

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

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# FSIS DIRECTIVE

8410.1,  
Revision 2

6/30/04

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## DETENTION AND SEIZURE

### I. PURPOSE

This directive provides the procedures that Food Safety and Inspection Service (FSIS) program personnel follow when detaining, or preparing a recommendation to seize, meat, poultry, and egg products.

#### *Key Points Covered*

- *The difference between detentions and retentions*
- *When detentions are needed*
- *How product is detained*
- *What actions are necessary to support a detention or seizure*

### II. CANCELLATION

FSIS Directive 8410.1, Rev. 1, 8/28/91

### III. REASON FOR REISSUANCE

This directive has been rewritten in its entirety to reflect the new duties of some FSIS program personnel and to update the procedures for carrying out detentions and for petitioning for seizures.

### IV. REFERENCES

Federal Meat Inspection Act (FMIA), Poultry Products Inspection Act (PPIA), Egg Products Inspection Act (EPIA), 9 CFR parts 312, 329, 381, Subpart U, 590.240.

### V. ABBREVIATIONS AND FORMS

AER	Administrative Enforcement Report
FMIA	Federal Meat Inspection Act
PPIA	Poultry Products Inspection Act
EPIA	Egg Products Inspection Act
HQ	Headquarters

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**DISTRIBUTION:** Inspection Offices; T/A Inspectors;  
Plant Mgt; T/A Plant Mgt; TRA; ABB; TSC; Import  
Offices

**OPI:** OPPEd

RO	Regional Office
DO	District Office
CID	Compliance and Investigation Division, OPEER
EARO	Executive Assistant for Regulatory Operations
EED	Evaluation and Enforcement Division, OPEER
EIAO	Enforcement and Investigative Analysis Officer
ISLI	Import Surveillance Liaison Inspector
OFO	Office of Field Operations
OIA	Office of International Affairs
OPEER	Office of Program Evaluation, Enforcement and Review
PI	Program Investigator
PHV	Public Health Veterinarian
FSIS Form 8080-1	Notice of Detention
FSIS Form 8400-1	Notice of Termination of Detention
FSIS Form 8400-2	“U. S. Detain” Tag
FSIS Form 8080-4	Voluntary Destruction of Human Food Notice
FSIS Form 8080-6	Voluntary Destruction of Human Food-Personal Use Notice

## VI. DEFINITIONS

**Detention:** For product in commerce, an Agency action preventing product movement in commerce (i.e., detain product).

**Retention:** For product at official establishments, an Agency action preventing product entry into commerce (i.e., retain product).

**Seizure:** For product in commerce, an action in which product is held by court action pending a judicial determination as to whether the product is adulterated or misbranded.

**Libel of Information:** A document filed with the court explaining the circumstances and particulars of why a product is adulterated or misbranded and seeking seizure of product.

## VII. BACKGROUND

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

A. detain products in commerce, as set out in 9 CFR part 329.1, 9 CFR 381.210, 9 CFR 590.240, for a period not to exceed 20 days, and

B. petition a U.S. District court to seize products. This action is initiated by the Department of Justice acting on FSIS' behalf by filing a Libel of Information against the product in the appropriate district court. See 21 U.S.C. 467, 673, and 1049.

Traditionally, inspection program personnel retained products at federally-inspected establishments, and compliance program personnel detained products in commerce and initiated the petition to seize product. In light of FSIS' reorganization, the following program personnel are authorized to detain products:

1. EIAO, OFO,
2. PHV, OFO, trained in the EIAO methodology,
3. ISLI, OIA,
4. PI, OPEER, and
5. Any other program employee directed to execute a detention by one of the employees listed above.

**NOTE:** Inspection program personnel will continue to retain meat and poultry products in federally-inspected establishments as set out in FSIS Directive 5000.1, Revision 1.

### **VIII. CONDITIONS UNDER WHICH PRODUCTS ARE DETAINED**

A. Program personnel detain products when:

1. they are notified by their supervisory office to detain product when there is reason to believe that it is misbranded or adulterated at a non-federally inspected premises (e.g., product in commerce that is subject to recall, or product in a non-federally-inspected facility that has been contaminated with rodent feces).

2. they find evidence at a non-federally inspected premises that:

- a. product capable of use as human food is adulterated or misbranded,
- b. product is amenable (required to be produced under FSIS jurisdiction), and it has not been federally or State inspected and passed and thus is in violation with the Acts, or
- c. amenable products have been or are intended to be distributed in violation of the Acts.

B. To ensure that the Agency will be able to file a complaint for seizure by the time the 20-day detention expires, collection of evidence (including pertinent facts and evidence such as photos, AER Reports, or statements) to support a determination that the product is adulterated or misbranded, which would form the basis for the Agency's complaint for seizure, should begin when the product is detained.

C. Once the product is detained (see paragraph IX for detention procedures), and the program employee has notified his/her supervisory office, the DO/OFO, RO/OIA, or RO/OPEER will contact the case specialist/OFO, program investigator/OPEER, or OIA to begin preparing the case file complaint. The case specialist or PI will contact the EARO, OFO, HQ/OPEER, or OIA, who, in coordination with EED, will then notify OGC.

**NOTE:** In situations outlined in A. 1 of this section, the collection of evidence to support a determination that the product is adulterated will likely have been completed.

## **IX. DETENTION PROCEDURES**

A. Program personnel are to place a U.S. Detained Tag on product being detained and secure all evidence supporting the detention, at non-federally inspected locations when the conditions set forth in section VIII A. 1 or 2 are met.

B. Program personnel are to complete FSIS Form 8080-1, Notice of Detention, (see outlook address *MS Outlook, Public Folders, All Public Folders, Agency Issuances, Forms, FSIS 8000 series*) and maintain a copy. Via hand delivery or certified mail, the original of the form is provided to the custodian, and when possible, a copy is provided to the owner.

C. Program personnel are to:

1. inform the custodian of the product and the owner, if known, of the detention action as soon as possible.
2. provide the custodian the reasons why they have detained the product (see section VIII).
3. inform the custodian, and the owner, if known, that the product cannot be moved or sold in commerce for 20 days from the date of the detention, and
4. provide an opportunity to propose a method to bring the product into compliance with the applicable statutes to avoid a seizure.

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

1. the date of the detention,
2. the name and address of custodian and the owner, if known,

3. the name of product being detained (number of pounds, number of containers, labeling, and inspection marks),
4. the total weight of product being detained,
5. the reason for the detention, and
6. the program employee's badge number.

The supervisory office will contact EED/OPEER for the detention entry number.

E. When directed by the program employee's supervisory office, the program personnel will collect representative samples of the product for possible use as evidence in any legal action.

F. In cases where appropriate product disposition cannot be achieved voluntarily, the Acts provide for the request for a seizure by the Agency.

**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 products that there is reason to believe are adulterated or misbranded belonging to multiple owners at a public warehouse facility, multiple detention actions are to be executed. A continuation page should be used to list inventories of their respective products.

## **X. PROCEDURE FOR PETITION FOR SEIZURE**

Product that is controlled under detention is subject to a petition for seizure. The process to seize product must be initiated before expiration of the 20-day detention period in the statutes. If product is controlled by a detention, and disposition under Section XI of this Directive may not be achieved, the program employee should initiate the procedures, through supervisory channels, for product seizure.

A. The program employee should immediately notify their appropriate supervisory office when seizure proceeding is required and supply the following information:

1. Location of product, including complete address, lot storage numbers, and any other applicable information.
2. Description of product
3. Date of detention, including date and time of day of each detention involved.
4. Owner or custodian of product. Provide complete name and address of the owner, if known, or of the custodian of the product. For multiple owners or custodians, provide information for each. If product ownership is uncertain, provide this information for custodians, brokers, shippers, consignees, or others as appropriate.

5. Processor of product. Provide complete name, address, nature of business, establishment number, if applicable, and other information. If the processor is unknown, so state.

6. Points of shipment (the complete address of the facility from which the product was moved before it was detained and to where it was moved).

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

8. Synopsis of facts and evidence that support a determination that the product is adulterated, misbranded, or otherwise in violation of the statutes and that would be the basis for the Agency's case if a complaint for seizure is filed (including evidence such as photos, AER Report, or statements). Also, include details of efforts to resolve by means other than seizure.

9. Sections of the Acts and regulations under which the product is misbranded, adulterated, or otherwise in violation of the statutes.

B. The program supervisor (District Manager, OFO; Regional Manager, OIA; or Regional Manager, OPEER) will notify EED/OPEER and provide case documentation and a written request to support legal action to seize product in commerce. This will include enclosures (copies of detention notices, signed statements, or any other material that would support seizure (e.g., AER case file)).

C. EED/OPEER will contact OGC, upon a determination that the documentation supports the request, to initiate seizure procedures.

**NOTE:** If the program employee suspects criminal activity or intent, he or she is to contact EED/OPEER.

## **XI. PROCEDURE FOR TERMINATING A DETENTION**

A. Program personnel may terminate a detention by completing an FSIS Form 8400-1, after appropriate disposition of the product has been made.

B. Dispositions under which detentions can be terminated include the following:

1. denaturing and destruction of noninspected product that has moved in commerce (this process must be witnessed by the program employee),

2. voluntary destruction of product for human food purposes per written agreement (this process must be witnessed by the program employee),

3. seizure and directed disposition of product by a U.S. District Court and the U.S. Marshal Service, and

4. voluntary removal of official identification from products that are not amenable. When nonamenable product is found in commerce inside of packaging/boxes bearing the marks of meat or poultry inspection, this product is subject to detention. Program employees can request that suspect product be brought into compliance by the voluntary removal of the nonamenable product from packaging/boxes bearing the marks of meat and poultry inspection (e.g., removing packaged chicken breast from a box bearing a label that represents the product as beef roasts).

C. Once the product has met one or more of the conditions specified in B. 1-4 of this section, program personnel are to:

1. complete FSIS Form 8400-1, Notice of Termination of Detention, and if appropriate, complete FSIS Form 8080-4, Voluntary Destruction of Human Food Notice, or FSIS Form 8080-6, Voluntary Destruction of Human Food-Personal Use Notice, and maintain the originals. Via hand delivery, certified mail, or fax, one copy is provided to the owner and, when applicable, another copy is provided to the custodian. Also a copy goes to the program employee's appropriate supervisory office (DO/OFO, RO/OPEER, RO/OIA), and

2. notify the appropriate supervisory office (DO/OFO, RO/OPEER, RO/OIA) by telephone or e-mail that the detention has been terminated. The supervisory office will notify EED/OPEER, who will make appropriate notification in the tracking system.

D. In instances where product custodians/owners provide an appropriate disposition plan, and there is reason to believe 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 requesting that the Agency not initiate action to seize the product.

1. The program employee will inform the custodian/owner that:

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

b. the written request or proposal must 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, and anticipated time frame,

d. the written request or proposal needs to state that, if the product is not disposed of within the specified time frame, FSIS will re-detain the product and move for judicial seizure, and

e. the written request or proposal needs to also provide that the product is not to be moved without the approval of FSIS, and that if it is, FSIS will seek criminal charges against the owner of the product for transporting adulterated or misbranded product in commerce.

2. After the appropriate FSIS official (District Manager or Regional Manager) approves the request, the program employee:

a. is to ensure that disposition takes place under his or her supervision,  
b. is to ensure that disposition is achieved within the specified time period, and

c. will terminate the detention by issuing FSIS Form 8400-1, Notice of Termination of Detention, upon condition that the owner disposes of the product in the manner specified in the written request or proposal. Upon proper disposition, the program employee will complete the voluntary destruction notice form, if applicable.

3. In a situation where the proposal is not approved by the supervisor, the program employee should move for a seizure action as outlined in Section X.

4. If the company fails to follow up on approved disposal procedures, the program employee will immediately initiate the request for seizure action following the procedures outlined in Section X.

5. If the product is moved to another location without authorization from a program official, the program employee will re-detain the product and immediately initiate the request for seizure action following the procedures outlined in Section X.

Refer questions to the Technical Service Center.

*Philip S. Derfler /s/*

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