

Detention and Seizure

Objectives

Upon completion of this module the trainee will be able to:

1. Describe the purpose of detention and the conditions under which product will be detained.
2. List the steps to be taken by the EIAO when detaining product.
3. Given a scenario, be able to describe a course of action in relation to product detention.

Introduction

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 Acts, FSIS may detain such products. The authority to detain product can be found in the following references:

- 21 USC 672
- 9 CFR 312.9 & 329
- 21 USC 467a
- 9 CFR 381, Subpart U
- FSIS Directive 8410.1 Rev. 2

Definitions

Here are some definitions you should be familiar with:

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.

Purpose of Detention

The purpose of detention is to control meat, poultry, and egg products in commerce whenever there is evidence or reason to believe that:

- Product capable for use as human food is adulterated or misbranded.
- Amenable product has not been inspected as required.
- Amenable product has been or is intended to be distributed in violation of the Acts.

Note that detentions are taken at locations *other than official establishments* (i.e., in commerce). Retention of product is to be utilized at official establishments.

In many of these instances, FSIS program personnel work with product owners and custodians to obtain voluntary destruction or other appropriate product disposition without having to take a detention action. For example, for non-amenable product bearing the mark of inspection on the packaging material, the owner may volunteer to remove the mark of inspection from the product.

Time Limitations

Detentions are for a period *not to exceed 20 days*. If disposition cannot be obtained in 20 days, FSIS may follow procedures to have the product seized by a U.S. District court. 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.

Authorized Personnel

The following program personnel are authorized to detain products.

- EIAO
- PHV trained in the EIAO methodology
- ISLO, OIA
- PI, OPEER
- Any other program employee directed to execute a detention by one of the employees listed above.

Detention Procedures

If you encounter product you believe should be detained, immediately notify the District Office and they can help you through the process. To carry out a detention action, you are to:

- Place a U.S. Detained Tag (FSIS Form 8400-2) on the product being detained.
- Complete FSIS Form 8080-1, Notice of Detention and maintain a copy.
- Provide via hand delivery or certified mail the original of the form to the custodian, and, when possible, a copy is provided to the owner.
- Inform the custodian of the product and the owner, if known, of the detention action as soon as possible.
- Provide the custodian the reasons why you have detained the product.

- 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.
- Provide an opportunity to propose a method to bring the product into compliance with the applicable statutes to avoid a seizure.

Contact the District Office as soon as possible to obtain a detention entry number and provide them with the:

- Date of the detention,
- Name and address of custodian and the owner, if known,
- Name of product being detained (number of pounds, number of containers, labeling, and inspection marks),
- Total weight of product being detained,
- Reason for the detention.

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.

To ensure that the Agency will be able to file a complaint for seizure, if necessary, by the time the 20-day detention expires, collection of evidence (including pertinent facts and evidence such as photos, AER Reports, or statements) should begin when the product is detained. The case specialist will begin preparing the AER case file including the completion of FSIS Form 5400-9, Administrative Enforcement Report.

Preparation of FSIS Form 8080-1

Here is guidance on how to complete the FSIS Form 8080-1. For reference, there is a blank form at the end of this module.

- Case Number: Leave blank
- Entry Number: Leave blank
- Date: Enter the actual date of the preliminary detention action
- Owner, Custodian. Enter the full organization name, address, and telephone no. of owner or custodian
- If custodian and owner are the same, enter "Custodian-same as owner"

Block 1: Number and Description of Article(s) Detained

- A. Product Name: Enter product name, e.g. Boneless Beef
When multiple products are involved list each item separately in Blocks A-F
If more space is needed, place asterisk in appropriate section followed by "see back of form" or "see attached sheets"
- B. Coding: numerical or alphabetical coding of interest
- C. Number: Enter number of units - Example - 6/10 lb. boxes
- D. Product Weight: Enter total net weight
- E. Condition: Check appropriate block - Fresh, Frozen, Other

- F. Establishment Number: Enter any establishment number(s)
- G. Inspection Type: Check appropriate block - Federal, State, None

Block 2: Location of Detained Article(s)

- Enter the full organizational name and address where product is detained.
- If same as owner and/or custodian enter "same as owner" or "same as custodian" as appropriate

Block 3: Detention

- 3a: Enter detention code (refer to code sheet in this module)
- 3b: Reason: check "misbranded" or "adulterated"
- 3c: Enter brief description, i.e. sour, putrid, rodent defiled

Block 4: Detained Tag(s) Attached

- 4a: Number(s): Enter serial number of each tag used
- 4b Hour: Enter the hour detained tags were applied, i.e. 10:00 AM

Block 5: Legal Authority for Detention

- Check appropriate box

Block 6: Name & Address of Shipper

- Enter full organizational name and address of firm or individual responsible for offering the product for transportation in commerce. If same as owner, enter "same as owner"

Block 7: Name and Address of Seller

- Enter full organizational name and address of firm or individual that offered the product for sale. If same as owner, so state.

Block 8: Point of Shipment (origin)

- Enter the product(s) "Point of Origin"

Block 9: Transporter (Carrier)

- Enter the carrier of the product

Block 10: Product Sampled

- Check yes or no - Sampling will be as directed by supervisor

Block 11: Freezer Lot Number

- Enter lot number assigned by storage facility

Block 12: Name of Owner/Owner's Agent Notified

- Enter appropriate name and indicate if they are the owner or owner's agent.

Block 13: Signature

- Signature of Owner/Owner's Agent

Block 14: Name(s) and Address(es)

- Enter name & address of other Federal, State or local authorities notified, if any.

Block 15: Authorized Representative of Secretary

- A. Signature of program employee
- B. Badge number of program employee
- C. Employee's office telephone number
- D. Enter office address

Block 16: Date Owner Notified

- Complete if blocks 12 & 13 were not the owner

Procedure for Terminating a Detention

You may terminate a detention by completing an FSIS Form 8400-1, after appropriate disposition of the product has been made. Dispositions under which detentions can be terminated include the following:

- Denaturing and destruction of noninspected product that has moved in commerce (this process must be witnessed by the program employee),
- Voluntary destruction of product for human food purposes per written agreement (this process must be witnessed by the program employee),
- Seizure and directed disposition of product by a U.S. District Court and the U.S. Marshal Service,
- Voluntary removal of official identification from products that are not amenable.

You will 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 your District Office.

Notify the appropriate District Office by telephone or e-mail that the detention has been terminated. The DO will notify OPEER, who will make appropriate notification in the tracking system.

Voluntary Destruction Agreement

You will occasionally initiate a voluntary destruction agreement and observe the destruction of product. To do that you must:

- Complete FSIS Form 8080-4, Voluntary Destruction Notice *prior* to destruction of product.
- Obtain management's signature and title.

You will enter the following information on FSIS Form 8080-4.

- Date the product is voluntarily destroyed
- Firm's name and address
- Product name, number of containers, weight, brand name, etc. Briefly describe what caused the destruction
- Detained on: If a Notice of Detention is not initiated, the employee will cross out "detained on" and write in "observed on" and the date
- At: Name and address of the firm where product was located
- By: Program employee's name, title, and badge no
- Signature: Title and signature of owner or owner's agent/representative

Distribution of Voluntary Destruction Agreement

- Original to program employee then to supervisor
- Copy to owner

Other Disposition of Product Requests

If owner requests disposition other than voluntary destruction:

- You should contact the District Office who will coordinate any further action (example- release by DM for personal consumption).

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. If disposition of detained product may not be achieved, you should initiate the procedures for product seizure through supervisory channels. You should immediately notify the District Office when a seizure proceeding may be required and provide the:

- Location of the product, including complete address, lot storage numbers, and any other applicable information.
- Description of product.
- Date of detention, including date and time of day of each detention involved.
- 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.

- Processor of the product. Provide the complete name, address, nature of business, establishment number, if applicable, and other information. If the processor is unknown, so state.
- 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).
- Date of shipment (date product was shipped from the facility before it was detained and the date it arrived at destination).
- 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.
- Sections of the Acts and regulations under which the product is misbranded, adulterated, or otherwise in violation of the statutes.

The District Office will provide the case documentation and a written request to OPEER. If the documentation supports the request, OPEER will then contact the Office of General Counsel (OGC) to initiate seizure procedures.

Request to Not Seize Product

If the custodians/owners have provided an appropriate disposition plan, and there is reason to believe that the detained product cannot be disposed of before the 20-day limit expires, 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. If this applies, you will inform the custodian/owner that 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.),
- Must contain a statement specifying that the product is adulterated, misbranded, or otherwise in violation of the Acts,
- Should describe the product, including the number of pounds of product, location, method of product disposition, and anticipated time frame,
- Should 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
- Should 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.

After the District Manager approves the request, you will:

- Ensure that disposition takes place under his or her supervision,
- Ensure that disposition is achieved within the specified time period, and
- Terminate the detention by issuing FSIS Form 8400-1, Notice of Termination of Detention when the owner disposes of the product in the manner specified

in the written request or proposal. Upon proper disposition, you will complete the voluntary destruction notice form, if applicable.

If the proposal is not approved by the District Manager or the company fails to follow approved disposal procedures, the petitioning for seizure protocols will be followed.

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.

U.S. DEPARTMENT OF AGRICULTURE FOOD SAFETY AND INSPECTION SERVICE OFFICE OF FIELD OPERATIONS DISTRICT ENFORCEMENT OPERATIONS NOTICE OF DETENTION	DISTRIBUTION: Original - Compliance Officer 1 Copy - Product Owner 1 Copy - Product Custodian 1 Copy - ADME, DEO	CASE NUMBER	ENTRY NUMBER	DATE DETAINED
		OWNER'S NAME, ADDRESS		CUSTODIAN'S NAME, ADDRESS
TELEPHONE NUMBER		TELEPHONE NUMBER		

The article(s) described below was/were DETAINED by Food Safety and Inspection Service, U.S. Department of Agriculture, in accordance with the authority and for the reasons shown herein for a period not to exceed twenty (20) days. The article(s) described may not be used, moved or altered in any manner without first being released by an authorized employee of the Food Safety and Inspection Service, U.S. Department of Agriculture, under penalty of fine or imprisonment, or both. Voluntary disposition of the article(s) for human food purposes, or placing the article(s) in compliance will result in termination of the detention. Seizure, condemnation and disposal of such article(s) shall be as directed by any United States District Court or other proper Court as provided in the legislation cited.

1. NUMBER AND DESCRIPTION OF ARTICLE(S) DETAINED				
A. PRODUCT NAME	B. CODING (if any)	C. NUMBER	D. PRODUCT WEIGHT	E. CONDITION (✓) <input type="checkbox"/> FRESH <input type="checkbox"/> OTHER <input type="checkbox"/> FROZEN
F. ESTABLISHMENT NUMBER		G. INSPECTION (✓) <input type="checkbox"/> FEDERAL <input type="checkbox"/> STATE <input type="checkbox"/> NONE		
2. LOCATION OF DETAINED ARTICLE(S) (Complete name, address, etc.)		3. DETENTION A. CODE B. REASON (✓) <input type="checkbox"/> MISBRANDED <input type="checkbox"/> ADULTERATED C. DESCRIPTION		
4. DETAINED TAG(S) ATTACHED		5. LEGAL AUTHORITY FOR DETENTION (✓) <input type="checkbox"/> FEDERAL MEAT INSPECTION ACT 21 U.S.C. 601 <i>et seq.</i> <input type="checkbox"/> POULTRY PRODUCTS INSPECTION ACT 21 U.S.C. 451 <i>et seq.</i> <input type="checkbox"/> OTHER (specify act): _____		
A. NUMBER(S)	B. HOUR	7. NAME AND ADDRESS OF SELLER		
6. NAME AND ADDRESS OF SHIPPER		9. TRANSPORTER (carrier)		
8. POINT OF SHIPMENT (origin)		11. FREEZER LOT NUMBER		
10. PRODUCT SAMPLED <input type="checkbox"/> YES <input type="checkbox"/> NO		13. SIGNATURE		
12. NAME OF OWNER/OWNER'S AGENT NOTIFIED		14. NAME(S) AND ADDRESS(ES) OF FEDERAL, STATE OR LOCAL AUTHORITIES NOTIFIED (if any)		

15A. SIGNATURE OF AUTHORIZED REPRESENTATIVE OF USDA	B. BADGE #	C. TELEPHONE NUMBER
ADDRESS		

16A. DATE OWNER NOTIFIED	B. OWNER INFORMED BY (✓) <input type="checkbox"/> TEL <input type="checkbox"/> CM <input type="checkbox"/> HD <input type="checkbox"/> FAX	C. NAME OF OWNER / OWNER'S AGENT NOTIFIED
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FSIS FORM 8080-1 (10/4/1999) REPLACES FSIS FORM 8080-1 (12/9/1999), WHICH MAY BE USED UNTIL EXHAUSTED. *Designed on FormFlow Software.*

U.S. DEPARTMENT OF AGRICULTURE FOOD SAFETY AND INSPECTION SERVICE OFFICE OF PROGRAM EVALUATION, ENFORCEMENT AND REVIEW NOTICE OF TERMINATION OF DETENTION	DISTRIBUTION: Original - Program Investigator 1 Copy - Product Owner 1 Copy - Product Custodian 1 Copy - Regional Manager, OPEER	CASE NUMBER	ENTRY NUMBER	DATE DETAINED
OWNER'S NAME, ADDRESS		CUSTODIAN'S NAME, ADDRESS		
TELEPHONE NUMBER		TELEPHONE NUMBER		

The Detention of the article(s) described in the Notice Of Detention (*FSIS Form 8080-1*), and dated as shown above is hereby terminated for the reason(s) indicated below.

1. DISPOSITION CODE (✓)

- A. VOLUNTARY DESTRUCTION FOR HUMAN FOOD PURPOSES PER YOUR WRITTEN REQUEST DATED _____
- B. VOLUNTARY REMOVAL OF OFFICIAL IDENTIFICATION.
- C. DENATURED PRIOR TO USE FOR ANIMAL FOOD.
- D. RETURNED TO OFFICIAL ESTABLISHMENT FOR REINSPECT EST. / _____
- E. SEIZED AS DIRECTED BY A U.S. DISTRICT COURT.
- F. PLACED UNDER THE EMBARGO OR CONTROL OF THE FOLLOWING STATE OR LOCAL AUTHORITIES: _____
- G. RELEASED FOR PERSONAL CONSUMPTION PER YOUR WRITTEN REQUEST DATED _____
- H. OTHER (*specify*): _____

2. DETENTION TERMINATED

A. DETAIN TAG NUMBER(S) REMOVED	B. HOUR	C. DATE
D. REMARKS		

12. NAME OF OWNER/OWNER'S AGENT NOTIFIED	13. SIGNATURE OF OWNER/OWNER'S AGENT
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This termination does not preclude such criminal action as may be deemed appropriate under the applicable requirements of the legal authority cited in the Notice Of Detention.

A copy of this Notice of Termination of Detention is being furnished the agency or agencies shown on original Notice Of Detention (*FSIS Form 8080-1*).

15A. SIGNATURE OF AUTHORIZED REPRESENTATIVE OF USDA	B. BADGE #	C. TELEPHONE NUMBER
ADDRESS		

16A. DATE OWNER NOTIFIED	B. OWNER INFORMED BY (✓) <input type="checkbox"/> TEL <input type="checkbox"/> CM <input type="checkbox"/> HD <input type="checkbox"/> FAX	C. NAME OF OWNER / OWNER'S AGENT NOTIFIED
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FSIS Form 8080-4 Voluntary Destruction of Human Food

United States
Department of
Agriculture

Food Safety
and Inspection
Service

Washington, D.C.
20250

DATE: _____

Office of Program Evaluation, Enforcement and Review
Food Safety and Inspection Service, USDA

I, the undersigned, representing _____

elect to voluntarily destroy for human food purposes the following described

detained on _____ at _____

by _____

I understand that the detention action was taken under the authority of the Federal Meat Inspection Act, the Egg Products Inspection Act, and/or the Poultry Products Inspection Act.

I also understand that the disposal of the products described above will be under the supervision of a representative of the Food Safety and Inspection Service, USDA, without recourse to the Government and that the proposed voluntary destruction of the product(s) does not preclude any legal action that may be found appropriate.

The statements herein are made in full knowledge of the provisions of the U.S. Code, Title 18, Section 1001, which make it a criminal offense to make a willfully false statement or misrepresentation to any department or agency of the United States as to any matter within its jurisdiction.

Signature

Title

FSIS Form 8080-6 Voluntary Destruction of Human Food – Personal Use

UNITED STATES DEPARTMENT OF AGRICULTURE FOOD SAFETY AND INSPECTION SERVICE OFFICE OF PROGRAM EVALUATION, ENFORCEMENT AND REVIEW WASHINGTON, D.C. 20250	DATE
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I, the undersigned, representing _____

request that the following described meat and/or poultry products be released for my personal use. I fully understand that these products may not be sold or offered for sale:

detained on _____ at _____

by _____

I understand that the detention action was taken under the authority of the Federal Meat Inspection Act, and/or the Poultry Products Inspection Act.

The statements herein are made in full knowledge of the provisions of the U.S. Code, Title 18, Section 1001, which make it a criminal offense to make a willfully false statement or misrepresentation to any department or agency of the United States as to any matter within its jurisdiction.

PROGRAM INVESTIGATOR (Signature)	SIGNATURE OF COMPANY REPRESENTATIVE	
DUTY STATION	NAME	TITLE

NO. 06982

U.S. DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE

**U.S.
DETAINED**

The article(s) or container(s) to which this tag is attached is (are) hereby **DETAINED** and is (are) not to be used, moved, or altered in any manner without the express permission of an authorized employee of the United States Department of Agriculture. Violation of this detention or unauthorized removal or alteration of this tag is punishable upon conviction by fine or imprisonment, or both.

NO. 06982

ARTICLE TAGGED

NO. OF ARTICLES
OR CONTAINERS

U.S. DETAINED
MP FORM 483

SEE REVERSE

FSIS Form 8080-1 Block 3- Detention Codes

Code - enter appropriate three character code. The specific positions of (characters) within the code denote respectively:

First character indicates meat, poultry, or both

M -Meat P- Poultry B - Both E - Egg

Second character indicates adulterated or misbranded

A -Adulterated M - Misbranded

Third character indicates specific reason or cause of adulteration or misbranding.

Adulteration:

- 1) Bears or contains any harmful or unauthorized chemical or substance such as sulfites, curing agents, etc.
- 2) Bears or contains unauthorized ingredients which would increase the weight such as water, soy products, etc.
- 3) Bears or contains any extraneous material such as rodent or insect droppings, glass, bone, metal, hair, etc.
- 4) Consists of any sour, putrid, or moldy substance.
- 5) Other (specify)

Misbranded:

- 1) Void of labeling.
- 2) Contains excessive amounts of authorized ingredients of does not conform to standards of composition.
- 3) Contains false, misleading, or incomplete labeling such as an incomplete ingredients statement, missing inspection marks, etc., illegible labels or brands.
- 4) Un-inspected product represented as inspected.
- 5) Non-federally inspected product transported in commerce.
- 6) Inedible product improperly labeled or identified such as un-denatured inedible product.
- 7) Failure to remove official marks of inspection.
- 8) Entered NFI product into an official Establishment.
- 9) Other (specify)

Example:

MA3 = meat product adulterated with extraneous material such as rodent or insect droppings, glass, bone, metal, hair, etc.

Workshop

1. Describe the purpose of detention and the conditions under which product will be detained.
2. List the steps to be taken by the EIAO when detaining product.
3. You are doing a recall effectiveness check at a distribution warehouse and you notice that there is a pallet of boxed breaded chicken patties with numerous boxes that are torn open with product exposed and foreign material on it. How do you proceed?