

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOOD SAFETY AND INSPECTION SERVICE  
WASHINGTON, DC

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<b>FSIS DIRECTIVE</b>	8010.3 Revision 3	10/18/11
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**PROCEDURES FOR EVIDENCE COLLECTION,  
SAFEGUARDING AND DISPOSAL**

**PART I - GENERAL**

**I. PURPOSE**

This directive provides the methodologies and procedures that Food Safety and Inspection Service (FSIS) personnel in the Office of Program Evaluation, Enforcement and Review (OPEER), Office of Field Operations (OFO), Office of International Affairs (OIA), FSIS Laboratories, and other program areas (collectively referred to in this directive as program employees) are to apply when collecting, safeguarding, and disposing of evidence in the performance of surveillance, investigations, and other activities under the Federal Meat Inspection Act, (FMIA), the Poultry Products Inspection Act (PPIA), the Egg Products Inspection Act (EPIA) – collectively referred to as “the Acts” – and related laws and regulations.

*KEY POINTS:*

- *Three general categories of evidence*
- *Procedures for collecting and safeguarding evidence*
- *Procedures for transferring and receiving evidence*
- *Procedures for retention and disposal of evidence*

**II. CANCELLATION**

FSIS Directive 8010.3, Revision 2, Procedures for Evidence Collection, Safeguarding, and Disposal, dated 6/25/08

**III. REASON FOR REISSUANCE**

FSIS is reissuing this directive in its entirety to update some procedures and to include additional OPEER, OFO, and OIA program employees who will

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**DISTRIBUTION:** Electronic

**OPI:** OPPD

apply the procedures described in this directive when collecting evidence during certain activities.

#### **IV. REFERENCES**

Federal Meat Inspection Act (FMIA)

Poultry Products Inspection Act (PPIA)

Egg Products Inspection Act (EPIA)

Humane Methods of Slaughter Act

The Agricultural Marketing Act of 1946, as amended

9 CFR 320.4, 381.146, 381.178 and 590.200

21 U.S.C. 460, 642, 1033, 1034 and 1040

FSIS Directive 7355.1, Use of Sample Seals for Laboratory Samples and Other Applications

FSIS Directive 10,230.2, Procedures for Collecting and Submitting Domestic Samples for Microbiological Analysis

FSIS Directive 10,300.1, Intensified Verification Testing (IVT) Protocol for Sampling of Product, Food Contact Surfaces, and Environmental Surfaces for *Listeria Monocytogenes*

#### **V. APPLICABILITY**

Specifically this directive applies to the following offices and personnel:

##### **1. OPEER**

###### **a. Compliance and Investigations Division (CID)**

- i. Investigators (including Senior Investigators);
- ii. Supervisory Investigators (SI); and
- iii. Regional Directors (RD)

###### **b. Internal Control and Audit Division (ICAD)**

- i. Personnel Misconduct Investigators (PMI);
- ii. Investigations Branch Chief (IBC); and
- iii. Director

##### **2. OFO**

- a. Enforcement, Investigations, and Analysis Officers (EIAO);
- b. District Case Specialist (DCS);
- c. Deputy District Managers (DDM); and
- d. District Managers (DM)

3. OIA
  - a. Import Inspection Division (IID);
  - b. Import Surveillance Liaison Officers (ISLO);
  - c. Regional Import Field Supervisors (RIFS);
  - d. Deputy Director for Operations (DDO); and
  - e. Director
4. FSIS Laboratory Personnel

## **VI. FSIS FORMS ASSOCIATED WITH THIS DIRECTIVE**

A. The FSIS forms listed below are located on the FSIS website:  
<https://inside.fsis.usda.gov/fsis/emp/static/global/forms/forms.jsp>.

FSIS Form 8000-7B (Photographic Report) – This form provides a detailed description of the subject of the photograph, the location where the photograph was taken, the date the photographic was taken, and the name of the photographer.

FSIS Form 8000-15 (Photographic Log) – Section I of this form identifies the subject or location photographed; Section II identifies the type of media and a specific description of each photograph; and Section III provides for a reference sketch of the area/items photographed.

FSIS Form 8050-2 (Shipper's or Receiver's Certification) – This form may be used when initial contact is made with the shipper or receiver of meat, poultry, or processed egg products that appear to be in violation of the Acts.

FSIS Form 8200-1 (Property Receipt) – This form is issued to the owner or custodian of records, documents, or other items of personal property when that property is collected as evidence.

FSIS Form 8200-2 (Evidence Tag) – This form may be placed on physical objects to which the Evidence Receipt and Chain of Custody form cannot be readily attached.

B. The following FSIS Forms are completed in the AssuranceNet (ANet) system.

FSIS Form 8000-16 (Evidence Log) – This form provides a detailed accounting of all evidentiary items collected in an investigation and is used to monitor the control and accountability of these items.

FSIS Form 8000-17 (Evidence Receipt and Chain of Custody) – Section I of this form identifies the evidentiary items collected in an investigation and establishes the chain of custody for that evidence; Section II tracks the chain of custody to maintain control and

accountability for the items; and Section III documents the final disposal action of the items.

**NOTE:** For program employees who do not have access to ANet, the above forms are available on the FSIS website at <https://inside.fsis.usda.gov/fsis/emp/static/global/forms/forms.jsp>.

## **VII. BACKGROUND**

A. OPEER/CID Investigators, RD, and SI have a responsibility to conduct surveillance, investigations, and other activities; OPEER/ICAD PMI conduct misconduct investigations and other activities; OFO EIAO, DCS, DDM, and DM have a responsibility to conduct investigations, Food Safety Assessments (FSA), and other activities; and OIA/IID ISLO have a responsibility to conduct surveillance, investigations, and other activities under the Acts.

B. The collection and safeguarding of evidence during these activities is essential to support Agency decisions, regulatory action, investigative findings, and enforcement or other legal actions. Other authorized Agency personnel may sometimes collect evidence while performing official duties and are to follow the procedures set out in this directive to collect, safeguard, and maintain evidence.

C. Evidence includes documents, photographs, investigative samples, and other facts or records collected during surveillance, investigations, FSAs, and other activities. The safeguarding of evidence includes the steps needed to establish legal integrity (i.e., identification, security, handling, and chain of custody) from the time of initial acquisition to final disposal. These steps prevent loss, unauthorized alteration, mishandling, or other actions that may affect the integrity of evidence. Chain of custody is the methodology used to maintain, track, and document control of all evidentiary items. Chain of custody includes the order of places where, and the persons with whom, evidence collected by FSIS program employees was located from the time it was collected to its disposal. Failure to safeguard evidence may affect the use of that evidence to support enforcement or legal actions. Evidence disposal addresses retention, disposal requirements, and procedures.

## **PART II - EVIDENCE COLLECTION**

### **I. GENERAL**

A. Evidence may be used to support Agency decisions, to support that a violation of law has occurred, to take enforcement actions, to help obtain a ruling in a court of law, or for other purposes. When collecting evidence, program employees are to treat every item of evidence in the manner described in this directive. The proper treatment and the preservation of evidence in the condition in which it was collected require that all authorized persons handle evidentiary items with care. Establishing and maintaining a chain of custody for all evidence collected is of utmost importance to provide for accountability for, and for maintaining a record of, the conditions under which the items were held at each stage of evidence collection, safeguarding, and disposal.

B. There are three general categories of evidence for which the procedures outlined in this directive apply. These categories are:

1. Documentary evidence;
2. Photographic evidence; and
3. Investigative samples.

C. Program employees may, as necessary, develop demonstrative exhibits to illustrate, clarify, or summarize evidence (i.e. documents, photographs, or samples) collected during surveillance, investigations, FSAs, and other activities. Demonstrative exhibits need to fairly and accurately represent the evidence. Examples of demonstrative exhibits include diagrams, flowcharts, maps, drawings, or graphs. Program employees are to include any demonstrative exhibits in the list of exhibits. Because demonstrative exhibits are generated by the program employee, and not collected from a subject or witness of an investigation, it is not necessary to prepare an Evidence Receipt and Chain of Custody.

### **II. DOCUMENTARY EVIDENCE**

A. Documentary evidence is the most common form of evidence collected by FSIS during investigations and other activities. Documents, including various forms of statements collected by program employees during surveillance, investigation, and other activities, may be used to support Agency decisions, enforcement actions, and investigative findings or to support legal action in Federal, state, or local court.

B. It is imperative that a government witness (usually the person who collected the record) be able to testify as to where, when, and from whom the documents were collected and to the fact that the copy is a true and correct copy of the source document, based on his/her review of the source document.

C. Examples of documentary evidence include:

1. Sales invoices (as a means of identifying the seller or buyer; the amount, type, price, or date of the sale; or purchase or receipt of the product);
2. Receiving and storage records (as a means of identifying dates relevant to product storage, product condition or temperature, or storage temperature);
3. Transportation records (as a means of identifying the transporter, the location the product was shipped from, or the location to which the product was shipped);
4. Rodent and pest control service records;
5. Contracts;
6. Sanitation SOP records and HACCP records;
7. Production records (e.g., plant production dates, lot numbers, pre-shipment review conducted);
8. Laboratory analysis records of product (analysis requested by a manufacturer, custodian, or owner);
9. Records or reports documented by Federal, State, or local authorities of non-compliance, violations, or other issues (e.g., FSIS Forms 5400-5, Noncompliance Record);
10. Statements (signed and unsigned);
11. Memorandum of Interview (MOI);
12. Photographs, videos, or other electronic media files collected from a subject or witness during an investigation; and
13. Diagrams, maps, charts, or graphs collected from a subject or witness during an investigation.

D. To collect documentary evidence, program employees are to use the following procedures:

1. Make an oral request to a responsible official to examine records or documents;
2. Examine and determine the specific records to collect; and
3. Obtain selected documentary evidence by requesting copies or the opportunity to make copies or photographing each individual record or document.

**NOTE:** If an original record, document (e.g., source document), or item, such as personal property, is collected as evidence or removed from a business or federally inspected establishment to make a copy for evidence, the program employee is to initiate and issue a Property Receipt to the owner or custodian of the record, document, or item. Original records and documents collected to be used as evidence or to make a copy for evidence are to be returned to the owner or custodian when possible; therefore, ensure these records, documents, or items are not altered in any way. The Property Receipt issued to the owner or custodian and the Evidence Receipt and Chain of Custody, naming the records, documents or other items, will serve to identify these records.

E. If access to a business or federally inspected establishment, or its records, or a request for copies of specific records, is denied, program employees are to explain that the Acts, at 21 U.S.C. 460, 642, 1034 and 1040, provide duly-authorized representatives of the Secretary with access to the place of business and an opportunity to examine the facilities, inventory, and records thereof, and to copy all such records. If necessary, contact, through supervisory channels, the Evaluation and Enforcement Division (EED), OPEER, to request an administrative subpoena to access the facility or to collect copies of records.

F. To identify documentary evidence, program employees are to:

1. Initial and date the back of each document collected (e.g., Initials—mm/dd/yy), with the exception of official FSIS forms or Agency investigative or administrative reports (e.g., FSIS Form 8080-1, Notice of Detention FSIS Form 8000-7, Exhibit Cover Sheet, FSA), which are not to be initialed or dated;
2. Sign and date each statement or MOI; and
3. Complete Section I of an Evidence Receipt and Chain of Custody form in ANet by completing the appropriate data fields, print a hard copy, and maintain it with the original evidence.

**NOTE:** There are occasions when a single piece of documentary evidence may consist of hundreds of sheets of paper, which may or may not be bound or sequentially numbered (e.g., page 6 of 10). In these instances, program employees may use an abbreviated method to initial and date these documents. If the program employee ensures that all pages are accounted for, the program employee may initial and date the first and last page and identify the number of pages (e.g., page 1 of 500 on the first sheet and page 500 of 500 on the last sheet).

### **III. PHOTOGRAPHIC EVIDENCE**

A. Photographs are one of the most effective and useful forms of evidence. Photographs provide visual evidence to establish violative conditions or products, insanitary conditions or practices that are likely to render products injurious to health or other observations. Photographs provide a means to visually bring the facility or location to the decision-maker to support Agency decisions, enforcement actions, and investigative findings. Photographs also may be used

to record business and other documents, when necessary or efficient, in place of collecting or reproducing copies.

B. Examples of conditions or practices effectively documented by photographs include:

1. Evidence of rodents, insect infestation, other insanitary conditions, or facility construction or maintenance problem that contributes to insanitary conditions;
2. Routes of, as well as actual contamination of, raw materials or finished products;
3. Condition of raw materials or finished products;
4. Product labels, other labeling, or invoices;
5. Insanitary conditions contributing to contamination or to violative condition of raw materials or finished products;
6. Employee practices contributing to contamination or to violative condition of raw materials or finished products; and
7. In-commerce forms or official establishment records, including records showing errors, substitutions, penciled changes in procedure, faulty practices, deviations from HACCP, Sanitation SOP, prerequisite programs, or other protocols, altered or inadequate control procedures, or other derivations from stated procedure.

C. The Acts provide FSIS personnel authority to examine facilities, inventory, and records at federally inspected establishments and at warehouses, distribution centers, and other in-commerce facilities subject to the statutes (21 U.S.C. 460, 642, 1034, and 1040). These statutory provisions also provide program employees authority to copy certain business records. Program employees are to use photography, under these authorities, as a technique to examine facilities, inventory, and records and to copy business records. Permission from management to take photographs during a surveillance review, an investigation, or other activities is not necessary.

D. When establishment personnel or an establishment official refuses to allow program employees to take photographs, program employees are to explain the statutory authority cited above, and that the camera is a tool used in the examination of facilities and inventories and for copying business records. If necessary, contact EED through supervisory channels to request an administrative subpoena.

E. Program employees are not to surrender cameras, film, digital images, or photographs to establishment personnel or establishment officials. Program employees are to advise the establishment that it can seek to obtain copies of the photographs under the Freedom of Information Act.

F. Program employees are to use FSIS-issued digital cameras, or, when necessary, film-based or other photographic equipment, to collect photographic evidence.

**NOTE:** OFO personnel are not to use photographic equipment other than FSIS-issued digital cameras to collect photographic evidence without prior approval from the District Office (DO).

G. To collect photographic evidence, program employees are to use the following procedures:

1. Photograph the scene in a comprehensive, logical sequence whenever possible. The sequence should provide an overview of the entire area, a medium “eye-view” angle, close-up, and extreme close-up images of the subject. Avoid deleting any images in the sequence, even if poorly exposed;
2. Do not disturb or allow the scene to be disturbed until the necessary photographs are taken. Once they have been taken, the investigation or other activity may continue;
3. Ensure conclusive photographic identification of the location, as appropriate, in both the exterior and interior sections of the facility (e.g., include an identifiable landmark, such as a street sign, in a photograph of the exterior of the facility); and
4. When it is important to depict scale of the subject of a photograph, use a ruler or similar item strategically placed in the close-up images of the subject.

H. To identify photographic evidence, program employees are to:

1. Initiate and maintain a Photographic Log to identify the subject or location being photographed and include a description of each photograph;
  - a. A single entry in the Photograph Log may be used to describe a series of photographs that depict a situation or conditions if the entry is sufficient to describe what is being depicted (e.g., 00011—00020 show insanitary conditions in cooler B at XYZ Company);
  - b. When information relevant to photographs of a subject or location is initially captured in investigative notes, ensure that all pertinent information is transferred into Sections I and II of the Photographic Log; and
  - c. Section III of the Photographic Log may include a sketch of the subject or location being photographed. A sketch is a rough approximation of the scene that places items and locations in perspective to each other to supplement photographs.

**NOTE:** Program employees, in consultation with supervisors, may determine that completing a Photographic Log is not necessary when, during surveillance, investigative, or other activities, a small number of photographs are taken (e.g., one to five) and are included in the final investigative report on FSIS Form 8000-7B, Photographic Report. In these cases, the Photographic Report and Evidence Receipt and Chain of Custody will serve to identify those photographs.

2. Create and authenticate a master original copy of the digital photographs as soon as practical by transferring them to a once-writable CD (CD-R);
  - a. Use a CD-R to ensure that the files cannot be modified;
  - b. Authenticate the master CD-R by using a compatible permanent marker that will not damage the CD; and
  - c. Include the investigation file number, AER report number, or other file identifier; the firm name; date; description of the subject matter; and the photographer's initials.
3. Maintain the master CD-R under security as original evidence and make separate working copies, as necessary, on a computer hard drive, a CD, or other storage media for examination, printing, or enhancement.
4. Complete Section I of an Evidence Receipt and Chain of Custody form in the ANet system by completing the appropriate data fields, printing a hard copy, and maintaining it with the original master CD-R.

**NOTE:** When evidence is obtained as digital files (e.g. scanned document files, files obtained via e-mail), program employees are to follow the above procedures to identify and maintain the digital evidence on a CD-R with an Evidence Receipt and Chain of Custody form.

#### **IV. INVESTIGATIVE SAMPLES**

A. Investigative sample collection is an important component of evidence collection. It includes the sampling of inventory from persons or firms engaged in preparation or storage of meat, poultry, or processed egg products. It also includes collection and analysis of other materials, as necessary. The FMIA (21 U.S.C. 642) and PPIA (21 U.S.C. 460) provide authority that includes the sampling of inventory, upon payment of fair market value, from persons or firms engaged in the preparation or storage of meat and poultry. The EPIA contains similar authority (21 U.S.C. 1033 and 1034).

**NOTE:** Program employees also collect routine verification samples from persons or firms engaged in preparation or storage of meat, poultry, or processed egg products and are to follow the guidance in the appropriate directive or notice when they collect, prepare, and submit verification samples.

**Example:** For IVT samples follow FSIS Directive 10,300.1.

B. Investigative samples are collected to support Agency decisions, to take enforcement action, to support that a violation of law has occurred, to help obtain a ruling in a court of law, or for other purposes. Samples are to be collected and submitted for laboratory analysis in a manner that safeguards the integrity of the evidentiary material, so that it is reliable as evidence.

C. Examples of items that may be collected for analysis include:

1. Raw, in-process, or finished meat, poultry, or egg products;
2. Ingredients used in raw, in-process, or finished meat, poultry, or egg products;
3. Product packaging;
4. Rodent excreta, insects, apparent nesting, or vermin-gnawed material; or
5. Extraneous materials

**NOTE:** When investigative sample collection is related to foodborne illness investigations, program employees are to follow the product sampling guidance in FSIS Directive 8080.3 (Foodborne Illness Investigations), section IX, including inter-program area notifications as described in section IX.A.5.

D. Sample Types

1. Intact sampling: Obtain a sample of an unopened packaged product. Collecting intact samples, if possible, is preferred; however, if it is not possible to collect an intact sample, non-intact samples may be collected.
2. Non-intact sampling: At times, obtaining an intact sample may not be practical because of the volume of product involved or the product's unpackaged state. If intact sampling is not feasible, non-intact samples are to be collected from bulk.

**NOTE:** If microbiological analyses are to be on a sample, program employees are to use aseptic techniques as outlined in FSIS Directive 10,230.2, when collecting non-intact samples (and to the extent necessary when collecting intact samples). Program employees are to maintain the integrity of the sample and not cause contamination during sampling.

E. Sample Selection

1. During the development of an Investigative Plan, or otherwise as appropriate, contact the FSIS laboratory, as needed, to discuss methods and types of samples to be collected and specific capabilities to conduct desired analysis.
2. Samples collected for laboratory analysis are to be collected from the location where the violative product is known or suspected to exist. Select the portions that will demonstrate the violative nature of the product.

3. Additional sampling may sometimes be necessary to gain information or otherwise protect public health. In these situations, obtain guidance from an appropriate source (e.g., Office of Public Health Science (OPHS), OPPD) in regards to specific techniques and sampling plans.

F. To request laboratory analysis of investigative samples, program employees are to:

1. Complete FSIS Form 10,000-2, Domestic Laboratory Report, or Form 10,600-1, Domestic Chemical Lab Analysis;
2. Identify investigative samples, in red text, as “STC-39” for OPEER samples or “IMPINV” for OIA samples and provide the applicable program Region Code;

OPEER Region Codes:

- “W” Western
- “SW” Southwest
- “SE” Southeast
- “NE” Northeast

OIA Region Codes:

- “N” Northern Import Field Office
- “W” Western Import Field Office
- “NW” Northwest Import Field Office
- “S” Southern Import Field Office
- “SW” Southwest Import Field Office
- “E” Eastern Import Field Office
- “NE” Northeast Import Field Office

3. Provide the producer's name, address, and establishment number;
4. Provide a sample description, list of ingredients, and product codes (e.g., “sell by dates”);
5. Provide the name and address of the location where the sample was collected;
6. Provide date, time, and quantity collected;
7. Describe how the sample is identified and sealed (e.g., “collected by \_\_\_\_, on \_\_\_\_ (date), sealed with FSIS seal # \_\_\_\_”);
8. Provide the contact information of the appropriate RD for OPEER or the RIFS for OIA for transmission of sample results;
9. Describe the analysis requested; and

10. After the lab enters the results on the form, the form is scanned into a PDF and emailed to the Investigator and RD for OPEER or the ISLO and RFIS for OIA. The original form will reside at the laboratory pending notification of sample disposal from the RD or designee for OPEER or the RIFS or designee for OIA.

G. To identify investigative samples, program employees are to:

1. Photograph the product or other evidentiary material before and after sample collection;
2. Obtain identifying information (e.g., invoices, labels, or other product identification);
3. As appropriate, document a signed statement, MOI, or Shipper's or Receiver's Certification from witnesses with direct knowledge of the sample identity;
4. Complete Section I of an Evidence Receipt and Chain of Custody form in the ANet system by completing the appropriate data fields. Include a description of the sample/evidence and the sample serial number; print a hard copy of the form; and place the associated bar-coded, pressure-sensitive sticker from FSIS Form 7355-2B, in the appropriate block; and
5. Maintain all other identifying information (e.g., invoice, bill of lading) under separate Evidence Receipt and Chain of Custody form with the associated case file.

H. Prior to transferring investigative samples to the FSIS laboratory, program employees are to:

1. Complete the first entry in Section II of an Evidence Receipt and Chain of Custody form to initiate chain of custody;
2. Maintain a copy of the signed Receipt with the associated case file,
3. Place the signed Evidence Receipt and Chain of Custody form in the package with the investigative sample;
4. Seal the sample in accordance with FSIS Directive 7355.1; and
5. Transfer the evidentiary investigative sample to the laboratory.

I. Final disposition and disposal of samples

1. Because of the possibility of litigation, FSIS laboratories are to hold a portion of all investigative samples until notified that the sample may be discarded.
2. The RD or designee or RIFS or designee are to notify the appropriate laboratory when it is no longer necessary to hold a sample (based on

consideration of the retention schedule in this directive). The notification to the laboratory needs to include the file number and associated sample serial numbers.

3. The FSIS laboratory is to dispose of the samples and complete Section III of the Evidence Receipt and Chain of Custody form in accordance with this directive.
4. The FSIS laboratory is to then forward the completed Evidence Receipt and Chain of Custody form to the RD or RIFS who requested the disposal.

## **PART III – SAFEGUARDING, TRANSFERRING, RETAINING, AND DISPOSING OF EVIDENCE**

### **I. SAFEGUARDING EVIDENCE**

A. Evidence is to be maintained under security and have a documented chain of custody showing the order of the places where, and the persons with whom, evidence collected was located, and that control was continuously maintained, from the time of collection until the time it is admitted into court, or the case is resolved, and the evidence is no longer needed.

B. Evidence security is to be initiated and maintained as follows:

1. Maintain evidence in a secure, controlled-access area (e.g., a locked room, a locked steel file cabinet, a security locked DO, or other suitably-locked enclosure), accessible only to designated personnel;
2. Prepare an Evidence Log in the ANet system for each case to maintain evidence inventories;
3. Print a hard copy of the Evidence Log from the ANet system to file with the evidence when the case is complete, or otherwise as necessary, to demonstrate that, or monitor whether control of and accountability for the evidence was maintained in each case; and

**NOTE:** OFO program management has determined that it will not use the Evidence Log to maintain inventories or to monitor whether or demonstrate that control of, and accountability for, evidence is maintained. All evidence collected by OFO program employees is included in the List of Exhibits in the AER.

4. Keep the number of people involved in handling evidence to a minimum (e.g., persons associated with the investigation).

C. Chain of Custody is to be initiated and maintained as follows:

1. Ensure that the transfer of evidence from one person to another is documented in Section II of the Evidence Receipt and Chain of Custody form;
2. Ensure that evidence is always accompanied with its Evidence Receipt and Chain of Custody form to provide identification and the continuous chain of custody; and
3. Ensure that the Evidence Receipt and Chain of Custody form is filled out in a legible manner and with permanent ink.

### **II. TRANSFERRING AND RECEIVING EVIDENCE**

A. Transferring Evidence

1. To preserve the Chain of Custody when evidence is transferred in person, program employees are to:
  - a. Sign in Section II of the Evidence Receipt and Chain of Custody form as the person releasing the evidence and identify the purpose of the change in custody;
  - b. Ensure that the person receiving the evidence signs as receiving the evidence; and
  - c. Make a copy of the signed form and maintain it for records.
  
2. To preserve the Chain of Custody when evidence is transferred using the Agency approved service for express or ground delivery or Registered Mail, program employees are to:
  - a. Sign in Section II of the Evidence Receipt and Chain of Custody form as the person releasing the evidence and identify the purpose of the change in custody;
  - b. Place the evidence and the Evidence Receipt and Chain of Custody form in a suitable envelope or container marked to show that the contents is evidence, and that it is to be opened only by the identified recipient;
  - c. Seal the envelope or container, write the word "Sealed" on the outside of the envelope or container, and initial and date the envelope or container;
  - d. Prepare a transmittal letter or memorandum to include date, file number, description of the evidence, method of transportation, and tracking number;
  - e. E-mail or fax a copy of the transmittal letter or memorandum separately to the recipient to advise him or her of the transfer, except it is not necessary to do so when sending investigative samples, because the sample analysis request form and the official sample seal will serve the purpose of advising the recipient;
  - f. Place the sealed envelope or container and transmittal letter in a larger envelope or container addressed to the recipient;
  - g. Use the Agency approved service for express or ground delivery to transfer evidence when possible and always request signature confirmation; and
  - h. If Registered Mail is used, always request a Return Receipt for signature confirmation.

## B. Receiving Evidence

1. To preserve the Chain of Custody when evidence is received in person, program employees are to:
  - a. Sign in Section II of the Evidence Receipt and Chain of Custody form as the person receiving the evidence; and
  - b. Maintain the signed Evidence Receipt and Chain of Custody form under security with the evidence.
2. To preserve the Chain of Custody as the receiver when evidence is received by the Agency approved service for express or ground delivery or Registered Mail, program employees are to:
  - a. Sign in Section II of the Evidence Receipt and Chain of Custody form, as the person receiving the evidence;
  - b. Provide a copy of the signed Evidence Receipt and Chain of Custody form to the transferee who relinquished the evidence, for the transferee's records;
  - c. Write the word "Opened," the initials of the employee who opened the envelop or container, and the date the envelop or container is opened on the inner envelop or container; and
  - d. Maintain the original initialed envelop or shipping package with the original evidence to provide proof of the chain of custody

## III. RETENTION AND DISPOSAL OF EVIDENCE

A. Retention schedules for evidence collected in the performance of surveillances, investigations, or other activities, are as follows:

1. General correspondence and other records
  - a. General correspondence and other records pertaining to surveillance activities or allegations that do not result in an investigation – destroy two (2) years after the end of the fiscal year in which the records were created;
  - b. General correspondence and other records pertaining to product detentions that do not result in an investigation – destroy two (2) years after the end of the fiscal year in which the records were created;
  - c. General correspondence and other records pertaining to administrative activities (e.g., FSA), or allegations that do not result in an investigation – destroy four (4) years after the end of the fiscal year in which the records were created
2. Administrative Case Files

- a. Report of Investigation, Administrative Enforcement Report, and associated case correspondence and other records:
  - i. Reports that result in an Administrative Consent Order, Administrative Exempt Settlement Agreement, Administrative Judicial Decision & Order, Administrative Exempt Ineligibility Order, or voluntary withdrawal – destroy three (3) years after the end of the fiscal year in which the administrative action terminates
  - ii. Reports for cases that result in a Notice of Warning (NOW), Letter of Information (LOI), Letter of Warning (LOW), Notice of Prohibited Activity (NoPA), Letter to Withhold Labels (LWL), Letter to Close Appeal (LCA), Notice of Effective Recall Letter (NOER), or no action – destroy three (3) years after the end of the fiscal year in which the case was closed
  - iii. Reports of cases that result in a company placed on Recordkeeping Requirements – destroy two (2) years after the end of the fiscal year in which the termination notice is issued
- 3. Criminal Case Files
  - a. Reports of Investigation and associated case correspondence and other records
    - i. Reports for cases that are prosecuted and result in a Conviction – destroy ten (10) years after the end of the fiscal year in which the case is closed;
    - ii. Reports for cases that result in a Pretrial Diversion – destroy three (3) years after the end of the fiscal year in which the Agreement terminates;
    - iii. Reports for cases that result in an NOW, LOI, or no action – destroy three (3) years after the end of the fiscal year in which the case was closed
- 4. Civil Case Files
  - a. Reports of Investigation and associated case correspondence and other records
    - i. Reports for cases that result in a Civil Consent Decree, Civil Judgment, or Civil Decree of Forfeiture – destroy three (3) years after the end of the fiscal year in which the civil action terminates
- 5. Other investigative reports that result in an Other type of disposition or that are closed with No Action – destroy one (1) year after the end of the fiscal year in which the Other disposition terminates, or the case is closed with No Action

6. Reports of precedent-setting cases are to be maintained permanently. FSIS will offer such reports to the National Archives and Records Administration ten (10) years after the end of the fiscal year in which the case is closed
7. Investigative Sample Retention:
  - a. Investigative samples held at FSIS laboratories may be disposed of upon a determination that no action will be taken with regard to the sample;
  - b. Investigative samples held at FSIS laboratories that support cases pending disposition may be disposed of subsequent to issuance of a closing action (e.g., NOW or LOI); and
  - c. Investigative samples held at FSIS laboratories that support cases pending litigation may be disposed of after a final disposition in the case, and all legal proceedings or appeals have been exhausted.

**NOTE:** When the retention schedule has been met for administrative, criminal, or civil case files or other investigative reports, the program area (e.g., OPEER/CID regional office) with responsibility for the disposal of all evidentiary material related to the case is responsible for notifying the FSIS laboratory.

B. Evidence is to be disposed of in the following manner:

1. All evidence and all copies of evidence, including electronic records, are to be destroyed by shredding or incineration, except for personal property evidence for which a Property Receipt was issued;
2. Return personal property evidence for which a Property Receipt was issued to the property owner; and
3. Document the disposal of all evidence in Section III of the Evidence Receipt and Chain of Custody form and provide it to the supervisory official for verification of disposal.

#### **PART IV - RESPONSIBILITIES**

A. The program employee who collects evidence is to:

1. Ensure that the proper methods and procedures for collection and safeguarding of evidence are effected in accordance with this directive during surveillance, investigation, or other activities to prevent evidence from being lost, altered, mishandled, or handled in any other way that may affect its integrity;
2. Initial and date the back of all evidentiary documents for evidence authentication, except original property, as previously defined in this directive;

3. Establish and maintain identity of investigative samples from the time of collection until receipt at the laboratory in accordance with this directive;
4. Upon collection of all evidentiary items, prepare an Evidence Receipt and Chain of Custody form in the ANet system to establish identification of the evidence, initiate the chain of custody, and provide for evidence authentication;
5. When personal property is collected as evidence, complete a Property Receipt and provide the owner or custodian of the property with a copy;
6. When an evidentiary item is such that the Evidence Receipt and Chain of Custody form cannot easily accompany or be attached to the item, maintain the Evidence Receipt and Chain of Custody form with the case evidence and attach an Evidence Tag to the item;
7. Make copies of documentary evidence to be used in the investigative report;
8. Document transfers of evidence in Section II of the Evidence Receipt and Chain of Custody form to maintain the Chain of Custody; and
9. Ensure that the methods and procedures set forth in this directive are followed during liaison activities with other Federal, State, and local law enforcement agencies in the collection, safeguarding, and disposal of evidence, as applicable

B. The Evidence Officer (EO) is responsible for maintaining control of, and accountability for, all evidentiary items for each assigned investigation. In OPEER/CID, the EO will usually be the lead Investigator (case agent) but may be another program employee as designated by the RD. In OPEER/ICAD, the EO is to be designated by the Director. In OIA, the EO will usually be the ISLO but may be another program employee as designated by the Director or Deputy Director. In OFO, the EO will usually be the DCS but may be another program employee as designated by the DM. The EO is to:

1. Protect all incoming evidentiary items from loss, alteration, mishandling, or other actions that may affect their integrity;
2. Generate in the ANet system, a hard-copy of the Evidence Log for each assigned investigation as necessary to audit the evidence for each investigation;
3. Arrange for and document in Section II of the Evidence Receipt and Chain of Custody form the receipt of evidence, or transfer, release, or return of evidence, for laboratory analysis, investigative use, use in court, or as otherwise necessary;

4. Serve as a liaison with other FSIS program areas or other Federal, State, or local law enforcement agencies for transfers, releases, or returns of evidence for laboratory analysis, investigative use, or use in court;
5. Conduct periodic inventory of evidence for each assigned investigation to monitor control of, and ensure accountability for, that evidence; and
6. Arrange for the proper disposal of evidence in accordance with the schedules for evidence retention in this directive.

C. FSIS laboratory personnel are to:

1. Document receipt of investigative sample evidence in Section II of the Evidence Receipt and Chain of Custody form to maintain the chain of custody;
2. Document any subsequent transfer, release, or return of evidence for investigative use, use in court, or as otherwise necessary;
3. Follow OPHS laboratory internal guidelines in the analysis, storage, and disposal of investigative sample evidence;
4. Complete Section III of the Evidence Receipt and Chain of Custody form to document the final disposal action of investigative sample evidence; and
5. Return the completed Evidence Receipt and Chain of Custody form to the appropriate program area office.

D. The OPEER CID Regional Director or ICAD Director or designees, OIA Deputy Director for Operations or designee, or OFO DM or designee is to:

1. Establish security for evidence (e.g., evidence room, locked cabinet), including limiting access to secure areas;
2. Assign an EO for each investigation in his or her area (e.g., region, district) of responsibility;
3. Receive and provide FSIS laboratory analysis results to the lead Investigator, EO, or other appropriate program employees;
4. Conduct periodic reviews of evidence, evidence logs, and evidence receipts to monitor control of, and accountability for, evidence; and
5. Ensure the timely and proper disposal of evidence in accordance with schedules and procedures in this directive, including notifying the appropriate laboratory when it is no longer necessary to hold investigative samples.

Refer questions regarding through supervisory channels.

A handwritten signature in black ink, appearing to read "David Joseph". The signature is written in a cursive style with a prominent loop at the end.

Assistant Administrator  
Office of Policy and Program Development