

## Food and Drug Administration, HHS

## § 1.402

### § 1.392 Who receives a copy of the detention order?

(a) FDA must issue the detention order to the owner, operator, or agent in charge of the place where the article of food is located. If the owner of the article of food is different from the owner, operator, or agent in charge of the place where the article is detained, FDA must provide a copy of the detention order to the owner of the article of food if the owner's identity can be determined readily.

(b) If FDA issues a detention order for an article of food located in a vehicle or other carrier used to transport the detained article of food, FDA also must provide a copy of the detention order to the shipper of record and the owner and operator of the vehicle or other carrier, if their identities can be determined readily.

### § 1.393 What information must FDA include in the detention order?

(a) FDA must issue the detention order in writing, in the form of a detention notice, signed and dated by the officer or qualified employee of FDA who has reason to believe that such article of food is adulterated or misbranded.

(b) The detention order must include the following information:

- (1) The detention order number;
- (2) The date and hour of the detention order;
- (3) Identification of the detained article of food;
- (4) The period of the detention;
- (5) A statement that the article of food identified in the order is detained for the period shown;
- (6) A brief, general statement of the reasons for the detention;
- (7) The address and location where the article of food is to be detained and the appropriate storage conditions;
- (8) Any applicable conditions of transportation of the detained article of food;
- (9) A statement that the article of food is not to be consumed, moved, altered, or tampered with in any manner during the detention period, unless the detention order is first modified under § 1.381(c);
- (10) The text of section 304(h) of the act and §§ 1.401 and 1.402;

(11) A statement that any informal hearing on an appeal of a detention order must be conducted as a regulatory hearing under part 16 of this chapter, with certain exceptions described in § 1.403;

(12) The mailing address, telephone number, email address, fax number, and the name of the FDA Division Director in whose division the detained article of food is located;

(13) A statement indicating the manner in which approval of the detention order was obtained, *i.e.*, verbally or in writing; and

(14) The name and the title of the authorized FDA representative who approved the detention order.

[69 FR 31701, June 4, 2004, as amended at 76 FR 25541, May 5, 2011; 85 FR 16550, Mar. 24, 2020]

### 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 Division Director in whose division the detained article of food is located, at the mailing address, email 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