UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS DIRECTIVE

8410.1, Revision 4 | 9/4/07

DETENTION AND SEIZURE

I. PURPOSE

A. This directive provides the procedures that Food Safety and Inspection Service (FSIS) program personnel are to follow when detaining, or preparing a recommendation to seize, meat, poultry, or egg products found in commerce when there is reason to believe that the products are adulterated, misbranded, or otherwise in violation of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), or the Egg Products Inspection Act (EPIA).

B. Section VI. of this directive defines circumstances in which program personnel are to begin the detention process. Section VII. describes how program personnel are to support a detention and possible seizure and, before detaining the product, communicate with the product owner, agent, or custodian. Section VIII. sets out the steps to detain product. Section IX. sets out other factors program personnel are to consider as part of the detention process in determining whether other actions are necessary (e.g., notifying other program personnel about the possibility of violative product in other places). Section X. describes possible voluntary product dispositions and the FSIS Forms that program personnel are to complete based on the type of disposition. Section XI. explains how detentions are to be terminated. Section XII. explains the process for product seizure, and Section XIII. sets out the responsibilities of the Office of Program Evaluation, Enforcement and Review (OPEER), Evaluation and Enforcement Division (EED), related to product seizure.

II. CANCELLATION

FSIS Directive 8410.1, Revision 3, dated 6/5/07

III. REASON FOR REISSUANCE

FSIS held training sessions with OPEER personnel on FSIS Directive 8410.1, Revision 3, dated 6/5/07. Based on information gathered at the training sessions, FSIS is reissuing the directive to make minor edits.

IV. REFERENCES

Federal Meat Inspection Act (FMIA), 21 U.S.C. 601 et seq.
Poultry Products Inspection Act (PPIA), 21 U.S.C. 451 et seq.
Egg Products Inspection Act (EPIA), 21 U.S.C. 1031 et seq.
9 CFR Parts 303, 312, 327, 329, 350, 381, 500, 590
FSIS Directive 5000.1, Verifying an Establishment's Food Safety System
FSIS Directive 5100.3, Administrative Enforcement Reporting (AER) System
FSIS Directive 5500.2, Non-Routine Incident Response
FSIS Directive 5930.1, Custom Exempt Establishment Review Procedures
FSIS Directive 8010.1, Methodology for Conducting In-Commerce Surveillance Activities
FSIS Directive 8010.2, Investigative Methodology
FSIS Directive 8010.3, Procedures for Evidence Collection, Safeguarding and Disposal
FSIS Directive 8010.4, Report of Investigation
FSIS Form 5500-4, Non-Routine Incident Report
FSIS Form 8080-1, Notice of Detention
FSIS Form 8080-4, Voluntary Destruction of Human Food Notice
FSIS Form 8080-6, Personal Use Notice
FSIS Form 8400-1, Notice of Termination of Detention
FSIS Form 8400-2, "U.S. Detained" Tag

V. BACKGROUND

A. When FSIS has reason to believe that meat, poultry, or egg products that are found in commerce are adulterated, misbranded, or otherwise in violation of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act, (PPIA), or the Egg Products Inspection Act (EPIA)(the Acts), FSIS may detain such products. See Sec. 402 of the FMIA (21 U.S.C. 672), Sec. 19 of the PPIA (21 U.S.C. 467a), and Sec. 19 of the EPIA (21 U.S.C. 1048). In many instances, FSIS program personnel work with the product owner, owner's agent, or custodian to obtain appropriate voluntary disposition of the violative product. When voluntary product disposition cannot be obtained, FSIS may:

1. detain products in commerce, as authorized by the Acts and as set out in 9 CFR part 329.1, 9 CFR 381.210, and 9 CFR 590.240, for a period not to exceed 20 days; and

2. petition a U.S. District court to seize the products. This action is initiated by the Department of Justice or United States Attorney acting on FSIS' behalf with the filing of a Libel of Information or a Complaint in Rem under Sec. 403 of the FMIA (21 U.S.C. 673), Sec. 20 of the PPIA (21 U.S.C. 467b), or Sec. 20 of the EPIA (21 U.S.C. 1049) against the product in the appropriate district court.

B. The following program personnel are authorized to detain products in commerce:

1. Office of Field Operations (OFO)

a. Enforcement, Investigations and Analysis Officers (EIAO)

b. Public Health Veterinarians (PHV) trained in the EIAO methodology

2. Office of International Affairs (OIA), Import Surveillance Liaison Officers (ISLO)

3. Office of Program Evaluation, Enforcement and Review (OPEER), Compliance and Investigations Division (CID) Investigators

4. Any other program personnel directed to execute a detention by one of the employees listed above or by an authorized FSIS program supervisor.

NOTE: Inspection program personnel will continue to retain meat and poultry products in Federally-inspected establishments as set out in FSIS Directive 5000.1, "Verifying an Establishment's Food Safety System."

C. The program area (OFO/District Office (DO), OPEER/CID/Regional Office (RO), or OIA/Regional Import Field Office (RIFO)) initiating the detention action is responsible for completing the detention action, including the coordination of cooperative actions with other program areas for extended voluntary disposition plans for the detention, when applicable.

VI. CONDITIONS UNDER WHICH DETENTIONS ARE WARRANTED

Program personnel detain the following types of violative products in commerce (at non-official establishments):

1. meat, poultry, and egg products capable of use as human food that there is reason to believe are adulterated;

2. meat, poultry, and egg products capable of use as human food that there is reason to believe are misbranded;

3. amenable products (i.e., products required to be prepared or processed under FSIS jurisdiction) or products represented as amenable that have not been Federally or State inspected and passed; and

4. amenable products that have been, or are intended to be, distributed in violation of the Acts, which includes illegally imported product or product from ineligible countries or ineligible foreign establishments.

NOTE: When the above types of violative products are found at custom exempt operations, program personnel are to take action in accordance with FSIS Directive 5930.1, "Custom Exempt Establishment Review Procedures."

VII. DETENTION

A. To ensure that the Agency is able to support a detention, and, if needed, to file a complaint for seizure within the 20-day statutory detention period, program personnel are to collect evidence to support the product detention at the beginning of the detention process. Such evidence includes, but is not limited to, documents and other information such as photographs, company business records, statements, memoranda of interviews, sampling and testing results, detention forms, and organoleptic observations. This evidence forms the basis for the Agency's detention and, if needed, complaint for seizure.

B. Program personnel are to review records and consult with the owner, owner's agent, or custodian to verify that all violative product under his or her control has been identified.

C. After program personnel identify all violative products, they should inform the owner, owner's agent, or custodian that he or she may offer and make a voluntary disposition of the product before a detention action is taken. If the owner, owner's agent, or custodian offers and makes an appropriate voluntary disposition of the product, program personnel are to verify that it is done as set out in Section X. below.

D. If the owner, owner's agent, or custodian does not agree to an appropriate voluntary disposition of the violative product, or does not complete the voluntary disposition in an appropriate manner, program personnel are to detain the violative product as set out in Section VIII., which follows.

VIII. NOTIFICATION AND DOCUMENTATION OF A DETENTION

A. Program personnel are to place FSIS Form 8400-2, "U.S. Detained" Tag, on the product being detained.

B. Program personnel are to complete FSIS Form 8080-1, Notice of Detention, and maintain the original. A copy of the form is to be provided to the custodian by hand delivery or certified mail, and, when possible, a copy is provided to the owner of the product.

NOTE: Detention codes have been modified in the instructions for FSIS Form 8080-1. The Form includes a "new" code position to identify the type of product, (i.e., D = Domestic products or I = Illegal entry/imported products).

C. Program personnel are to:

1. inform the owner, owner's agent, or custodian of the product about the detention action and that the product cannot be used, altered, moved, or sold in commerce while under the detention;

2. provide the owner, owner's agent, or custodian with the reasons why the product was detained (see Section VII.); and

3. provide an opportunity to the owner, owner's agent, or custodian to propose a method to bring the product into compliance with the applicable statute to avoid a seizure.

D. Program personnel are to contact their appropriate OFO/DO, OPEER/RO, or OIA/RIFO to obtain a detention entry number and to provide that office with:

1. the date of the detention;

2. the name and address of the owner, owner's agent, or custodian;

3. the full product name, number of pounds, number of containers, labeling, and inspection marks of each product being detained;

4. the total weight of the product being detained;

5. the reason for the detention; and

6. the program employee's badge number.

NOTE: If multiple products are to be detained that belong to one owner at one location, a single "Notice of Detention" should be used. Continuation pages should be used to itemize multiple detained products. If there are multiple owners, each owner may propose voluntary disposition for his or her products. In such cases, investigators would place each owner's product under a separate detention action. A continuation page should be used to list inventories of the respective products.

IX. OTHER FACTORS TO CONSIDER

Program personnel are, if necessary, to:

1. Review records or inquire with firm management or firm employees to determine whether all of the violative product is located at the firm, or whether there is additional violative product at other locations not under the firm's control. The lack of product control by the firm of violative product may lead program personnel to conduct further inquiry, verification, surveillance, investigation, or other activities at other firms or establishments. If program personnel believe that there may be a criminal violation, or that they need assistance with these investigations, they are to contact their immediate supervisor. Information or allegations regarding potential criminal violations should be referred to the appropriate OPEER/CID/RM. If there is concern that an official establishment has, or is still producing, the violative product, program personnel are to contact the appropriate OFO/DO.

2. Submit samples of product for laboratory testing to support the detention action or to positively identify the adulterant if there are public health concerns (e.g., contaminant appears to be a toxic substance).

3. Complete FSIS Form 5500-4, Non-Routine Incident Report, as set out in FSIS Directive 5500.2, “Non-Routine Incident Response,” if there is evidence of intentional product tampering or that the product contains a hazardous material.

4. Notify the Office of Inspector General (OIG), through the immediate supervisor, and CID/OPEER if the detained products exhibit characteristics of product tampering.

5. When program personnel find non-amenable products that appear to be adulterated, misbranded, or otherwise in violation of the law, they should contact the local Food and Drug Administration (FDA) representative as set out in a current Memorandum of Understanding with that agency or the appropriate State, county or local health department, sanitarian, or other appropriate official.

X. VOLUNTARY DISPOSITIONS

A. Program personnel are to notify the owner, owner’s agent, or custodian that he or she may submit a proposal for the adequate voluntary disposition of the violative product. The proposal should include (1) whether violative product will be moved for re-inspection or disposal, (2) how the move will be accomplished, and (3) what corrective and preventive measures the owner, owner’s agent, or custodian will take.

B. If an appropriate disposition of the product is taken before a detention, or in response to a detention, program personnel are to complete the appropriate forms and take actions as set out in Section XI. of this directive.

C. Voluntary dispositions under which detentions may not be necessary or may be terminated include:

1. Denaturing and destruction of detained product. Program personnel are to be present for denaturing or destruction. Program personnel are to complete FSIS Form 8080-4, Voluntary Destruction of Human Food Notice.

NOTE: Program personnel are to contact the Animal and Plant Health Inspection Service (APHIS) if imported product poses animal health, food security, or threat concerns. Such product cannot be voluntarily destroyed until APHIS is contacted.

2. Transferring control of the violative product to FSIS personnel at an official establishment or official import establishment pending the reconditioning of product under a procedure that has been determined to be appropriate by the appropriate FSIS Field and Headquarters staff (OFO, OIA, or OPEER).

3. Voluntarily removing official marks from products that are not amenable. When non-amenable product is found in commerce inside of packaging/boxes bearing the marks of meat, poultry, or egg inspection, this product is subject to detention. Program personnel can request that this product be voluntarily removed from the packaging/ boxes, or that the marks of inspection be obliterated.

4. Product that is found to be safe, wholesome, and capable for use as human food may be released for personal use. Program personnel should not release more product for personal use than defined in the regulations (9 CFR 303.1(d)(2)(ii),

327.16, 381.10(d)(2)(ii), 381.207, and 590.960). Program personnel are to complete FSIS Form 8080-6, Personal Use Notice.

NOTE: Illegal, ineligible foreign product cannot be released for personal use or donated. Such product must be properly destroyed.

5. Releasing product that is misbranded but not adulterated for donation. Program personnel are to complete FSIS Form 8080-6, Personal Use Notice.

D. In situations when it will take longer than 20 days to complete the voluntary disposition, the owner, owner's agent, or custodian may request the Agency to approve an extended disposition plan as set out in Section XI.

XI. TERMINATION OF DETENTION

A. Program personnel are to complete FSIS Form 8400-1, Notice of Termination of Detention, and any other appropriate voluntary disposition forms, and provide (by hand delivery, certified mail, or fax) one copy of the appropriate completed form to the owner and, when applicable, another copy to the custodian. A copy also goes to the program employee's appropriate supervisory office (OFO/DO, OPEER/RO, or OIA/RIFO).

B. Program personnel are to inform the appropriate supervisory office (OFO/DO, OPEER/RO, or OIA/RIFO) that the detention has been terminated.

C. In instances where the owner, owner's agent, or custodian provides an appropriate disposition plan, and it is apparent that the detained product cannot be disposed of before the 20-day limit, a written request or proposal can be submitted to FSIS from the product owner, owner's agent, or custodian requesting approval of an extended disposition plan for the detained product. If the plan is approved by FSIS, that initial detention is terminated. However, if the owner, owner's agent, or custodian do not meet the conditions in 1 and 2 below, a new detention action will be taken on the product.

1. Program personnel will inform the owner, owner's agent, or custodian that:

a. the written request or proposal should be addressed to the program employee's supervisor (OFO/District Manager (DM), OPEER/Regional Manager (RM), OIA/Regional Import Field Supervisor (RIFS)), and explain the extenuating circumstances (e.g., large amount of product, owner cannot be contacted, or transportation or landfill issues);

b. the written request or proposal needs to contain a statement specifying that the product is adulterated, misbranded, or otherwise in violation of the Acts;

c. the written request or proposal needs to describe the product, including the number of pounds of product, location, method of product disposition, anticipated

timeframe in which the disposition will occur, and how the product will be accounted for if the disposition is occurring over an extended timeframe;

d. the written request or proposal needs to state that, if the product disposition does not occur within the specified timeframe, the product will be voluntarily destroyed or subject to a new detention and seizure; and

e. the written request or proposal needs to also agree that the product will not be moved without the approval of FSIS and acknowledge that if it is, the owner, owner's agent, or custodian is subject to criminal charges for transporting adulterated or misbranded, or otherwise violative, product in commerce.

2. After the appropriate FSIS official (DM, RM, or RIFS) accepts the request and responds in writing to the product owner, owner's agent, or custodian, program personnel are to:

a. terminate the detention by issuing FSIS Form 8400-1, Notice of Termination of Detention;

b. ensure that disposition or movement for disposition takes place under his or her supervision; and

c. ensure that disposition is achieved within the specified time period.

3. Upon completion of the disposition plan, program personnel are to complete the appropriate voluntary disposition form.

4. In a situation where the extended disposition plan is not approved by the supervisor, program personnel are to immediately initiate a request for a seizure action in accordance with Section XII.

5. In a situation where the extended disposition plan is approved by the supervisor, but the company fails to follow the approved extended disposition procedures, program personnel are to immediately detain the product and initiate a request for seizure action in accordance with Section XII.

6. If the owner, owner's agent, custodian or other unauthorized person or firm moves the product to another location without authorization from a program official, program personnel are to immediately detain the product, initiate a request for seizure action in accordance with Section XII., and initiate an investigation or refer the matter to OPEER to investigate for possible criminal or other action.

XII. SEIZURE OF PRODUCT

A. Program personnel are to initiate, through supervisory channels, a recommendation for seizure within ten (10) days of the initial detention when the owner, owner's agent, or custodian does not offer an appropriate voluntary disposition of the detained product.

B. Program personnel are to initiate, through supervisory channels, a recommendation for immediate seizure when:

1. the supervisor has not approved an extended disposition plan;

2. the owner, owner's agent, or custodian did not properly execute an approved extended disposition plan; or

3. the product moves to another location without authorization from a program official.

C. When program personnel plan to recommend a seizure action, they are to notify their immediate supervisor and supply the following information:

1. a complete inventory and description of product, including species, cooked/raw, fresh/frozen, item count, and total weight;

2. location of product, including complete address, lot storage numbers, and any other applicable information;

3. date of detention, including date and time of day of each detention involved;

4. complete name of owner, owner's agent, or custodian of the product (includes Importer of Record). For multiple owners, owners' agents, or custodians, program personnel are to provide information for each. If product ownership is uncertain, provide this information for owner's agents, brokers, shippers, consignees, or others as appropriate;

5. processor of product. Program personnel are to provide the complete name, address, nature of business, establishment number, if applicable, and other information for the processor. If the processor is unknown, so state;

6. if the product was moved, all points of shipment (the complete addresses of the facilities from where the product was moved before it was detained, and, if it was moved after detention, to where it was moved);

7. date of shipment (the date product was shipped from the facility before it was detained, and the date that it arrived at its destination);

8. sections of the Acts and regulations under which the product is misbranded, adulterated, or otherwise violative;

9. information on all efforts to resolve the detention by a means other than a seizure; and

10. photographs, company business records, statements, memoranda of interviews, sampling and testing results, detention forms, organoleptic observations, and other evidence that supports the determination that the product is adulterated, misbranded, or otherwise in violation of the statutes.

D. This evidence will serve as the basis to support a request for seizure. OFO personnel are to use an Administrative Enforcement Report (AER) to document findings and evidence (see FSIS Directive 5100.3, "Administrative Enforcement Reporting (AER) System"). OPEER investigators are to use a Report of Investigation (ROI) to document findings and evidence (see FSIS Directive 8010.4, "Report of Investigation").

E. The District Office (OFO) or Regional Office (OIA or OPEER), as appropriate, notifies the Director of EED of the seizure request as soon as practicable and sends a copy of the AER, ROI, or other documentation to support a recommendation or request for seizure to the Director of EED. To prevent delays in processing a seizure request, the District Office or Regional Office (OIA or OPEER) should discuss with EED the best method to provide the AER or ROI (i.e., courier, fax, or electronically). The contact information for the Director of EED is:

Director, Evaluation and Enforcement Division
Office of Program Evaluation, Enforcement and Review
Food Safety and Inspection Service
U.S. Department of Agriculture
Congressional Quarterly Building, Room 300
Washington, DC 20037
Telephone (202) 418-8872
FAX (202) 418-8896

NOTE: Case evidence may be submitted electronically or by hard copy; however, EED, the Office of the General Counsel (OGC), or the U.S. Attorney's Office may require the original evidence before action proceeds.

XIII. EVALUATION AND ENFORCEMENT DIVISION RESPONSIBILITIES

A. EED reviews the recommendation or request for seizure and case documentation (i.e., AER, ROI) to verify that the product in commerce is adulterated, misbranded, or otherwise in violation of the statutes, and that there is a basis for seizure. If EED needs additional information or evidence, it will coordinate with the appropriate FSIS program area. EED will close the case if the case evidence does not support the seizure action.

B. When EED determines that the case evidence supports the seizure action, it will refer the case and evidence to OGC for initiation of legal proceedings through a U.S. Attorney.

C. EED will work with OGC and the appropriate U.S. Attorney's Office within the Department of Justice to draft or develop a petition for seizure, Complaint in Rem, Libel of Information, supporting affidavits, and other needed documents, case evidence, or information based on the information supplied by the FSIS program or immediate supervisor that initiated the request for seizure. If OGC or the U.S. Attorney's Office requires additional information, EED will coordinate with the appropriate program area.

NOTE: Program personnel, including field supervisors, may be called upon to verify final product disposition, to serve legal documents, or to otherwise support seizure actions should the U.S. Attorney or U.S. District Court file a complaint or other legal

document to seize products, enter a Decree of Condemnation or Forfeiture, or otherwise initiate or take legal action based on a request by FSIS for initiation of seizure proceedings. EED will work with the appropriate program area, field supervisor, OGC attorney, and the U.S. Attorney to help coordinate such activities.

D. OPEER/EED, OFO/DO, OIA/RIFO, and OPEER/CID/RO, as applicable, work in concert and collaborate on follow-up investigations or other actions, such as administrative action by the Agency or development of evidence to support issuance of a Notice of Warning or referral for criminal or civil action.

Refer questions to the Policy Development Division (formerly the Technical Service Center) at 1-800-233-3935.

Assistant Administrator
Office of Policy, Program, and Employee Development