

Food Safety and Quality Act, 2001

Loi de 2001 sur la qualité et la salubrité des aliments

ONTARIO REGULATION 222/05

GENERAL

Consolidation Period: From June 19, 2006 to the e-Laws currency date.

Last amendment: O.Reg. 326/06.

This Regulation is made in English only.

PART I

THINGS SEIZED OR DETAINED UNDER S. 23, 24, 25, 28 OR 36 OF THE ACT

Application

1. This Part applies in respect of any food, agricultural or aquatic commodity, agricultural input or other thing that is,

(a) seized under,

(i) clause 23 (2) (d) of the Act,

(ii) clause 24 (2) (d) of the Act,

(iii) subsection 25 (3) of the Act,

(iv) section 28 of the Act,

(v) an order made under section 36 of the Act;

(b) detained under,

(i) clause 23 (2) (d) of the Act,

(ii) clause 24 (2) (d) of the Act,

(iii) subsection 25 (3) of the Act,

(iv) an order made under section 36 of the Act. O. Reg. 222/05, s. 1.

Seizure

2. (1) On seizing any thing, an inspector shall,

(a) promptly,

(i) serve a notice of seizure on the person who had custody of the thing at the time it was seized, or

(ii) if the inspector cannot determine who had custody of the thing, attach a notice of seizure to the premises or conveyance where the thing was seized unless there is no practical place at which to attach the notice; and

(b) promptly serve a notice of seizure on the owner of the thing, if the inspector can determine who the owner is. O. Reg. 222/05, s. 2 (1).

(2) A notice of seizure shall include,

(a) a description of the seized thing;

(b) a statement of the reasons for the seizure;

(c) the date of the seizure;

(d) the place of seizure;

(e) the name and signature of the inspector who seized the thing and details of how the inspector can be contacted. O. Reg. 222/05, s. 2 (2).

Detention

3. (1) On detaining any thing, an inspector shall,

(a) attach a tag to the thing that indicates it is detained or, if attaching a tag is not practical, indicate in some other clear manner that the thing is detained;

(b) promptly,

(i) serve a notice of detention on the person who had custody of the thing at the time it was detained,
or

(ii) if the inspector cannot determine who had custody of the thing, attach a notice of detention to the premises or conveyance where the thing was detained or to the detained thing itself;

(c) promptly serve a notice of detention on the owner of the thing, if the inspector can determine who the owner is. O. Reg. 222/05, s. 3 (1).

(2) A notice of detention shall include,

(a) a description of the detained thing;

(b) a statement of the reasons for the detention;

(c) the date of the detention;

(d) the place of detention;

(e) the name and signature of the inspector who detained the thing and details of how the inspector can be contacted. O. Reg. 222/05, s. 3 (2).

(3) No person shall remove or interfere with a tag or other thing an inspector has used under clause (1) (a) to indicate that a thing is detained unless authorized or required to do so by an inspector. O. Reg. 222/05, s. 3 (3).

(4) No person shall move or interfere with a thing that has been detained unless authorized or required to do so by an inspector. O. Reg. 222/05, s. 3 (4).

(5) An inspector may, by order, require a person to do anything described in subsections (3) and (4). O. Reg. 222/05, s. 3 (5).

(6) Where, in an inspector's opinion, something must be done in respect of a thing that has been detained in order to secure its preservation, the inspector may,

(a) authorize a person to do anything that the inspector considers necessary to secure the thing's preservation; or

(b) by order require a person to do anything that the inspector considers necessary to secure the thing's preservation. O. Reg. 222/05, s. 3 (6).

Disposal of Things Seized or Detained

Director may order disposal

4. (1) A director may order that a thing that has been seized or detained be disposed of in accordance with section 5, 6, 7 or 8. O. Reg. 222/05, s. 4 (1).

(2) An order for disposal under section 5, 6, 7 or 8 may be given to,

(a) an inspector;

(b) the person who had custody of the thing at the time it was seized or detained;

(c) the owner of the thing; or

(d) a person who has an interest in the thing. O. Reg. 222/05, s. 4 (2).

Disposal — hearing required

5. (1) Subject to sections 6, 7 and 8, if a director intends to order that a thing that has been seized or detained be disposed of, he or she shall serve written notice on,

(a) the person who had custody of the thing at the time it was seized or detained, if the director can determine who that person was; and

(b) the owner of the thing, if the director can determine who the owner is. O. Reg. 222/05, s. 5 (1).

(2) Within 10 days of the director serving notice on any person under subsection (1), the following persons may apply to the director for a hearing, whether or not notice was served on that person:

1. The person who had custody of the thing at the time it was seized or detained.

2. The owner of the thing.

3. Any other person who claims an interest in the thing. O. Reg. 222/05, s. 5 (2).

(3) A person described in subsection (2) who applies for a hearing within the time permitted under that subsection is entitled to a hearing before the director. O. Reg. 222/05, s. 5 (3).

(4) The director may refuse to hold a hearing if the only person who applies for a hearing is someone other than the person who had custody of the thing when it was seized or detained or the owner of the thing and the director is not satisfied that the person has an interest in the thing. O. Reg. 222/05, s. 5 (4).

(5) If, after a hearing, the director determines that the thing that has been seized or detained does not contravene any provision of the Act or its regulations or an order made under section 32 of the Act or under a regulation, he or she shall release the thing to,

(a) the person who had custody of the thing at the time it was seized or detained;

(b) the owner of the thing; or

(c) another person who has an interest in the thing and who was a party to the hearing. O. Reg. 222/05, s. 5 (5).

(6) If, after a hearing, the director determines that the thing that has been seized or detained contravenes a provision of the Act or its regulations or an order made under section 32 of the Act or under a regulation, he or she shall order that the thing be destroyed. O. Reg. 222/05, s. 5 (6).

(7) Despite subsection (6), where the director determines that the thing that has been seized or detained contravenes a provision of the Act or its regulations or an order made under section 32 of the Act or under a regulation but is of the opinion that something can safely be done in respect of the thing to remedy the contravention, he or she may release the thing to any person described in subsection (5) if,

(a) in his or her opinion, releasing the thing to the person is appropriate in the circumstances; and

(b) he or she is satisfied that the person will take whatever steps the director considers necessary to remedy the contravention. O. Reg. 222/05, s. 5 (7).

(8) Despite subsection (6), where the director determines that the thing that has been seized or detained contravenes a provision of the Act or its regulations or an order made under section 32 of the Act or under a regulation, he or she may release the thing to any person described in subsection (5) if,

(a) in his or her opinion releasing the thing to the person is appropriate in the circumstances; and

(b) he or she is satisfied that the person will not use the thing in contravention of a provision of the Act or its regulations or an order made under section 32 of the Act or under a regulation. O. Reg. 222/05, s. 5 (8).

(9) The director may release a thing under subsection (7) or (8) subject to such conditions as are, in his or her opinion, appropriate in the circumstances and may, by order, require the person to whom the thing is released to take whatever steps the director considers necessary, having regard to,

(a) the need to ensure that the contravention is safely remedied, in the case of something released under subsection (7); and

(b) the need to ensure that the thing is not used in contravention of the Act or its regulations or an order made under section 32 of the Act or under a regulation, in the case of something released under subsection (8). O. Reg. 222/05, s. 5 (9).

(10) The director may, without a hearing, order that a thing that has been seized or detained be disposed of in a manner satisfactory to the director if,

(a) no person applies for a hearing within the time permitted under subsection (3);

(b) the director refuses to hold a hearing under subsection (4); or

(c) no person who applied for a hearing appeared at the scheduled time for the hearing. O. Reg. 222/05, s. 5 (10).

Disposal — no hearing required

No interested person

6. If, having made a reasonable effort to do so, a director is unable to determine who had custody of a thing at the time it was seized or detained or who the owner of the thing is, the director may, if 30 days have passed since the thing was seized or detained, order that the thing be disposed of in a manner satisfactory to the director without giving notice to any person and without a hearing. O. Reg. 222/05, s. 6.

With owner's consent

7. If the owner of a thing that has been seized or detained agrees to its disposal, a director may, without giving notice to any person and without a hearing, order that the thing be disposed of in the agreed upon manner. O. Reg. 222/05, s. 7.

Urgent circumstances

8. (1) A director may, without giving notice to any person and without a hearing, at any time order that a thing that has been seized or detained,

(a) be disposed of in a manner satisfactory to the director if the director is of the opinion that the thing is or will soon be rotting, spoiling or otherwise perishing; or

(b) if the thing is an animal, order that it be euthanized and that its remains be disposed of in a manner satisfactory to the director if the director is of the opinion that it is appropriate to euthanize that animal to prevent or relieve its undue suffering or distress because the animal is injured, ill or near death. O. Reg. 222/05, s. 8 (1).

(2) Where a director orders that a thing be disposed of under subsection (1), any processes started under section 5 in respect of the thing are cancelled. O. Reg. 222/05, s. 8 (2).

(3) Where a thing has been disposed of in accordance with subsection (1), the director shall give written notice of the disposal within 20 days to,

(a) the person who had custody of the thing at the time it was seized or detained, if the director can determine who that person was;

(b) the owner of the thing, if the director can determine who the owner is; and

(c) the person who had custody of the thing at the time the order was issued under subsection (1). O. Reg. 222/05, s. 8 (3).

(4) A written notice of the disposal shall include,

(a) a description of the disposed thing;

(b) a statement of the reasons for the disposal of the thing;

(c) a statement describing the disposal; and

(d) the date of disposal. O. Reg. 222/05, s. 8 (4).

PART II

OTHER MATTERS

Manner of service

9. (1) Where the Act requires that any thing be served on a person, the thing shall be served in a manner specified in this section. O. Reg. 222/05, s. 9 (1).

(2) In the case of service on an individual, a thing may be,

(a) delivered personally;

(b) left at the individual's place of residence with someone who appears to be an adult person resident in the same household if, no later than the next day, a copy of the thing is sent by mail to the individual at the place of residence;

(c) sent by mail to the individual's last known address using a method of mail delivery that allows delivery to be verified;

(d) sent by courier to the individual's last known address;

(e) sent by fax to the individual's last known fax number. O. Reg. 222/05, s. 9 (2).

(3) In the case of service on a person who is not an individual, a thing may be,

(a) delivered personally to the head office or other usual place of business of the person and left with an officer, director or agent of the person or with any other individual present at the place who appears to be in control or management of the place;

(b) sent by mail to the person's head office or other usual place of business or to the person's agent using a method of mail delivery that allows delivery to be verified;

(c) sent by courier to the person's last known address;

(d) sent by fax to the person's last known fax number. O. Reg. 222/05, s. 9 (3).

When service effective

10. (1) In the case of something delivered personally under clause 9 (2) (a) or (3) (a) or left with another person at the intended recipient's residence under clause 9 (2) (b), service is effective on the day the thing was delivered or left, as the case may be. O. Reg. 222/05, s. 10 (1).

(2) In the case of something sent by mail, service is effective on the earlier of the day on which the intended recipient receives the thing and the fifth day after it was sent. O. Reg. 222/05, s. 10 (2).

(3) In the case of something sent by courier, service is effective on the earlier of the day on which the intended recipient receives the thing and the day after it was sent. O. Reg. 222/05, s. 10 (3).

(4) In the case of something sent by fax, service is effective on the day it is sent. O. Reg. 222/05, s. 10 (4).

Deadlines

11. (1) The prescribed time in which a person to whom an order is directed under section 32 of the Act may request a hearing is 10 days after service of the order. O. Reg. 326/06, s. 2.

(2) The prescribed time in which a party to a hearing may appeal a director's decision or order under section 34 of the Act to the Tribunal is 15 days after service of notice of the decision or order. O. Reg. 326/06, s. 2.