FSIS DIRECTIVE

DETENTION AND SEIZURE

I. PURPOSE

This directive provides the procedures that Food Safety and Inspection Service (FSIS) program employees are to follow when detaining, or preparing a recommendation to seize, meat, poultry, and egg productsfound 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). The directive also provides procedures for detaining and preparing a recommendation to seize shell eggs packed into containers destined for the ultimate consumer (hereafter referred to as "shell eggs") found in commerce when there is reason to believe that the shell eggs are in violation of the EPIA. FSIS is reissuing this directive in its entirety to update information related to detentions and seizures, to incorporate instructions related to donations, add information related to shell eggs, 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 and using the FSIS Forms*
- *Terminating detention actions and product seizure*

II. CANCELLATION

FSIS Directive 8410.1, Revision 5, Detention and Seizure, dated 6/19/08

III. BACKGROUND

A. When FSIS has reason to believe that meat, poultry, and egg productsfound in commerce are adulterated, misbranded, or otherwise in violation of the Acts, FSIS may detain such products as per Sec. 402 of the FMIA (21 U.S.C. 672), Sec. 19 of the PPIA (21 U.S.C. 467a), and Sec. 19 of the EPIA (21 U.S.C. 1048). The EPIA (21 U.S.C. 1048) also provides FSIS authority to detain shell eggs found in commerce when there is reasons to believe the shell

eggs are in violation of the statute. 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 by the Acts and as set out in 9 CFR part 329.1, 9 CFR 381.210, and 9 CFR 590.240, for a period not to exceed 20 days; and

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

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

1. Office of Field Operations (OFO)

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

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

2. Office of Investigation, Enforcement and Audit (OIEA), Compliance and Investigations Division (CID) Investigators; and

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

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

C. The program area (OFO/District Office (DO) or OIEA/CID/Regional Office (RO)) 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, poultry, and egg products capable for use as human food that there is reason to believe are adulterated;

NOTE: Shell eggs packed into containers destined for the ultimate consumer that are found in violation of temperature requirements of the EPIA are not considered adulterated

2. Meat, poultry, or egg 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 FSIS 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

5. Shell eggs, packed into containers destined for the ultimate consumer, that there is reason to believe are stored, held, or transported at an ambient temperature of greater than 45 degrees Fahrenheit after packing or that do not contain labeling indicating that refrigeration is required, in violation of the EPIA (21 U.S.C 1034, 1037).

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 FSIS Form 8400-2, U.S. 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 FSIS Form 8080-1, Notice of Detention, in the Product Control component of the AssuranceNet/In-Commerce System (ANet/ICS);

NOTE: Instructions for completing FSIS Form 8080-1 are on the back of the official PDF version of the form. The ANet/ICS contains a link to these instructions, as well as instructions for completing other FSIS forms associated with product control actions. If the ANet/ICS is not available, program employees are to complete the PDF version of the form and follow the instructions above to print, distribute, and maintain the form. When the ANet/ICS becomes available, program employees enter the product control action into the system and attach a scanned signed form into the record for the associated product control action.

2. Print a form for each recipient in the "distribution" section of Form 8080-1;

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 federally 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. Program employees are to refer information or allegations regarding potential criminal violations to the appropriate OIEA/CID/RO. If there is concern that a federally inspected establishment has produced, or is still producing, the violative product, program employees are to contact the appropriate OFO/DO;

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

3. Complete FSIS Form 5500-4, 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 (FSIS Directive 5500.2, Significant Incident Response);

4. Notify the Office of Inspector General (OIG), through the immediate supervisor, and the appropriate OIEA/CID/RO if the detained products exhibit characteristics of product tampering (FSIS Directive 8030.1, Communicating with the Office of Inspector General); and

5. 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, poultry, and egg 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. Shell eggs stored in violation of the ambient temperature requirement cannot be used for personal use or donated. Shell eggs stored in violation of the ambient temperature requirement also cannot be used as human food, unless treated to kill *Salmonella*. Shell eggs may be diverted from human food channels (e.g., for pet food or for inedible products) to a breaking plant under FSIS jurisdiction, to a facility under FDA jurisdiction to be cooked in the shell or broken and cooked in tubes/molds using a validated process that ensures a *Salmonella*-negative food or destroyed.

D. 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.

E. 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.

F. 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).

NOTE: When product is not detained because an immediate voluntary disposition is taken, the program employee is to check the 'observed on' box in the ANet/ICS under the Product Control tab.

G. 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.

H. 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 FSIS Form 8080-6, Personal Use Notice.

I. 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 FSIS Form 8080-4, Voluntary Destruction of Human Food Notice.

J. Program employees may transfer control of the violative product to FSIS employees (section X) 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).

K. 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, poultry, or egg 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. If shell eggs do not bear the required refrigeration statement, they may be relabeled to include it and, thereby, brought into compliance.

L. 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 (e.g., correctional facilities, child welfare facilities, homes for senior populations, institutions for the physically or mentally ill, or similar qualifying institutions) (see 21 U.S.C. 673(a)(5)(A) and 467(a)(5)(A)).

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. 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 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, FSIS will not require the product to be relabeled to include a "Not for Sale" statement on each immediate container.

NOTE: FSIS 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. FSIS does not expect OIEA 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, OIEA 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 FSIS Directive 8010.1, *Methodology for Conducting In-Commerce Surveillance Activities*; FSIS Directive

8010.2, *Investigative Methodology*; FSIS Directive 8010.3, *Procedures for Evidence Collection, Safeguarding and Disposal*; and FSIS 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 FSIS 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 FSIS Form 8400-1, Notice of Termination of Detention, and any other appropriate voluntary disposition forms in the Product Control section of the ANet/ICS;

2. Print a form for each recipient in the "distribution" section of Form 8400.1 and appropriate voluntary disposition forms;

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 (OFO/DO or OIEA/RO), if necessary.

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

NOTE: 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, Notice of Termination of Detention. Copies of official documents will be collected from the receiving program area or agency and maintained according to Directive 8010.3, Procedures for Evidence Collection, Safeguarding and Disposal.

C. In instances where the owner, owner's agent, or custodian provides an appropriate disposition plan, and it is apparent that the detained product cannot be disposed of before the 20-day limit, a written request or proposal can be submitted to FSIS from the product owner, owner's agent, or custodian requesting approval of an extended disposition plan for the detained product. If the plan is approved by FSIS, that initial detention is terminated. However, if the owner, owner's agent, or custodian 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 (OFO/District Manager (DM) or OIEA/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 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) 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 FSIS Form 8400-1, 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.

D. If the owner, owner's agent, custodian or other unauthorized person or firm moves the product to another location without authorization from a program official, program employees are to immediately detain the product (unless location of product cannot be identified), initiate a request for seizure action in accordance with Section XI, and initiate an investigation or refer the matter to OIEA to investigate for possible criminal or other action.

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 document the information and evidence that supports the request for seizure. OFO employees are to use an Administrative Enforcement Report (AER) to document findings and evidence (FSIS Directive 5100.3, Administrative Enforcement Reporting (AER) System). OIEA/CID investigators are to use a Report of Investigation (ROI) to document findings and evidence (FSIS Directive 8010.4, Report of Investigation).

E. The OFO DM and OIEA/CID RD are to notify the Director, OIEA Enforcement and Litigation Division (ELD), or designee, as far in advance as practicable regarding any request for, or potential request for, product seizure. This notice is critical because of the timeframes and public health issues associated with product detention and seizure. Contact information for the ELD is on the FSIS List of Key Agency Contacts and below.

Director, Enforcement and Litigation Division
Office of Investigation, Enforcement and Audit
USDA Food Safety and Inspection Service
Patriots Plaza III, Room 8-205
Mail Drop 3753
1400 Independence Avenue, SW
Washington, DC 20250
Telephone (202) 418-8872
FAX (202) 245-5097
Email CEBCorrespondence@fsis.usda.gov

F. The OFO DM and OIEA/CID RD are to refer the AER, ROI, or other case documentation to ELD in accordance with the procedures set out in FSIS Directive 8010.5, Case Referral and Disposition (see FSIS Directive 8010.5).

XII. ENFORCEMENT AND LITIGATION DIVISION RESPONSIBILITIES

A. ELD reviews the recommendation or request 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 statutes, and that there is a basis for seizure (Directive 8010.5, Case Referral and Disposition).

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

2. If ELD determines that the case evidence does not support the seizure action, it will close the case with no action or recommend other verification or regulatory activities action. In this instance, program personnel are to ensure appropriate product disposition.

3. If ELD determines that additional information, evidence, or investigation is needed, it will coordinate with the appropriate FSIS program area.

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

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

D. OIEA/ELD, 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 (FSIS Directive 8010.5, Case Referral and Disposition).

XIII. QUESTIONS

Refer questions regarding this directive through supervisory channels.

Assistant Administrator
Office of Policy and Program Development