

OFO Evidence Collection Procedures

EIAO Training



Objectives

- Identify the three types of evidence
- Describe the procedures for collecting, safeguarding, and disposal of evidence, including photographs and videos
- Identify the proper procedures for using government-issued smartphones for evidence collection
- Explain the term “chain of custody” and the importance of establishing and maintaining correct chain of custody
- Identify the proper procedures for maintaining chain of custody
- Complete the forms associated with evidence collection and safeguarding

Evidence

- Agency personnel who collect and review investigative information must understand how to properly collect, safeguard, and dispose of evidence.



OFO Guidance

- OFO employees may collect evidence while performing their official duties.
- Follow the methods to collect, safeguard, and maintain evidence as set out FSIS Directive 8010.3.



Evidence – Key Principles

- OFO personnel are to recognize key principles pertaining to evidence associated with administrative cases.
- Methods to collect, safeguard, maintain, and disposal of evidence including photographs and videos
- Procedures for using government issued smartphones for evidence collection
- Procedures for transferring and receiving evidence
- Procedures for retention and disposal of evidence

Evidence – Key Principles

- Evidence should be maintained properly at all levels in FSIS.
- Evidence should be collected, safeguarded, and disposed of in a consistent manner and in accordance with FSIS Directive 8010.3 established procedures.
- Follow retention schedules (Chapter III, Section III).

Evidence – Key Principles

- When collecting or receiving documents from a plant, FSIS must account for:
 - Date received
 - Who received it
 - Who provided it
 - How it is maintained
- When transferring evidence, you must:
 - Preserve the “chain of custody”, so that possession can be traced from the initial collector to the final custodian

Evidence – Key Principles

- Collect evidence by the directive
- Initial/date back of evidence documents, records as defined in directive
- Prepare Evidence Receipt and Chain of Custody Forms in ANet
- Prepare Personal Property Receipt, when necessary
- Maintain Evidence Receipt and Chain of Custody form with evidence
- Document transfers of evidence on Evidence Receipt and Chain of Custody form

Evidence – Key Principles

- **Proper treatment** and preservation in the condition which it was originally collected requires that all authorized persons handle evidentiary items with care.
- **Accountability** must be established at each stage of evidence collection and disposal.

Evidence – Key Principles

- Care should be exercised to limit the number of people involved in handling evidence to a minimum.
- Information pertaining to the case should not be provided to persons who are not directly involved.
- Evidence should be handled in a manner to avoid later allegations of tampering or mishandling.

Evidence – Key Principles

- Evidence should be maintained in a secure area and accessible only to designated personnel. This includes:
 - Documents received from a plant
 - Copies of plant records
 - Any original documents received from the plant
 - Photographs taken by FSIS during the course of a review

Evidence – Disposal

- Destroy copies by shredding or incineration
- Return personal property evidence to owner
- Document disposal of all evidence on Evidence Receipt and Chain of Custody form
 - Provide to supervisory official for verification of disposal
 - Update ANet record with actual evidence destruction date
- ANet records, including evidence, are handled separately

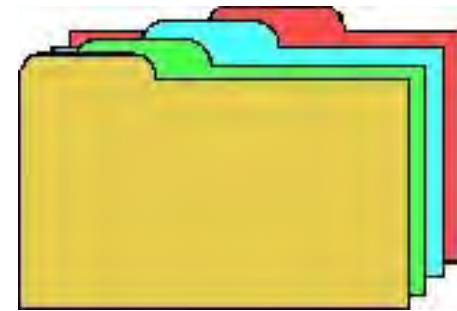
Evidence Types

- Documentary
- Photographic
- Investigative samples



Documentary Evidence

- Develop and compile supporting documents for decisions reached
- Examples of evidence in physical form
 - Noncompliance Records
 - Food Safety Assessment reports
 - Plant Records
 - Lab Reports
 - Photographs
 - Letters/MOIs



Documentary Evidence

- Support investigative findings, Agency decisions, enforcement, legal actions
- Federal Rules of Evidence
 - “Best evidence” rule



Federal Rules of Evidence

- Duplicate
 - Rule 1001(4) - a duplicate is a counterpart produced by the same impression as the original (mechanical or electronic re-recording) or by other equivalent techniques which accurately reproduces the original

Federal Rules of Evidence

- Admissibility of Duplicates
 - Rule 1003 - a duplicate is admissible to the same extent as an original, unless a genuine question is raised as to the authenticity of the original

Chain of Custody

- Methodology used to maintain, track, and document control of evidentiary items
 - In OFO, the process begins as soon as the EIAO collects copies of the original plant records or photographs, for use as evidence to support various administrative cases.
 - Also takes place when the DCS receives additional evidence (such as receiving a copy of an original plant response sent to the DM).

OFO Evidence Procedures

- To account for plant records received
- To provide Chain of Custody and authentication of records received



Plant Records

- Oral request to responsible management official
- Examine records
- Determine what is needed
- Obtain copies
- Photograph, if necessary

Plant Records

- Title 21 U.S.C.
 - § 460
 - § 642
 - § 1034 and 1040
- 9 CFR
 - Parts 310.22, 310.25, 320.1, 381.94, 416, 417, and 430

Plant Records

- Entrance meeting with the plant
 - Advise plant officials that EIAO will be accessing, examining, taking photographs and copying records
- If EIAO is denied access:
 - Explain statutory and regulatory basis for record access
 - Contact the DO for further guidance if plant still refuses

Plant Records

- Plant records should be reviewed onsite.
 - Preferably in location provided by the plant such as a conference room
- Plant records should not be taken outside the plant.



Property Receipt for Plant Records

- If records are taken to government office or out of the plant:
 - FSIS Form 8200-1, Property Receipt, is to be completed and the owner or custodian should initial Block 5B.

Property Receipt for Plant Records

- Property Receipt form should also be completed when the original records are returned to the plant.
- Owner or custodian initials Block 6B of the form.

Property Receipt

U.S. DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE

Property Receipt

1. Date

SECTION I

2. RECEIPT FOR: *(Check one)*

☐

Property Received

☐

Property Returned

3. RECEIVED FROM *(Name and Address)*

SECTION II

| 4. DESCRIPTION OF PROPERTY | 5. RECEIVED FROM | | 6. RETURNED TO | |
|-------------------------------|------------------|--------------------|------------------|---------------------|
| | DATE A. _____ | INITIAL B. ____ | DATE A. _____ | INITIALS B. ____ |
| | | | | |

Plant Records

- Make copies of only those plant records necessary to support enforcement actions
 - Example: If only one page of a hazard analysis is noncompliant, copy only that page.
 - Example: When multiple issues of a similar nature are involved, you may only need representative sample.
- Consult the DCS when in doubt

Plant Records

- After reviewing and/or copying, the EIAO is to return all originally obtained records to the owner or custodian in the same condition as received.
- Back side of the first and last page of any copied records should be initialed and dated
- Not necessary to initial and date the back of all pages
- Never initial, write on, staple, or in any way alter original records that are plant/personal property
- Initiate the Chain of Custody form (FSIS Form 8000-17)

Evidence Receipt and Chain of Custody

- Evidence Receipt and Chain of Custody, FSIS Form 8000-17
- Initiate separate receipt by:
 - Type of record/document
 - Date collected
 - Location collected



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Evidence Receipt & Chain of Custody

| II. CHAIN OF CUSTODY (Continued on page 2) | | | | |
|--|-------------|-------------|-------------|------------------------------|
| DATE & TIME | RELEASED BY | DATE & TIME | RECEIVED BY | PURPOSE OF CHANGE IN CUSTODY |
| | SIGNATURE | | SIGNATURE | |
| | NAME, TITLE | | NAME, TITLE | |
| | SIGNATURE | | SIGNATURE | |
| | NAME, TITLE | | NAME, TITLE | |
| | SIGNATURE | | SIGNATURE | |
| | NAME, TITLE | | NAME, TITLE | |

| III. FINAL DISPOSAL ACTION | |
|----------------------------|-------|
| DESTROYED BY: (Print Name) | TITLE |
| (Signature) | DATE |

FSIS FORM 8000-17 (12/08/2006)

Transfer of Evidence – DCS

- All collected evidence, with completed FSIS Form 8000-17, is sent to the District Case Specialist via approved Agency carrier.
- Do not use regular mail.

Plant Records

- Exit meeting with the plant
 - Return all records received from the plant
 - Advise the plant of records copied to support non-compliance finding(s)

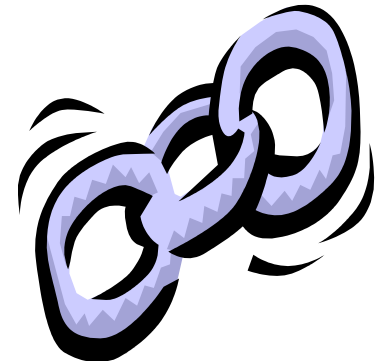


Chain of Custody

- Original evidence associated with the case will remain in the District Office once it is received by the DCS.
- If original evidence associated with a case needs to be sent to other persons, such as OGC, the DCS should seek further guidance about the process for transmitting the evidence utilizing the change of custody process as described in Section II, of FSIS Form 8000-17.

Chain of Custody

- Account for all evidence received from the plant or other industry officials
- Ensure that the one “hard” copy of the case is maintained in the District Office
- Contains the original copies of records received



Forms

- Copies of the forms associated with these procedures are available on the FSIS Intranet.
- <http://inside.fsis.usda.gov>



Photographic/Digital Evidence

- Examples
 - Digital photos of images/conditions, products, practices
 - Photos of documents (in place of collecting copies)

Photographic/Digital Evidence

- Question – You observe evidence of rodent infestation during performance of an FSA. You pull out your work camera/smartphone to take pictures of your observations. The plant manager stops you and explains that the establishment is not comfortable with you taking photos. What do you do?

FSIS Statutes

The FMIA, PPIA, and EPIA provide FSIS personnel broad authority to conduct inspections and examinations of the premises, facilities, inventory, records, equipment, and operations of federally inspected establishments and warehouses, distribution centers, and other in-commerce facilities subject to the statutes (21 U.S.C. 455, 460, 604, 609, 642, 1034, and 1040). These statutory provisions also provide program employees authority to copy certain business records.

FSIS Directive 8010.3

Program employees are to use photography, under these authorities, as a technique, where necessary, to inspect and examine premises, facilities, inventory, records, equipment, operations and to copy business records. Permission from company management at official establishments or in-commerce facilities to take photographic evidence during surveillance, investigations, or other activities is not necessary.

FSIS Directive 8010.3

- When official establishment or in-commerce facility personnel refuse to allow program employees to take photographic evidence, program employees are to explain the statutory authority, and that the camera is a tool used in the examination of facilities and inventories and for copying business records.
- Refusal to allow program employees to take photographic evidence under these authorities may constitute interference and may be addressed, as appropriate, through enforcement measures.
 - In an official establishment, refusal may be considered interference with inspection, subject to withholding action or suspension without prior notification (9 CFR 500.3(a)(6)).

Photographic/Digital Evidence

- Question continued – You explain the statutory authority and the plant manager indicated that they understand and you can take pictures. However, they request that you provide them copies of the pictures you have taken. What should you do?

FSIS Directive 8010.3

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

Photographic/Digital Evidence

- Question – The plant manager indicates that he wants to take companion photographs and or video for their records. What should you do?

FSIS Directive 8010.3

Official establishment or in-commerce facility personnel may take companion photographs or video for their records provided it is not done in a manner that opposes, impedes, intimidates, or interferes with any program employees while engaged in or on account of the performance of his or her official duties under the Acts.

Photographic/Digital Evidence

- Collecting photographic/digital evidence
 - Use work cameras/smartphones
 - Ensure external photo sharing options are turned off
 - Capture comprehensive/logical sequence
 - Avoid deleting images in the sequence
 - Prevent disturbance of the scene until images are collected
 - Ensure conclusive identification of location in images (landmark)
 - Depict scale when necessary
 - Transfer ASAP to CD-R or DVD-R and delete from smartphone

Photographic/Digital Evidence

- Collecting photographic/digital evidence
 - Maintain photographic log
 - ID subject being photographed
 - Include description of each photograph
 - CD-R or DVD-R
 - Label with permanent marker – AER report number; firm name; date; description of subject matter; photographers initials
 - Complete FSIS Form 8000-17 in ANet -> print/sign-> maintain with CD/DVD

Using Photography



Logical Sequence



Logical Sequence



Logical Sequence



Logical Sequence



Logical Sequence



Logical Sequence



Logical Sequence



Logical Sequence



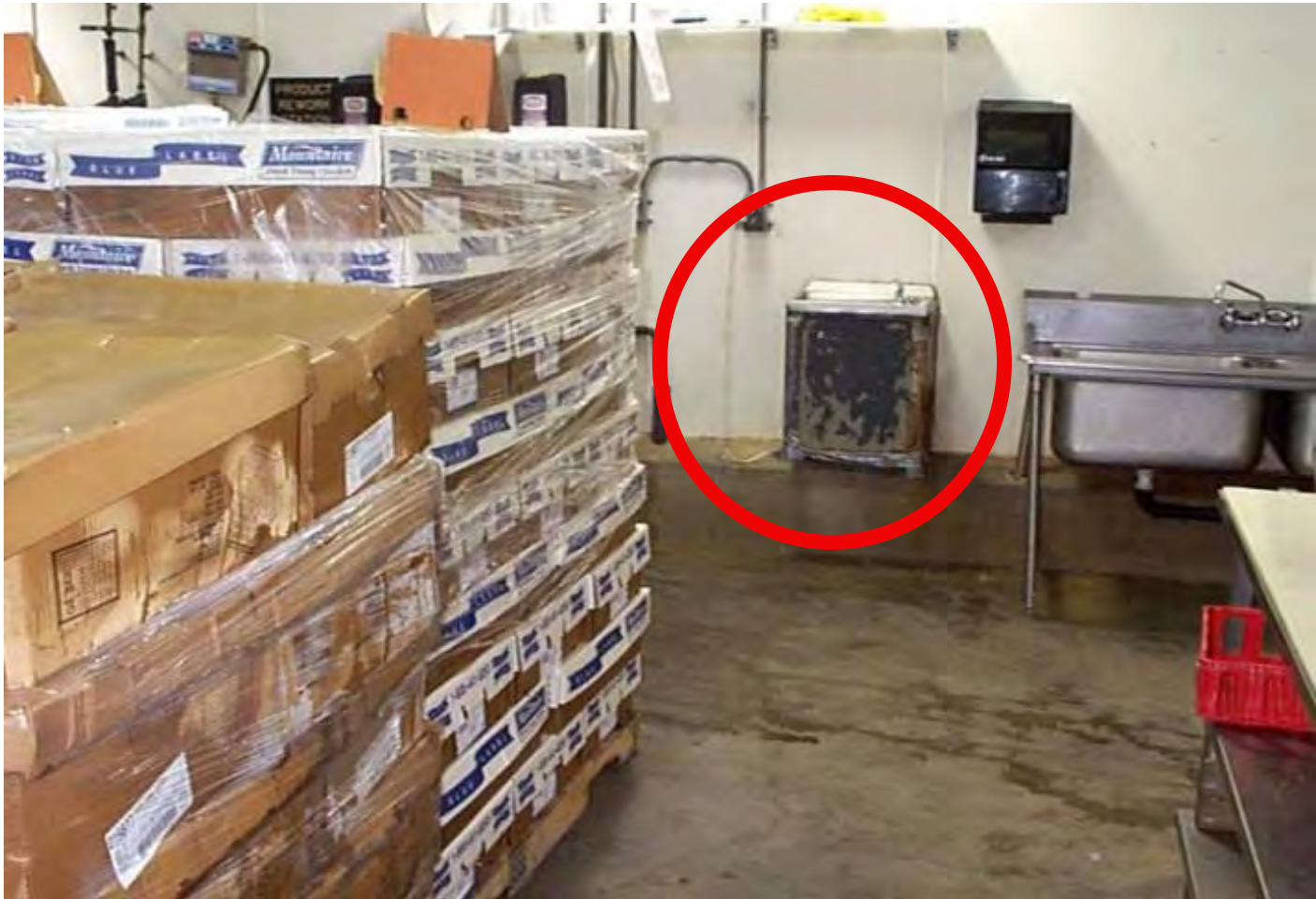
Logical Sequence



Logical Sequence



Logical Sequence



Logical Sequence



Logical Sequence



Photography Tips



Photography Tips



Photography Tips



Photography Tips

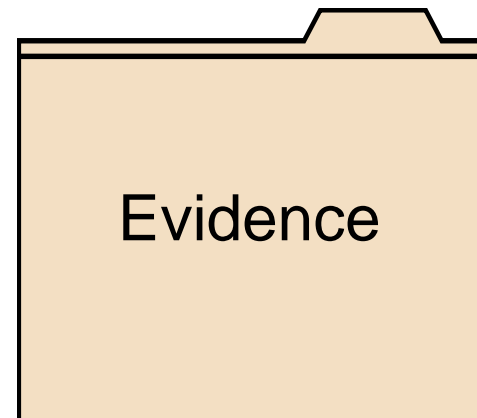


Summary

- Evidence must be properly collected and safeguarded
- Complete FSIS Form 8200-1, Property Receipt Form
- Complete FSIS Form 8000-17, Evidence Collection and Chain of Custody

Summary

- EIAO will send all evidence to DCS via approved Agency carrier upon completion
- Complete Section II of FSIS Form 8000-17 to show the change in custody



Questions

