# MSA DIRECTIVE	8410.1, Revision 6	4/24/14

DETENTION AND SEIZURE

I. PURPOSE

This directive provides the procedures that Meat Safety Assurance (MSA) program employees are to follow when detaining, or preparing a recommendation to seize, meat and poultry 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) (the Acts). MSA is reissuing this directive in its entirety to update information related to detentions and seizures, to incorporate instructions related to donations and to provide additional updates.

KEY POINTS:

- *Circumstances in which program employees are to begin the detention process*
- *Supporting detention and seizure actions*
- *Communicating with product owners, agents, or custodians*
- *Procedures to detain product and other factors to consider as part of the detention process*
- *Voluntary product dispositions, including product donations*
- *Documenting detention actions*
- *Terminating detention actions and product seizure*

II. CANCELLATION

MSA Directive 8410.1, Revision 5, Detention and Seizure

III. BACKGROUND

A. When MSA has reason to believe that meat and poultry products found in commerce are adulterated, misbranded, or otherwise in violation of the Acts, MSA may detain such products as per Sec. 402 of the FMIA (21 U.S.C. 672) and Sec. 19 of the PPIA (21 U.S.C. 467a). In many instances, MSA 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, MSA may detain the product, 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

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

1. Enforcement, Investigations, and Analysis Officers (EIAO)

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

3. Compliance Investigators; and

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

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

C. The program area initiating the detention action is responsible for completing the detention action, when applicable, including coordinating cooperative actions with other program areas for extended voluntary disposition plans for the detention.

IV. CONDITIONS UNDER WHICH DETENTIONS ARE WARRANTED

A. Program employees detain the following types of violative products in commerce (at non-official establishments).

1. Meat and poultry products capable for use as human food that there is reason to believe are adulterated;

2. Meat and poultry products capable for 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 MSA jurisdiction) or products represented as amenable that there is reason to believe have not been federally or State inspected and passed;

4. Amenable products that there is reason to believe 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

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. 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 employees 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, as set out in Section VIII below.

C. After program employees identify all violative products, they are to 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.

D. If the owner, owner's agent, or custodian offers and makes an appropriate voluntary disposition of the product, program employees are to verify that it is done as set out in

Section IX below. If the voluntary disposition is taken immediately under the program employee's supervision, program employees do not need to take a detention action and do not need to complete the detention form.

NOTE: Program employees are to complete the appropriate product disposition forms.

E. If the 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 VIII below.

VI. NOTIFICATION AND DOCUMENTATION OF A DETENTION

A. Program employees are to place "Texas Detained Tag", on the product being detained.

B. Program employees 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 (Section VI.); 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 action.

C. Program employees are to:

1. Complete MSA, Notice of Detention Form,

2. Print a form for each recipient;

3. Obtain a signature from the responsible individual on all forms;

4. Provide, as applicable, one signed form to the 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.

5. Attach a scanned signed form into the record for the associated product control action in the ANet/ICS,

6. Maintain a signed form in accordance with the appropriate records retention schedule

NOTE: If multiple products are to be detained that belong to one owner at one location, a single Notice of Detention is to be used. Continuation pages are to 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, 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.

VII. OTHER FACTORS TO CONSIDER

Program employees are, if necessary, to:

1. Review records and inquire of 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 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 inspected establishments. If program employees believe that there may be a criminal violation, or that they need assistance with these investigations, they are to contact their immediate supervisors.

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. 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 owner, owner's agent, or custodian has several options for voluntary disposition of meat and poultry products, including: bringing product into compliance (e.g., relabeling), personal use, permit the donation of misbranded or economically adulterated products to non-profit organizations, or destroy the product for human consumption.

B. Adulterated product may not be used for personal use or donated. Economically adulterated product may be donated (See Section IX).

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

D. Product prepared under custom exemption may not be donated. Product prepared under custom exemption may be returned to the owner, provided if the investigator is able to determine that it is safe, wholesome, and capable for use as human food.

E. 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 meat and poultry products to non-profit organizations (Section IX).

F. When an appropriate product disposition is not immediately taken, program employees 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 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 and preventive measures the owner, owner's agent, or custodian will take.

G. Product that is found to be safe, wholesome, and capable for use as human food may be released for personal use. Program employees are not to 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), and 381.207). Program employees are to complete MSA, Personal Use Notice form.

H. 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 denaturing, decharacterizing, or destruction. Program employees are to complete MSA Form, Voluntary Destruction of Human Food Notice.

I. Program employees may transfer control of the violative product to MSA employees (section X) at an official establishment pending the reconditioning of product under a procedure that has been determined to be appropriate by the appropriate MSA Field and PSQA Manager.

J. The owner, owner's agent, or custodian may bring misbranded product into compliance by 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 and poultry product inspection, this product is 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.

K. 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 X. C.

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.

B. Certain misbranded product may be donated to non-profit organizations. Examples of wholesome misbranded product that may be donated include product that is labeled with the incorrect net weight, or product that does not meet purchase specifications.

C. Adulterated product may not be donated to non-profit organizations except when the product is found to be economically adulterated under section 1(m)(8) of the FMIA (21 U.S.C. 601 (m)(8)) or section 4(g)(8) of the PPIA (21 U.S.C. 453(g)(8)). A firm cannot dispose of product found to be adulterated for reasons other than economic adulteration by donating it to non-profit organizations.

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. MSA will allow in-commerce firms to donate product that is misbranded or economically adulterated, without temporary label approval, except for product that is misbranded because it contains unlabeled ingredients of public health concern that are required to be on the ingredients statement. Ingredients of public health concerns include the eight most common ("big 8") food allergens. The "big 8" allergens are wheat, Crustacea (e.g., shrimp, crab, lobster), eggs, fish, peanuts, milk, tree nuts (e.g., almonds, pecans, walnuts), and

soybeans. Ingredients of public health concern also include ingredients that cause adverse reactions in sensitive individuals, such as sulfites, lactose, and Yellow 5 (tartrazine). The adverse reactions to these substances are caused by the ingredient itself or its chemical composition. In addition, MSA will not require the product to be relabeled to include a "Not for Sale" statement on each immediate container.

NOTE: MSA will not allow misbranded product that contains unlabeled ingredients of public health concern that are required to be on the ingredients statement to be donated without temporary label approval because these unlabeled ingredients are associated with adverse reactions, such as food allergies and intolerance

F. For product to be eligible to be donated, the bill of lading needs to include 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."

G. If the bill of lading does not contain all of this information, the product is not eligible to move in commerce and thus is not eligible to be donated.

H. If the bill of lading is not available to Agency 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. MSA does not expect Investigators to obtain the signature of the product owner, owner's agent, or custodian for donated product.

J. If during a surveillance activity, 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 F., above; and

    2. Document findings, as appropriate, in accordance with MSA Directive 8010.1, *Methodology for Conducting In-Commerce Surveillance Activities*; MSA Directive 8010.2, *Investigative Methodology*; MSA Directive 8010.3, *Procedures for Evidence Collection, Safeguarding and Disposal*; and MSA Directive 8010.4, *Report of Investigation*.

K. Investigators are to document the donation by completing data fields in ANet/ICS under the Product Control, Personal Use tab; and:

L. Program employees are to check mark the "Donation" data field box;

    1. Enter the total amount of donated product (in pounds) under the "Product Weight" data field;

    2. Enter the description of the donated product under the "Description of Product/Additional Information" data field;

3. Enter the reason that the product is misbranded under the "Description of Product/Additional Information" data field; and

4. Enter "Not for Sale" under the "Description of Product/Additional Information" data field.

M. Investigators are to upload a scanned version of the bill of lading into the ANet/ICS.

N. If the firm does not, in accordance with MSA regulations, voluntarily dispose of product that is misbranded or economically adulterated or, in appropriate circumstances, donate it, program employees are to detain the product and follow Section V of this directive.

O. Investigators are to verify the requirements above are met when performing surveillance at non-profit organizations (e.g., food banks) by reviewing the bill(s) of lading and examining the donated products found at the non-profit organizations. Program employees are to document their surveillance findings in the ANet/ICS.

X. TERMINATION OF DETENTION

A. Program employees are to:

1. Complete MSA Form, Notice of Termination of Detention, and any other appropriate voluntary disposition forms;

2. Print a form for each recipient;

3. Obtain a signature on all forms from the responsible individual;

4. Provide, as applicable, an appropriately completed form to the owner, owner's agent, or custodian by hand delivery, certified mail, or fax;

5. Scan and attach a completed form into the record for the associated product control action in the ANet/ICS;

6. Maintain a signed form in accordance with the appropriate records retention schedule; and

7. Provide a form to the program employee's appropriate supervisory office, if necessary.

B. Program employees are to inform the appropriate supervisory office 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 MSA 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 MSA, that initial detention is terminated. However, if the owner, owner's agent, or custodian does not meet the conditions in 1 and 2 below, a new detention action will be taken on the product (21 U.S.C. § 467a, 21 U.S.C. § 672, 21 U.S.C. 1048).

1. Program employees are to inform the 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 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, 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 MSA, and acknowledge that if it is, the 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 MSA official approves 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 MSA Form, Notice of Termination of Detention;

b. Ensure that disposition or movement for disposition takes place under 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 the ANet/ICS.

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 approved by the supervisor, program employees are to immediately initiate a request for a seizure action in accordance with Section XI.

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 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.

XI. SEIZURE OF PRODUCT

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

1. The DM or RD has not approved a proposed 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 employees plan to recommend a seizure action, they are to notify their immediate supervisor and supply the following information, which will serve as the basis for the request for seizure:

1. A complete inventory and description of the product, including species, cooked/raw, fresh/frozen, item count, total pounds (or dozens), and any other applicable information;

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 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 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 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.

D. Program employees are to use a Report of Investigation (ROI) to document findings and evidence.

XII. QUESTIONS

Questions regarding this Notice shall be directed to the MSA Central Office through the supervisory chain-of-command.

Dr. Howard C. "Butch" Johnson, DVM, MS, DACVPM
Director, Texas State Meat and Poultry Inspection Program
Department of State Health Services