

Wyoming Division of Criminal Investigation

**Chapter 1**

**Sample and Destroy Rules**

Section 1. Authority. These rules are promulgated by the authority of Wyo. Stat. Ann. § 35-7-1049(e)(vi).

Section 2. Purpose of the Rules. These rules are intended to create standards and procedures for the sampling, and ultimate destruction, of bulk amounts of controlled substances without a district court order. These rules also define the duties and obligations of the Division of Criminal Investigation for documenting the sampling process, from seizure to destruction. Finally, this sample and destroy program will serve to alleviate those health and safety concerns associated with the storage and retention of bulk amounts of controlled substances.

Section 3. Statutory Changes. Whenever these rules refer to Wyoming statutes and those statutes are renumbered or amended, these rules shall be interpreted to reflect such changes.

Section 4. Definitions.

(a) As used in these rules:

(i) “Commissioner” means the Wyoming Attorney General in his capacity as Commissioner of Drugs and Substances Control pursuant to W.S. § 35-7-1003;

(ii) “Controlled Substance” means a drug, substance, or immediate precursor in schedules I through V of article III of the Wyoming Controlled Substances Act of 1971, as amended;

(iii) “Crime Lab” means the Wyoming State Crime Lab, a division of the Office of the Attorney General;

(iv) “Division” means the Division of Criminal Investigation within the Office of the Attorney General of the State of Wyoming as defined by W.S. § 9-1-611.

Section 5. Bulk Controlled Substance Evidence

(a) All seized controlled substances in the amounts listed below will be submitted

directly to the Division's evidence facility for storage and analysis by the crime lab:

- (i) Marijuana – Five (5) ounces or less;
- (ii) Powdered Substances – Five (5) grams or less;
- (iii) Liquid substances – Five-tenths (5/10) gram or less.

(b) Upon the Commissioner's approval, bulk controlled substance seizures in excess of the amounts listed in subsection (a) of this section will be sampled by Division special agents in adherence with the procedures detailed in sections 6 and 7 of this chapter. The Commissioner, upon recommendation of the Division's director, or his designee, shall have the discretion to implement sample and destroy procedures for bulk amounts of seized controlled substances.

(c) All controlled substances located at the Division's evidence facility as of July 1, 2006, shall be subject to these rules.

(i) Upon the Commissioner's approval, notification shall be made to appropriate prosecuting attorney(s) and defense counsel prior to the implementation of sample and destroy procedures on those controlled substances located at the Division's evidence facility prior to July 1, 2006.

#### Section 6. Sampling Procedure

(a) All sampling procedures shall be carried out at the Division's evidence facility. A DCI Special Agent shall remain in control of the bulk seizure and shall ensure the proper documentation of the sampling process as well as the proper submittal of the bulk seizure and representative sample after completion of the sampling process.

(b) Entire seizures shall be photographed as well as videotaped. Duplicate prints/videos shall be made for the prosecution and the Division case agent. The negatives, if any, and one set of prints/video will be placed in non-drug evidence. Instant developing color cameras may be used only as a secondary means of documentation.

(i) In the event a digital camera/video camera is used, the photographs/video shall be placed on a recordable compact disc.

(c) A sign will be prepared containing the following: case number, amount of seizure (weight), and date of the seizure. The sign will appear in all photographs documenting the physical appearance of the bulk seizure. Additionally, a scale by which to measure the physical size of the seizure shall appear in at least 3 photographs, taken from different perspectives. Such scale may consist of a ruler, yard stick, or a person.

(d) The bulk seizure shall be unloaded, assembled or stacked in such a manner

as to make clear visual display of the sampling technique. If the evidence is in closed containers, several containers shall be opened to display the contents.

(e) Only properly calibrated scales shall be used to weigh the entire bulk amount, as well as the representative samples. All weights and weighing procedures, including calibration of scales, shall be documented in the Division's case report.

(f) The agent shall, at all times during the sampling process, work in conjunction with designated crime lab personnel.

(g) After properly documenting the controlled substance bulk seizure, the agent, in conjunction with designated crime lab personnel, shall prepare a representative sample from the bulk amount of each type of controlled substance seized.

#### Section 7. Representative Sample

(a) The agent, in conjunction with designated laboratory personnel, shall extract a sample from one location of the bulk amount. Such sample shall be large enough to provide for adequate testing by the crime lab, as well as of such size to provide for multiple testing without risk of depletion. The agent will place a clearly visible marker bearing the letter "a" at the location of this first sample extraction. The agent shall then proceed to extract no fewer than nine (9) additional samples from randomly dispersed areas of the bulk amount. These locations will bear a clearly visible marker bearing consecutive letters of the alphabet.

(b) The agent shall retain an additional sample of the following weight:

(i) Five (5) ounces of organic material if the controlled substance is marijuana or a substance of similar organic composition;

(ii) Five (5) grams of a controlled substance in powdered or crystalline form;

(iii) Five-tenths (.5) of a gram of a controlled substance in liquid form.

(c) The process of sample extraction shall be documented and photographed/videotaped. The entire bulk amount, containing all marked sampling locations, will again be photographed and videotaped.

(d) Each of the individual samples shall be placed into separate, individually labeled containers. All containers shall then be placed into a single, sealed container for

submission to the crime lab. This single, sealed container will accompany the bulk amount for submission to the to the Division's evidence facility for storage.

#### Section 8. Chain of Custody; Laboratory Testing

(a) All bulk amount controlled substances, including its representative sample, shall be submitted for storage at the Division's evidence facility.

(b) Upon receipt of the submitted evidence, evidence facility personnel will notify the crime lab of the representative samples for which forensic analysis has been requested. Designated crime lab and evidence facility personnel will coordinate transportation of evidence to and from the lab for examination/analytical and/or storage purposes.

(c) The chain of custody shall be maintained.

(d) The crime lab shall test the representative samples using techniques widely accepted by the scientific community.

(e) A copy of the test results shall be placed in the master case file.

(f) Once testing of the representative samples has been completed, the samples shall be placed in the container in which originally submitted to the crime lab, and returned to the Division's evidence facility for storage with the bulk amount from which the samples were extracted.

#### Section 9. Evidentiary Value of Representative Sample

(a) Once confirmed by the crime lab's analysis that the samples collected from the bulk amount are a controlled substance, the total representative sample may be used for criminal prosecution, and/or civil forfeiture proceedings.

(b) An amount sufficient for testing by defense experts shall be made available for the purpose of defending criminal charges at the request of the criminal defense.

(i) The defense shall make its request in writing, to the Division, and shall name in its request the analytical laboratory that it intends to test the controlled substance. This laboratory shall be registered with the Drug Enforcement Agency (DEA).

(ii) Upon such a request, the crime lab will draw a sample of suitable size for testing. This sample will be transferred directly to the laboratory of defense counsel's choosing.

#### Section 10. Destruction of Bulk Amounts of Controlled Substances

(a) After the sampling and testing process is complete, the Attorney General acting in his capacity as the Commissioner of Drugs and Substances Control, or the Attorney General's Chief Deputy, may order the destruction of that bulk amount of seized controlled substance in excess of the representative samples.

(b) The retained sample will be stored at the Division's evidence facility or other suitable evidence facility until it no longer possesses any evidentiary value, criminal or civil. At such time, the Commissioner may authorize any law enforcement officer to apply to the appropriate district court of jurisdiction for an order providing for the destruction of the representative samples.

(c) Destruction of controlled substances pursuant to these rules shall be accomplished by burning in a suitable incinerator or by another method as long as the destruction is accomplished in:

(i) A safe and responsible manner;

(ii) Compliance with all relevant federal, state, local laws, and administrative rules;

(iii) Compliance with any requirements of the Wyoming Department of Environmental Quality and the Environmental Protection Agency.

(d) Destruction of controlled substances pursuant to these rules shall be witnessed by at least two Division employees, at least one of whom shall be a peace officer as defined in Wyo. § Stat. Ann. 7-2-101(a) (iv). Each witness must:

(i) Examine each item in a manner sufficient to complete the destruction inventory required by this section; and

(ii) Examine each package for the integrity or breach of chain of custody.

(e) The controlled substances shall be weighed immediately prior to departure for the destruction site to certify that the weight is substantially similar as originally weighed, less amounts utilized in the sampling and testing procedures.

(f) The controlled substances shall then be documented for the chain of custody. Certain information must be included in the documentation:

(i) Nature, kind, and quantity of the controlled substance to be

destroyed; and

(ii) The names and signatures of witness.

(g) Following destruction as set forth in subsection (c), the process must be documented by a statement created immediately after the time of destruction by a witness to the destruction. The statement may incorporate video tape or other documents to verify, and must contain:

(i.) The manner of transportation to the destruction site, including the names of each individual transporting an item;

(ii.) An inventory of the items destroyed, including the nature, kind, and quantity of the item;

(iii.) The witnesses, including the name, title, agency, and signature of each witness;

(iv.) The date and location of destruction;

(v.) The manner of destruction, and any unusual or suspicion events that occurred during the destruction incident.

Section 11. Savings Clause. Should any provision of these rules and regulations be held invalid or unconstitutional, such a ruling shall not affect other provisions of these regulations which can be given effect without the invalid or unconstitutional provision and, to this end, the provisions of these rules and regulations are severable.