



Designation: E2028 – 99 (Reapproved 2005)

Standard Practice for Receiving, Testing and Reporting Results of Investigation of Metal, Ore, or Metal Related Samples that Are or May Be Involved in Litigation¹

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1. Scope

1.1 This practice covers the procedures to be used for receiving, testing and reporting results of investigation of metals, ores, related materials or samples thereof that have been the subject of an incident that is or is reasonably expected to be the subject of litigation.

1.2 This practice was developed particularly for cases involving civil litigation, however it can be applied to criminal cases where it does not conflict with applicable laws and regulations.

2. Referenced Documents

2.1 *ASTM Standards*:²

E620 Practice for Reporting Opinions of Scientific or Technical Experts

E678 Practice for Evaluation of Scientific or Technical Data

E860 Practice for Examining And Preparing Items That Are Or May Become Involved In Criminal or Civil Litigation

E1188 Practice for Collection and Preservation of Information and Physical Items by a Technical Investigator

2.2 *ISO Standard*:³

ISO Guide 25 General Requirements for the Competence of Calibration and Testing Laboratories

2.3 *Other Documents*:

NIST Handbook 150 NVLAP Procedures and General Requirements⁴

NIST Handbook 150-18 NVLAP Fasteners and Metals⁴

¹ This practice is under the jurisdiction of ASTM Committee E01 on Analytical Chemistry for Metals, Ores, and Related Materials and is the direct responsibility of Subcommittee E01.20 on Fundamental Practices.

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² For referenced ASTM standards, visit the ASTM website, www.astm.org, or contact ASTM Customer Service at service@astm.org. For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

³ Available from American National Standards Institute (ANSI), 25 W. 43rd St., 4th Floor, New York, NY 10036.

⁴ Available from U.S. Government Printing Office Superintendent of Documents, 732 N. Capitol St., NW, Mail Stop: SDE, Washington, DC 20401.

3. Terminology

3.1 *Definitions*:

3.1.1 *deposition, n*—the process during which a potential witness for a trial is questioned under oath (“being deposed”) by the attorney of the opposing party prior to the trial as part of the “discovery” process.

3.1.2 *evidence chain of custody form, n*— form used to accompany the evidence, when evidence is transmitted from one person to another to prove a continuous chain of custody.

3.1.3 *expert witness, n*—a witness having expertise in the field in which he is about to give testimony and whose testimony can aid the judge and jury to understand the technical facts involved in the case before them.

3.1.3.1 *Discussion*—Before being accepted as an expert witness in a case, the witness has to submit to an examination and a cross examination concerning his qualifications. An expert witness can testify to what he saw, heard, or did (such as tests performed), and state opinions in his field of expertise.

3.2 *Definitions of Terms Specific to This Standard*:

3.2.1 *evidence, n*—any metal, ore or related material, regardless whether or not it is an entire part, a portion of a part or a representative sample of some metal, ore or related material, having actual or potential bearing on the incident or its outcome.

3.2.2 *incident, n*—any event or occurrence that causes directly or indirectly death, injury, or material damage that results or can result in a claim or litigation.

3.2.3 *investigator, n*—the technically competent person in charge of the testing.

4. Significance and Use

4.1 This practice sets guidelines for the receiving, testing and reporting of result of the investigation of metal, ores and related materials that may constitute evidence that is or may become involved in litigation. It outlines procedures to be followed to document the nature and condition of the evidence, the planning and performance of the testing, and actions that involve altering the nature or condition of the evidence.

5. Procedure—General

5.1 The laboratory performing the testing can be: a laboratory owned or operated, or both, by one of the parties involved or potentially involved in the litigation of the incident, such as plaintiff(s), or defendant(s), an independent laboratory hired by one of the parties involved or his representative, a laboratory owned or hired by a government agency to establish if any violation of law or regulations was committed, or a laboratory to act as an arbitrator selected jointly by the plaintiff(s) and defendant(s) or appointed by a court or arbitrating authority.

5.1.1 The laboratory shall follow all procedures outlined in this practice and produce unbiased results, opinions and reports.

5.2 When evidence from an incident is submitted to the laboratory, an investigator is appointed to the particular incident. The investigator shall be in charge of receiving, recording and securing all evidence received, planning the testing, performing or supervising the performance of the testing, preparing the report and preserving the evidence.

5.2.1 The investigator shall be a technically competent person in general, as well as in the principal areas of the testing. He shall be able to submit to a deposition and testify in court as an expert witness, if required.

5.3 *Confidentiality*—No aspects of the case, incident, evidence, and tests planned or performed shall be discussed with anyone outside the technical personnel of the laboratory. Such discussions with technical personnel within the laboratory shall be conducted strictly on a “need to know” basis.

6. Procedure—Evidence Receiving

6.1 When evidence is received by the laboratory, company or organization, the appointed investigator shall immediately take charge of the evidence. If no investigator has been appointed, the senior management person shall immediately appoint one. The investigator shall assign a unique case number to the incident and the evidence and prepare a record for the case.

NOTE 1—The unique case numbers (however called) shall be alphanumeric numbers, using letters of the standard English alphabet and Arabic numerals. Example: The case number for an incident may be BL-12345 and each piece of evidence numbered BL-12345-1, BL-12345-2, BL-12345-3, etc. If any of the pieces of evidence is subdivided, cut, or broken, each portion may be referred to as BL-12345-2a, BL-12345-2b, etc. The number shall be unique. It shall not have been used before, and shall not be used again in conjunction with any other case.

6.1.1 If the laboratory keeps its records in record books, it may be advisable to start a new record book for each incident. If a record book is used for the record of the investigation, it should be a bound book with numbered pages.

6.1.2 If the laboratory keeps its records on a computer, it may be advisable to keep the records of a case that is involved in or subject to litigation in a record book, or, at least, on a completely separate data base if there is a compelling reason to keep it on a computer.

NOTE 2—All records related to a case may be subpoenaed by a court and are subject to inspection by the opposing party during the discovery process. If original records have to be introduced, complications may arise if the records are not kept separately.

6.2 The record created at the time of the receipt of the sample should include the following information:

6.2.1 A brief factual description of the incident indicating the date and time of the incident, and the source of information for the stated facts.

6.2.2 The date and time of the submission of the evidence, and the number of pieces of evidence submitted. For each piece of evidence, the unique number assigned to that sample, and the full description including all markings and conditions as required by ISO Guide 25, and NIST Handbook 150, and NIST Handbook 150-18 if applicable. A photographic record of each piece of evidence may be helpful, in which case it should be included in the record.

6.2.3 The identity of the person delivering the evidence or the means of delivery of the evidence such as, via registered mail (including registration number). If the delivery is made by a person unknown to the investigator, he shall request proper identification of the person making the delivery and record the type of identification, (for example, drivers licence) along with the serial number of the identification.

6.2.4 If the person making the delivery has an evidence chain of custody form, it shall be signed by the investigator and a copy shall be attached to the record. If there is no evidence chain of custody form, one should be created by the investigator, signed by the person submitting the evidence and the investigator. One copy shall be given to the person delivering the evidence and a copy shall be attached to the record.

6.2.5 All instructions received shall be recorded including the identification of the person who gave the instructions and how the instructions were given, such as, verbally, by messenger, by signed letter, or by telephone.

6.2.6 Any and all other pertinent facts.

6.3 No entry shall be made based on opinion or deduction.

6.4 All evidence received shall be properly identified with the assigned unique sample number, and secured from unauthorized access. It shall be stored in a location where the access is restricted to the investigator, and in a manner that is suitable for the proper preservation of the evidence.

7. Procedure—Planning of Testing

7.1 The first step in planning should be deciding which tests the laboratory intends to perform.

7.1.1 If the laboratory is part of the organization that is involved in the litigation (or potential litigation), the investigator should consult with the legal advisor (attorney) handling the litigation (or potential litigation) for the organization. His advice should be followed. No work should be performed without his prior approval. The decision on which tests to perform should be made by the legal advisor with technical input from the investigator.

7.1.2 If the laboratory is an independent laboratory hired by one of the parties involved in the litigation (or potential litigation), the decision regarding the tests should be made by the party that hired the laboratory, preferably after they have consulted with their legal advisor (attorney) handling the litigation (or potential litigation). In some cases, it may be that