



Retail Food Program Protocol

SUBJECT: EMBARGO AND DISPOSITION; VOLUNTARY DESTRUCTION

Embargo

Periodically, it becomes necessary to embargo food items. Embargo is an action (an order) by the local health regulatory agency having jurisdiction to prohibit the commerce of a particular food product as the health officer has determined that it is either adulterated or misbranded. It is meant to prohibit from sale, transportation, or further use of a food items(s) until such time as it is proven to be safe and wholesome for human consumption (re-enter commerce) or condemned (destroyed). Embargo should not be confused with destruction, as the food is only being held temporarily while a determination is being made as to the status of the product. **It is not a seizure order.** The legal authority for this action can be found in the Federal Food, Drug, and Cosmetic (FD&C) Act (1938), the IL Food Service Sanitation Code (Section 750.340 Public Health) and each ordinance. Once embargoed, no one can remove or dispose of the food or drink without permission from the health officer, Public Health Administrator, or a court.

Condemn

Condemn shall be defined as goods found to be or believed to be unfit for human consumption which need to be denatured and disposed or used for non-human product.

Release

Release shall be defined as goods allowed to re-enter commerce.

Adulterated

Food is adulterated if it:

- Contains any substance harmful to health (resulting in human illness and/or death if consumed);
- Contains any diseased, contaminated, filthy, putrid or decomposed substance;
- Is spoiled or decomposed;
- Has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health;
- Food, food packages, or single-use items damaged by fire, smoke, heat, water, floodwater, fire suppression chemicals, or sewage;
- Food contaminated with foreign material including, but not limited to, insect or rodent urine, fecal material, or body fragments; or
- Foods obtained from unapproved sources, e.g. Cottage Foods/home kitchen foods in a permitted food establishment or meat/poultry missing Marks of Inspection.

Misbranded

Food is misbranded for a variety of different labeling issues including food fraud.

- There is no labeling;
- There is no labeling in English;
- Labeling error regarding an allergen;
- It has labeling that is false or misleading;
- It is offered for sale under the name of another food;
- The container is so made, formed or filled as to be misleading;
- It does not conform to label declarations for weight, measure or numerical count; or
- It is a food that does not conform to a prescribed definition and standard of identity.
- Food fraud via substitution is common for: olive oil, milk, honey, orange juice, saffron, coffee, & apple juice.

What are the options?

- Voluntary Disposal by the owner/PIC.
 - Majority of the time; it is in their best interest.
 - Voluntary action will be recorded on the inspection form if found during an inspection; indicated by COS in the violation. If no inspection report, record on Order of Destruction form (attachment).
 - Demonstrates responsible action by the operator/PIC.
 - Do's
 - If the responsible person agrees to voluntary disposal, then document on the Order of Destruction form.
 - Obtain their signature.
 - Observe...do not assist with the disposal and denaturing!
 - Don'ts
 - Do not assist with the disposal; do not carry to the dumpster.
 - Do not denature (i.e. pour chlorine solution on it); but observe this action.
 - Do not take the food with you.
 - Can explain embargo or other remedies but be careful not to threaten/coerce.
- Embargo: Steps
 - 1) Explain the embargo process to the responsible person (owner/PIC). Offer a last opportunity to voluntarily destroy, if no?
 - 2) Issue the embargo (Hold Order {attachment})—issue written notice to the owner or PIC.
 - a) Identify the food product embargoed; describe food product, e.g. bean sprouts.
 - b) Include: package size, quantity (amount/count), identify brand/lot #, etc.
 - c) Identify source/Marks of Inspection.
 - d) Issue tag (Detained {attachment}); attach to the food subject to the embargo.
 - e) What to photograph?
 - i. Temperature on the thermometer.
 - ii. Product identifying info (lot #, brand).

- iii. Size relationships.
 - iv. Location found, e.g. walk-in cooler.
 - v. Detain tag.
- f) Information on tag matches written Hold Order?
 - g) List reason for embargo.
 - h) List food establishment full address.
 - i) List EH staff involved.
 - j) List date.
 - k) Owner/PIC may decide now to destroy voluntarily—allow.
 - l) Owner/PIC refuses to sign? Document their refusal on the form.
- 3) Isolate embargoed foods from other foods, e.g. secure in separate containers, remove to a designated location, but still store the food under appropriate conditions specified in the embargo, e.g. if frozen, store frozen.
- 4) Inform owner/PIC that the detained food and/or drink shall:
- a. Not be used, served, or moved from the food establishment;
 - b. Be preserved, protected, and maintained by the owner/PIC; and
 - c. Not to move or alter a Hold Order or tag placed on food.
 - d. If selecting to test food at their expense, then will need to release to a laboratory (Embargo Release form).
- 5) If Hold Order is violated, then immediate health permit suspension.
- 6) Explain the appeal process:
- a. The license holder may make a written request to the Health Authority for a hearing within ten (10) business days of receiving the embargo. Such requests shall be made directly to the Health Authority.
 - b. If no such request is made within this time period, the food subject to the embargo shall be destroyed.
 - c. A hearing shall be held, if so requested. Based on the evidence produced at that hearing the embargo may be vacated, or the owner/ PIC of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the local ordinances. If Owner/PIC decides to appeal to court of competent jurisdiction, they have three (3) business days.
- Imminent Hazard
 - May immediately revoke or suspend permit for lack of satisfactory compliance.
 - Injunction (court)
 - Used for long-term remedy
 - Misdemeanor (court)
 - Used for repeat offender

Destroying or Denaturing Condemned Food

- 1) Issue an Order of Destruction.
- 2) If owner/PIC refuses to destroy food on the Order of Destruction, then immediately suspended health permit.

- 3) Do not permit unsalvageable food to be removed from our jurisdiction.
- 4) Supervise the destruction of the food commodity. The destruction must be sufficient to denature the food so it is not consumable by humans. The EHS must not physically take part in the actual destruction, but must be present during the entire destruction process. Take photographs of the destruction process, if possible
- 5) Destruction and/or denaturing can be accomplished by observing:
 - A. Crushing the product with a compactor truck;
 - B. Crushing the product at a transfer station;
 - C. Disposing the product at an approved incinerator or landfill; or
 - D. Removing any wrapper/container from the product, disposing of the product in a dumpster and pouring bleach or other chemical (discoloration with a dye, ammonia, or pine oil) over the product.
- 6) May need: Guidelines for the Disposal of Intentionally Adulterated Food Products and the Decontamination of Food Processing Facilities.
http://www.fsis.usda.gov/shared/PDF/Disposal_Decontamination_Guidelines.pdf.
- 7) It is best if the person, firm, etc. assume the responsibility of the destruction. The health department should recommend procedures, which the individual voluntarily agrees to do. If the destruction cannot be done voluntarily, it must be ordered if necessary.

Releasing Embargo

- 1) Embargo order is vacated, then issue release (Release of Notice of Embargo {attachment});
 - ✓ Abatement of conditions, e.g. re-labeled;
 - ✓ Diversion to an acceptable use, e.g. animal rendering to make feed or pasteurized egg products, or to salvage operation {see IDPH Salvage rules and regulations at <http://www.ilga.gov/commission/jcar/admincode/077/07700725sections.html>};
 - ✓ Release via a Chain of Custody, e.g. IDPH lab or ILAG/USDA/FDA inspector seizure, with Chain of Custody form (attachment);
 - ✓ Testing by lab indicated no adulteration or misbranding; or
 - ✓ Determination made to condemn food (Order of Destruction).
- 2) Provide a copy of the form to the owner/PIC and another copy for the food establishment file.

Reminders

- 1) Be Prepared—got forms and tags?
- 2) Use standard procedures.
- 3) Be timely; when in doubt—embargo!
- 4) Communicate with supervisors.
- 5) Document accurately and double-check work.
- 6) Owner/PIC got copy?

Adoption	Revisions	Review	Rescind
07-01-2014		2015 2016	
		11-21-2017 11-07-2018	