



## FUGITIVE INVESTIGATIONS

### *Criminal Investigations*

#### 8.6 EVIDENCE

**A. Purpose:** This section outlines the procedure for the seizure/collection and preservation of evidence by employees of the U.S. Marshals Service (USMS). For the purpose of this section, contraband shall be handled as evidence.

**B. Authority:** The Director's authority to direct and supervise all activities of the USMS is set forth in 28 USC 561(g) and 28 CFR 0.111. The authority of the USMS to investigate fugitive matters, effect arrests, protect the judiciary, and execute lawful writs, court orders, and process is set forth in 28 USC 566.

#### **C. Policy**

1. All evidentiary items will be seized according to statutory authority, preserved at the crime scene until collected by qualified personnel, transferred by chain of custody procedures, and held in a secure facility until final disposition.
2. The USMS will ensure the proper collection and preservation of any item of evidence resulting from a USMS case or investigation, referred case, or a case of another agency with which the USMS has a Memorandum of Understanding. Non-USMS case evidence will be transferred by chain of custody to the appropriate agency for prosecution or disposition purposes.
3. The USMS will relinquish control and custody of evidence to the appropriate state or local authority during any task force or other USMS-assisted case.

#### **D. Procedures**

1. **Retrieval and Preservation:** Evidence will be preserved in the best manner possible at the crime scene and protected from any loss, damage, or alteration:
  - a. A perimeter will be established and the scene protected (e.g., cordoned off with official tape) until all items of evidence have been retrieved by the investigating deputy/deputies or until other personnel qualified in evidence processing arrive at the scene and assume responsibility for evidence collection.
  - b. The crime scene will be surveyed to identify evidentiary items and to determine a retrieval plan.
  - c. The scene, including each item of evidence, should be documented by use of video recorder, still camera, or both. A record will be made of the location of each item of evidence, the deputy's location when filming/photographing, the time and date, and any pertinent observations.
  - d. If special protective clothing is worn, it should be saved and stored along with the evidence. This will be noted in the investigative report.

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- e. Evidence items shall be preserved, safely removed, individually tagged, and placed in an appropriate size container or clear evidence bag and then sealed. The sealed evidence container or clear evidence bag will be labeled with a Form USM-8. Specific methods for preserving, collecting, and packaging various types of evidence are set forth in Publication ST-2004, Collection and Preservation of Evidence (Federal Law Enforcement Training Center).
- f. Firearms seized as evidence will be rendered safe at the scene and wrapped in a protective covering.
- g. Narcotics and related paraphernalia shall be secured as normal evidence. Illegal drug laboratories, i.e., "Meth labs" should be secured by perimeter only, due to their hazardous nature, until the appropriate officials (Drug Enforcement Administration or state/local police) can declare the scene safe and assume responsibility for the scene.
- h. Evidence containers shall be labeled with a Form USM-8. At a minimum, the Form USM-8 will include the name of the person that acquired the evidence, the specific location and date the evidence was seized, and a unique assigned collection number (e.g., if five items of evidence are collected, they will be numbered 1 through 5, respectively). In the absence of the Form USM-8, this information can be written on the outer shell or covering of the packaging material.

## 2. Documentation and Transfer of Custody

- a. A written record of evidence seized at the scene will be maintained by the retrieving deputy. Each item of evidence will be described, and the circumstances by which the evidence came into USMS possession will be recorded. One copy of the record will be attached to the USM-11, Report of Investigation, and one copy will be attached to the USM-102, Seized Property and Evidence Control Form. The USMS shall obtain a copy of the record of any evidence retrieved by another law enforcement agency and turned over to the USMS.
- b. The retrieving deputy will complete a USM-102, describing all evidence seized/collected, and transfer the evidence directly to the designated custodian by the end of the deputy's duty day. In after-hours situations, the deputy who took possession of the property will maintain control of it and temporarily secure it until the next business day when it can be turned over to the custodian.
- c. DUSMs may relinquish custody of the evidence and contraband to an appropriate law enforcement agency /office at the place of crime. This activity will be recorded on the USM-11. A USM-102 will be created to reflect that evidence was turned over to another law enforcement agency.

## 3. Laboratory Analysis

- a. Prior to submitting evidence to a forensic laboratory, the laboratory shall be contacted and advised of the nature of the evidence, and requested to provide packaging and shipping instructions. Federal Express or other registered mail is an appropriate method for controlled shipping.
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## E. Definitions

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1. **Evidence:** Any tangible object, substance, or material being held by the USMS for use in a legal proceeding, including contraband.
2. **Contraband:** Any item or substance whose use or possession is prohibited by (or which is defined as contraband in) any law of the United States or the state in which the property is currently located.
3. **Seizure:** The lawful taking of evidence or contraband. Evidence may be seized for the purposes of referring it to another law enforcement agency for an undetermined amount of time.

## IN-CUSTODY PROPERTY

- A. **Purpose:** This section outlines the policies and procedures regarding the control and disposition of all in-custody property by the U.S. Marshals Service (USMS). For the purpose of this section, in-custody property consists of evidence, contraband, and abandoned/unclaimed property. This section does not cover property under the Seized Assets Program or prisoner property.
- B. **Authority:** 40 USC 304f-304m, Federal Property and Administrative Services Act of 1949; 41 CFR 101-48, Federal Property Management Regulation; Department of Justice Order 2400.3, Justice Property Management Regulation; 28 USC 561(g); 28 CFR 0.111; 28 USC 566
- C. **Policy**
  1. The USMS will maintain control over all items of evidence, contraband, or abandoned/unclaimed property placed in its custody. All in-custody property will be transferred by chain of custody procedures and held in a secure facility until final disposition.
  2. In situations where the USMS is unable to maintain an in-custody property operation, the services of another law enforcement agency with an established property and evidence control function may be used for control and storage. Abandoned/unclaimed property may also be referred to other offices (e.g., the Office of the Clerk of the Court or the building manager's office) for control and storage.
  3. Each district will designate an in-custody property custodian (or both an evidence custodian and a custodian for other in-custody property) appointed by the U.S. Marshal (USM) or Chief Deputy U.S. Marshal (CDUSM). A custodian may be designated for each office within a district where such property may be taken into custody. Temporary designations may be made when the primary custodian is absent so that a designated employee will be available on any duty day to take control of evidence or unclaimed property received or accepted by the district.
  4. An inventory of in-custody property will be conducted whenever an employee responsible for such property is assigned or transferred from the position. An audit of in-custody property held by a district will be conducted annually.
- D. **Procedures:** The following procedures apply to in-custody property received or accepted by the district or division for control and storage.
  1. **Storage**
    - a. Any property taken into custody shall be signed over to the custodian by the end of the deputy's duty day. The custodian will immediately store the property in the secure storage area. Secure areas may consist of locked containers, vaults, lockers, or interior rooms. In after-hours situations, or when distance is a factor, the deputy who took possession of the property will maintain control and temporarily secure it until the next business day when the property, contraband, or evidence can be turned over to the custodian.
    - b. In the event the custodian is not available, gun lockers, safes, or other locking

containers may be used for the temporary storage of in-custody property, as long as access to the container is restricted. Only authorized personnel, designated in writing by district management, shall have access to the permanent secure storage areas.

- c. Evidence shall not be stored in the same storage container with other types of property or items (e.g., checks, office supplies, etc.) or where someone other than the designated custodian or authorized personnel may have access to the evidence. If evidence is stored in a vault with other non-evidentiary items, a separate locking container within the vault must be used for the evidence.
- d. Any item taken into custody must be packaged and stored to prevent any loss, damage, or alteration. Prior to storage, items shall be tagged or labeled, placed into an appropriate size container or clear bag, if possible, and sealed. Evidence containers shall be labeled with the retrieving deputy's name, credential number, type of evidence, date, time, and the assigned evidence control number. Firearms shall be rendered safe and wrapped in a protective covering. For non-evidentiary property, the label must include the appropriate report number, date received into custody, and description of item. Specific methods (guidelines) for packaging and labeling various types of evidence prior to storage are set forth in Publication ST-2004, *Collection and Preservation of Evidence* (Federal Law Enforcement Training Center).
- e. High-value items (e.g., large amounts of cash, precious jewelry) or sensitive items (e.g., firearms, narcotics) will be afforded extra security measures, including storage in the best secure container available, with access limited to the designated custodian. These items will be provided extra security protection as soon as they are taken into custody. Extra security storage may consist of locked containers, such as vaults, lockers, interior rooms, or safe deposit boxes. If a high-security container is not available at the district office for high-value items that require extra security, the items will be placed in a safe deposit box at a financial institution.

## 2. Control Register

- a. Evidence, contraband, or unclaimed property received by district personnel shall be entered into a property/evidence control register ("log") by the custodian as soon as possible. The register may be in manual or electronic form. The status of all in-custody property held by the district, or held by another agency or office on behalf of the USMS, will be recorded in a property control register, which shall list the register line item number; time and date when the property came into district custody; location of the property when taken into custody; description of property, to include make, serial number, and model number; condition of property at time of receipt; and name and telephone number of owner, if known. The USM-101, *Seized Property and Evidence Register*, may be used as the control register for evidence and contraband, with a separate register used for other in-custody property. The property control register will serve as an indexing system for the identification and retrieval of in-custody property in the custody of the USMS.
- b. Any item entered into the property/evidence control register must include a copy of the appropriate report. The report will include a description of the item and the circumstances by which the property came into custody. One copy of the report must be attached to the item, or placed in the container or bag containing the item, and one copy will be placed with the property/evidence control register. Evidence will be recorded on the USM-102, *Seized Property and Evidence Control Form*, which will remain with the property at all times. The USM-102 is the property control document. Procedures to identify and notify the owner of abandoned/unclaimed property are set forth in USMS Property Management Policy.
- c. When evidence is temporarily removed from the secured storage area (for court removed from the secure storage or laboratory purposes), the custodian and the retrieving deputy shall sign and date the USM-102 indicating transfer of the evidence.

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When evidence is transferred to a laboratory for forensic analysis, a copy of the USM-102 will be forwarded with the item. When the evidence is no longer required for court or another purpose, it will be returned to the custodian, who will return the evidence to the secure storage area. Transfer of the evidence will be recorded by dual signatures on the USM-102. Temporary removal from, and the return of evidence to, the secure storage area will be recorded in the control register.

### 3. **Inspections**

- a. To ensure the integrity of in-custody property, both routine and unannounced inspections will be conducted of the secured storage area(s). The following inspections and reports shall be completed:
- b. The inspection to determine adherence to procedures used for the control of property will be conducted at least quarterly by the supervisor of the custodian.
- c. The inventory required when an employee is assigned or transferred from the custodian position will be conducted by the newly designated custodian and a designee of the USM or CDUSM. The employee assuming custody should ensure that all records are current and properly annotated. A record of any discrepancies will be made and kept in a separate, secure file.
- d. The annual audit of in-custody property will be conducted by a supervisor not routinely or directly connected with the control of in-custody property.
- e. Unannounced inspections of property storage areas will be conducted as directed by the USM or CDUSM.
- f. Specific inspections, audits, or inventories conducted as part of a district review by the Program Review Team will serve as compliance with the above requirements.

### 4. **Disposition:** Final disposition of in-custody property will be accomplished within six months after any legal requirements have been satisfied. In addition to the requirements below, final disposition will be recorded in the property control register USM-101, *Seized Property and Evidence Register*, may be used as the control register for evidence and contraband).

- a. Final disposition of evidence will be accomplished in accordance with court instructions. Where appropriate, efforts will be made by the custodian to notify an owner or representative to release items held in custody. The USM-102 will be used to annotate (with signatures) the disposition, including return of property to its owner or witnessed destruction pursuant to a Certificate of Destruction. The USM-102 and any accompanying instructions or certifications will be maintained as part of the investigative file.
- b. Contraband will be disposed of in accordance with controlling statute or court order. Typical disposition of contraband is destruction. The USM-102 will be used to annotate the disposition, signed by the recipient or witness to destruction, and maintained as part of the investigative file. In the event that contraband other than narcotics is destroyed, the fair market value of the contraband should be ascertained prior to destruction.
- c. Abandoned/unclaimed property not returned to the owner or owner's representative shall be reported to the Property Management Team, Management Support Division, on SF-120, for disposition instructions.

## E. **Responsibilities**

1. **U.S. Marshal/Chief Deputy U.S. Marshal:** Responsible for ensuring that in-custody property control procedures, including inspections and audits, are applied within his/her district, and for

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designating the in-custody property custodian(s).

2. **In-Custody Property Custodian:** Responsible for the control and integrity of all evidence, contraband, and abandoned/unclaimed property, access to storage areas, and maintaining the control register of all in-custody property.

#### F. Definitions

1. **Abandoned/Unclaimed Property:** Private property found on premises secured or occupied by the USMS, the ownership of which is unknown, denied, or relinquished by the owner, and temporary possession of which is accepted by the district. Property checked at courthouse entry control points will not be considered abandoned/unclaimed until turned over to the district in-custody property custodian. Prisoner property, for which there are separate procedures, is not included in this definition.
2. **Contraband:** Contraband is defined as any item or substance whose use or possession is prohibited by (or which is defined as contraband in) any law of the United States or the state in which the property is currently located.
3. **Evidence:** Any tangible object, substance, or material being held by the USMS for use in a legal proceeding.
4. **In-custody Property:** Evidence, contraband, or abandoned/unclaimed property in the possession of the USMS.
5. **Secure Storage:** Placement in any vault, safe, or other security container, the access to which is controlled.

#### TRACING OF SEIZED FIREARMS AND BALLISTIC EVIDENCE

- A. **Purpose:** This section sets forth the United States Marshals Service (USMS) policy concerning the tracing of firearms and ballistic evidence seized by the USMS.
- B. **Authority:** The authority of certain USMS personnel to make arrests for offenses against the United States is set forth in 18 USC 3053, 28 USC 566(d) and (a), and Federal Rules of Criminal Procedure Rule 4(d)(1). Additional authority is derived from 28 USC 564, *Powers as Sheriff*, the Attorney General's National Anti-Violent Crime Initiative, the Presidential Threat Protection Act (Pub. L. 106-544) and Memorandum of the Attorney General, dated 1/19/2001, regarding, *Establishing Institutional Crime Gun Tracing and Ballistics Identification*.
- C. **Policy and Procedures**
  1. **Tracing of Seized Firearms:** All firearms seized by USMS personnel and USMS task force officers shall be queried through the National Crime Information Center (NCIC) Gun File, and the Bureau of Alcohol, Tobacco & Firearms (ATF) National Tracing Center (NTC).
    - a. A record of each query, results, and actions taken in response to positive responses shall be documented on a USMS-11 and maintained in the appropriate investigative file. Additionally, to the extent that the feature is available, all firearms seized in the course of fugitive and/or criminal investigations, whether or not the firearms are recovered by USMS operational employees, shall be entered into the Warrant Information Network.
    - b. NTC checks may be accomplished by completing an ATF Form 3312.1, *National Tracing Center Trace Request*, and faxing it to the NTC at 1-800-578-7223. Questions regarding the completion of the forms may be directed to the NTC at 1-800-788-7133. Firearms with obliterated serial numbers may be traced by faxing a completed ATF Form 3312.2, *NTC Obliterated Serial Number Trace Request*, to the NTC. Forms can be

obtained from your local ATF field office or from the [ATF web site](#).

- c. **Ballistic Evidence:** All ballistic evidence recovered by the USMS, particularly spent bullets and shell casings, shall be entered into the National Integrated Ballistics Information Network (NIBIN). Information regarding NIBIN can be obtained from your local ATF field office. Evidence should be handled in accordance with USMS Directives.

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