

## § 1.401

### WHAT IS THE APPEAL PROCESS FOR A DETENTION ORDER?

#### § 1.401 Who is entitled to appeal?

Any person who would be entitled to be a claimant for the article of food, if seized under section 304(a) of the act, may appeal a detention order as specified in § 1.402. Procedures for establishing entitlement to be a claimant for purposes of section 304(a) of the act are governed by Supplemental Rule C to the “Federal Rules of Civil Procedure.”

#### § 1.402 What are the requirements for submitting an appeal?

(a) If you want to appeal a detention order, you must submit your appeal in writing to the FDA District Director, in whose district the detained article of food is located, at the mailing address, e-mail address, or fax number identified in the detention order according to the following applicable timeframes:

(1) *Perishable food*: If the detained article is a perishable food, as defined in § 1.377, you must file an appeal within 2 calendar days of receipt of the detention order.

(2) *Nonperishable food*: If the detained article is not a perishable food, as defined in § 1.377, you must file a notice of an intent to request a hearing within 4 calendar days of receipt of the detention order. If the notice of intent is not filed within 4 calendar days, you will not be granted a hearing. If you have not filed a timely notice of intent to request a hearing, you may file an appeal without a hearing request. Whether or not it includes a request for hearing, your appeal must be filed within 10 calendar days of receipt of the detention order.

(b) Your request for appeal must include a verified statement identifying your ownership or proprietary interest in the detained article of food, in accordance with Supplemental Rule C to the “Federal Rules of Civil Procedure.”

(c) The process for the appeal of a detention order under this section terminates if FDA institutes either a seizure action under section 304(a) of the act or an injunction under section 302 of the act (21 U.S.C. 276) regarding the article of food involved in the detention order.

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(d) As part of the appeals process, you may request an informal hearing. Your request for a hearing must be in writing and must be included in your request for an appeal specified in paragraph (a) of this section. If you request an informal hearing, and FDA grants your request, the hearing will be held within 2 calendar days after the date the appeal is filed.

#### § 1.403 What requirements apply to an informal hearing?

If FDA grants a request for an informal hearing on an appeal of a detention order, FDA must conduct the hearing in accordance with part 16 of this chapter, except that:

(a) The detention order under § 1.393, rather than the notice under § 16.22(a) of this chapter, provides notice of opportunity for a hearing under this section and is part of the administrative record of the regulatory hearing under § 16.80(a) of this chapter;

(b) A request for a hearing under this section must be addressed to the FDA District Director in whose district the article of food involved is located;

(c) The provision in § 16.22(b) of this chapter, providing that a person not be given less than 3 working days after receipt of notice to request a hearing, does not apply to a hearing under this subpart;

(d) The provision in § 16.24(e) of this chapter, stating that a hearing may not be required to be held at a time less than 2 working days after receipt of the request for a hearing, does not apply to a hearing under this subpart;

(e) Section 1.406, rather than § 16.24(f) of this chapter, describes the statement that will be provided to an appellant where a detention order is based on classified information;

(f) Section 1.404, rather than § 16.42(a) of this chapter, describes the FDA employees, *e.g.*, Regional Food and Drug Directors or other officials senior to a District Director, who preside at hearings under this subpart;

(g) The presiding officer may require that a hearing conducted under this section be completed within 1 calendar day, as appropriate;

(h) Section 16.60(e) and (f) of this chapter does not apply to a hearing