

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

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# FSIS DIRECTIVE

8410.1  
Revision 7

7/26/21

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## DETENTION AND SEIZURE

### I. PURPOSE

This directive provides instructions to Food Safety and Inspection Service (FSIS) program employees on detaining and preparing a recommendation to seize meat, poultry, shell eggs, and 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](#)) (the Acts). FSIS is reissuing this directive to update information related to detentions and seizures, add the [Understanding Product Detention attachment](#), and provide additional updates.

#### KEY POINTS:

- *Identifying circumstances in which FSIS program employees are to detain product and, when necessary, initiate a recommendation for seizure*
- *Procedures to detain product, including factors to consider, voluntary product dispositions, termination of the detention action, and product seizure*
- *Documenting and supporting detention and seizure actions*
- *Communicating with product owners, agents, or custodians, including Understanding Product Detention ([Attachment](#))*

### II. CANCELLATION

FSIS Directive 8410.1, Revision 6, *Detention and Seizure*, 4/24/14

### III. BACKGROUND

A. When FSIS has reason to believe that meat, poultry, shell eggs, and egg products found in commerce are adulterated, misbranded, or otherwise in violation of the Acts, FSIS may detain such products under the authorities in the FMIA (21 U.S.C. 672), PPIA (21 U.S.C. 467a), and EPIA (21 U.S.C. 1048). In many instances, FSIS program employees 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 the product, as authorized under the Acts and as set out in 9 CFR [329.1](#), 9 CFR [381.210](#), and 9 CFR [590.240](#), for a period not to exceed 20 days, pending initiation of judicial proceedings; and
2. When necessary, petition a U.S. District Court to seize and condemn the product. This action is initiated by the Department of Justice or United States Attorney acting on FSIS's behalf with the filing of a Complaint in rem (i.e., libel of information) under the FMIA (21 U.S.C. 673), PPIA (21

U.S.C. 467b), or EPIA (21 U.S.C. 1049) against the product in the appropriate district court.

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

1. Office of Field Operations (OFO);
  - a. Enforcement, Investigations, and Analysis Officers (EIAO); and
  - b. Public Health Veterinarians (PHV) trained in the EIAO methodology.
2. Office of Investigation, Enforcement and Audit (OIEA), Compliance and Investigations Division (CID) Investigators; and
3. Any other program employees directed to execute a detention by an authorized FSIS program supervisor.

C. Inspection program personnel are to retain meat, poultry, and egg products in federally inspected establishments and egg products plants in accordance with [FSIS Directive 5000.1](#), *Verifying an Establishment's Food Safety System*, and [FSIS Directive 5030.1](#), *Inspection Methodology Utilizing the Public Health Information System for the Verification of Regulatory Compliance in Egg Products Plants*.

#### **IV. CONDITIONS UNDER WHICH DETENTIONS ARE WARRANTED**

Program employees detain the following types of violative products in commerce (i.e., in non-official establishments):

1. Meat, poultry, shell eggs, and egg products capable for use as human food when there is reason to believe such products are adulterated;
2. Meat, poultry, or egg products capable for use as human food when there is reason to believe such products are misbranded;
3. Amenable products required to be inspected and passed when there is reason to believe they have not been so inspected and passed;
4. Amenable products when there is reason to believe such products 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; and
5. Shell eggs, packed into containers destined for the ultimate consumer, when there is reason to believe such products have been stored or transported in violation of the EPIA and the regulations promulgated thereunder, which includes shell eggs stored or transported at ambient temperatures of greater than 45 degrees Fahrenheit or that do not bear the required safe handling instructions.

#### **V. 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 employees are to collect evidence to support the product detention at the beginning of the detention process and initiate a recommendation for seizure within 10 days of the initial detention action. Evidence includes, but is not limited to, documents and other information such as photographic evidence, company business records, statements, memoranda of interview, 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.

**NOTE:** When a situation involves more than one detention on different days, the 20-day statutory detention period applies to each respective date and is not extended by a subsequent detention.

- B. Program employees are to review records and communicate with the product owner, owner's agent, or custodian to verify that all violative product under their control has been identified as set out in Section VII below.
- C. After identifying all violative products, program employees are to inform the product owner, owner's agent, or custodian that they may offer and make an immediate voluntary disposition of the product before a detention action is taken.
- D. If the product owner, owner's agent, or custodian offers and makes an appropriate immediate voluntary disposition of the product, program employees are to verify that it is done as set out in Section VIII below.
- E. When the voluntary disposition is taken immediately under the program employee's supervision, they are not to take a detention action and are not to complete the detention form.
- F. If the product owner, owner's agent, or custodian does not agree to an immediate disposition of the violative product or does not complete the voluntary disposition in an appropriate manner, program employees are to detain the violative product as set out in Section VI below.
- G. Program employees are to ensure that the disposition is in accordance with Section VIII below.
- H. When product is not detained because an immediate voluntary disposition is taken, the program employee is to check the 'observed on' box in AssuranceNet (ANet) under the Product Control record.

## **VI. NOTIFICATION AND DOCUMENTATION OF A DETENTION**

- A. When program employees take a detention action, they are to:
  - 1. Place FSIS Form 8400-2, U.S. Detained Tag, on the product being detained;
  - 2. Inform the product 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 detention;
  - 3. Provide the product owner, owner's agent, or custodian with the reasons why the product was detained;
  - 4. Inform the product owner, owner's agent, or custodian that they may offer an appropriate voluntary product disposition. There are a number of voluntary product disposition options, as set out in Section VIII below, including bringing the product into compliance, when appropriate, and proposing an extended disposition plan;
  - 5. Inform the product owner, owner's agent, or custodian that FSIS will move to seize the product if proper disposition is not offered within 10 days and completed within 20 days from the date of the detention. Program employees are to maintain contact with the product owner, owner's agent, or custodian and provide them the opportunity to make or propose a voluntary product disposition (including an extended disposition plan); and
  - 6. Provide a copy of *Understanding Product Detention* ([Attachment 1](#)) to the product owner, owner's agent, or custodian.
- B. Program employees are to complete FSIS Form 8080-1, Notice of Detention, in the Product Control record of ANet.

**NOTE:** The official PDF versions of detention-related forms referenced in this directive are located on [InsideFSIS](#) and contain instructions on how to complete the form. ANet contains a link to these instructions. If ANet is not available, program employees are to complete the PDF version of the form and follow the instructions in this directive to print, distribute, and maintain the form. When ANet becomes available, program employees are to enter the action (e.g., detention, personal use, voluntary destruction, termination of the detention) into the system and attach a scanned signed form into the record for the associated product control action.

C. Once FSIS Form 8080-1 is completed, program employees are to:

1. Print a form for each recipient in the “distribution” section of FSIS Form 8080-1;
2. Obtain a signature from the responsible individual on all forms;
3. Provide, as applicable, one signed form to the product owner, owner’s agent, or custodian by hand delivery, certified mail, or fax;

**NOTE:** There may be situations when the product owner or an owner’s agent cannot be determined, and the product custodian will be the only recipient of the signed form.

4. Attach the scanned signed form into the record for the associated product control action in ANet; and
5. Maintain the signed form in accordance with the appropriate records retention schedule as described in [FSIS Directive 8010.3](#), *Procedures for Evidence Collection, Safeguarding and Disposal*.

D. Program employees are to inform the appropriate supervisory office (OFO/District Office (DO) or OIEA/CID/Regional Office (RO)) that the detention has been initiated.

E. The program area (OFO/DO or OIEA/CID/RO) initiating the detention action is to complete the detention action, when applicable, including coordinating actions with other program areas for extended voluntary disposition plans.

F. When multiple products are to be detained that belong to one owner at one location, a single Notice of Detention is to be used, and the piece count, weight, and any other identifiers for each product is to be documented. Continuation pages are to be used to itemize multiple detained products.

**NOTE:** If additional products to be detained are identified on subsequent days, separate Notices of Detention are to be completed.

G. When there are multiple product owners, each owner may propose voluntary disposition for his or her products. In such cases, program employees are to place each owner’s product under a separate detention action. A continuation page is to be used to list inventories of the owner’s respective products.

H. Program employees are to document information and evidence to support the product detention, and any seizure action that may be initiated, starting at the beginning of the detention process. Program employees are to initiate, through supervisory channels, recommendations for seizure within 10 days of the initial detention action if product will not be appropriately dispositioned within 20 days or an extended disposition plan has not been accepted by FSIS.

I. OFO employees are to use an Administrative Enforcement Report (AER) to document findings and evidence associated with a detention action in accordance with [FSIS Directive 5100.3](#), *Administrative Enforcement Action Decision-Making and Methodology*. OIEA/CID Investigators are to use a Report of

Investigation (ROI) to document findings and evidence associated with a detention action in accordance with [FSIS Directive 8010.4](#), *Report of Investigation*.

## VII. OTHER FACTORS TO CONSIDER

When program employees take a detention action, they are, if necessary, to:

1. Review records and communicate with firm management or employees to determine whether all violative product is located at the firm, or whether there is additional violative product at other locations not under the firm's control. The firm's lack of control of violative product may lead program employees to conduct further inquiry, verification, surveillance, investigation, or other activities at other firms or federally inspected establishments.
2. Refer information or allegations regarding potential criminal violations to the appropriate OIEA/CID/RO in accordance with [FSIS Directive 8010.5](#), *Case Referral and Disposition*. If there is a concern that a federally inspected establishment has produced, or is still producing, the violative product, program employees are to contact the appropriate OFO/DO.
3. 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) in accordance with [FSIS Directive 8010.3](#).
4. Complete FSIS Form 5500-4, Significant Incident Report, if there is a significant incident that presents a grave, or potentially grave, threat to public health or to the safety of FSIS-regulated product as described in [FSIS Directive 5500.2](#), *Significant Incident Response*.
5. When a potential violation that may involve the USDA Office of Inspector General (OIG) is detected (e.g., if the detained products exhibit characteristics of product tampering), program employees are to report the matter to their supervisor. FSIS supervisors are to communicate and coordinate with the designated OIEA liaison during investigation and enforcement activities involving OIG, regarding notification of OIG in accordance with [FSIS Directive 8030.1](#), *Communicating with the Office of Inspector General*.
6. Contact the appropriate Federal, State, or local agency (e.g., Food and Drug Administration (FDA)), through the immediate supervisor, when non-amenable products appear to be adulterated, misbranded, or otherwise in violation of the law.

## VIII. VOLUNTARY DISPOSITIONS

A. The product owner, owner's agent, or custodian has several options for voluntary disposition of meat, poultry, and egg products, such as: bringing product into compliance (e.g., relabeling), personal use, donation of misbranded or economically adulterated products, or destruction of the product for human food purposes.

B. Adulterated product may not be used for personal use or donated. Economically adulterated product may be donated in accordance with Section IX below.

C. Shell eggs stored and transported in violation of the ambient temperature requirement cannot be used for personal use or donated. Shell eggs stored or transported in violation of the ambient temperature requirement also cannot be used as human food, unless treated to destroy *Salmonella*. Shell eggs may be:

1. Diverted from human food channels (e.g., for pet food or for inedible products);

2. Destroyed; or
3. Sent to a breaking plant under FSIS jurisdiction or a facility under FDA jurisdiction (i.e., cooked in the shell or broken and cooked in tubes/molds) that uses a validated process that ensures a *Salmonella*-negative food.

D. Illegal, ineligible foreign product cannot be released for personal use or donated. Such product must be properly destroyed or re-exported to the country of origin (see paragraph E below). Before voluntarily destroying imported product, program employees are to contact the Animal and Plant Health Inspection Service (APHIS) to determine if the product poses animal health, food security, or threat concerns. Such product is not to be voluntarily destroyed until APHIS is contacted.

E. If a violation is based solely on Failure to Present (FTP), and product containers are still intact and in the original shipping containers/boxes, then the product owner, owner's agent, or custodian have the option to have the product re-exported or returned to the country of origin.

F. Product prepared under custom exemption may not be donated. Product prepared under custom exemption may be returned to the owner once ownership has been confirmed and the owner has been informed of the purpose of the detention.

G. If an appropriate disposition of the product is taken before a detention is initiated, or in response to a detention, program employees are to witness bringing the product into compliance, witness the voluntary destruction or denaturing of the product, release the product for personal use, or permit the donation of misbranded or economically adulterated products in accordance with Section IX below.

H. When an appropriate product disposition is not immediately taken, program employees are to notify the product owner, owner's agent, or custodian that they may submit a proposal for the adequate voluntary disposition of the violative product. The proposal needs to address:

1. Whether violative product will be moved for re-inspection or disposal;
2. How the move will be accomplished; and
3. What corrective measures the product owner, owner's agent, or custodian will take.

I. Product that is found to be safe, wholesome, and capable for use as human food may be released for personal use in limited quantity. Program employees are not to release more product for personal use, per individual, than defined in the regulations (9 CFR [303.1\(d\)\(2\)\(ii\)](#), [327.16](#), [381.10\(d\)\(2\)\(ii\)](#), [381.207](#), and [532.3\(c\)](#)). Program employees are to complete FSIS Form 8080-6, Personal Use Notice, in the Product Control record of ANet.

**NOTE:** Program employees are to also use FSIS Form 8080-6 to document when product prepared under custom exemption is returned to the owner (see paragraph F above).

J. Product not permitted for use as human food must be denatured, decharacterized, or destroyed. These products may be sent to a landfill, a rendering plant, or a pet food manufacturer. Program employees are to be present for product denaturing, decharacterizing, or destruction. Program employees are to complete FSIS Form 8080-4, Voluntary Destruction of Human Food Notice, in the Product Control record of ANet.

K. Program employees may transfer control of the violative product to FSIS employees 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 or OIEA) as set out in Section X below.

L. The product owner, owner's agent, or custodian may bring misbranded product into compliance by voluntarily removing official marks from products that are not amenable.

1. When non-amenable product is found in commerce inside of packaging/boxes bearing the marks of meat, poultry, or egg product inspection, this product is not subject to detention. Program employees may request that this product be voluntarily removed from the packaging/boxes, or that the marks of inspection be obliterated. Unauthorized use of the mark of inspection is a violation of 21 U.S.C. 611, 458, and 1037.
2. If shell eggs do not bear the required safe handling instructions, they may be relabeled to include it and, thereby, brought into compliance.

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

## **IX. DONATED PRODUCT**

A. Meat and poultry products that are safe, wholesome, and capable of use as human food may, under appropriate circumstances, be donated to non-profit organizations, such as charitable institutions, food banks, and government-supported facilities (e.g., correctional facilities, child welfare facilities, homes for senior populations, institutions for the physically or mentally ill, or similar qualifying institutions) (21 U.S.C. 673(a)(5)(A) and 467b(a)(5)(A)).

B. Certain misbranded product may be donated to non-profit organizations, if otherwise found wholesome, not adulterated, and capable of use as human food. Examples of such misbranded product include that which displays the incorrect net weight, product that is misbranded on invoices, or product that does not meet applicable standard of identities, or other labeling requirements.

C. Adulterated product may not be donated to non-profit organizations except when the product is found to be economically adulterated under the FMIA (21 U.S.C. 601 (m)(8)) or the PPIA (21 U.S.C. 453(g)(8)).

D. Economically adulterated product is product from which any valuable constituent in whole or in part has been omitted or removed, or in which any less valuable substance has been substituted. Products into which any substance is added or mixed, or that are packed in a way that misrepresents their weight or bulk or that makes them appear to be of greater value, are also considered economically adulterated (21 U.S.C. 601(m)(8) and 453(g)(8)).

E. FSIS will allow in-commerce firms to donate product that is misbranded or economically adulterated, without temporary label approval from the Labeling and Program Delivery Staff (LPDS), except for product that is misbranded because it contains undeclared ingredients of public health concern that are required to be on the ingredients statement. In addition, FSIS will not require the product to be relabeled to include a "Not for Sale" statement on each immediate container.

F. FSIS will not allow misbranded product that contains undeclared ingredients of public health concern that are required to be on the ingredients statement to be donated without temporary label approval from LPDS and a "Not for Sale" statement on each immediate container of the product because these ingredients are associated with adverse reactions, such as food allergies and intolerance. The relabeling of these products may require coordination with other FSIS program areas.

**NOTE:** Ingredients of public health concern include the eight most common food allergens (i.e., wheat, Crustacea [e.g., shrimp, crab, lobster], eggs, fish, peanuts, milk, tree nuts [e.g., almonds, pecans, walnuts], and soybeans) as well as those that cause adverse reactions in sensitive individuals (e.g., sulfites, lactose, FD&C Yellow 5 (tartrazine), gluten, and monosodium glutamate (MSG)). To be



consistent with FDA enforcement of the Food Allergy Safety, Treatment, Education, and Research (FASTER) Act of 2021 ([Public Law No. 117-11](#)), FSIS will also consider sesame to be a common food allergen of public health concern beginning January 1, 2023. The adverse reactions to these substances are caused by the ingredient itself or its chemical composition.

G. A product may only be donated if the bill of lading includes the following information:

1. The quantity of the donated product;
2. A description of the donated product;
3. The reason the product is diverted for donation (e.g., incorrect net weight); and
4. A statement that the product is “Not for Sale.”

H. If the bill of lading is not available to Agency program employees for review and copying if necessary, the product is not eligible to move in commerce and thus is not eligible to be donated.

I. FSIS does not expect program employees to obtain the signature of the product owner, owner’s agent, or custodian for donated product.

J. Program employees are to document the donation by completing FSIS Form 8080-6, Personal Use Notice, in ANet under the Product Control record, Personal Use Notice tab, by:

1. Marking the “Donation” data field box;
2. Entering the total amount of donated product (in pounds) under the “Product Weight” data field;
3. Entering the description of the donated product under the “Description of Product/Additional Information” data field;
4. Entering the reason that the product is misbranded under the “Description of Product/ Additional Information” data field; and
5. Entering “Not for Sale” under the “Description of Product/Additional Information” data field.

K. Program employees are to upload a scanned version of the bill of lading into ANet.

L. If the firm does not voluntarily dispose of product that is misbranded or economically adulterated, or, in appropriate circumstances, donate it, program employees are to detain the product as set out in Section VI above.

M. OIEA/CID Investigators are to verify the requirements above are met when performing surveillance at non-profit organizations (e.g., food banks) by reviewing the bills of lading and examining the donated products found at the non-profit organizations. Investigators are to document their surveillance findings in ANet.

N. If during a surveillance activity, OIEA/CID Investigators observe misbranded or economically adulterated product at an in-commerce firm, and the firm states that it intends to donate the misbranded or economically adulterated product to a non-profit organization, Investigators are to:

1. Review the bills of lading and verify that they include the information in paragraph G above; and
2. Document findings, as appropriate, in accordance with [FSIS Directive 8010.1](#), *Methodology for Conducting In-Commerce Surveillance Activities*; [FSIS Directive 8010.2](#), *Investigative*



## **X. TERMINATION OF DETENTION**

A. Program employees are to complete FSIS Form 8400-1, Notice of Termination of Detention, and any other appropriate voluntary disposition forms in the Product Control record of ANet and are to:

1. Print a form for each recipient in the “distribution” section of FSIS Form 8400-1 and appropriate voluntary disposition forms;
2. Obtain a signature from the responsible individual for FSIS Form 8400-1 and appropriate voluntary disposition forms;
3. Provide, as applicable, an appropriately completed form to the product owner, owner’s agent, or custodian by hand delivery, certified mail, or fax;
4. Scan and attach the completed form into the record for the associated product control action in ANet; and
5. Maintain the signed form in accordance with the appropriate records retention schedule.

B. Program employees are to inform the appropriate supervisory office (OFO/DO or OIEA/CID/RO) that the detention has been terminated.

C. If control of detained products will be transferred to another program area or another agency, the appropriate officials are to complete and sign FSIS Form 8400-1. Copies of official documents are to be collected from the receiving program area or agency and maintained according to [FSIS Directive 8010.3](#).

D. In instances where the product 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 is to 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 accepted by FSIS, the initial detention is terminated. However, if the product owner, owner’s agent, or custodian does not meet the conditions in 1 and 2 below, a new detention action is to be taken on the product (21 U.S.C. 467a, 672, and 1048).

1. Program employees are to inform the product owner, owner’s agent, or custodian that the written request or proposal is to:
  - a. Be on company letterhead and addressed to the appropriate program official (OFO/District Manager (DM) or OIEA/CID/Regional Director (RD)) and explain the extenuating circumstances (e.g., large amount of product, owner cannot be contacted, or transportation or landfill issues) upon which the request is based;
  - b. Contain a statement specifying that the product is adulterated, misbranded, or otherwise in violation of the Acts;
  - c. Describe the product, including the number of pounds of product (or dozens of shell eggs), location, method of product disposition, anticipated time frame in which the disposition will occur, and how the product will be accounted for if the disposition is occurring over an extended time frame;
  - d. State that, if the product disposition does not occur within the specified time frame, the product will be voluntarily destroyed or subject to a new detention and seizure; and

- e. Agree that the product will not be moved without the approval of FSIS, and acknowledge that if it is, the product owner, owner's agent, or custodian is subject to criminal charges for transporting adulterated, misbranded, or other violative product in commerce.
2. After the appropriate FSIS official (DM or RD or designee) accepts the request and responds in writing to the product owner, owner's agent, or custodian, program employees 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 a program employee's supervision;
    - c. Ensure that disposition is achieved within the specified time period; and
    - d. Attach a scanned copy of the extended disposition plan into the record for the associated product control action in ANet.
  3. Upon completion of the disposition plan, program employees are to complete the appropriate voluntary disposition form.
  4. In a situation where the extended disposition plan is not accepted by the FSIS official, program employees are to immediately initiate a recommendation for seizure in accordance with Section XI below.
  5. In a situation where the extended disposition plan is accepted by the FSIS official, but the company fails to follow the accepted extended disposition procedures, program employees are to immediately detain the product (21 U.S.C. 467a, 21 U.S.C. 672, 21 U.S.C. 1048) and initiate a request for seizure action in accordance with Section XI below.

E. If the product owner, owner's agent, custodian or other person or firm moves the product to another location without authorization from a program official, program employees are to immediately detain the product (unless location of the product cannot be identified), initiate a recommendation for seizure in accordance with Section XI below, and initiate an investigation (or, for OFO, refer the matter to OIEA/CID in accordance with [FSIS Directive 8010.5](#)) to investigate for possible criminal or other action.

## **XI. SEIZURE OF PRODUCT**

A. Seizure is a civil enforcement tool available to FSIS, through the authority of the U.S. District Courts, to remove adulterated, misbranded, or otherwise unsafe or illegal meat, poultry, shell eggs, and egg products from commerce. Seizure actions are initiated by the U.S. Attorney, through the USDA Office of the General Counsel (OGC), on behalf of the Agency.

B. When the product owner, owner's agent, or custodian does not offer an appropriate voluntary product disposition, program employees are to initiate a recommendation for seizure within 10 days of the initial detention action.

C. Additionally, program employees are to initiate immediately, through supervisory channels, a recommendation for seizure when:

1. The DM or RD, or designee, has not accepted a proposed extended disposition plan;
2. The product owner, owner's agent, or custodian did not properly execute an accepted extended disposition plan; or

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

D. When a program employee plans to initiate a recommendation for seizure, they are to notify their immediate supervisor and supply the following information, which will serve as the basis for the recommendation:

1. A complete inventory and description of the product, including species, cooked/raw, fresh/frozen, item count, total pounds (or dozens of shell eggs), and any other applicable information;
2. Locations of product, including complete addresses, 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 product owner, owner's agent, or custodian (includes Importer of Record), if known. For multiple product owners, owners' agents, or custodians, program employees are to provide information for each. If product ownership is uncertain, program employees are to provide this information for the owner's agents, brokers, shippers, consignees, or others as appropriate;
5. Processor of the product. Program employees 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, program employees are to state so;
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 in violation of the Acts;
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 Acts.

E. The OFO DM and OIEA/CID RD, or designee, are to notify the OIEA Enforcement Operations Staff (EOS) Director, or designee, as far in advance as practicable, but no later than 10 days, regarding any recommendation for, or potential recommendation for, product seizure. This early notice is critical because of the limited timeframe for product detention, the need to initiate timely seizure action, and public health issues associated with product detention and seizure.

F. The OFO DM or OIEA/CID RD, or designee, is to refer the AER or ROI, and other case documentation to EOS in accordance with [FSIS Directive 8010.5](#).

## **XII. ENFORCEMENT OPERATIONS STAFF RESPONSIBILITIES**

A. EOS reviews the recommendation for seizure and case documentation (e.g., AER, ROI) to verify that the product in commerce is adulterated, misbranded, or otherwise in violation of the Acts, and that there is a basis for seizure in accordance with [FSIS Directive 8010.5](#).

1. If EOS determines that the case evidence supports the seizure action, it is to refer the case and the evidence to OGC for initiation of legal proceedings through a U.S. Attorney.
2. If EOS determines that the case evidence does not support the seizure action, it is to close the case with no action or recommend other verification or regulatory activities by the program area. In this instance, program employees are to ensure appropriate product disposition.
3. If EOS determines that additional information, evidence, or investigation is needed, it is to coordinate with the appropriate FSIS program area.

B. EOS is to work with OGC and the appropriate U.S. Attorney's Office within the Department of Justice to develop case evidence, supporting affidavits, and other information to file a Complaint in rem (i.e., libel of information) for seizure and condemnation of the product, notice of arrest of the product, and related actions or case disposition. EOS is to coordinate, as necessary, with appropriate program areas.

C. Program employees 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. EOS is to work with the appropriate program area, field supervisor, OGC attorney, and the U.S. Attorney to help coordinate such activities.

D. OIEA/EOS, OFO/DO, and OIEA/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 issuing a Notice of Warning letter or referral for criminal or civil action in accordance with [FSIS Directive 8010.5](#).

### **XIII. QUESTIONS**

Questions regarding this directive are to be referred through supervisory channels.



Assistant Administrator  
Office of Policy and Program Development

## **FSIS Directive 8410.1, ATTACHMENT 1**

### **Understanding Product Detention Information for the Product Owner, Owner's Agent, or Custodian**

#### **WHAT IS THE FOOD SAFETY AND INSPECTION SERVICE (FSIS)?**

FSIS is the public health agency responsible for ensuring that the nation's commercial supply of meat (including fish of the Order of Siluriformes), poultry, shell eggs, and egg products is safe, wholesome, and properly labeled and packaged.

#### **WHY IS FSIS INITIATING A DETENTION ACTION?**

The Federal Meat Inspection Act (21 U.S.C. 672), the Poultry Products Inspection Act (21 U.S.C. 467a), and the Egg Products Inspection Act (21 U.S.C. 1048) (the Acts) provide FSIS with detention authority. Under the Acts, any amenable product in commerce may be detained when FSIS has reason to believe it is adulterated, misbranded, or otherwise in violation of the Acts. Detention actions protect consumers by stopping further distribution of unsafe or noncompliant product.

#### **CAN DETAINED PRODUCT BE MOVED?**

When product is detained, the Acts prohibit any person or firm from moving the product until it is released by FSIS or the movement is otherwise authorized by the Agency. Any person or firm that moves detained product without prior authorization from FSIS is subject to criminal prosecution or other sanctions.

#### **WHAT OCCURS DURING A DETENTION ACTION?**

When there is reason to believe an FSIS regulated product is adulterated, misbranded, or otherwise in violation of the Acts, an FSIS program employee is to apply a U.S. Detained Tag to the product. The product remains under detention while the product owner, owner's agent, or custodian develops a proposal for product disposition. An acceptable product disposition proposal would need to address, at a minimum, whether the affected product will be moved, e.g., for re-inspection or for disposal; how said move will be accomplished; and any corrective and preventive measures.

FSIS encourages the responsible firm or individual to develop and submit the product disposition proposal as soon as possible. If an acceptable proposal is not received by FSIS within 10 days of the detention action, the Agency may initiate actions to recommend seizure and condemnation of the affected product in accordance with the Acts.

#### **HOW IS THE DETENTION ACTION RESOLVED?**

An FSIS program employee is to verify that the product disposition proposal is properly executed; once verified, they are to then terminate the detention action.

#### **QUESTIONS?**

If you have questions regarding a detention action, please contact the FSIS program employee who initiated the action, or the responsible OIEA Regional Office or OFO District Office. Office contact information, by region and district, can be found on the Agency's Contact Us page at <https://www.fsis.usda.gov/contact-us/fsis-offices>.