Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

RE: Criteria Used to Order Administrative Detention of Food for Human or Animal Consumption [Docket No. FDA-2011-N-0197; RIN 0910-AG67]

The Center for Science in the Public Interest (CSPI)\(^1\) appreciates the opportunity to comment on the interim final rule amending regulations on administrative detention of food for human or animal consumption [Docket No. FDA-2011-N-0197]. CSPI supports the rule as published in the May 5, 2011, Federal Register but makes the following observations.

The FDA Food Safety Modernization Act provides authority to administratively detain food if an inspector has a reason to believe the food is adulterated or misbranded. The authority amends section 304(h) of the Food, Drug, and Cosmetic Act which had proved ineffective because it set too high an evidentiary criteria. This is demonstrated by the fact that the Food and Drug Administration (FDA) has never used its administrative detention authority to stop contaminated food from reaching the market. Hopefully, the amended law will benefit consumers by helping the agency take rapid, precautionary action while determining the status of food items that are suspected of being adulterated or misbranded at the time of an inspection.

As the agency implements its administrative detention authority, CSPI encourages it to adopt policies that maximize consumer protection. The agency should empower inspectors to act on their experience as opposed to requiring them to develop clear evidence of adulteration or misbranding before detaining food. Detention is temporary and designed to provide time for FDA inspectors to conduct further observations and testing. As such, it should be treated as broad authority for inspectors to act quickly – even in situations of uncertainty.

CSPI thanks the agency for taking these comments into consideration as it moves forward with its programs for assuring the safety of the U.S. food supply.

Sincerely,

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\(^1\) The Center for Science in the Public Interest is a nonprofit health advocacy and education organization focused on food safety, nutrition, and alcohol issues. CSPI is supported principally by the 850,000 subscribers to its Nutrition Action HealthLetter and by foundation grants. We accept no government or industry funding.