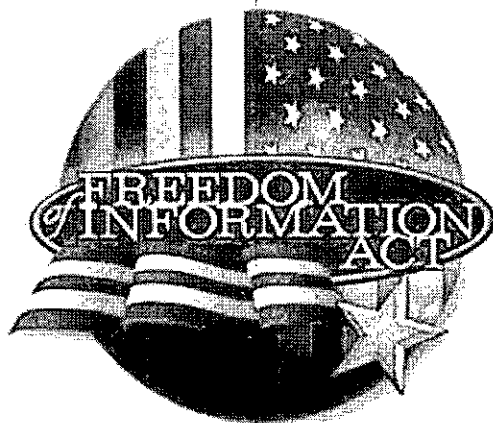


**FREEDOM OF INFORMATION
AND
PRIVACY ACTS**

**SUBJECT: MANUAL OF INVESTIGATIVE
OPERATIONS AND GUIDELINES (MIOG)**

VOLUME 2

PART 3



FEDERAL BUREAU OF INVESTIGATION

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 1

SECTION 259. SECURITY CLEARANCE INVESTIGATIONS

259-1 PURPOSE (See MIOG, Part I, 67-18 (3); II, 35-9.2.)

(1) All individuals who require access to National Security Information (NSI) must undergo a security clearance background investigation (BI). Individuals who are under contract to the FBI are discussed under Part I, Section 260 of the MIOG. This section deals with individuals who are not FBI contractors and require access to NSI.

(2) Deleted

(3) The other classifications in the FBI Security Program are 67E, 260, and 261 and are explained in those sections of the MIOG, Part I.

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259-2 259A - CLASSIFIED INFORMATION PROCEDURES ACT (CIPA)
(See MIOG, Part II, 17-2 (6) & 23-9; MAOP, Part II, 3-1.1 & 3-1.2.)

(1) The CIPA legislation was enacted in 1980 by Congress to provide for the introduction of NSI within the context of a federal CRIMINAL proceeding in order to prevent a defendant from claiming an inability to provide adequate defense because of a need to have access to NSI. Prior to CIPA, this claim could result in the government requesting a dismissal of the criminal charges rather than compromise national security.

(2) Persons needing a security clearance are identified by the court, e.g., attorneys and their staffs and court personnel. The request for a BI originates with the court and is coordinated with the Department of Justice (DOJ). Subsequently, DOJ directs FBIHQ Security Programs Manager to conduct a BI and provide the results to DOJ for clearance adjudication.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 2

(3) Procedurally, at FBIHQ the cases are managed by the Industrial/Facility Security Unit (I/FSU), Security Countermeasures Section (SCMS), National Security Division (NSD), and any questions and/or consultation may be directed accordingly. I/FSU sets out investigation for the field under the subclassification 259A. The BI is to be conducted by the field in accordance with the guidelines set out in MIOG, Part II, 17.

(4) IMPORTANT THINGS TO REMEMBER:

(a) Deadlines in CIPA cases are driven by the trial date established by the U.S. District Court judge hearing the criminal case. Invariably, the time frames for conducting the BIs are extremely short, as is the tolerance of the judges for missed deadlines. More importantly, failure to meet the deadline could result in dismissal of the government's case with prejudice. Therefore, field supervisors managing these cases must be extremely sensitive to the time constraints.

(b) The FBI conducts the BI and the results are provided to DOJ for clearance adjudication. Only DOJ, Office of Security, can authorize discontinuance of these investigations.

(c) In some special cases, DOJ may ask the FBI to provide a security briefing to individuals who are cleared pursuant to the CIPA.

(d) CIPA applies only to CRIMINAL proceedings.

(e) When individuals must be cleared for access to NSI in the context of a civil judicial proceeding wherein the U.S. government is a party, the BIs are handled under the 259D classification.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 3

259-3 259B - FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978
(FISA) (See MIOG, Part II, 17-2, (6); MAOP, Part II, 3-1.1
& 3-1.2.)

(1) This Act was passed by Congress to ensure that all electronic surveillance targeted against foreign individuals or establishments in the United States were reviewed and approved by a special FISA Court. Orders issued by the FISA Court are classified because of the nature of the information contained therein. Further, this Act authorized the Attorney General (AG) and the Director of Central Intelligence (DCI) to set the guidelines for the security procedures to be followed for all FISA electronic surveillance.

(2) The security requirements as determined by the AG and the DCI are contained in a document entitled SECURITY PROCEDURES FOR SAFEGUARDING RECORDS PERTAINING TO ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES AUTHORIZED UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 which was signed March 13, 1980, and endorsed by the FBI. A copy of this document is to be maintained by the field office (FO) Security Countermeasures Programs Manager. These security procedures hold the FBI responsible for the security of the classified court orders, to include those orders which the communications carrier chooses to store in its own facility. Further, it is incumbent upon the FBI to ensure that any individual who has access to these classified court orders has the proper security clearance. Most often these individuals are cleared for "Top Secret."

The above-referenced security procedures provide for the use of a Trust Receipt which gives the communications carrier full access to the information contained in the classified court order, while the FBI physically maintains the order in the FO. The communications carrier receives a Trust Receipt signed by the SAC which guarantees the communications carrier access to the order at any time during business hours, during nonbusiness hours upon prior notification, and further guarantees that the court order will not be altered or destroyed. Each FO should encourage the communications carrier to utilize the Trust Receipt. The use of the Trust Receipt can be demonstrated as a savings for the communications carrier, since fewer people must be cleared. In addition, communications carriers will not incur the costs normally associated with the storage of classified information. The FBI will benefit since fewer of the communications carrier employees must have a security clearance. The FBI will not have the additional responsibility of periodically inspecting the communications carrier's facilities as mandated by the security procedures.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 4

In the event the communications carrier elects to store the classified FISA order in its space, it is incumbent upon the FO Security Countermeasures Programs Manager to ensure that the classified material is being protected as outlined in Section 2, "Carrier Storage," of the above-referenced Security Procedures.

(3) Procedurally, FISA security clearance background investigations are managed by I/FSU, SCMS, NSD, and any questions and/or consultations may be directed accordingly. The investigations will be reported under the 259B subclassification.

(4) When the field Security Countermeasures Programs Manager identifies communications carrier personnel who need a security clearance, the following procedures are to be followed:

(a) Candidate completes an SF-86, "Questionnaire for Sensitive Positions," and is fingerprinted. The SF-86 and two FD-258s (applicant fingerprint cards) are forwarded to the FO Security Countermeasures Programs Manager.

(b) The field Security Countermeasures Programs Manager opens a 259B case, initiates indices, ALL available automated data base checks, and local criminal checks.

(c) After reviewing the SF-86 and the results of the FO checks, the field Security Countermeasures Programs Manager or designee interviews the candidate and reports same on an FD-302. The interview need not reflect the specific questions asked of the candidate. A question-and-answer format is not desired as it tends to result in a "checklist" style of interview. This interview is intended to obtain information to facilitate our investigative efforts. If a candidate provides information which could become an issue affecting trustworthiness for his/her access to classified information, this should be fully explored at the interview.

The narrative of the FD-302 should be sufficiently detailed to reflect, at a minimum, each of the following points:

1. Completeness and accuracy of the SF-86.
2. Personal and business credit issues, including, but not limited to, repossessions, delinquent student loans, debts placed for collection, and bankruptcy.
3. Civil suits as plaintiff or defendant, including divorces. Identify issues litigated.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 5

4. Any involvement in criminal matters as a suspect or subject or any criminal charge, arrest, and/or conviction.

5. Any denials of employment and/or dismissals.
Include reasons.

6. Any contact with representatives of foreign countries.

7. Details of candidate's personal life that could be used to coerce or unduly influence the candidate.

8. Details of professional complaints or any nonjudicial disciplinary action, e.g., bar association grievances, better business complaints, student or military disciplinary proceedings, Equal Employment Opportunity complaints, etc.

9. Business/investment circumstances that could or have involved conflict of interest allegations.

10. Details of any psychological counseling with psychiatrists, psychologists, or other qualified counselors.

11. Any abuse of prescription drugs or alcohol, illegal drug use, to include marijuana, and participation in drug/alcohol counseling/rehabilitation programs, during candidate's entire adult life (since age 18). Identify all drugs used, when used, duration of usage, amount of drug used, place where used (public or private setting), how the drug was obtained, whether or not candidate has provided drugs to anyone, if candidate has purchased or sold drugs, others having knowledge of candidate's drug use.

12. Any involvement in any organization which advocates the use of force to overthrow the U.S. government; or any involvement in any organization involved in the commission of sabotage, espionage, or assisting others in terrorism.

13. Any current or past circumstances known to the candidate that could have a bearing on his/her trustworthiness for access to classified information.

(d) The candidate should be recontacted to resolve, if necessary, any issues developed during the investigation.

(e) THE FIELD SECURITY COUNTERMEASURES PROGRAMS

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 6

MANAGER SPONSORING THE CANDIDATE HAS THE AUTHORITY TO DISCONTINUE THE INVESTIGATION AT ANY TIME BASED ON INFORMATION DEVELOPED.

(f) If the candidate is still viable for clearance, the field submits the original SF-86, two FD-258s (applicant fingerprint cards), results of the FO checks, and candidate interview with a cover communication to |I/FSU| AND auxiliary FOs, as appropriate, setting out type of investigation, 259B file number, and 30-day Buded. FBI Headquarters' Personnel Security Specialist reviews Headquarters checks and, if necessary, advises field of unfavorable information.

(g) FO continues BI consistent with guidelines set out in Part II, Section 17, MIOG. Submit completed investigation to |I/FSU| with copies to office processing the candidate.

(h) The |I/FSU| adjudicates trustworthiness and notifies the sponsoring FO of the clearance decision.

(5) The field Security Countermeasures Programs Manager provides a comprehensive briefing covering the handling of classified information.

(a) The ORIGINAL signed SF-312, "Classified Information Nondisclosure Agreement," is forwarded to the |I/FSU|.

(b) When the candidate's security clearance is terminated for any reason, the field provides a debriefing and forwards the signed SF-312 to the |I/FSU| for the mandatory 50-year retention requirement.

(6) The FISA security procedures provide for EMERGENCY SITUATIONS when it is necessary to grant uncleared individuals access to the classified court order. The SAC or designee must make the determination that the time required to obtain a personnel security clearance in a particular circumstance would cause failure or unreasonable delay in conducting the surveillance. Such emergency authorization must be confirmed in writing to the communications carrier, and the person being served with the classified order must execute the security agreement form required by the FISA security procedures (supra). The emergency procedures are not to be utilized to bypass the clearance process. Subsequent contacts with the same communications carrier for the purpose of serving a classified court order should be anticipated and the appropriate individual(s) submitted for a security clearance.

The FO Security Countermeasures Programs Manager must work closely

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 7

with the FO Technical Advisor in an effort to identify key individuals with the communications carriers who will need clearances for FISA orders.

(7) IMPORTANT THINGS TO REMEMBER:

(a) Classified FISA orders should only be served on individuals who possess the required DOJ security clearance.

(b) The communications carrier should be encouraged to utilize the Trust Receipt exclusively.

(c) The FO is responsible for inspecting the facilities of communications carriers which store the classified FISA orders to ensure proper security procedures are in place.

(d) The FO Security Countermeasures Programs Manager is responsible for identifying all communications carriers which are or could be used for a FISA. Appropriate personnel with those carriers are to be cleared. The FO should be aware of the communications carriers' pending retirements or transfers so that a pool of cleared individuals can be maintained.

(e) Emergency procedures exist for those limited situations when an uncleared individual must be served with a FISA order. The SAC or designee must determine an emergency exists and confirm authorization for emergency access in writing to the communications carrier. The uncleared individual must sign the security agreement form. This individual must undergo a security clearance investigation and receive a clearance before he/she can be served with any subsequent FISA order.

(f) The FBI component in the NSD managing the FISA program will, from time to time, identify key communications carrier personnel at the Headquarters level who will require a Top Secret security clearance. In those instances, the I/FSU, SCMS, NSD, will initiate the BI and set out leads to the field accordingly.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 8

259-4 259C - FBI JOINT TASK FORCES (JTFs) (See MIOG, Part II,
17-2|(6); MAOP, Part II, 3-1.1 & 3-1.2.)|

(1) A Joint Task Force (JTF) for purposes of this sub-section is the combination of FBI personnel and other resources with STATE AND LOCAL law enforcement agencies to address common crime problems within their respective jurisdictions.

(2) Generally speaking, a JTF is designed so the FBI and state and local participants are on an equal footing as to the sharing of information, personnel, and/or facilities to which access is necessary to accomplish the objectives of the JTF. Very often, the JTF personnel become one force whose participants become indistinguishable. Heretofore, security countermeasures required a ten-year BI and a Top Secret security clearance for ALL state and local JTF participants.

In the late 1980s and early 1990s, there was a proliferation of FBI JTFs across the nation occasioned by the expansion of the FBI's investigative responsibilities, such as Violent Crime/Major Offenders initiative, Domestic and International Terrorism, etc. The traditional task force concept began to lose its identity in that the new JTFs had significant variances in the degree of access to FBI information, personnel, and/or facilities afforded to state and local personnel. As a consequence, the ten-year BI was thought to be excessive when the access was, at times, measurably less than in the traditional task force of the late 1970s and early 1980s.

(3) The entire security countermeasures program as applicable to JTFs was revisited by experienced SAs in the field and representatives of both investigative divisions at FBIHQ. The objective was to make the program more effective in terms of streamlining procedures without sacrificing the security of our information, personnel, and/or facilities.

(a) A threshold decision was made to place responsibility on FO managers to assess JTF security vulnerabilities by utilizing the concept of "RISK FACTOR."

1. "RISK FACTOR" is ascertained by the FO examining and quantifying the access to FBI information, personnel, and/or facilities being afforded to the JTF state and local law enforcement personnel. Thereafter, the FO managers must project the damage to the FBI if the state and/or local law enforcement personnel betray the access afforded them. In other words, if there is compromise, what is the potential damage? For example, will

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 9

compromise jeopardize an investigation?; endanger life of an undercover agent?; an informant?; surface covert facility or operation?, etc. When you can estimate the probable impact of compromise, you have established the "RISK FACTOR."

2. The "RISK FACTOR" drives the scope of your security countermeasures program as it applies to a particular JTF.

(b) The group (supra) studying the JTF security countermeasures policy and procedures took the position that, under all circumstances, every FO MUST HAVE a record of ALL state and local participants in FBI JTFs.

(c) The guesswork, as to the scope of the security countermeasures, has been eliminated by establishing two ALL INCLUSIVE categories of JTFs for purposes of security countermeasures, i.e., CATEGORY I and CATEGORY II.

(d) The new JTF security countermeasures policy and procedures were sent out to ALL SACs by airtel dated 11/22/93, captioned "SECURITY PROCEDURES REGARDING JOINT TASK FORCES (JTFs), FBI AND OTHER LAW ENFORCEMENT AGENCIES, FCI - SECURITY COUNTERMEASURES."

(4) These cases will be reported under the 259C subclassification.

The FBI Security Program is managed in each office by the National Foreign Intelligence Program Manager, WHO MUST FAMILIARIZE OTHER FO SUPERVISORY PERSONNEL WITH SECURITY COUNTERMEASURES POLICY AND PROCEDURES.

This facet of the FBI Security Program is being managed at FBIHQ by the I/FSU, SCMS, NSD, and any questions and/or consultation may be directed accordingly.

(5) All state and local JTF participants will be investigated in either CATEGORY I OR II, depending on FIELD OFFICE assessment of the RISK FACTOR.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 10

259-4.1 Category I JTFs Consist of State and Local Candidates Participating in FBI Joint Task Forces Who Need Department of Justice Top Secret Security Clearances Based on a Ten-Year Background Investigation (BI)

(1) Specifically, this category applies to state and local candidates who will have:

(2) Access to national security information in order to participate in joint task forces; OR

(3) Long-term unrestricted access to FBI information, personnel, and/or facilities.

EFFECTIVE: 04/12/94

259-4.1.1 Procedures for Conducting a Ten-Year Background Investigation on State and Local Candidates Participating in FBI Joint Task Forces Who Need Top Secret Security Clearances

(1) Candidate completes an SF-86, "Questionnaire for Sensitive Positions," and is fingerprinted. The SF-86 and two FD-258s (applicant fingerprint cards) are forwarded to the field Security Countermeasures Programs Manager.

(2) The field Security Countermeasures Programs Manager opens a 259C case, initiates indices, ALL available automated data base checks, local criminal checks, and police department Internal Affairs check.

(3) After reviewing the SF-86 and the results of the FO checks, the field Security Countermeasures Programs Manager or designee interviews the candidate and reports same on an FD-302. The interview need not reflect the specific questions asked of the candidate. A question-and-answer format is not desired as it tends to result in a "checklist" style of interview. This interview is intended to obtain information to facilitate our investigative efforts. If a candidate provides information which could become an issue affecting suitability for participation in an FBI JTF or his/her access to sensitive or classified information, this should be fully

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 11

explored at the interview.

The narrative of the FD-302 should be sufficiently detailed to reflect, at a minimum, each of the following points:

(a) Completeness and accuracy of the SF-86.

(b) Personal and business credit issues, including, but not limited to, repossessions, delinquent student loans, debts placed for collection and bankruptcy.

(c) Civil suits as plaintiff or defendant, including divorces. Identify issues litigated.

(d) Any involvement in criminal matters as a suspect or subject or any criminal charge, arrest, and/or conviction.

(e) Any denials of employment and/or dismissals. Include reasons.

(f) Any contact with representatives of foreign countries.

(g) Details of candidate's personal life that could be used to coerce or unduly influence the candidate.

(h) Details of professional complaints or any nonjudicial disciplinary action, e.g., bar association grievances, better business complaints, student or military disciplinary proceedings, Equal Employment Opportunity complaints, etc.

(i) Business/investment circumstances that could or have involved conflict of interest allegations.

(j) Details of any psychological counseling with psychiatrists, psychologists, or other qualified counselors.

(k) Any abuse of prescription drugs or alcohol, illegal drug use, to include marijuana, and participation in drug/alcohol counseling/rehabilitation programs, during candidate's entire adult life (since age 18). Identify all drugs used, when used, duration of usage, amount of drug used, place where used (public or private setting), how the drug was obtained, whether or not candidate has provided drugs to anyone, if candidate has purchased or sold drugs, others having knowledge of candidate's drug use.

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 12

(l) Memberships in organizations whose policies restrict membership on the basis of sex, race, color, religion, or national origin.

(m) Any involvement in any organization which advocates the use of force to overthrow the U.S. Government; or any involvement in any organization involved in the commission of sabotage, espionage, or assisting others in terrorism.

(n) Any current or past circumstances known to the candidate that could have a bearing on his/her suitability for FBI JTF participation and/or access to sensitive and/or classified information.

(4) If necessary, the candidate should be recontacted to resolve any issues developed during the investigation.

(5) THE FIELD SECURITY COUNTERMEASURES PROGRAMS MANAGER SPONSORING THE CANDIDATE HAS THE AUTHORITY TO DISCONTINUE THE INVESTIGATION AT ANY TIME BASED ON INFORMATION DEVELOPED.

(6) If the candidate is still viable for clearance, the field submits original of the SF-86, two FD-258s (applicant fingerprint cards), results of the FO checks, and candidate interview with a cover communication to ISU AND auxiliary field offices, as appropriate, setting out type of investigation, 259C file number and 30-day Buded. FBIHQ Personnel Security Specialist reviews Headquarters' checks and, if necessary, advises field of unfavorable information.

(7) Field offices continue BI consistent with guidelines set out in Part II, Section 17, MIOG. However, this investigation must include ARREST CHECKS ON RELATIVES. Submit completed investigation to ISU with copies to office sponsoring the candidate.

(8) The ISU adjudicates trustworthiness and notifies the sponsoring FO of the clearance decision.

(9) The field Security Countermeasures Programs Manager provides a comprehensive briefing covering the handling of national security information and security policy and procedures of the FO.

(a) A COPY of the signed SF-312, "Classified Information Nondisclosure Agreement," is forwarded to the ISU.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 13

(b) When the candidate terminates the task force, the field provides a debriefing and forwards the ORIGINAL signed SF-312 to the ISU for the mandatory 50-year retention requirement.

EFFECTIVE: 04/12/94

259-4.2 Category II JTFs Consist of State and Local Candidates Participating in FBI Joint Task Forces Who Have NO NEED FOR A SECURITY CLEARANCE But Must Be Subjected to a Limited Security Investigation

(1) Specifically, this category applies to state and local candidates who will NOT have:

(2) Access to national security information in order to participate in joint task forces; OR

(3) Long-term unrestricted access to FBI information, personnel, and/or facilities.

EFFECTIVE: 04/12/94

259-4.2.1 Procedures for Conducting a Limited Investigation on State and Local Candidates Participating in FBI Joint Task Forces Who Have NO NEED FOR A SECURITY CLEARANCE

(1) Candidate completes pages 1, 2, 3, 9 (Certification only), and 10 of the SF-86, "Questionnaire for Sensitive Positions." The SF-86 is forwarded to the field Security Countermeasures Programs Manager.

(2) The field Security Countermeasures Programs Manager opens a 259C case, initiates indices, ALL available automated data base checks, local criminal checks, and police department Internal Affairs check.

(3) After reviewing the SF-86 and the results of the FO checks, the field Security Countermeasures Programs Manager or

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 14

designee interviews the candidate and reports same on an FD-302. The interview should cover the following:

- (a) Completeness and accuracy of the SF-86.
- (b) Any involvement by the candidate in criminal matters as suspect or subject of any criminal charge, arrest, and/or conviction.
- (c) Any current or past circumstances known to the candidate that could have a bearing on his/her suitability for participation in an FBI JTF and its investigative mission.
- (4) The above items are not all inclusive and may be expanded depending upon the nature of the task force, degree of access, Risk Factor, and other information developed which may adversely affect the candidate's participation in an FBI JTF.
- (5) THE FIELD SECURITY COUNTERMEASURES PROGRAMS MANAGER HAS THE AUTHORITY TO DISCONTINUE THE INVESTIGATION AT ANY TIME BASED ON INFORMATION DEVELOPED.
- (6) If the field Security Countermeasures Programs Manager determines candidate is acceptable for participation in the FBI JTF, the candidate must be provided a comprehensive briefing covering the security policy and procedures of the FO.
- (7) All records regarding the above must be maintained in the FO 259C file. No reporting to FBIHQ is required in Category II cases.

EFFECTIVE: 04/12/94

259-5 SECURITY CLAUSES FOR JOINT TASK FORCE MEMORANDUM OF UNDERSTANDING

- (1) An integral part of the JTF process is a Memorandum of Understanding (MOU) to ensure clarity as to the responsibilities for each of the participating agencies.
- (2) An MOU is an agreement which is voluntarily entered into between the FBI and a cooperating state or local law enforcement

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 15

agency which sets out the objectives of a joint investigation, the method of conducting the investigation, and the responsibilities of all parties.

(3) Depending upon the Category of the JTF (I or II), different security clauses will be necessary.

(a) CATEGORY I task forces require a DOJ Top Secret security clearance for state and local candidates who will have:

1. Access to national security information in order to participate in joint task forces; OR

2. Long-term unrestricted access to FBI information, personnel, and/or facilities.

(b) The CATEGORY I FBI JTF security clauses are as follows:

"Personnel of the (insert agency name) participating in this FBI Joint Task Force will be required to undergo a full background investigation for a Department of Justice Top Secret security clearance. If, for any reason, a candidate is not selected, (name of participating agency) will be so advised and a request will be made for another candidate.

"Sixty days prior to being assigned to this task force, each candidate will be required to furnish a completed "Questionnaire for Sensitive Positions" (SF-86) and two "Applicant Fingerprint Cards" (FD-258s) to the FBI. Sometime thereafter, an interview of each candidate will be conducted by an FBI representative.

"At the completion of the background investigation, each candidate selected will be granted a Department of Justice Top Secret security clearance and will receive a comprehensive briefing on the security policy and procedures of the FBI field office, to include the handling and protection of national security information. During the briefing, each candidate will execute a nondisclosure agreement (SF-312).

"Upon departure from the task force, each candidate will execute a nondisclosure agreement (SF-312) and will be given a security debriefing."

(c) CATEGORY II task forces require a limited

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 16

background investigation for all state and local personnel who will NOT have:

1. Access to national security information in order to participate in joint task forces; OR

2. Long-term unrestricted access to FBI information, personnel, and/or facilities.

(d) The CATEGORY II FBI JTF security clauses are as follows:

"Personnel of the (insert agency name) participating in this FBI Joint Task Force will be required to undergo a limited background investigation. If, for any reason, a candidate is not selected, (name of participating agency) will be so advised and a request will be made for another candidate.

"Thirty days prior to being assigned to the task force, each candidate will be required to furnish pages 1, 2, 3, 9 (Certification only), and 10, of the "Questionnaire for Sensitive Positions" (SF-86). Sometime thereafter, an interview of each candidate will be conducted by a representative of the FBI.

"Upon being selected, each candidate will receive a comprehensive briefing covering the security policy and procedures of the FBI field office."

(4) Procedures regarding preparation of MOUs are outlined in the revised "FIELD GUIDE FOR UNDERCOVER AND SENSITIVE OPERATIONS," under the caption "CONTRACTS/AGREEMENTS, MEMORANDUM OF UNDERSTANDING." A sample of an MOU with the Security Clauses for Category I and CATEGORY II JTFs are located in the Appendix of the "Guide." This "Guide" was published by the Undercover and Sensitive Operations Unit, Corruption/Civil Rights Section, Criminal Investigative Division, FBIHQ.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 17

259-6 259D - OTHERS - ACCESS TO NATIONAL SECURITY INFORMATION
(SEE MIOG, PART II, 17-2 (6).)

This category applies to individuals other than those in 259A, B, and C (supra), who must have access to NSI. This miscellaneous category has grown significantly in recent years and the following list is illustrative:

(1) Attorneys representing FBI employees in personnel actions requiring access to NSI;

(2) Federal civil judicial proceedings wherein the U.S. Government is a party and litigants must have access to NSI;

(3) Staff of Federal Independent Counsel, Special Counsel, etc.;

(4) Special Consultants (e.g., security professionals, administrators);

(5) Selected Federal Legislative and Judicial Branch personnel;

(6) Military personnel supporting FBI initiatives (see All SAC airtel, captioned "DEPARTMENT OF DEFENSE (DOD) SUPPORT FOR FBI COUNTERDRUG OPERATIONS SECURITY COUNTERMEASURES POLICY AND PROCEDURES, FCI - SECURITY COUNTERMEASURES," dated 1/10/94);

(7) Chaplains promoting health and welfare of FBI personnel (see All SACs airtel, captioned "FBI CHAPLAINS PROGRAM SECURITY COUNTERMEASURES POLICY AND PROCEDURES, FCI - SECURITY COUNTERMEASURES," dated 3/4/94);

(8) Other Federal personnel supporting FBI initiatives;

(9) Individuals needing access to NSI and, to do so, will need a DOJ security clearance.

If the Field Security Countermeasures Programs Manager receives a request for a security clearance in this miscellaneous category for which there are no existing policy and procedures, it must be coordinated with the ISU, SCMS, NSD, FBIHQ.

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 18

EFFECTIVE: 04/12/94

259-7 | 259E - PERIODIC REINVESTIGATIONS/SECURITY CLEARANCES
(See MIOG, Part II, 17-2; MAOP, Part II, 3-1.1 and
3-1.2.)

All FBI noncontractor personnel possessing current and active security clearances five years old or older are to be reinvestigated to ensure trustworthiness for continued access to National Security Information.

(1) Individuals due for the five-year reinvestigation, both at the "Secret" and "Top Secret" levels, will be identified by field offices or divisions within FBIHQ. The reinvestigation will be initiated via electronic communication from field offices or divisions within FBIHQ and include the original Standard Form 86 (SF-86) to FBIHQ and set forth the required investigation.

(2) The reinvestigation for a "Secret" security clearance will include a candidate interview, a check of FBI indices (field and FBIHQ), automated data bases (FBIHQ), national agency checks (FBIHQ), local agency checks/arrest checks (field), and credit bureau checks (FBIHQ).

(3) The "Top Secret" reinvestigation will encompass the same areas as the "Secret" level and, in addition, will include verification of residence, interview of two neighbors, review of employment records, two employment references, and two character references developed by the investigator and not provided by the candidate.

(4) In all instances the investigation must be expanded to resolve any derogatory or adverse information. Newly listed information within the scope of the investigation, such as education, recent divorce, roommate, part-time military service and foreign travel must be addressed.

(5) Conduct investigation in accordance with the policy and procedures set out in MIOG, Part II, 17-6, entitled "Scope of Full Field Investigation."

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 259 - 19

EFFECTIVE: 01/03/97

|259-8| CHARACTER - SECURITY CLEARANCE INVESTIGATIONS - CIPA; -
FISA; - JTF; - OTHER; - PERSONNEL REINVESTIGATIONS/
SECURITY CLEARANCES (See MIOG, Part II, 17-2; MAOP, Part
II, 3-1.1 and 3-1.2.)|

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Sensitive
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SECTION 260. INDUSTRIAL SECURITY PROGRAM

260-1 BACKGROUND AND PURPOSE (See MIOG, Part I, 67-18 (3) & 259-1; II, 35-9.2.)

(1) The Industrial Security Program (ISP) is designed to manage, control, and safeguard FBI information entrusted to contractors and thereby prevent damage to national security. In order to perform this task, the ISP cannot merely address the threat of espionage posed by contractor personnel who have access to National Security Information (NSI). It must also focus on those situations where there is potential risk to the national security by virtue of access by non-FBI personnel to sensitive unclassified FBI information, personnel, and facilities. The following are illustrative of major concerns the ISP must address: (See MIOG, Part I, 261-2 (6) & MAOP, Part II, 2-4.3.1 (1) (p).)

(a) All contracts which include new construction or modification of existing FBI facilities;

(b) All contractual arrangements with the private sector for the installation and/or service of any manufactured item essential to Bureau operations, i.e., computers, typewriters, building maintenance, automobiles, etc.;

(c) Any or all non-FBI individuals who are granted access to FBI facilities for whatever reason, to include but not limited to vendors, consultants, service people, etc.; and

(d) Traditional contractual arrangements involving the release of NSI to a contractor.

(2) The ISP is one segment of the FBI's Security Program which is included within the National Foreign Intelligence Program. The following classification and alpha designators have been approved for capturing field time expended on this aspect of the ISP. (See MIOG, Part II, 17-2 (7) & MAOP, Part II, 3-1.1 & 3-1.2.)

260A ISP - Personnel Clearance
260B ISP - Facility Clearance
260C ISP - Nonclassified Personnel/Access
260D ISP - Other
260E ISP - Personnel Clearance - Reinvestigations

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 2

(3) The ISP is managed by the FBI Security Programs Manager (SPM) and the staffs of the Industrial/Facility Security Unit (I/FSU), Security Countermeasures Section, National Security Division.

(4) The guidelines in this section of the MIOG apply to all FBI components, both at FBIHQ and in the field. The policy and procedures set forth in this section apply to obtaining personnel and facility security clearances for contractors and their employees who require access to and/or storage of NSI. These guidelines also apply to personnel facility access approvals to FBI facilities for a contractor, its employees, and/or others accessing sensitive information, FBI personnel, or facilities, including equipment, not requiring access to NSI.

(5) General reporting procedures for 260 matters are contained in Part II, Section 17-6 of the MIOG.

EFFECTIVE: 03/07/96

260-2 PERSONNEL CLEARANCE 260A (See MIOG, Part I, 260-2.1(1) & 260-3.2(3).)

(1) |I/FSU| manages the investigation and clearance of those contractor personnel who will need access to NSI in order to fulfill the terms of their contract. Pursuant to Department of Justice Order 2640.2B, "Automated Information Systems Security," individuals who must also be investigated and cleared include contractor personnel who will require access to FBI computer systems (hardware and software) containing NSI or unescorted access to Bureau automated data processing (ADP) facilities where NSI is processed. Level of clearance required for those individuals involved in ADP or ADP facility maintenance is set forth in 260-4.3.2. Contractor personnel not requiring access to NSI, as set forth in this paragraph, are not subject to regulations promulgated by the |I/FSU;| however, they may be subject to guidelines set forth in |MIOG, Part I,| 260-4. | (See MIOG, Part I, 260-2.5(3).)|

| (2) | Cognizant Security Officer

The Cognizant Security Officer (CSO) is the FBI employee given the responsibility by the contracting component of the FBI to oversee security issues, e.g., Contracting Officer's Technical

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 3

Representative, Division Security Officer, etc. The CSO will act as liaison between the FBI and the contractor on all matters relating to security.

EFFECTIVE: 07/11/94

260-2.1 FBI National Security Clearance Adjudicative Process

(1) Pursuant to a Letter of Agreement between the Department of Justice and the Department of Defense, dated March 19, 1976, and amended December 11, 1989, the FBI is a User Agency of the Defense Investigative Security Program as administered by the Defense Investigative Service (DIS). Therefore, except as set forth in 260-2.3, FBI contractors meeting the criteria in 260-2 (1) will require FBI background investigations and thereafter be granted clearances issued by the Defense Industrial Security Clearance Office (DISCO) and authority granted by the SPM to participate in Bureau projects involving NSI.

(2) The 1989 amendment to the 1976 Letter of Agreement permits the FBI considerable flexibility in the administration of its ISP. Notwithstanding the fact that a prospective contract employee has the requisite DISCO clearance, the SPM can conduct such investigation as is deemed necessary to make a determination of trustworthiness prior to placement of that contract employee into a Bureau project. Further, if during the course of the security clearance background investigation or at any other time information is developed indicating that the contract employee's continued participation in a Bureau project is not clearly in the best interests of national security, he/she may be removed by the SPM pending resolution of the trustworthiness issue by the DIS.

(3) Participation Authorization

Participation authorization is a determination by the SPM that a contract employee's involvement in a Bureau project is consistent with the best interests of national security. No contract employee may participate in a Bureau project involving NSI without SPM authorization.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 4

EFFECTIVE: 02/12/92

260-2.2 Interim Clearance/Participation Authorization

(1) Definition - DISCO "interim" clearance and SPM "interim" participation authorization are determinations based upon the completion of minimum investigative requirements and are granted on a temporary basis, pending completion of the full investigative requirements.

(2) Upon certification of an immediate need for a contract employee's participation in a Bureau project by the CSO, the |I/FSU| will seek an "interim" clearance from DISCO and the SPM can authorize "interim" participation by the contract employee to the requesting Bureau component. In those cases where the contract employee has the requisite DISCO clearance, |I/FSU| will, after meeting the minimum investigative requirements, request the SPM authorize "interim" participation.

(3) Requests for "interim" clearance/participation authorization must be justified by exigent circumstances and not submitted on a routine basis.

EFFECTIVE: 07/11/94

260-2.3 Department of Justice Clearances Issued to Contractors

The SPM may, from time to time, determine that a clearance for a contractor be sought from the Department of Justice (DOJ) rather than DISCO. In these cases, the field will be so informed by the airtel initiating the investigation. The completed investigation (or results of the preliminary investigation where an "interim" clearance is being sought) will be presented to the Department Security Officer, DOJ, for an adjudicative determination. An example of a contractor clearance issued by the DOJ is that provided to Special Investigators involved in the Background Investigation Contract Services program.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 5

EFFECTIVE: 02/12/92

||260-2.3.1 | Moved To 260-5.1|

EFFECTIVE: 03/07/96

260-2.4 Forms

(1) All contracting components within the FBI (FBIHQ or field) seeking a national security clearance or participation authorization on behalf of a contract employee should submit to the |I/FSU| an original and four copies of Standard Form (SF) 86, "Questionnaire for Sensitive Positions" (Revised date October 19, 1987), and two copies of an FD-258 "Applicant Fingerprint Card." It is the responsibility of the CSO to ensure that all submitted documentation is typewritten, complete, and accurate. All applications not meeting these criteria will be returned unprocessed.

(2) The above forms must be attached to a communication stating:

(a) the identity of the CSO;

(b) whether the candidate will require access (escorted or unescorted) to FBIHQ or field office facilities;

(c) the Corporate and Government Entity (CAGE) code of the contractor indicating that it is a DIS-cleared facility (see 260-3). CSOs must ensure that the contractor facility has the appropriate level of clearance (see 260-3 infra); | (See MIOG, Part I, 260-3.2(2).) |

(d) the level of clearance required;

(e) if applicable, justification for "interim" clearance/participation authorization.

(3) It is incumbent upon the CSO to advise the |I/FSU| expeditiously when a contract employee's participation in a

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 6

Bureau project is no longer required.

(4) |I/FSU| will audit, on a semiannual basis, the continued need for contract employees to retain their clearance/participation authorizations.

EFFECTIVE: 07/11/94

260-2.5 Level of Clearance/Types of Investigations

(1) A determination of trustworthiness will be made in accordance with the standards set forth in Department of Defense Personnel Security Program Regulation, 5200.2R, Appendix I, entitled "Adjudication Policy-General." The scope of the FBI security clearance background investigation (BI) to be conducted is determined by the level of clearance sought. In any case, the SPM may expand the scope of the investigation in order to arrive at a determination of trustworthiness.

(a) "Top Secret" - A security clearance BI covering the past |10| years of an individual's life or from age 18 to the present, whichever is shorter. However, in no case may the BI cover less than a scope of two years.

(b) "Secret" - A security clearance BI covering the past five years of an individual's life or from age 18 to the present, whichever is shorter. However, in no case may the BI cover less than a scope of two years.

(c) "Confidential" - An investigation composed of various records checks conducted by FBIHQ and the field, as directed by |I/FSU|.

(d) Sensitive Compartmented Information (SCI) - FBI contractor access to SCI will be determined in accordance with the guidelines set forth in Part II, Section 26-10, of the MIOG.

(2) Investigative procedures for 260A are contained in Part II, Section 17, of the MIOG. Deviation from investigative procedures set forth in Part II, Section 17, may be requested by FBIHQ and will be detailed in the communication directing the investigation.

(3) The procedures set forth above must be adhered to by

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 7

Bureau components involved in the use of contractors falling within the parameters set out in 260-2 (1) (supra). Certain CSOs may wish to impose additional security procedures in connection with projects they administer. In such cases, the CSO may institute changes with the prior approval of the I/FSU. (See (4) below.)

(4) Security Awareness Briefings for contractors granted clearances issued by the Department of Justice will be afforded by division Security Officers, as directed by the I/FSU. Briefings for those individuals cleared by DISCO will be conducted by their respective corporate Security Officers in accordance with the INDUSTRIAL SECURITY MANUAL or by the CSO as provided in 260-2.5 (3). Briefings for consultants cleared by DISCO is addressed in 260-3.2 (5) (infra).

EFFECTIVE: 07/11/94

260-3

FACILITY CLEARANCE 260B (See MIOG, Part I,
260-2.4(2)(c).)

(1) Definition - A facility clearance (FCL) is an administrative determination that a facility is eligible from a security viewpoint for access to NSI of the same or lower classification level as the clearance being granted.

(2) An FCL is required of all firms with which the FBI engages in NSI contractual matters. DISCO will only issue personnel clearances for contract employees employed by a cleared facility (except as set forth in 260-3.2). An FCL is required, notwithstanding the fact that the contractor may not be required to possess NSI at its facility.

(3) Components of an FCL investigation are: personnel security clearances of designated owners, officers, directors, executive personnel (OODEPs); a determination of the foreign ownership, control, or influence to which the contractor may be subject; and the adequacy of safeguards to store NSI (if applicable).

(4) The FBI will rely upon the DIS to conduct the appropriate inspection and issue the requisite FCL. All CSOs will ensure that firms with which the FBI contracts to do classified work have an FCL at the requisite level of clearance or must submit a request for issuance or upgrade of FCL to the I/FSU.

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 8

(5) The request for issuance or upgrading of an FCL must include:

- (a) the identity of the CSO;
- (b) the name, address, and telephone number of the contractor facility;
- (c) a point of contact at the facility who must be an OODEP;
- (d) a brief description of the work to be performed pursuant to the contract;
- (e) the level of clearance required;
- (f) whether NSI will be stored at the contractor facility.

(6) DIS industrial security representatives will advise the I/FSU of the identity of those individuals who will require personnel clearance investigations in connection with the FCL. The I/FSU will manage these background investigations and coordinate the results with the DIS and the CSO.

EFFECTIVE: 07/11/94

260-3.1 Contract Security Classification Specification Department of Defense Form 254

(1) The completed DD 254 is the basic document by which classification, regrading, and declassification specifications are documented and provided to contractors. It is designed to identify the specific items of NSI involved in the contract that require security classification protection.

(2) For those programs where the DIS will exercise total or partial control over the facility inspection of a Bureau contractor, the CSO will prepare a DD 254 and provide it to I/FSU. The DD 254 advises the DIS that a User Agency has a classified contract at a facility. It also assists the DIS industrial security representatives in determining whether NSI is being handled in

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 9

accordance with established DIS policy and specific instructions as set forth on the DD 254.

(3) There may be circumstances when a CSO wishes to exclude a project or a portion thereof from the purview of DIS inspection. This is known as a "carve out." In such a case, the CSO should prepare a communication to the SPM setting forth a security plan containing the following:

- (a) justification for this request;
- (b) the exact location of the NSI retained at the contractor facility;
- (c) documentation that the CSO has the expertise to conduct facility inspections in lieu of the DIS;
- (d) a copy of the security guidance to be provided to the contractor.

(4) The |I/FSU| will coordinate notification of this "carve out" request with the Special Actions Branch at DIS Headquarters in Washington, D.C.

(5) In the event a project is removed from DIS inspection responsibilities, the CSO must certify to the SPM at least once per year that a facility inspection has been conducted consistent with the security plan approved by the SPM, as set forth above, and the results thereof.

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260-3.2 Consultant Agreements

(1) An individual may qualify for a personnel security clearance despite the fact that he/she is not employed by a cleared facility if his/her contractual obligation to the Bureau meets the following guidelines: |(See MIOG, Part I, 260-3 (2).)|

(a) NSI shall not be possessed by the consultant away from the premises of the FBI;

(b) The FBI shall not furnish NSI to the consultant

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 10

at any location other than the premises of the FBI;

(c) Performance of the consulting services by the consultant shall be accomplished in FBI office space and classification guidance will be provided by the FBI.

(2) The CSO will be provided a Consultant/User Agency Certification by the |I/FSU| which must be executed by the CSO and consultant. The executed Consultant/User Agency Certification should be attached to the memorandum requesting clearance action in lieu of the CAGE code as set forth in 260-2.4 (2).

(3) The scope of the security clearance background investigation and reporting requirements for consultants are identical to those outlined in 260-2 (supra).

(4) Upon issuance of the security clearance to a consultant by the DIS, the Security Officer for the field office covering the location of the consultant's employment or FBIHQ divisional Security Officer will be instructed by |I/FSU| to brief him/her pursuant to guidelines set out in Part I, Section 261, of the MIOG. The executed SF-312, "Classified Information Nondisclosure Agreement," must be returned to the |I/FSU| where it will be maintained.

(5) It is the responsibility of the CSO to advise the |I/FSU| when a consultant's participation in the Bureau project is no longer required. The |I/FSU| will thereafter direct the appropriate field office or FBIHQ Security Officer to debrief him/her, utilizing an SF-312. It is not necessary to debrief the individual on the same form used during the initial briefing. (See MIOG, Part I, 260-2.5(4).)

EFFECTIVE: 07/11/94

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 11

260-4 NONCLASSIFIED PERSONNEL/ACCESS 260C (See MIOG, Part I,
260-2 (1).)

(1) Definition

The FBI is concerned with any non-Bureau employee having access to our facilities, information, equipment or employees. Due to our investigative responsibilities in criminal and FCI matters, all contract and subcontract individuals have the opportunity to be compromised and directed by outside elements to seek sensitive criminal information or NSI in the course of their employment. This access creates a potential risk to national security, sensitive information, our facilities, equipment and employees' safety. Therefore, a consistent personnel facility access approval program for such a person must be made.

(2) Facility Access Determinations

Determinations of eligibility for personnel facility access will be made by the SPM and shall be made taking into consideration criteria set forth in EO 10450 and Director of Central Intelligence Directive 1-14 (copies maintained with each Security Officer). All contract individuals who require access to an FBI facility or information, but don't require clearance, shall be processed for either escorted or unescorted access.

EFFECTIVE: 07/11/94

260-4.1 Types of Personnel/Facility Access Background
Investigations (See MIOG, Part I, 260-4.1.1(2)
& 260-4.3.2(3).)

The basis for facility access eligibility approvals shall be adjudicated upon information concerning contract individuals acquired through investigative procedures or otherwise made available to the SPM. See 260-4.2 for details as to processing requirements. There are two types of background investigations which are used to approve individuals for escorted or unescorted access:

(1) Ten-Year Scope

(a) A ten-year background investigation covers the last ten-year period of the person's life or from age 18 to present,

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 12

whichever is shorter.

(b) Part II, Section 17-6, of this manual should be used as a guideline for processing ten-year scope investigations.

(c) Twenty working days shall be allowed for I/FSU to conduct the initial processing (credit check, Criminal Justice Information Services (CJIS) Division checks, etc.) for a determination regarding "restricted" access which might allow the candidate limited access to his/her work area while the BI is being completed.

(2) Limited

(a) A limited background investigation consists of FBIHQ and/or field office indices checks, CJIS Division checks, National Crime Information Center (NCIC) wanted files, criminal history records through the NCIC Interstate Identification Index (III), local police agency checks, and, where applicable verification of citizenship or alien status.

(b) Five working days shall be allowed for I/FSU to conduct the above processing prior to the granting of escorted access.

EFFECTIVE: 07/11/94

260-4.1.1 Types of Access (See MIOG, Part II, 35-9.2.)

(1) ESCORTED

(a) Approvals of ESCORTED ACCESS eligibility shall relate to the short-term, intermittent, or infrequent basis to provide some service, product, or perform some other official function of interest to the FBI. Individuals who fall within this category shall be escorted at all times.

(b) Normally a limited background investigation is required, except in the subsections noted in (c) and (d), below.

(c) Some examples of people within this category include repair service persons for electrical and plumbing equipment, vending machines, etc.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 13

The maintenance and cleaning workers (char force) who provide daily cleaning services in resident agency (RA) offices may also fall in this category. (See paragraph (2)(c) below.)

(d) Individual(s) working on computers, telephones, and radio equipment may require a ten-year background investigation at the discretion and instruction of the SPM, FBIHQ (see Sections 260-4.3.2 and 260-4.3.3). Depending on the location of the worksite, the SAC or other designated official may require an escort for a contract individual in addition to the ten-year background investigation.

(e) A credit check is not required for a limited background investigation; however, it may be conducted at the requestor's discretion. In this instance, an FD-406 (Authority to Release Information) must be completed and forwarded to FBIHQ for processing. Credit checks will then be conducted by contractor personnel at FBIHQ.

(f) The limited background investigation should not be AUTOMATICALLY selected simply because a particular individual is going to have escorted access on a short-term or intermittent basis. (See Section 260-4.3.3 (Telephones) and (2) below (Unescorted).)

(2) UNESCORTED

(a) Approvals of UNESCORTED ACCESS eligibility shall relate to the frequency and/or recurrence of the person's access to the facility (e.g., persons performing daily maintenance or daily contracting duties generally consisting of more than 90 days). Other areas of consideration may include individuals on emergency or 24-hour call status, or an individual being exposed to equipment containing sensitive information. Unescorted access allows the contractor to go to and from his/her work area without an FBI escort. In other words, the contractor employee granted unescorted access may only access these components of the FBI facility consistent with performance of his/her contract duties.

(b) A ten-year background investigation is required. (See MIOG, Part I, 260-4.1.)

(c) The SAC may waive the ten-year background requirement for char force individuals who perform daily janitorial duties within an RA or overt off-site facility, providing that an FBI employee is present in the room while the person is cleaning. This

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 14

waiver applies only to RAs and off-site facilities. (See (1)(c).)

(d) A security briefing should be provided to any contract individual who has been granted unescorted access privileges to FBI space. At the completion of the briefing, the contract individual should execute "Security Acknowledgement Form," FD-835, by reading the form and signing and dating the bottom of page two. The FBI employee who conducts the briefing should be identified as the Witness. The original FD-835 should be maintained in the individual's investigative file located in the field office or at FBI Headquarters (FBIHQ), depending upon where the individual is working.

EFFECTIVE: 03/07/96

260-4.2 Forms (See MIOG, Part I, 260-4.1 & 260-4.3.2.)

(1) Processing requirements depend on the work to be performed and the type of access (escorted vs. unescorted) needed for a contract individual to perform his/her duty.

(2) Generally, a limited background investigation will be conducted on escorted individuals, whereas a ten-year background investigation will be conducted on unescorted individuals. There are exceptions to this guideline, as noted in Sections 260-4.3.2 and 260-4.3.3.

(3) The below-listed forms must be completed where applicable:

(a) STANDARD FORM (SF)-86 - QUESTIONNAIRE FOR SENSITIVE POSITIONS

The SF-86 must be completed when UNESCORTED access for contract individuals is required to FBI facilities on a daily basis, where the security clause of the contract requires it, or where exposure to sensitive material may be likely due to the type of equipment, location of work area, etc. (See MIOG, Part I, 259-2(1).) When using this form, candidates must be interviewed, to ensure all questions have been answered and information required to conduct the background investigation has been furnished. The results of the interview shall be furnished on an FD-302 and accompany the FD-316, SF-86, and other required forms, upon submission to FBIHQ. Refer to Part II, Section 17-6 of this manual for guidance.

Sensitive
PRINTED: 02/18/98

Sensitive

NOTE: An FD-484 and FD-406 are NOT used in conjunction with an SF-86. All SF-86 forms dated prior to December, 1990, are obsolete and should be destroyed. Obsolete forms will not be processed by the Industrial/Facility Security Unit.

(b) Form FD-816, "Access of Non-FBI Personnel to FBI Facilities, Background Data Information Form."

The FD-816 must be completed for all contract individuals who require escorted access to any FBI facility (i.e., Quantico, field office, resident agency, etc.).

(c) FORM FD-258 - FBI FINGERPRINT CARD

Two sets of fingerprint cards (only one card required if fingerprinted at FBIHQ) must be completed for all contract individuals who require access, whether escorted or not, to FBI facilities on two or more occasions. This requirement for contract individuals for access not to exceed five days, on a one-time basis only, may be waived.

(d) FORM FD-316 - "ISP, ACCESS OF NON-FBI PERSONNEL TO FBI FACILITIES"

The FD-316 is the form used to request access to an FBI facility by non-FBI individual(s) contracted to perform a service for the Bureau. The FD-316 is to be completed by the Bureau employee who is requesting the access for the non-FBI contract individual(s).

(e) FORM FD-406 - "AUTHORITY TO RELEASE INFORMATION"

The FD-406 must be completed for obtaining sensitive information, i.e., credit checks, medical records, etc., when an SF-86 is not necessary. This form should not be submitted in conjunction with an SF-86. Credit checks will be processed by contractor personnel at FBIHQ once the FD-406 is completed and forwarded to FBIHQ.

(f) FORM FD-484 - "PRIVACY ACT ACKNOWLEDGEMENT"

A Form FD-484, signed and dated by the contract individual, must be attached to each FD-316 when an SF-86 is not required. A copy should be given to the individual requiring access.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 16

(g) FORM FD-835 - "SECURITY ACKNOWLEDGEMENT FORM"

The Form FD-835 is to be signed and dated by the contract individual, who has been granted unescorted access privileges to FBI space. The FBI employee who conducts the briefing should be identified as the Witness. By use of this form, in the event of a security violation, the FBI will have a record that the information was provided to the contractor. The original FD-835 should be maintained in the individual's investigative file located in the field office or at FBIHQ, depending upon where the individual is working.

The below-listed examples should be used as a guideline for processing purposes:

ESCORTED ACCESS
(Field Office or FBIHQ)

FD-316
FD-816
FD-484
FD-258 (Two copies) (One copy if
if taken at FBIHQ)

UNESCORTED ACCESS
(Field Office or FBIHQ)

FD-316
SF-86
FD-258 (Two copies) (One copy
if taken at FBIHQ)
FD-835

EFFECTIVE: 03/07/96

||260-4.3| Special Cases

EFFECTIVE: 04/19/91

||260-4.3.1| Aliens

Immigrant aliens and foreign nationals who contract with or are employed by the United States Government are not eligible for the same type of access eligibility approval that may be granted to United States citizens, but may only be provided with limited access authorizations which shall authorize access only for specific programs, projects, or contracts. Long-term contracts requiring daily access to FBI facilities (i.e., maintenance workers) should be reserved for U.S. citizens.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 17

EFFECTIVE: 04/19/91

260-4.3.2 Computers (See MIOG, Part I, 260-2(1), 260-4.1.1(1)(d) & 260-4.2(2).)

(1) A microcomputer is classified at the highest level of information that has been entered into, stored on, or processed by the system unless the COMPUTER SYSTEM can be appropriately declassified. Automated Data Processing STORAGE MEDIA (operative and inoperative, removable and nonremovable) and NONVOLATILE MEMORY DEVICES may NEVER be downgraded or declassified in the field.

(2) Hardware and/or software maintenance on classified computer devices may only be performed by individuals possessing a clearance commensurate with the classification levels of the computer equipment..

(3) Individuals performing hardware and/or software maintenance on unclassified computer devices must, at a minimum, be subject to a limited background investigation consisting of those checks identified in Section 260-4.1, "Types of Personnel/Facility Access Background Investigations," and 260-4.2, "Forms."

(4) Because hardware and software maintenance activity may affect the integrity of existing protection measures or permit the introduction of security exposures into a system (e.g., computer viruses, trojan horses, logic bombs, implant devices, etc.), all maintenance work must be supervised by FBI personnel knowledgeable in the operation of microcomputers, regardless of the classification of the microcomputer or its associated media.

See MIOG, Part I, 261-2(1), "Federal Bureau of Investigation, ADPT Security Policy," for more information.

EFFECTIVE: 07/11/94

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 18

260-4.3.3 Telephones (See MIOG, Part I, 260-4.1.1(1)(d) & (f),
260-4.2(2).)

(1) As all new contracts with telephone companies will contain an updated security clause, the scope of the background investigation will not coincide Bureauwide until all contracts have been renewed.

(2) The field office|Supervisory Administrative Specialist (SAS)|should be contacted to determine the scope of the background investigation of a telephone company employee in coordination with FBIHQ.

(3) All telephone company employees who require access to FBI facilities to perform installations within or service to the telephone switch shall be afforded a ten-year background investigation.

EFFECTIVE: 07/11/94

260-4.3.4 Photocopiers

All photocopier technicians who require access to FBI facilities to service photocopying machines must be processed for a ten-year background investigation. This policy applies to all FBI facilities, including resident agencies.

EFFECTIVE: 07/11/94

260-4.3.5 Contract Physicians

To assist the FBI in conducting the required periodic and/or fitness-for-duty evaluations for on-board employees and applicants, the Health Care Programs Unit (HCPU), Personnel Division, FBI Headquarters (FBIHQ), grants contracts to physicians within each FBI field office territory, as well as Clarksburg, West Virginia; the FBI Academy, Quantico, Virginia; and FBIHQ. The majority of the fitness-for-duty physicals occur within the office space of the

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 19

contract physician, as opposed to the actual FBI facility.

(1) SECURITY REQUIREMENTS

(a) Prior to granting the contract to a medical group or local physician, the HCPU, Personnel Division, FBIHQ, may require the field office to conduct an on-site inspection of the physician's office. The inspection will determine the level of security which will be afforded to the FBI information provided to contract physicians, whether medical, personal, or administrative data.

1. If within regular Bureau space, security of documentary materials shall be no less than a locking file-type or similar cabinet in a restricted access location. If the volume of data requires the open storage of such materials, a dedicated closet, room, or facility shall be provided to which there is restricted access by only medical and other authorized personnel. The door(s) to this location shall be equipped with security locking hardware, uniquely keyed to maintain access to only medical or other authorized personnel.

2. If within contractor space and Bureau material is identifiable as such, security of documentary materials shall be no less than a locking file-type or similar cabinet maintained in a location to which only Bureau-approved personnel have access. If the volume of the materials is such that open storage is required, it shall be maintained in a restricted-access area, the doors to which are equipped with security locking hardware, uniquely keyed to restrict access to only Bureau-approved personnel to have access. The general office space shall have typical business-type facility protections. Although an intrusion detection system is preferred, one is not required. No classified material may be maintained in this facility, unless approved in writing by the Security Programs Manager, FBIHQ, and both the facility and the appropriate employees have been cleared at the appropriate level for handling or maintenance of classified materials.

(2) REQUIRED FORMS

All physicians being considered as potential contractors will be required to complete either an SF-85p, "Questionnaire for Public Trust Positions," or an SF-86, "Questionnaire for National Security Positions." The appropriate form to be completed will be determined based on the location of where the physicals will be performed.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 20

(a) If the physicals will be conducted in the physician's office, then the physician would be required to complete the SF-85p. If the physicals will be performed within the field office space, the physician would be required to complete the SF-86. Regardless of which form is executed, it should be completed in its entirety, and ALL release forms and certification statements must be signed and dated.

(b) Each physician will be required to submit two FD-258 (blue) fingerprint cards.

(3) FIELD OFFICE PRELIMINARY INVESTIGATIVE
RESPONSIBILITIES

(a) Appropriate field office checks must be conducted on the contract physician prior to submitting the security forms to FBIHQ for processing. The appropriate checks should include field office indices, local law enforcement checks, and a review of computerized National Crime Information Center (NCIC) Wanted File records and Interstate Identification Index (III) criminal history checks. When conducting the III checks, both "QH" and "QR" checks should be conducted, if possible.

(b) The physician should be provided with a standard candidate interview consisting of a review of information provided by the individual on his/her appropriate background form to ensure the accuracy of the information. Issues of concern or security-related matters should be addressed, if identified. During the interview, the physician should be asked the question, "Have you ever had your medical privileges suspended or revoked?" The results of the candidate interview should be provided on an FD-302.

(c) The requesting field office will be responsible for assigning the 260 file number. Each physician should be assigned an individual file number.

(4) SUBMISSION OF THE REQUEST

Although the physicians will be processed under the 260 classification, the method of requesting the background investigation is different than outlined in Part I, Section 260, MIOG. Requests for conducting a BI on a contract physician shall be submitted using the Electronic Communication (EC) format marked to the attention of the I/FSU, NSD, Room 4362, and the HCPU, Personnel Division, Room 6344, each with leads "For appropriate action."

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 21

The same EC shall also set forth field office leads to verify the proposed physician's status with the American Medical Association (AMA) and State Licensing Bureau (SLB). Determine if the candidate physician is currently licensed to practice medicine, certified by the AMA, and if there have been any claims of malpractice filed against the physician. When obtaining this information, the following questions should be used:

QUESTIONS TO THE AMA:

"Is the candidate a person of good standing with the AMA?"

"Has the candidate ever had any medical claims against him/her?" If yes, what are they, when did they occur, and what was the outcome of the claim.

QUESTIONS FOR THE SLB:

"Does the candidate have a current license to practice medicine in this state?"

"Has the candidate ever had his/her license suspended or revoked?" If so, when and for what reason.

LEADS TO CONDUCT THE REMAINING INVESTIGATION SHOULD BE HELD IN ABEYANCE UNTIL FURTHER NOTICE FROM THE I/FSU.

For contractual reasons, the results of the above investigation shall be received at FBIHQ within ten working days from the date of the requesting EC. Copies of the investigative results should be directed to the attention of both the I/FSU and HCPU.

(5) CONDUCTING THE REMAINING INVESTIGATION

The I/FSU will adjudicate the results of all preliminary investigation to determine if the remaining BI should be initiated. If the remaining investigation is to be conducted, the I/FSU will promptly initiate the appropriate leads. At the same time, the EC setting forth the remaining investigation will advise the initiating division if the physician has been approved for access to FBI information or facilities pending completion of his/her BI. This office will be responsible for notifying the appropriate field office personnel of this information. Separate notification may also come from the HCPU.

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 22

(6) SUBMISSION OF FINAL BACKGROUND INVESTIGATION RESULTS

(a) Results of the additional BI conducted shall be provided only to the I/FSU, NSD. THE HCPU WILL RECEIVE ONLY THE RESULTS OF THE PRELIMINARY INVESTIGATION QUESTIONS.

(b) Upon review of the completed investigative results, the Security Programs Manager, NSD, will provide the final adjudication concerning the continual access of the physician to FBI information and facilities.

(7) SUBMISSION BY FBIHQ AND FBIHQ FACILITIES

(a) The medical staff assigned to Clarksburg, West Virginia, or Quantico, Virginia, will be responsible for conducting a preliminary review of the application to determine if all of the requested information has been provided. The HCPU will handle this function for FBIHQ.

(b) Once the BI questionnaires are determined to be acceptable, the medical staff or HCPU should contact the AMA and SLB to determine the answers to the questions previously set forth. Upon receipt of this information, the security forms should be furnished to the I/FSU, NSD, by an EC. The results of the questions should be provided. Requests from Clarksburg, West Virginia, and Quantico, Virginia, should send a copy of the requesting EC to the attention of the HCPU, Personnel Division, with the original coming to I/FSU, NSD.

(c) Following the adjudicative review of the initial background checks, the I/FSU will set forth instructions to the appropriate field office or Background Investigative Contract Services (BICS) territory to conduct the initial candidate interview, obtain the file number for each submission, and, when appropriate, initiate the BI, as outlined above.

(8) FBI FIELD OFFICE PROCESSING OF THE PHYSICIAN'S OFFICE STAFF

(a) Each member of the physician's office staff who will have access to the records and administrative information pertaining to FBI referrals will require a limited BI. Noting that these individuals will be responsible for the security of sensitive medical and related data pertaining to Bureau personnel and applicants (through the initial candidate interview, office security visit or other appropriate means), it will be the responsibility of the handling office to identify the applicable staff members. Each

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 23

individual will be required to complete Form FD-816, "Access of Non-FBI Personnel to FBI Facilities Background Data Information"; Form FD-484, "Privacy Act Acknowledgement"; and two FD-258 (blue) fingerprint cards. The field office shall conduct appropriate local record checks and submit the results to FBIHQ using the same procedures for processing escorted access requests as set forth in the MIOG, Part I, Section 260.

(b) Upon favorable adjudication of local record checks, the SAC of the requesting office may grant the equivalent of escorted access UACB. Requests which contain derogatory information which cannot be mitigated according to Bureau guidelines will be adjudicated on a case-by-case basis by the Security Programs Manager (SPM).

(9) FBIHQ AND FBIHQ FACILITIES - PROCESSING OF THE
PHYSICIAN'S OFFICE STAFF

The security forms outlined above will be required for FBIHQ facilities contracts as well. Once the forms are obtained, they should be forwarded to the I/FSU for processing.

EFFECTIVE: 11/12/96

260-5 | PERSONNEL CLEARANCE REINVESTIGATIONS 260E |

EFFECTIVE: 03/07/96

260-5.1 Personnel Clearance Reinvestigations - Annual
Reinvestigations of Contract Linguists (See MIOG, Part II,
17-2.)

All FBI Contract Linguists on-board in excess of one year will be subject annually to a personnel security interview (PSI) to determine their continued "trustworthiness" to NSI. The PSI will cover, but not be limited to, the following:

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 24

- (1) Changes in any information provided in the original application.
- (2) Foreign travel, if any, during the past year.
- (3) Contact, if any, with a foreign national not previously identified in the original SF-86.
- (4) Any other employment or source of income not reported to the FBI.

EFFECTIVE: 03/07/96

260-5.2 Personnel Clearance Reinvestigations - Contractors Other Than Contract Linguists (See MIOG, Part II, 17-2.)

All FBI contractor personnel possessing current and active security clearances five years old or more are to be reinvestigated to ensure trustworthiness for continued access to NSI.

(1) Individuals due for the five-year reinvestigation, both at the "Secret" and "Top Secret" levels, will be identified by FBIHQ. The reinvestigation will be initiated via communication from FBIHQ which will enclose the Standard Form 86 (SF-86) and set forth the required investigation.

(2) The reinvestigation for a "Secret" security clearance will include a candidate interview, a check of FBI indices (field and FBIHQ), automated data bases (FBIHQ), national agency checks (FBIHQ), local agency checks/arrest checks (field), and credit bureau checks (FBIHQ).

(3) The "Top Secret" reinvestigation will encompass the same areas as the "Secret" level and, in addition, will include verification of residence, interview of two neighbors, review of employment records, two employment references, and two character references developed by the investigator and not provided by the candidate.

(4) In all instances the investigation must be expanded to resolve any derogatory or adverse information. Newly listed information within the scope of the investigation, such as

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 260 - 25

education, recent divorce, roommate, part-time military service, and foreign travel must be addressed.

(5) Conduct investigation in accordance with the policy and procedures set out in MIOG, Part II, 17-6, entitled "Scope of Full Field Investigations."

EFFECTIVE: 03/07/96

||260-6| CHARACTER - INDUSTRIAL SECURITY PROGRAM - PERSONNEL
CLEARANCE; - FACILITY CLEARANCE; - NONCLASSIFIED
PERSONNEL/ACCESS; -|OTHER; PERSONNEL CLEARANCE
REINVESTIGATIONS (See MAOP, Part II, 3-1.1 & 3-1.2.)|

EFFECTIVE: 03/07/96

Sensitive
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FOIPA
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Section 552

Section 552a

(b)(1)

(b)(7)(A)

(d)(5)

(b)(2)

(b)(7)(B)

(j)(2)

(b)(3)

(b)(7)(C)

(k)(1)

(b)(7)(D)

(k)(2)

(b)(7)(E)

(k)(3)

(b)(7)(F)

(k)(4)

(b)(4)

(b)(8)

(k)(5)

(b)(5)

(b)(9)

(k)(6)

(b)(6)

(k)(7)

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 261 - 1

SECTION 261. SECURITY OFFICER MATTERS (SOM)

261-1 BACKGROUND AND PURPOSE (See MIOG, Part I, 67-18 (3),
259-2 (6), & 260-3.2(4); MAOP, Part I, 15-3.4(1).)

Each FBI Headquarters division and office, field office and Legal Attache will designate a Supervisory Special Agent (GM-14 or above) as the Security Countermeasures Program Manager (SCMPM). This individual is responsible for the management of all FBI Security Program activities, including specific Security Officer responsibilities in their division/office. A Security Officer and as many Alternate Security Officers as necessary should be employed to administer the Security Program. Wherever possible, Special Agents should be designated to serve as Security Officers and Alternate Security Officers. The Security Programs Manager (SPM), National Security Division, FBIHQ, should be kept advised of the identities of designees. To avoid potential conflicts of interest, the Employee Assistance Program (EAP) Coordinator (or counselor) or anyone administering the EAP should not also be assigned the responsibilities of SCMPM and/or Security Officer. (See FCI Manual, Part II, 1-1.)

EFFECTIVE: 11/15/93

261-2 PROGRAM FUNCTIONS (See MAOP, Part II, 3-1.1 & 3-1.2; and National Foreign Intelligence Program Manual (NFIPM), Part I, 8-1.1.)

Under the above caption, the functions of these programs are as follows:

(1) 261A - SOM - AUTOMATED DATA PROCESSING/
TELECOMMUNICATIONS SECURITY (ADP/T)

The ADP/T security will consist of those activities involved in the protection of information while being stored, processed, handled, or transmitted by ADP/T systems. The ADP/T security operates under the guidelines set forth in the FBI's Automated Data Processing and Telecommunications Security Policy, MIOG, Part II, Section 35. The responsibilities of the Security Officer are to ensure compliance with FBIHQ security policy for FBI

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 261 - 3

c. Private contractor personnel in connection with the Industrial Security Program.

d. If so designated, may conduct or participate in security debriefings of certain Bureau applicants who are the subjects of specific reviews or inquiries directed by the SPM or SPM's designee.

e. If so designated, other non-Bureau personnel, as circumstances may require.

5. Conduct periodic security awareness updates at scheduled SAC, support, and SA conferences, and on other occasions, as appropriate.

6. As designated, special individualized security awareness briefings or debriefings of current Bureau employees who are the subjects of specific reviews or inquiries directed by the SPM or SPM's designee.

7. Briefing FBI personnel involved in the management, operation, programming, maintenance, or use of FBI ADPT systems to make them aware of the threats to and vulnerabilities of those systems, and appropriate security countermeasures.

8. Under the Personnel Security Interview (PSI), the time expended on this interview is to be captured for TURK purposes under the FBI Security Program, entitled "Security Officer Matters," by utilization of classification 261B. Additionally, for TURK purposes a record of the interview is to be maintained in the field office in a control file under the 261B classification. (For complete details see MIOG, Part I, 67-7.9, 67-7.9.1, 67-7.9.2 & 67-7.9.2(11).)

(d) Each field office is to establish a control file under the 261B classification. A record of each briefing/debriefing conducted is to be maintained in this control file, in addition to a copy which is to be maintained in the individual substantive file to which the matter relates. The time expended on any of the above briefings/debriefings is to be captured for TURK purposes under the 261B classification. (See MIOG, Part I, 67-7.9.2 (11).)

(e) All specialized training on the topics of security awareness and Security Awareness Briefings provided to FBI employees shall be documented and placed on record in the security/investigative section of the employee's personnel file.

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 261 - 4

(3) 261C - SOM - INFORMATION SECURITY

The Executive Order 12958; Department of Justice Implementation Order 28; Code of Federal Regulations, Part 17; and Part II, Section 26, of this manual, set forth procedures for classifying and safeguarding NSI, and investigating security violations involving NSI. The activities of the Security Officer would be as follows:

(a) Ensure procedures are followed for the classification, storage, transmission and destruction of NSI. (See Part II, Section 26, of this manual.)

(b) Ensure procedures are followed in the conduct of a damage assessment concerning the loss or possible compromise of classified information. See Part II, Section 26-13.1, of this manual, and Memorandum to all SACs 22-85, dated July 23, 1985, entitled "Loss or Possible Compromise of Classified Information."

(c) Act as "Top Secret" and Sensitive Compartmented Information (SCI) Control Officer. See Part II, Sections 26-6 and 26-10, of this manual.

(d) Other activities expended on the protection of NSI are not specifically enumerated.

(4) 261D - SOM - PHYSICAL SECURITY

The goal of Physical Security is to help ensure the safety and integrity of Bureau facilities, information, and personnel through the use of physical barriers designed to prevent unauthorized access by any individual or group whose interests may be inimical to those of the Bureau or the United States. FBIHQ and field divisions should direct any inquiries to the Facility Security Unit, Security Countermeasures Section, National Security Division, FBIHQ.

(a) The General Services Administration (GSA) tests and provides the minimum standards for storage equipment used to protect classified materials and information. The Department of Justice (DOJ) provides implementing guidelines in Title 28, Code of Federal Regulations, Part 17, or in the form of Orders, Security Bulletins, or letters to the heads of agencies and bureaus. Guidelines for the protection of storage of classified materials and information are set forth in Part II, Section 26-5 of this manual.

Sensitive

Manual of Investigative Operations and Guidelines.
Part I

PAGE 261 - 5

(b) For the administrative responsibilities of a Security Officer with regard to the proper use and changing of lock combinations and the maintenance of lock combination records, refer to Part II, Sections 16-7.2.6(9) and 26-5.4, of this manual. (See National Foreign Intelligence Program Manual, Part I, 8-5.4.)

(c) Electronic Technicians have installation and maintenance responsibilities for Hirsch Access Control Systems.

(5) 261E - SOM - OPERATIONS SECURITY

Operations Security (OPSEC) is an analytical process which denies potential adversaries information concerning operations and intentions by identifying and protecting generally unclassified indications of sensitive operations and activities. Overall management of this program is the responsibility of the Security Programs Manager (SPM). Local management of OPSEC is the responsibility of the Security Countermeasures Program Manager (SCMPM) in each division or office. Inquiries should be directed to the Information Systems Security Unit, Security Countermeasures Section, National Security Division, FBIHQ.

(a) OPSEC addresses five areas:

1. Identification of critical information
2. Threat analysis
3. Vulnerability analysis
4. Risk assessment
5. Applicable countermeasures

(b) OPSEC should be actively practiced in all facets of FBI operations, programs, and administrative procedures.

(c) An OPSEC control file is to be established by each field and FBIHQ division and office, Legat, Regional Computer Center, and, as applicable, other off-site locations. Any time the OPSEC process is formally applied to any investigative or administrative matter, this fact is to be documented in the affected file, with a copy designated to the control file.

(6) 261F - SOM - EMERGENCY PLANS

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 261 - 6

Executive Order 12656, and various Department of Justice Orders direct the FBI to prepare Emergency Plans (EP) to protect life and property and to ensure the continuity of essential operations in any emergency. Overall management of EP activities is the responsibility of the Security Programs Manager. Local management of EP is the responsibility of the SAC and the Security Officer (SO) in each field and FBIHQ division. Inquiries should be directed to the Information Systems Security Unit, Security Countermeasures Section, National Security Division, FBIHQ.

(a) Emergency Plans address the following areas:

1. Preparation of an Occupant Emergency Plan (OEP) for FBI facilities to minimize risk to life and property during fire, bombing, earthquake, civil disturbance or other emergency. The OEP is a document that sets forth procedures and assigns responsibility for an orderly and systematic response to emergencies in order to protect people, property and information.

In buildings or facilities where the FBI is the prime tenant, the Senior Official in Charge (SOIC) of the FBI resident component, with the assistance of the Division Security Officer and the Collateral Duty Safety Officer, shall be responsible for development of the OEP. Where the FBI is not the prime tenant, the SOIC shall cooperate with the prime tenant to develop an OEP. If the prime tenant fails to develop an adequate OEP, the SOIC shall develop an independent plan to ensure the safety of FBI personnel and the protection of FBI property. The term "prime tenant" is defined as the organization with the largest number of employees in a building or facility.

The OEP shall include a written memorandum to occupants addressing evacuation procedures in the event of fire or other emergency. The plan shall also designate handicap, stairway and floor monitors, where necessary, to assist personnel during an evacuation. Additionally, procedures for the protection of classified and sensitive information during an evacuation should be incorporated into the OEP. To facilitate development of a plan, the NSD, SCMS, ISSU, has available a booklet titled "OCCUPANT EMERGENCY PROGRAM GUIDE," published by the General Services Administration. This booklet outlines a step-by-step approach to development of an OEP.

The OEP shall be reviewed annually and updated as necessary. Prime tenants should also conduct and document an annual evacuation drill. Whenever the FBI occupies a new or modified facility, an OEP shall be developed within 30 days of occupancy.

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 261 - 7

2. Preparation of tactical security plans for each FBI-controlled facility, whether covert or overt, to manage, contain, and neutralize hostile actions directed at or in those facilities. Plans shall document procedures, outline authorities, and assign responsibilities for an orderly and systematic response. Each facility housing more than 50 personnel shall have its own plan. At the discretion of the preparing office, multiple locations with less than 50 personnel each may be addressed in one plan or contained as an appendix to the headquarters city plan.

Where FBI employees are located in facilities not controlled by the FBI, every effort should be made to afford them the same protections they enjoy in FBI space. If security is deemed inadequate at these facilities, appropriate action should be taken to include removal of employees from the space.

Preparation of tactical security plans should be a cooperative effort between the SAC, the Security Officer, the SOIC of the facility, and the SWAT Team Leader. Additional guidance is available in the Manual of Investigative Operations and Guidelines (MIOG), Part II, 30-1, titled "Crisis Management Program," and FBIHQ airtel to all offices dated February 10, 1995, captioned "Physical Security; Tactical Plans for Field Office, Resident Agency, and Off-Site FBI Space," or from the SAC, Critical Incident Response Group (CIRG), Quantico. Plans shall be reviewed annually and updated as necessary.

3. Identification of critical FBI functions and the resources necessary to carry out those functions in time of emergency.

4. Identification of relocation sites, development and maintenance of plans to relocate critical functions to those sites in time of emergency. (Note that MIOG, Part II, 26-3.4, directs that the identity, location and other factors concerning FBI relocation sites be classified "Secret" until the activation of those sites during a national security emergency.)

5. Promotion of individual and family preparedness among FBI employees to ensure their safety, speedy recovery, and return to duty following an emergency. A variety of preparedness materials are available from local emergency management agencies, the Federal Emergency Management Agency (FEMA), and the NSD, SCMS, ISSU, FBIHQ.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 261 - 8

6. Cooperation with certain other government agencies, as directed by the SPM, in the development and maintenance of plans to ensure continuity of government in national security emergencies.

(7) 261G - SOM - ALL OTHER

This category will encompass the duties Security Officers perform which are not specifically addressed in A through F above.

The other classifications in the FBI Security Program are 67E, 259, and 260 and are explained in those sections of the MIOG, Part I.

EFFECTIVE: 09/09/97

261-3 CHARACTER - SECURITY OFFICER MATTERS

EFFECTIVE: 02/12/92

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 1

SECTION 262. OVERSEAS HOMICIDE/ATTEMPTED HOMICIDE -
INTERNATIONAL TERRORISM (OHAHT)

262-1 OVERSEAS HOMICIDE/ATTEMPTED HOMICIDE - INTERNATIONAL
TERRORISM

(1) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (ODSAA), Public Law 99-399, created Section 2331 in Title 18 of the United States Code (USC), entitled, "Terrorist Acts Abroad Against United States Nationals," which became effective August 27, 1986.

(2) This section makes it unlawful for any person to assault, attempt to kill or kill a United States national while that person is outside the United States or its territories. To enter into a conspiracy to commit an assault, attempt to kill or murder is also considered unlawful under this statute.

EFFECTIVE: 07/14/88

262-2 BACKGROUND

In an effort to protect United States nationals abroad from acts of terrorism, as part of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (ODSAA), Congress enacted a provision regarding assaults and murder of United States nationals. Prior to this legislation only Government officials and diplomatic persons were protected from such attacks under Federal law. These steps were taken as there are no international agreements to protect individuals from such attacks. An important feature of this statute is that before any prosecution of this offense is initiated it requires written certification from the Attorney General or the highest subordinate of the Attorney General with responsibility for criminal prosecutions to state that the offense committed was to coerce or influence a government or civilian population.

EFFECTIVE: 07/14/88

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 2

262-3 STATUTE, PENALTY AND DEFINITIONS

Title 18, USC, Section 2331, reads as follows:

"2331. Terrorist acts abroad against United States
nationals

"(a) HOMICIDE.-- Whoever kills a national of the United States, while such national is outside the United States, shall--

"(1) if the killing is a murder as defined in section 1111(a) of this title, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned;

"(2) if the killing is a voluntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than ten years, or both; and

"(3) if the killing is an involuntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than three years, or both.

"(b) ATTEMPT OR CONSPIRACY WITH RESPECT TO HOMICIDE.-- Whoever outside the United States attempts to kill, or engages in a conspiracy to kill, a national of the United States shall--

"(1) in the case of an attempt to commit a killing that is a murder as defined in this chapter, be fined under this title or imprisoned not more than 20 years, or both; and

"(2) in the case of a conspiracy by two or more persons to commit killing that is a murder as defined in section 1111(a) of this title, if one or more of such persons do any overt act to effect the object of the conspiracy, be fined under this title or imprisoned for any term of years or for life, or both so fined and so imprisoned.

"(c) OTHER CONDUCT.-- Whoever outside the United States engages in physical violence--

"(1) with intent to cause serious bodily injury to a national of the United States; or

"(2) with the result that serious bodily injury is caused to a national of the United States; shall be fined under this title or imprisoned not more than five years, or both.

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 3

"(d) DEFINITION.-- As used in this section the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

"(e) LIMITATION ON PROSECUTION.-- No prosecution for any offense described in this section shall be undertaken by the United States except on written certification of the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions that, in the judgment of the certifying official, such offense was intended to coerce, intimidate, or retaliate against a government or a civilian population."

As used in this section United States nationals are defined pursuant to Section 101(a)(22) of the Immigration and Nationality Act (codified at Title 8, USC, Section 1101(a)(22)) as set forth below:

"The Term 'national of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States."

EFFECTIVE: 07/14/88

262-3.1 Extension of Statute of Limitations for Certain Terrorism Offenses (Title 18, USC, Section 3286) (Also see MIOG Part II, 1-4.)

"Notwithstanding section 3282, no person shall be prosecuted, tried or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2331 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2340A (torture) of this title or section 46502, 46504, 46505 or 46506 of title 49, unless the indictment is found or the information is instituted within eight years after the offense was

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 4

committed."

(1) The above shall not apply to any offense committed MORE than five years prior to the date of the enactment of this act (September 13, 1994).

(2) For clarification regarding the statute of limitations pertaining to FBI counterterrorism extraterritorial investigations PRIOR to the passage of this legislation, the Department of Justice (DOJ) has advised the following:

(a) MURDER - The statute of limitations will expire EIGHT years from the occurrence of the offense in cases in which U.S. nationals were MURDERED abroad IF the murder occurred five years PRIOR to September 13, 1994 AND DOJ has determined that the specific case is a violation of Title 18, USC, Section 2331. There is NO statute of limitations in cases where a U.S. national was murdered abroad ON THE DATE OF THE PASSAGE OF THIS ACT (September 13, 1994).

(b) ATTEMPTED MURDER OR CONSPIRACY TO MURDER -- DOJ advised that the statute of limitations will expire FIVE years from the anniversary of the offense in cases of ATTEMPTED murder of a U.S. national outside the United States if the attempted murder occurred FIVE years prior to September 13, 1994.

EFFECTIVE: 11/24/95

262-4 ELEMENTS OF THE OFFENSE

(1) HOMICIDE.-- This provision of the statute makes it an offense to kill a United States national, while such is outside the territorial limits of the United States by means of murder, voluntary manslaughter or involuntary manslaughter. It is important to note the commission of the homicide must take place outside of the United States.

(a) MURDER for this section is defined as the unlawful killing of a human being with malice aforethought.

(b) VOLUNTARY MANSLAUGHTER for purposes of this section is defined as the unlawful killing of a human being without malice as the result of a sudden quarrel or heat of passion.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 5

(c) INVOLUNTARY MANSLAUGHTER for purposes of this section is defined as the unlawful killing of a human being without malice during the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

(2) ATTEMPT OR CONSPIRACY WITH RESPECT TO HOMICIDE.-- This provision makes it unlawful for any person outside the United States to attempt to kill or engage in a conspiracy to kill a United States National. Note here that it is the attempt or conspiracy which must take place outside of the United States irrespective of the location of the United States national at the time of the conspiracy. An attempt to kill ordinarily means a person has the intent to kill combined with an act which falls short of actually killing the person.

The conspiratorial aspect of this offense makes it unlawful for two or more persons outside the United States to conspire to commit a killing that is a murder, if one or more members of the conspiracy do any overt act to effect the objective of the conspiracy. It is the conspiracy which must take place outside the United States irrespective of the location at that time of the United States national.

(3) OTHER CONDUCT.-- The statute makes it unlawful for any person outside the United States to engage in any act of physical violence which is intended to cause or actually causes serious bodily injury to a United States national.

(4) LIMITATION ON PROSECUTION.-- Before any suspected violations of this section can be prosecuted, it is required that the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions certify in writing that in his judgment the violation of this statute was intended to coerce, intimidate, or retaliate against a government or a civilian population. Therefore, not only is the intent element necessary with respect to the type of offense committed, i.e., homicide or conspiracy, but an additional element of intent must be demonstrated, that is, it must be for the purpose to coerce, intimidate or retaliate against a government or civilian population. These actions are not restricted to the United States Government but to any government.

EFFECTIVE: 07/14/88

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 6

262-5 PENALTIES UNDER SECTION 2331

This statute prescribes the imposition of penalties for the various offenses contained therein as follows:

- (1) MURDER -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for any term of years or for life;
- (2) VOLUNTARY MANSLAUGHTER -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for not more than ten years;
- (3) INVOLUNTARY MANSLAUGHTER -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for not more than three years;
- (4) ATTEMPTED MURDER -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for not more than 20 years;
- (5) CONSPIRACY TO COMMIT MURDER -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for any term of years or for life;
- (6) SERIOUS BODILY INJURY -- to be fined in accordance with provisions of Title 18 of USC and/or imprisoned for not more than five years.

EFFECTIVE: 07/14/88

262-6 INVESTIGATIVE OBJECTIVES

An effective investigative activity must be taken in order to identify and eventually apprehend and prosecute the subject(s) involved.

EFFECTIVE: 07/14/88

262-7 REPORTING PROCEDURES

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 7

EFFECTIVE: 07/14/88

262-7.1 Initial Notifications

(1) Immediately advise FBIHQ, Counterterrorism Section, Criminal Investigative Division, by telephone, followed by teletype, of every preliminary inquiry and investigation instituted under the ODSAA of 1986.

(2) Those field offices and Legal Attaches deemed appropriate should be included as recipients of the initial teletype to FBIHQ.

EFFECTIVE: 07/14/88

262-7.2 Notification to FBIHQ regarding Final Outcome

(1) In order that the FBIHQ substantive case file may indicate the final outcome of each investigation of a possible violation, the following FBIHQ notification policy should be adhered to by the office of origin.

(2) In all cases, including those cases in which the United States Attorney declines or defers prosecution and those cases determined not to be a violation of OSDAA of 1986, a closing communication should be directed to FBIHQ clearly setting forth the basis for closing. Legal Attaches should report to FBIHQ information regarding prosecutions or declinations of these cases in foreign countries.

EFFECTIVE: 07/14/88

262-8 LIAISON AND COORDINATING RESPONSIBILITIES

EFFECTIVE: 07/14/88

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 8

262-8.1 Legal Attache Responsibilities

(1) Legal Attaches must establish close liaison with affected foreign law enforcement agencies, as well as appropriate U.S. Embassy personnel, to ensure that the FBI is apprised of any terrorist incidents which may fall under our investigative jurisdiction.

(2) Upon the receipt of information that a United States national(s) has been a victim of a homicide/attempted homicide outside United States territorial boundaries and this investigation could fall within the jurisdiction of the FBI under the ODSAA of 1986 (Title 18, USC, Section 2331), the Legal Attache should contact the foreign law enforcement agency handling the investigation and obtain all facts pertinent to the homicide/attempted homicide after coordinating with the appropriate embassy personnel. Particular attention should be paid to whether any demands have been made of the United States Government or any United States corporation.

(3) The Legal Attache should immediately advise the Counterterrorism Section, Criminal Investigative Division, FBIHQ, and the office of origin of an overseas homicide/attempted homicide situation. (See 262-9.)

(4) The Legal Attache, in consultation with FBIHQ and the United States Department of State (USDS), will ascertain if the case is of such magnitude as to warrant the deployment of Special Agent personnel from the office of origin to assist in conducting the investigation in concert with the appropriate foreign law enforcement agencies and whether the host country is in agreement and will allow such personnel in the country.

(5) In those cases where FBIHQ and USDS concur, the Legal Attache should provide an offer of FBI assistance, both investigative and technical, to the principal investigative law enforcement agency.

(6) The Legal Attache is to ensure that immediately after the host government has given permission for FBI investigative involvement that steps are taken to ensure protection of the crime scene and that appropriate FBI personnel (i.e., FBI forensic team, etc.) to the extent possible, are the first investigative group to have access to the crime scene before any other U.S. Government representatives. These procedures are necessary to avoid contamination of the crime scene by noninvestigative personnel.

(7) Because autopsy reports are an integral part of any prosecution, in the event a U.S. citizen is killed, the Legal Attache

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 9

is to initiate arrangements with the appropriate USDS representatives for transportation of the victim's body to the United States for autopsy.

(8) The Legal Attache should ensure, to the degree possible, that when investigations are conducted by foreign law enforcement personnel, copies of such investigations are made available to the FBI. In the event the host country does not intend to prosecute the perpetrators, the Legal Attache should, if possible, obtain any evidence available through the investigating foreign law enforcement agency or other authority. In the event foreign prosecution is conducted, the Legal Attache should follow the prosecution and attempt to secure trial transcripts.

(9) The Legal Attache, in consultation with the USDS, should obtain any objections to extradition to the United States should the host government indicate an unwillingness to prosecute identified subjects. This development, should it occur, must be immediately reported to FBIHQ.

EFFECTIVE: 01/18/91

262-8.2 | Office of Origin | Responsibilities

(1) Upon receipt of information from Legal Attache involving violations of aforementioned statute, the office of origin will immediately establish contact with Counterterrorism Section (CTS), Criminal Investigative Division (CID), FBIHQ.

(2) In cases where U.S. nationals have been murdered, the office of origin should obtain all background information regarding each victim and alert the appropriate FBI field office once an address is determined for the next of kin. (While the USDS has the responsibility for notifying the next of kin, a release in order to do the autopsy must be obtained from the next of kin.) The appropriate FBI field office, through contact with CTS, CID, FBIHQ, is to ensure the next of kin has been notified by USDS of circumstances surrounding death before attempting to obtain such release. If the next of kin refuses to authorize an autopsy, FBIHQ must be notified immediately. The field office is to exercise the utmost sensitivity in requesting an autopsy.

(3) The office of origin will furnish FBIHQ a summary of available facts concerning the incident as soon as possible to ensure

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 10

that appropriate coordination is made by FBIHQ with other affected agencies.

EFFECTIVE: 01/18/91

262-8.3 FBIHQ Responsibilities

(1) FBIHQ, will determine from DOJ whether the Attorney General has certified that the offense was intended to coerce, intimidate, or retaliate against a government or civilian population in accordance with ODSAA.

(2) Upon certification by the Attorney General, FBIHQ will ensure that the USDS is notified of the above and request that the appropriate U.S. Ambassador be advised of FBI jurisdiction and determine whether host country is willing to permit an FBI investigative team in the country.

(3) FBIHQ will consider activating the Strategic Information Operations Center (SIOC) and advise all field offices and Legats by teletype of the opening of the SIOC.

(4) FBIHQ will obtain background information from Legat concerned, set the number of FBI personnel who will participate in the debriefing of hostages, coordinate FBI Forensic Team responsibilities and ensure appropriate travel orders are issued.

(5) FBIHQ Laboratory Division will maintain a list of language proficient Special Agents/support personnel and will determine whether this terrorist event requires particular language skills, placing such personnel on standby for possible overseas travel. In addition, FBIHQ is to ensure that appropriate passports, visas, shots, etc., are ready so that deployment of such personnel can be done rapidly.

(6) In a case when property of a U.S. corporation is involved, FBIHQ will ensure, through appropriate FBI field offices, that the corporate owners of the property are to be personally notified of the incident relating to their property. Further, corporate officials will be advised that their cooperation in the investigation is expected.

(7) FBIHQ will contact Office of International Affairs (OIA), DOJ, in order to review the United States/country of incident

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 262 - 11

| extradition treaty. |

EFFECTIVE: 07/14/88

| 262-9 | OFFICE OF ORIGIN

Office of origin (OO) will be divided among the Washington Metropolitan Field Office (WMFO), the Honolulu Office and the Miami Office for all OHAHT investigations. WMFO will assume OO when the offense occurs in Europe, including Turkey, the Middle East, Africa or Canada. The Honolulu Office will assume OO when the offense occurs in Asia (excluding the Middle East) or Australia and Oceania. The Miami Office will assume OO when the offense occurs in North America (excluding Canada) or South America. |

EFFECTIVE: 01/18/91

| 262-10 | CHARACTER

The character of this violation is Overseas Homicide/Attempted Homicide - International Terrorism (OHAHT).

EFFECTIVE: 01/18/91

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 1

SECTION 263. OFFICE OF PROFESSIONAL RESPONSIBILITY MATTER

263-1 BACKGROUND (See MIOG, Part I, 62-1.5.)

(1) The Office of Professional Responsibility (OPR) was established in the Inspection Division in October, 1976, in order to bring about a greater awareness of professional responsibility throughout the FBI and to seek a more definitive and uniform policy in our administration of disciplinary personnel matters. OPR has three basic functions: (1) supervise and/or investigate all allegations of criminality and serious misconduct on the part of FBI employees; (2) maintain liaison with the Office of Professional Responsibility, Department of Justice (OPR/DOJ); and, (3) monitor disciplinary action taken concerning all employees of the FBI.

(2) It is OPR's goal to ensure that all such allegations against FBI employees are promptly, objectively, and thoroughly investigated and reported to the Personnel Division (PD) in a timely fashion for their consideration and appropriate action. The maintaining of the integrity of the FBI as an institution is paramount while conducting these mandated responsibilities. The rights of our employees, however, are to be similarly guarded.

EFFECTIVE: 04/21/94

263-2 NOTIFICATION OF FBIHQ UPON RECEIPT OF ALLEGATIONS OF
CRIMINALITY OR SERIOUS MISCONDUCT

(1) As is set forth in Part I, Section 13 of the Manual of Administrative Operations and Procedures (MAOP), all allegations of employee misconduct must be reported to the Administrative Summary Unit (ASU), PD. Allegations of criminality or serious misconduct, however, must be reported simultaneously to the FBI's OPR. OPR supervises and/or investigates all allegations of criminality or serious misconduct on the part of FBI employees. Judicial criticism of an Agent's conduct in findings of fact, opinions, or court orders, whether oral or written, is to be considered an allegation of serious misconduct and reported to OPR as set forth below.

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 2

(2) When an allegation is received concerning criminality or serious misconduct, the appropriate Assistant Director, SAC, or Legal Attache, must advise OPR of the allegation, preferably by telephone. OPR will, in turn, advise ASU/PD. A confirming airtel, with a copy designated for the ASU/PD, should be directed in a sealed envelope to FBIHQ, Attention: OPR. OPR will determine and advise who will conduct the investigation. In those matters involving nonserious misconduct or performance-related deficiencies, in all likelihood, the SAC will be advised to handle those matters directly with the ASU/PD. In most cases, the Assistant Directors, SACs, or Legal Attaches will personally conduct the necessary investigation of OPR matters under the supervision and monitoring of OPR. Representatives of OPR normally investigate only those allegations involving FBIHQ officials, SACs, ASACs, and Legal Attaches, and sometimes FBIHQ and Field Supervisors, or when circumstances of a particular matter dictate.

(3) Timeliness of reporting and resolution of OPR matters are extremely important. It is imperative that upon receipt of an allegation of criminality or serious misconduct against an FBI employee, that OPR be advised promptly in order that appropriate instructions may be given. There should be no delay in contacting OPR while attempting to "round out" an allegation of possible criminality or serious misconduct.

(4) If an allegation of misconduct within the responsibility of OPR arises out of a substantive case (pending or closed), the matter will be coordinated closely between OPR and the FBIHQ Division which has overall responsibility for the substantive matter. FBIHQ Divisions should immediately inform OPR of allegations of possible criminality or serious misconduct which come to their attention and forward that portion of the investigation to OPR for further processing. The allegations arising from a substantive case will be carried separately under the Office of Professional Responsibility Matter caption and handled as a separate "263" classification investigation so that the substantive investigation and/or prosecution is not hindered.

(5) The following is a list of items which for the most part are considered OPR matters. They are furnished for information and are not considered all inclusive. Any question of whether the matter should be handled by OPR should be resolved by contact with OPR:

Abuse of authority
Arrest by local authorities (or subject of investigation by local authorities)

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 3

Civil rights violations
Conflict of interest
Driving While Intoxicated (both Bureau cars and personally owned automobiles)
Failure to advise the Bureau of contacts with law enforcement agencies
False statements during applicant processing
Falsification of documents
False reporting
Franking privilege violations
Fraud Against the Government
Improper association/relationship with criminal element
Improper association with informants
Judicial criticism
Narcotics matters
Outside employment
Retaliation matters
Sexual offenses
Subject of a Federal criminal investigation
Theft
Unauthorized disclosure of information
Unauthorized use of a Bureau vehicle
Unauthorized passenger in a Bureau vehicle
Unprofessional conduct
Whistleblower matters

(6) Other infractions, such as lost badges or minor personal misconduct, will continue to be handled by the PD. These matters are well defined and should continue to be handled as in the past. Any question as to whether a matter is or is not within the responsibility of OPR must be referred to OPR for a determination in this regard.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 4

263-3 INVESTIGATION (See MAOP, Part I, 13-3.)

(1) Investigation necessary to develop complete, essential facts regarding any allegation against Bureau employees must be instituted promptly and every logical lead which will establish the true facts should be completely investigated unless such action might prejudice pending investigations or prosecutions, in which event FBIHQ will weigh the facts along with the recommendation of the Division Head.

(2) The record of the inquiry shall include the initial allegation; the investigative results; aggravating or mitigating circumstances; statement of specific charge(s); and the employee's answer(s) including defenses to the specific charge(s), if any.

(3) SACs should ensure the objectivity in personnel investigations conducted by field offices by not assigning supervisory personnel to them who have a direct working relationship with the employee(s) under investigation. OPR is likewise alert to this possible conflict of interest and will discuss this with the SACs when cases are initially reported to OPR.

(4) Requests to conduct audits of the computer systems activities of employees who are suspected of misconduct or improper performance of duty will be handled only with prior notification to FBIHQ. The term audit refers both to review and/or evaluation of prior transactions or activities of a user and procedures designed to monitor the ongoing activities of a user. The proper form for such a request is a formal written communication to FBIHQ with a request directed to the Information Resources Division's (IRD), Investigative Automation Support Section (IASS), to conduct the audit. In exigent circumstances, which dictate the need for immediate institution of an audit, requests may be made telephonically to OPR and subsequently confirmed in writing. In instances where telephonic requests are authorized, the level of authority is at the ASAC level or above in the field offices and at the Section Chief level or above at FBIHQ, with the exception of requests emanating from OPR. Telephonic requests for user activities audits made by OPR will be authorized at the Supervisory Special Agent level. (See MAOP, Part I, 13-3 (3).)

(5) Approval to conduct the audits will be made at the Section Chief level in IASS, based on the technical feasibility and resource constraints. If the audit cannot be conducted or if additional information is needed to formulate the audit, IASS will contact the requestor. The results of each audit conducted will be

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 5

reported on an FD-302 and disseminated to OPR and the requestor, should it be different from OPR. The original FD-302 will be forwarded to the office of origin. In those instances where exigent circumstances dictate that the results of the audit be telephonically disseminated, the results will be disseminated by IRD to OPR and to the requestor, should it be different from OPR, and the telephonic response subsequently confirmed in writing to OPR and the requestor. (See MAOP, Part I, 13-3 (4).)

EFFECTIVE: 06/01/94

263-4 INTERVIEWS OF EMPLOYEES

(1) Interviews of employees involved in allegations of criminality or serious misconduct should be conducted at the earliest logical time and in a forthright manner following coordination with OPR. There should be no evasiveness on the part of the Bureau official conducting the interview.

(2) The employee should be fully and specifically advised of the allegations which have been made against him/her in order that he/she may have an opportunity to fully answer and respond to them. The employee must be entirely frank and cooperative in answering inquiries of an administrative nature. If allegations are possibly criminal in nature, the employee has the right to seek counsel in the same vein as any other individual.

(3) Such interviews must be complete and thorough with all pertinent information obtained and recorded so that all phases of the allegations may be resolved. The interviews must not be unduly protracted and should be held to a reasonable length by proper preparation and recognition of the purpose of the interviews.

(4) The inquiry shall not be complete until the specific allegations which may justify disciplinary action are made known to the employee who may be disciplined and the employee is afforded reasonable time to answer the specific allegations. The employee's answers, explanations, defenses, etc., should be recorded in the form of a signed, sworn statement which should specifically include the allegations made against the employee in an introductory paragraph. The statement is to be prepared following an in-depth interview under oath of the employee by the Division Head or designated supervisory representative. The employee is not merely to be asked to give a

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 6

written response to the allegations, but is to be interviewed in an interrogatory fashion, and a signed, sworn statement prepared from the results by the interviewing official. Since the statement represents that which the employee is willing to sign and swear to, he/she retains the right to make corrections or changes before doing so. If those changes or corrections differ materially from what the employee stated during the interview, that fact and the nature of the statements should be separately recorded. The employee should be sworn prior to the interview in order that the information furnished during the interview will have been under oath. Should there be any question on the part of the interviewing official as to whether a particular allegation (set of facts) might justify disciplinary action, he/she should contact OPR in order to resolve this prior to the interview so the employee will be ensured of an opportunity to appropriately respond.

(5) The results of interviews of nonsubject, "witness" FBI employees in OPR matters should also be recorded in the form of signed, sworn statements. If there is some reason for not doing so, this should be coordinated with OPR/Inspection Division.

(6) When interviewing employees during administrative inquiries to solicit information about themselves or about their own activities, the employee should be provided the Privacy Act notice described in MIOG, Part I, 190-5(2), explaining the purpose of the inquiry and how the information will be used.

(7) When interviewing employees, or others, to solicit information about the subject of an administrative inquiry, the person interviewed as a source should be provided, if appropriate and necessary, the opportunity to request an express promise of confidentiality, as described in MIOG, Part I, 190-7, and SAC Memorandum 51-77(C), dated 11/15/77, in order to protect the source's identity should the subject of the inquiry submit a Privacy Act request for access to records of the inquiry. The source should be cautioned that if a formal adverse personnel action is taken against the subject of the inquiry pursuant to Chapter 75 of the Civil Service Reform Act, the information furnished, along with the source's identity, must, by law, be provided to the subject, if any information provided in that statement is used in whole or in part to support that personnel action. In addition, pursuant to certain administrative inquiries and possible judicial proceedings, it may be necessary to furnish the source's identity if any information provided in the source's statement is used in whole or in part to support a personnel action. The principles discussed in 263-5, infra, are also applicable to an interview of an employee regarding the actions of others, to the

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 7

extent such answers might reveal criminal misconduct on the part of the employee being interviewed.

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263-5 ADMINISTRATIVE OR CRIMINAL PROCEEDINGS - USE OF INTERVIEW
FORMS (See MIOG, Part I, 263-4 (7); MAOP, Part I, 13-6.)

(1) Prior to the interview of an employee against whom allegations of criminal misconduct have been leveled, a decision must be made as to whether the goal of the interview is to obtain a statement admissible in subsequent criminal proceedings or whether the goal is to compel the employee to make a full statement of the facts in order to ascertain what administrative action, if any, is appropriate. This decision is to be made by OPR in coordination with the OPR, DOJ.

(2) To ensure that employees being interviewed are fully and consistently aware of their rights and obligations, two forms have been adopted for use in such interviews. The Office of Professional Responsibility, DOJ, has endorsed the use of these forms. These forms are only to be utilized during OFFICIAL inquiries and only when authorized by OPR.

(3) Neither of these two forms (FD-644 nor FD-645) which are described below are to be routinely used during the investigation of a shooting incident. They will be used only in those shooting inquiries when instructed to do so by FBIHQ as set forth in MIOG, Part II, Section 12-11.7.

The decision as to which form will be used in a particular inquiry will be made by OPR, FBIHQ, on a case-by-case basis, in accordance with the principles set forth below. For your information, there are certain prosecutive guidelines which have been agreed to by OPR, DOJ. The factual situation of any particular allegation will be considered by OPR in line with those prosecutive guidelines.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 8

263-5.1 Criminal Proceeding Contemplated or Possible

(1) Form FD-644 captioned "Warning and Assurance to Employee Requested to Provide Information on a Voluntary Basis," is to be utilized in situations where an employee is provided an opportunity to voluntarily respond to questions concerning allegations of job-related misconduct which have the potential for criminal prosecution, but wherein the employee is not being compelled to answer questions or provide a statement. Use of this form should assure that any statements obtained will be freely and voluntarily given and, hence, admissible in any future criminal proceeding.

(2) Full Miranda warnings will be given to employees only in situations where the employee to be interviewed is in custody or is significantly deprived of his/her freedom of action, an arrest is clearly intended at the conclusion of the interview, or whether in custody or not, the employee being interviewed has previously been arrested or formally charged and prosecution is pending on a Federal offense and the questioning concerns that offense or a related Federal offense.

(3) Whenever Form FD-644 is utilized, an interview log should be prepared in accordance with the Legal Handbook for Special Agents, Section 7-9.

EFFECTIVE: 10/18/88

263-5.2 Inquiry Solely for Administrative Purposes

(1) In a situation where the allegation, if true, has the potential for criminal prosecution, but a decision has been made not to seek an admissible statement (but rather, to compel the employee to fully and candidly answer all questions concerning the alleged incident), Form FD-645, captioned "Warning and Assurance to Employee Required to Provide Information," should be used. However, prior to the use of this form in any instance where the allegation, if true, would have potential for Federal criminal prosecution of the employee to be interviewed, OPR/Inspection Division must present the facts of the case to OPR/DOJ and obtain an initial opinion that the matter in question should be handled administratively rather than criminally. This is necessary because any incriminating statement obtained after use of Form FD-645 will not be admissible in a criminal prosecution of the employee.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 9

(2) In a situation where the allegation, if true, has potential for non-Federal prosecution, and a decision has been made by FBIHQ to compel full answers from the employee regarding the matter under investigation, Form FD-645 should be used.

(3) In all other instances where an employee is being interviewed in connection with an official administrative inquiry, Form FD-645 should be used.

(4) There is no Sixth Amendment right to counsel in purely administrative interviews. Therefore, even if the employee specifically requests to have an attorney present during the course of the interview, the Bureau is not legally obliged to agree to this condition. Any administrative decision to allow the presence of counsel during an administrative interview is to be made by OPR, FBIHQ.

(5) An interview log is not required when Form FD-645 is utilized. Those conducting such administrative interviews of employees should be alert, however, to circumstances where good judgment might warrant preparation of an interview log; for example, in those interviews of a particularly sensitive nature or in those concerning serious misconduct involving veterans which may ultimately be heard before a Merit Systems Protection Board.

EFFECTIVE: 10/18/88

263-6 POLYGRAPH EXAMINATIONS OF BUREAU EMPLOYEES (See MAOP, Part I, 13-4.1.)

(1) All polygraph examinations of FBI employees and those who have made allegations against FBI employees must be approved by the Assistant Director, Inspection Division, or another person designated by the Director. In the case of polygraph examinations requested pursuant to a security clearance adjudication, the Director has delegated approval authority to the Assistant Director, National Security Division.

(2) Polygraph examinations of employees will be administered away from their own office of assignment. This procedure will help protect the confidentiality of the investigation/inquiry and lessen the outside pressure on the employee which could be associated with an examination conducted with knowledge of an employee's friends

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 10

and associates.

(3) Polygraph examinations of Bureau employees are to be administered by an FBIHQ examiner. In the event an FBIHQ examiner is not available, the examination will be conducted by an examiner designated by the Polygraph Unit, FBIHQ.

See MIOG, Part II, 13-22.13.1, 13-22.13.2, 13-22.13.3, and 13-22.14 for additional instructions and information regarding polygraph examinations of employees who are subjects of a criminal investigation or administrative inquiry.

EFFECTIVE: 07/19/95

263-7 REPORTING | (See MAOP, Part I, 13-7 & II, 2-3.3 (1).) |

(1) In most instances, after OPR has been initially notified of the allegation, it will be satisfactory for the responsible division head to report the facts pertaining to the serious misconduct or criminality by airtel setting forth a concise statement of the situation together with supporting documentation and statements. In all cases, whether or not it is believed administrative action is necessary, a statement that administrative action is, or is not, recommended must be made.

(2) These cases should not be opened in the Field Office Information Management System (FOIMS) prior to obtaining Bureau approval to open the investigation. A separate file should be opened and indexed under a "263" classification for each OPR investigation and the file should be maintained in the SAC's safe. This file number should be included on all communications between field offices and OPR. Such communications, when directed to the SAC, should be to his/her personal attention and should be enclosed in sealed envelopes when submitted to FBIHQ, Attention: OPR. Proper names of individuals in OPR cases should not be entered in the title field in the case management system of FOIMS. The title field should contain the words "SEE SAC" only. The Index Driven Case Title (IDCT) software will automatically insert the words "SEE SAC" during the data input of the index record. Keystroking the letter "S" in the "Special" field on the index record will generate "SEE SAC" on the first line of the title in the case application. (It should be noted that the file number will not be displayed in the general indices of the field

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 11

office. OPR cases are to be opened in FOIMS as auxiliary office (AO) cases utilizing the FBIHQ file number as the Universal Case File Number. These cases should be opened with a pending status, not as "DEAD" or "ADM" status. Upon completion of the investigation, the status should be modified to RUC.

(3) Copies of the allegations and subsequent investigation should not be placed in the employee's field office or FBIHQ personnel file. Only if some form of administrative action is taken will there be any need to address the allegation in the employee's personnel file. This is satisfactorily handled by a designated copy of the approved justification memorandum and/or addendum(s) being placed in the employee's personnel file at FBIHQ as well as copies of the outgoing communication to the employee being placed in both the field office and FBIHQ personnel files.

(4) OPR will advise SACs and Assistant Directors when the results of OPR investigations have been reviewed by OPR and referred to ASU/PD for appropriate action.

EFFECTIVE: 04/21/94

263-7.1 Investigative Reports

(1) The results of most OPR investigations may be submitted by cover airtel to OPR. In those matters, however, involving more complicated situations or matters involving criminality which may need to be discussed further with the Department of Justice, they should be submitted to FBIHQ by investigative report which should be thorough, precise, and to the point. Any question concerning whether or not to submit an investigative report should be resolved by consulting with OPR.

(2) Synopses of OPR matter investigative reports should be complete to include all allegations, the results of the investigation, and the subject employee's responses to these allegations. Consideration should be given to including a table of contents in these investigative reports.

(3) Three copies of the investigative report (four copies if the matter involves a substantive case) should be submitted by cover airtel in a sealed envelope to FBIHQ, Attention: OPR/Inspection Division. The cover airtel should contain the SAC's observations and

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 12

comments, mitigating or aggravating circumstances, as well as the SAC's recommendations for administrative action.

(4) FBIHQ is the office of origin in OPR matter investigations. Upon completion of an investigation, originals of signed, sworn statements, Forms FD-644 and FD-645, etc., should be furnished to OPR.

EFFECTIVE: 04/19/91

263-8 CIVIL RIGHTS ALLEGATIONS AGAINST FBI PERSONNEL

Upon receipt of a complaint involving civil rights allegations against FBI personnel, the following procedures are to be followed:

(1) Advise the Civil Rights Unit (CRU), CID, and OPR by telephone followed by appropriate communications so that FBIHQ may furnish appropriate guidance. The CRU will coordinate with OPR and other FBIHQ components and advise the SAC concerning the proper handling of the matter.

(2) If a civil rights complaint arises during an administrative inquiry, the pertinent administrative inquiry relating only to the civil rights allegation must stop in order to resolve any criminal violations. That portion of the administrative inquiry may not resume until authorized by FBIHQ.

(3) OPR and CRU/CID will coordinate the presentation of the facts of the allegation to OPR/DOJ and the Civil Rights Division (CRD), DOJ, to determine if a criminal investigation is warranted. If no criminal investigation is warranted, the matter will be administratively handled by OPR. If the CRD/DOJ requests a criminal civil rights investigation, the CRU/CID will advise the SAC to initiate an investigation which should be reported to FBIHQ pursuant to Part I, Section 282-3.1 of the MIOG, unless advised to the contrary by FBIHQ.

EFFECTIVE: 01/31/94

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 263 - 13

263-9

DEPARTMENT OF JUSTICE OFFICE OF PROFESSIONAL
RESPONSIBILITY

See MAOP, Part I, Section 1-23.

EFFECTIVE: 09/20/89

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 1

SECTION 264. COMPUTER FRAUD AND ABUSE

264-1 BACKGROUND

(1) On October 12, 1984, the President signed into law the "Comprehensive Crime Control Act of 1984." Included in the passage of this Act was "Fraud and Related Activity in Connection with Computers," Title 18, USC, Section 1030. The creation of this statute was an attempt by Congress to address unauthorized access or use of computers. Jurisdiction for investigating violations of this statute has been governed by Memoranda of Understanding (MOU) between the Department of the Treasury and the Department of Justice. An MOU dated August 23, 1989, supersedes an MOU dated August 29, 1985, and outlines the jurisdiction of the FBI and the U.S. Secret Service (USSS) in these matters.

(2) On October 16, 1986, the "Computer Fraud and Abuse Act of 1986" (Public Law 99-474) and on October 21, 1986, the "Electronic Communications Privacy Act of 1986" (Public Law 99-508) were signed into law by the President. The Computer Fraud and Abuse Act of 1986 expanded Title 18, USC, Section 1030, unauthorized access or use of "Federal interest" computers (with intent to harm the U.S. Government, by obtaining classified or private financial information; modifying, destroying, or disclosing information; preventing use of the computer by others; and affecting computer operations), by adding fraudulent access to obtain property of value, trafficking in passwords with intent to defraud, and damage to certain stored information. Jurisdiction for investigating these violations is set out in the 8/23/89 MOU (see 264-3).

(3) Congress also enhanced individual and corporate protection against computer crime by enacting the Electronic Communications Privacy Act of 1986. Title II of this act amended Title 18 of the USC by adding Section 2701. This statute makes it a Federal offense to, without authorization, access or disclose the contents of a "stored electronic communication."

(4) On October 1, 1990, the Economic Crimes Subprogram (ECS) of the White Collar Crimes (WCC) Program was formed to address all economic crimes except financial institution fraud. Computer Fraud and Abuse (CFA) matters are within the ECS and are managed at FBIHQ by the Economics Crime Unit (ECU), White Collar Crimes Section (WCCS), Criminal Investigative Division (CID).

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 2

EFFECTIVE: 12/10/91

||264-2 |STATUTES, PENALTIES AND DEFINITIONS|

EFFECTIVE: 12/10/91

|264-2.1 |Section 1030. Fraud and Related Activity in Connection
with Computers|

| (1) | Whoever knowingly accesses a computer without authorization or exceeds authorized access, and by means of such conduct obtains information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954, with the intent or reason to believe that such information so obtained is to be used to the injury of the United States, or to the advantage of any foreign nation.

| The punishment for an offense of this section is a fine or imprisonment for not more than ten years, or both, for the first offense under this section. The punishment for multiple offenses of this section is a fine or punishment for not more than 20 years, or both. |

| (2) | Whoever intentionally accesses a computer without authorization, or exceeds authorized access, and thereby obtains information contained in a financial record of a financial institution, or card issuer as defined in section 1602 (n) of Title 15, or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (Title 15, USC, Section 1681, et seq.).

| The punishment for an offense of this section is a fine or imprisonment for not more than one year, or both, for the first offense or attempted offense under this section. The punishment for multiple offenses of this section is a fine or imprisonment for not more than ten years, or both. |

| (3) | Whoever intentionally, without authorization to

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 3

access any computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer.

The punishment for an offense of this section is a fine or imprisonment for not more than one year, or both, for the first offense or attempted offense under this section. The punishment for multiple offenses of this section is a fine or imprisonment for not more than ten years, or both.

(4) Whoever knowingly and with intent to defraud, accesses a Federal Interest computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer.

The punishment for an offense of this section is a fine or imprisonment for not more than five years, or both, for the first offense or attempted offense under this section. The punishment for multiple offenses of this section is a fine or imprisonment for not more than ten years, or both.

(5) Whoever intentionally accesses a Federal Interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal Interest computer, or prevents authorized use of any such computer or information, and thereby-

(a) causes loss to one or more others of a value aggregating \$1,000 or more during any one-year period; or

(b) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals.

The punishment for an offense of this section is a fine or imprisonment for not more than five years, or both, for the first offense or attempted offense under this section. The punishment for multiple offenses of this section is a fine or imprisonment for not more than ten years, or both.

(6) Whoever knowingly and with intent to defraud traffics (as defined in Section 1029) in any password or similar information

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 4

through which a computer may be accessed without authorization, if-

| (a) | such trafficking affects interstate or foreign
commerce; or

| (b) | such computer is used by or for the Government
of the United States.

| The punishment for an offense of this section is a fine or
imprisonment for not more than one year, or both, for the first
offense or attempted offense under this section. The punishment for
multiple offenses of this section is a fine or imprisonment for not
more than ten years, or both. |

EFFECTIVE: 12/10/91

| 264-2.2 | Definitions | as used in Section 1030 |

| (1) | The term "access" refers to storing data on and
retrieving data from a disk or other peripheral device. |

| (2) | The term "computer" means an electronic, magnetic,
optical, electrochemical, or other high-speed data processing device
performing logical, arithmetic, or storage functions, and includes any
data storage facility or communications facility directly related to
or operating in conjunction with such device, but such term does not
include an automated typewriter or typesetter, a portable hand-held
calculator, or other similar device.

| (3) | The term "Federal interest computer" means a
computer-

| (a) | exclusively for the use of a financial
institution or the United States Government, or, in the case of a
computer not exclusively for such use, used by or for a financial
institution or the United States Government and the conduct
constituting the offense affects the use of the financial
institution's operation or the Government's operation of such
computer; or

| (b) | which is one of two or more computers used in
committing the offense, not all of which are located in the same
State.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 5

| (4) | The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

| (5) | The term "financial institution" means-

| (a) | an institution with deposits insured by the Federal Deposit Insurance Corporation;

| (b) | the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

| (c) | a credit union with accounts insured by the National Credit Union Administration;

| (d) | a member of the Federal home loan bank system and any home loan bank;

| (e) | any institution of the Farm Credit System under the Farm Credit Act of 1971;

| (f) | a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934; and

| (g) | the Securities Investor Protection Corporation.

| (6) | The term "financial record" means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution.

| (7) | The term "exceeds authorized access" means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled so to obtain or alter.

| (8) | The term "department of the United States" means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.

EFFECTIVE: 12/10/91

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 6

| 264-2.3 Section 2701. | Unlawful Access to Stored Communications

| (1) Whoever intentionally accesses, without authorization, a facility through which an electronic communication is provided.

The punishment for an offense of this section is a fine of not more than \$250,000 or imprisonment for not more than one year, or both in the case of a first offense under this subparagraph. The punishment for subsequent offenses of this section is a fine or imprisonment for not more than two years, or both.

| (2) Whoever intentionally exceeds an authorization to access that facility, and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system.

The punishment for an offense of this section is a fine of not more than \$5,000 or imprisonment for not more than six months, or both, in any other cases.

| (3) This section does not apply with respect to conduct authorized-

(a) by the person or entity providing a wire or electronic communications service;

(b) by a user of that service with respect to a communication of, or intended for, that user; or

(c) in section 2703 (Requests for Governmental Access), 2704 (Backup Presentation), or 2518 (Procedure for Interception of Electronic Communications) of Title 18.

EFFECTIVE: 12/10/91

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 7

264-2.4 Definitions for Section 2701 are found in Title 18, USC,
Section 2510 (See MIOG, Part I, 139-1.1.)

(1) "Electronic communication" means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include--

(a) any wire or oral communication;

(b) any communication made through a tone-only paging device;

(c) any communication from a tracking device (as defined in section 3117 of Title 18);

(2) "User" means any person or entity who--

(a) uses an electronic communication service; and

(b) is duly authorized by the provider of such service to engage in such use;

(3) "Electronic communication system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

(4) "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications;

(5) "Electronic storage" means--

(a) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(b) any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 8

EFFECTIVE: 12/21/94

264-2.5 Other Statutes which may be used in CFA investigations

EFFECTIVE: 12/10/91

264-2.5.1 Title 18, USC, Section 641 (Theft of Government Property)

This statute covers the theft of any record, voucher money, or thing of value of the United States. This statute has been used to prosecute Government officials, who use their position to obtain computerized information to sell.

"Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, ... or

"Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted...shall be fined not more than \$10,000 or imprisoned not more than ten years, or both...." (See MIOG, Part I, Section 52.)

EFFECTIVE: 12/10/91

264-2.5.2 Title 18, USC, Sections 793, 794 and 798 (Espionage)

(1) These statutes deal with gathering, transmitting, or losing defense information for the purpose of injuring the United States or helping any foreign nation. These statutes also deal with delivering defense information to aid foreign government and disclosure of classified information.

(2) Violators of these statutes should be fined not more than \$10,000 or imprisoned not more than ten years, or both. (See FCI Manual, Part I, Section 65.)

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 9

EFFECTIVE: 12/10/91

264-2.5.3 Title 18, USC, Section 1343 (Wire Fraud) and Section 1341
(Mail Fraud)

The wire fraud statute and mail fraud statute have occasionally been used to prosecute computer criminals. To establish a violation of the wire fraud statute, the Government has to establish three elements beyond a reasonable doubt: i.e., a defendant (1) devised a scheme to defraud either the various networks or the computers on those networks, (2) intended to obtain money or property from them by false pretenses, representations, or promises; and, (3) that to execute the scheme, the defendant used or caused the use of interstate or international wire communication facilities in furtherance of the scheme. In the case of the mail fraud statute, the Government would have to show elements (1) and (2) and the use of the U.S. Postal Service in furtherance of the scheme.

The punishment for offenses under the fraud by wire and mail fraud statutes are a fine of not more than \$1,000 or imprisonment not more than five years, or both. (See MIOG, Part I, Section 196 and MIOG, Part I, Section 36, respectively.)

EFFECTIVE: 12/10/91

264-2.5.4 Title 18, USC, Section 1362 (Malicious Mischief)

This statute punishes the willful interference with military communications systems.

The punishment for an offense of this statute is a fine of not more than \$10,000 or imprisonment not more than ten years, or both.

EFFECTIVE: 12/10/91

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 10

264-2.5.5 Title 18, USC, Section 2314 (Interstate Transportation of Stolen Property)

This statute has been used with varying success to prosecute computer criminals. The Government has to show the interstate transportation of stolen property with a value in excess of \$5,000.

The punishment for an offense of this statute is a fine of not more than \$10,000 or imprisonment not more than ten years, or both. (See MIOG, Part I, Section 87.)

EFFECTIVE: 12/10/91

264-2.5.6 Title 17, USC, Section 506; Title 18, Sections 2318 and 2319 (Copyright Matters)

Generally, investigations in all copyright cases should be directed toward locating and identifying the producers, principal distributors, and publishers of unauthorized duplications of copyright products in order to eliminate the source of illicit productions.

The punishment for violations of these statutes is a maximum penalty of \$250,000 and/or five years' imprisonment. (See MIOG, Part I, Section 28.)

EFFECTIVE: 12/10/91

264-2.5.7 State and Local Legislation as an Additional Tool

A number of the states in the United States have enacted specific legislation to address computer crimes. These violations should not be overlooked when investigating computer crimes.

EFFECTIVE: 12/10/91

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 11

| 264-3 | JURISDICTION

| (1) | Title 18, USC, Section 1030(d) provides: "The United States Secret Service (USSS) shall, in addition to any other agency having such authority, have the authority to investigate offenses under this Section. Such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General."

On August 23, 1989, an amended agreement was entered into and it provides the following:

"4.a. The FBI shall have primary jurisdiction:

"(1) For matters which have traditionally been within its authority. These areas include such matters as organized crime, terrorism, and foreign counterintelligence.

"(2) For violations of Title 18, U.S. Code, Section 1030(a)(1) and (a)(3) which address the unauthorized access of computers used in national defense, foreign relations or any restricted data which may be used to the injury of the United States. However, when allegations involve unauthorized access of the White House complex computer systems or attempts at unauthorized access the USSS will maintain a presence and assist in the investigation.

"(3) For those criminal acts using a Federal-interest computer (as defined in Title 18, U.S. Code, Section 1030(e)(2)), that may be construed as violations of the Bank Fraud and Embezzlement, Fraud by Wire, or Bank Bribery Statutes where the FBI has traditionally had jurisdiction. The term bank is defined in various statutes as it relates to the specific offense (e.g., Title 18, U.S. Code, Sections 215, 1344, and 2113).

"(4) Except as noted in 4.b.(2) below, when a significant fraud against the Government has been committed by an employee of any Government agency. This is a matter that falls within the substantive jurisdiction of the FBI (Title 28, Section 535, U.S. Code), and has been articulated in Memoranda of Understanding between the FBI and Inspectors General of various agencies.

"b. The USSS shall have primary jurisdiction:

"(1) Except as noted in 4.a. (1), (2), (3), (4) above, for violations as outlined in Title 18, Section 1030 (a) (2),

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 12

occurring in a consumer reporting agency, as defined in the Fair Credit Reporting Act of 1978 (Title 15, Section 1681, U.S. Code), or a card issuer as defined in Title 15, Section 1602, U.S. Code, and as outlined in Title 18, Sections 1030(a)(3) and (a)(6), U.S. Code.

"(2) When the computer systems of the U.S. Treasury Department are the direct object of the violation and the allegations do not meet the criteria for referral to the Department of Justice set forth in the purpose section of this memorandum.

"c. The FBI and the USSS shall have concurrent jurisdiction:

"(1) Except as noted in 4.a. (1), (2), (3), (4) above, for fraudulent schemes as outlined in Title 18, Sections 1030 (a) (2), (a) (4), and (a) (5), U.S. Code, when such violations are perpetrated against a computer system of a financial institution as defined in Title 18, Sections 1030 (e) (4) (G) and (e) (4) (H).

"(2) Except as noted in 4.a. (1), (2), (3), (4) and 4.b. (1) and (2), above for violations as outlined in Title 18, U.S. Code, Section 1030 (a) (4), and (a) (5) when such violations involve other Federal-Interest computers. (as defined in Title 18, U.S. Code, Section 1030 (e) (2) (B))."

|(2) Title 18, USC, Section 2701, provides that the Federal Bureau of Investigation shall have investigative authority for any violations of this statute. |

EFFECTIVE: 12/10/91

||264-4| POLICY

EFFECTIVE: 12/10/91

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 13

||264-4.1| Investigative Policy

|(1)| Based on the legislative history and the apparent intent of Congress to address instances of computer trespass, fraud and malicious damage, the FBI's primary investigative role will be those cases which have traditionally formed the basis for our investigative authority and wherein the criminal activity is sizeable and/or widespread. Matters involving national security, crimes directed at financial institutions, United States Government computers, Federal Interest computers, and interstate frauds or malicious damage will be the primary thrust of FBI investigations. Other matters within the statute, but not covered above, may be referred to the USSS or any law enforcement agency of a state, or political subdivision thereof having jurisdiction.

|(2)| FBIHQ should be promptly notified, by telephone and/or teletype, of the initiation of major or otherwise significant CFA cases which may prompt news media (or other) inquiries to be directed to FBIHQ.

|(3)| Because of the broad scope of computer-related cases, the FBI is able to apply the substantive violations to the appropriate investigative situation. In instances where the primary direction of work pertains to violations other than CFA, field offices are directed to use the appropriate classification for those violations. The use of other statutes, in addition to CFA statutes, would create a more expansive and effective attack against violators of statutes. The use of other classifications in these situations will more appropriately identify the investigative program within which these individual cases will be managed.

EFFECTIVE: 12/10/91

||264-4.2| Prosecutive Policy

EFFECTIVE: 12/10/91

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 14

||264-4.2.1 Title 18, USC, Section 1030|

(1) The focus of Federal criminal prosecutions will be against those who demonstrate a clear intent to enter, without authorization, computer files belonging to another. The unauthorized access must be the person's conscious objective; however, an unintentional initial contact coupled with access deliberately maintained may not be exempt from prosecution. Section 1030 deals with an "unauthorized access" concept of computer fraud rather than the use of a computer. The conduct prohibited is analogous to that of a trespass (breaking and entering) rather than using a computer in committing the offense.

(2) Allegations of criminal acts involving Federal Government computers require proof that the unauthorized access to, and the use or destruction of, the information affects the operation of the Government. A computer used part time by the Government may become the victim of a Federal crime if it can be shown that the unauthorized access was made at any time when the Federal Government was authorized to use it, or if the unauthorized use left some sort of message, etc., that impacted on the Federal Government when it resumed use of the computer. The phrase "obtain information" is broadly defined.

(3) Thefts of property through computer trespass which occur as part of the fraud scheme require that the use of the computer be directly related to the intended fraud and not merely related to it.

(4) The statute exempts from prosecution under Title 18, USC, Section 1030(a)(4), persons who exceed authorized use of a computer simply to use the computer for purposes to which the authorization does not extend (e.g., to do homework, play video games or if the only thing of value obtained was the use of the computer's time).

EFFECTIVE: 12/10/91

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 15

||264-4.2.2 Title 18, USC, Section 2701|

(1) Congressional intent in legislating Title 18, USC, Section 2701, was to protect the privacy of an electronic communication which is transmitted to a communications service, its storage on the behalf of the subscriber, and to ensure that such communication service be available only to the subscriber and others who may have authorized or legal access to it. Thus, privacy is protected either before the communication is transmitted to the recipient, or, if a copy of the message is kept, after it is delivered. The statute was designed to protect electronic communication through such methods as electronic mail and computer transmissions. It was generally recognized that the interruption of communications during the transmission stage is intrusive, and these communications are given protection by making it a Federal felony to unlawfully access.

(2) Electronic services covered by this statute include electronic mail service, voice mail, remote computing service, and other like communicating systems.

(3) This provision is intended to address unauthorized "computer hackers" and corporate spies who deliberately gain access to, and sometimes tamper with, electronic communications that are not available to the public. The provision is not intended to criminalize access to "electronic bulletin boards," which are generally open to the public so that interested persons may communicate on specific topics. Where communications are readily accessible to the public, the sender has (for purposes of Title 18, USC, Section 2701 (a)) extended an "authorization" to the public to access those communications. A communication is readily accessible if the telephone number of the system and other means of access are widely known, and if the person does not, in the course of gaining access, encounter any warnings, encryptions, password requests, or other indications of intended privacy. To access a communication on such a system is not a violation of the law.

EFFECTIVE: 12/10/91

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 16

264-5 INVESTIGATIVE PROCEDURES

In general, computer-related crimes are not unique, in many cases the facts and circumstances parallel the traditionally criminal mental and physical acts found in such crimes as trespass, embezzlement, theft, fraud, malicious damage, sabotage, and espionage. The investigative approach should comply with traditional case management techniques, while giving appropriate consideration to the unique vocabulary found in the computer industry. Once the language hurdle is overcome, the investigator has the ability to understand what has occurred. The following investigative procedures are suggested for consideration in the investigation of 264 matters and are not considered an all-inclusive list:

(1) All CFA evidence examinations are to be submitted to the FBI Laboratory for examination and data retrieval. All requests for FBIHQ on-site examination and data retrieval will be coordinated through the ECU, WCCS, CID.

(2) When the criminal complaint is from the owner/user of the equipment/data, those who are directly familiar with the victim computer's operation and/or equipment should be called upon, if appropriate, to provide the facts to prove the elements of the offense; explain the modus operandi; aid in gathering the evidence; identify the suspect(s); and assist in simplifying the facts and circumstances for an effective presentation to the jury.

(3) The common investigative steps in any computer-related criminal investigation should be: the initial, preliminary investigation; contact the United States Attorney for a prosecutive opinion; investigative planning; information gathering and analysis; interviewing and interrogation; appropriate technical review, if necessary; and computer examination and documentation for prosecution and court presentation(s).

(4) The preliminary investigative phase should ascertain as much about the allegation as possible. It should determine the nature of the allegation, the probable degree of technicality involved and potential subjects and witnesses. Additionally, Agents investigating those matters should become familiar with the area, people, procedures, processes, security, and equipment involved.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 17

b2
b7E

[REDACTED]

(6)

[REDACTED]

(7)

[REDACTED]

(8)

[REDACTED]

(9)

[REDACTED]

(10) Upon proper predication, surveillance of computer facilities should be used to determine users of the facilities.

(11)

[REDACTED]

(12)

[REDACTED]

(13)

[REDACTED]

(14) Liaison contacts should be developed with local and state agencies investigating similar violations under state statutes. Should a preliminary inquiry not fall within the investigative policy of the FBI and/or the U.S. Attorney declines prosecution, the complainant should be directed to any other state or local law enforcement agency which has authority to conduct such investigations.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 18

(15) Absent sensitive circumstances, instances of computer-related crimes in other Federal Government agencies should be coordinated with the appropriate investigative unit of that agency.

(16) Search warrants are often used in CFA matters. In executing a search warrant, care must be taken to limit the scope of the warrant to seize only evidence pertinent to the crimes under investigation.

EFFECTIVE: 12/10/91

264-6 REPORTING REQUIREMENTS

(1) All complaints involving CFA, regardless of classification or whether a case is opened, will be submitted to ECU, WCCS; CID; FBIHQ, by the Computer Fraud and Abuse Data Transmittal Form (FD-801). The submission of the CFA Data Transmittal Form for all complaints will allow FBIHQ to monitor the instances of CFA; fully identify the scope of the crime problem and crime trends; and seek resources as necessary to address these matters. If an investigation is opened as a CFA matter, a letterhead memorandum (LHM) (original and five copies) is to be submitted to FBIHQ and any affected auxiliary offices within 20 calendar days. The transmittal form will replace the transmittal airtel previously utilized in submission of LHMs to FBIHQ. The LHM is to include the field office, field office file number, date the investigation was opened, identified subject(s), predication, estimated loss, investigation conducted to date, the U.S. Attorney's initial prosecutive opinion, and contemplated investigation. The 20-day reporting requirement facilitates the coordination of multijurisdictional matters in a timely manner.

(2) Any investigation which is of a national interest or involves prominent individuals should be initially reported by priority communication, to include telephone, if necessary, followed by the LHM and CFA Data Transmittal Form (FD-801). Any major developments, use of innovative or sensitive investigative techniques, or unusual problems should also be promptly reported to FBIHQ.

(3) FBIHQ will disseminate information regarding the initiation of CFA investigations to the USSS. FBIHQ may also have reason to disseminate information regarding these matters to other

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 19

Federal agencies. Sensitive information (i.e., informant/cooperating witness identities, personnel information, undercover Agent identities) should be set forth in the administrative section of the CFA Data Transmittal Form (FD-801). If the need exists not to disseminate, field offices should advise FBIHQ.

(4) Two copies of prosecutive reports prepared in CFA matters should be furnished to FBIHQ.

EFFECTIVE: 12/10/91

264-7 VENUE

Where the offense is committed, begun or completed.

EFFECTIVE: 12/10/91

264-8 CHARACTER - COMPUTER FRAUD AND ABUSE (CFA)

EFFECTIVE: 12/10/91

264-9 CLASSIFICATION (See MAOP, Part II, 3-1.1 & 3-1.2.)

The CFA classification is subdivided into three types of cases that are characterized by alpha designator. Alpha designators are as follows:

264A COMPUTER FRAUD AND ABUSE - IMPAIRMENT

This includes the modification of existing software on a computer or placing harmful software on a computer which then affects its normal operation.

264B COMPUTER FRAUD AND ABUSE - THEFT OF INFORMATION

Theft of information matters involve the taking of information that is protected for reasons of national defense; the taking or trafficking in passwords; the taking of financial records of a financial institution;

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 264 - 20

and taking anything of value.

264C COMPUTER FRAUD AND ABUSE - INTRUSION

Intrusion matters involve unauthorized use when it has not yet been determined that an impairment or theft has occurred.

EFFECTIVE: 10/18/95

264-10 | CASE TITLE

Set forth below is an example of a case title for use in the CFA Data Transmittal Form (FD-801):

JOHN H. SMITH;
XYZ AGENCY - VICTIM;
COMPUTER FRAUD AND ABUSE - IMPAIRMENT;
OO: NEW YORK
(264A-NY-12345) |

EFFECTIVE: 12/10/91

||264-11| OFFICE OF ORIGIN

Office of Origin will be established in the manner set forth in MAOP, Part II, Section 10-16.2.

EFFECTIVE: 12/10/91

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CLASSIFIED BY: SSS Jeff P
REASON: 1.5 (C)

9/23/98

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Manual of Investigative Operations and Guidelines
Part I

PAGE 265 - 1

SECTION 265. ACTS OF TERRORISM - INTERNATIONAL TERRORISTS

265-1 ACTS OF TERRORISM - INTERNATIONAL TERRORISTS

(1) This classification will include any investigation of a criminal act which involves an international terrorist. The investigative procedures will follow the same procedures detailed in the substantive offense under which the investigation is predicated. Alpha designators have been created to identify the investigative program under which the investigation should be classified.

(2) This classification was developed in order to focus on the criminal activity of the international terrorist. This effort does not diminish the importance of intelligence investigations or collection, but emphasizes the criminal nature of terrorism. Therefore, once information is developed in an investigation conducted under the Foreign Counterintelligence Guidelines that evidence exists of criminal activity, the criminal investigation under this classification, with appropriate alpha designator, is to be opened.

EFFECTIVE: 04/26/94

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

265-2 ALPHA DESIGNATORS | (See MIOG, Part I, 265-3.) |

Set forth below are the alpha designators which are applicable to the 265 classification. A case shall be identified with an alpha designator in accordance with the investigative program or subprogram to which the substantive offense would generally belong.

265A - Violent Crimes - Predicate Offense (i.e., kidnaping, bank robbery, etc.)

265B - Organized Crime - Predicate Offense (i.e., racketeering enterprise investigation, etc.)

265C - White-Collar Crime - Predicate Offense (i.e., FIF, etc.)

265D - Government Reservation Crimes - Predicate Offense

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 265 - 2

(i.e., CGR, TGP, etc.)

265E - Fugitive - Predicate Offense (i.e., bond default,
etc.)

265F - Interstate Theft - Predicate Offense (i.e., TFIS,
etc.)

265G - Drug Trafficking

EFFECTIVE: 04/26/94

265-3 INVESTIGATIVE POLICY AND PROCEDURES

b1
b7
[REDACTED]

(2) It is most likely that the 265 classification will
be applied to one of two possible scenarios.

b1
[REDACTED] (S)

b2
b7c
[REDACTED]

[REDACTED]

b1
[REDACTED]

XXXXXX
XXXXXX
XXXXXX

FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

- Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552

Section 552a

(b)(1)

(b)(7)(A)

(d)(5)

(b)(2)

(b)(7)(B)

(j)(2)

(b)(3)

(b)(7)(C)

(k)(1)

(b)(7)(D)

(k)(2)

(b)(7)(E)

(k)(3)

(b)(7)(F)

(k)(4)

(b)(4)

(b)(8)

(k)(5)

(b)(5)

(b)(9)

(k)(6)

(b)(6)

(k)(7)

- Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.
- Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

Page(s) withheld inasmuch as a final release determination has not been made. You will be advised as to the disposition at a later date.

Pages were not considered for release as they are duplicative of _____

Page(s) withheld for the following reason(s): _____

- The following number is to be used for reference regarding these pages:

MIOG Pt 1 Sec 265 p3

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X Deleted Page(s) X
X No Duplication Fee X
X for this page X
XXXXXXXXXXXXXXXXXXXX

XXXXXX
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Sensitive

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Manual of Investigative Operations and Guidelines
Part I

PAGE 265 - 4

2. The policy guidance set forth under (a) above applies to this situation also.

(3) Upon initiation of a 265 investigation, a teletype must be expeditiously prepared and forwarded to the attention of the CTS, NSD.

(a) This communication must contain the predication for the criminal investigation including the specific facts which clearly establish the terrorism nexus.

EFFECTIVE: 04/26/94

265-4

CHARACTER - ACTS OF TERRORISM - INTERNATIONAL TERRORISTS
(AOTIT)

EFFECTIVE: 04/26/94

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SECTION 266. ACTS OF TERRORISM - DOMESTIC TERRORISTS

266-1 ACTS OF TERRORISM - DOMESTIC TERRORISTS (See Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations, Part II, Contained in MIOG, Introduction, 1-3.)

(1) This classification shall include any investigation of a criminal act which involves an individual or individuals affiliated with a domestic terrorist group. The investigative procedures shall follow the same procedures detailed in the substantive offense under which the investigation is predicated. Alpha designators have been created to identify the investigative program under which the investigation should be classified.

(2) The Act of Terrorism (AOT) classification was developed in order to focus upon the specific criminal activity of the domestic terrorist. If a specific, articulable criminal violation on the part of a person or persons affiliated with a domestic terrorist group is determined to have occurred, is occurring, or is about to occur, then a criminal investigation should be opened under this classification with appropriate alpha designator (see Section 266-2). An AOT investigation (266 case) may be initiated in conjunction with, or independent of, a criminal intelligence investigation (100 case).

(3) Section II of the Attorney General Guidelines (AGG) permits field offices to open general crimes investigations when facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed. Section III of the AGG permits the initiation of criminal investigations of Domestic Security/Terrorism (DS/T) groups when facts or circumstances reasonably indicate that "two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States." (See MIOG, Introduction, 1-3.)

(4) Preliminary Inquiries

(a) Preliminary inquiries are not authorized under Section III of the AGG (criminal intelligence investigations/100 classification). Section I of the AGG states that preliminary inquiries shall be conducted pursuant to the General Crimes Guidelines

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 266 - 2

(Section II). There is no separate provision for the conduct of preliminary inquiries under the Criminal Intelligence Guidelines described by Section III.

(b) Preliminary inquiries authorized in the General Crimes Section are more limited in scope and purpose than the preliminary investigation formerly authorized under the 1976 Domestic Security Guidelines. However, they permit greater latitude in the use of certain investigative techniques, particularly where informants are involved. The only investigative techniques that are specifically prohibited during a preliminary inquiry are:

b7E [REDACTED] At the same time, the Guidelines caution that Agents should consider whether the information sought could be obtained by means which involve less intrusion into the subject's privacy. As an example, if a discreet inquiry to local law enforcement officials would produce the necessary information, it might be inappropriate to question neighbors.

b7E (c) Subject to this general guidance on intrusiveness pertaining to preliminary inquiries, Agents require no special authorization to check FBI files, public records or sources, government records, utilize established informants or confidential sources, interview subjects, complainants or others having knowledge of the facts, or to conduct surveillance. Prior authorization of a Supervisory Agent is required before employers or co-workers may be interviewed, pretext interviews are conducted, or new informants are developed. Other more intrusive techniques, [REDACTED] may be employed only in compelling circumstances and when other investigative means are not likely to be successful. An informant would also fall in that category if he/she is used in a manner that involves a significant intrusion into one's private affairs. "Compelling circumstances" are circumstances requiring the use of techniques to determine the validity of information or allegations concerning possible serious criminal activities such as a threat to life or substantial property interest, the destruction or alteration of evidence, or the serious impairment or hindrance of an investigation.

(d) Preliminary inquiries may be authorized by field supervisors, but in all situations, the inquiry must be completed within 90 days after initiation of the first investigative steps, unless authorized by the Bureau. Subsequent authorizations for extensions are limited to 30-day periods, and will be based upon a written request from the field divisions, including a statement of reasons justifying further "inquiry" when there is no "reasonable

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 266 - 3

indication" which would allow a full investigation under this classification.

(e) In order to ensure compliance with the Attorney General Guidelines and to avoid duplication of investigative effort, each field office shall advise FBIHQ, in writing, within 10 work days of the opening of a preliminary inquiry, as well as within 10 work days of the closing of a preliminary inquiry.

(5) Criminal intelligence investigations of DS/T enterprises should be initiated and carried as 100 matters. Criminal intelligence information developed during the course of a 266, or other investigation, may be placed in a 100 file to which it relates. Conversely, criminal acts detected in a 100 criminal intelligence investigation may be "spun off" to a 266 general investigation or a PI. DS/T criminal intelligence investigations are similar in nature to a racketeering enterprise investigation (REI).

(a) During the course of a DS/T criminal intelligence investigation, specific articulable criminal violations may be identified which would reasonably indicate enforcement activity or court proceedings (e.g., arrest, discovery hearings, etc.) will occur. At that time, a general criminal investigation (266 case) should be opened to focus upon the specific criminal activity. The criminal intelligence investigation (100 case) would continue to focus on the entire enterprise, as the scope of the AOT case may be limited to a relatively small portion of the total activity of that enterprise.

(b) While it may be appropriate for all investigative results generated from an AOT (266) case to be placed in the corresponding 100 file, the converse is not true. Only those details in the 100 case which specifically pertain to the subjects of the AOT case should be placed in the 266 file.

(6) The correct identification of a criminal intelligence investigation in the 100 classification or a General Crimes Investigation as a 266 is important because it establishes the FBI's investigative focus.

(7) When a general crimes investigation is classified as a 266 matter, it focuses on an individual and his or her criminal conduct which may be incidentally related to that person's affiliation with a DS/T group. These 266 Act of Terrorism-Domestic Terrorism investigations may not necessarily involve the sensitive circumstances which are likely to be involved in an intelligence investigation of

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 266 - 4

the group itself. Criminal intelligence investigation of DS/T groups are conducted in order to obtain information regarding the nature and structure of the enterprises.

(8) In the past, general crimes investigations and preliminary inquiries have been conducted out of 100 (DS/T) classification files or subfiles. Because preliminary inquiries can only be conducted in general crimes investigations, they should be handled as 266 matters (Acts of Terrorism - Domestic Terrorism), not 100 matters.

EFFECTIVE: 06/23/97

266-2 ALPHA DESIGNATORS | (See MIOG, Part I, 266-1.) |

Set forth below are the alpha designators which are applicable to the 266 classification. A case shall be identified with an alpha designator in accordance with the investigative program or subprogram to which the substantive offense would generally belong.

266A - Violent Crimes - Predicate Offense (i.e.,
| kidnapping, | bank robbery, etc.)

266B - Organized Crime - Predicate Offense (i.e.,
racketeering enterprise investigation, etc.)

266C - White-Collar Crime - Predicate Offense (i.e., FIF,
etc.)

266D - Government Reservation Crimes - Predicate Offense
(i.e., CGR, TGP, etc.)

266E - Fugitive - Predicate Offense (i.e., bond default,
etc.)

266F - Interstate Theft - Predicate Offense (i.e., TFIS,
etc.)

266G - Drug Trafficking

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 266 - 5

EFFECTIVE: 06/23/97

266-3 INVESTIGATIVE OBJECTIVES AND PROCEDURES

(1) The objective of this classification is to direct investigative resources toward detection and prevention of a terrorist incident and the prosecution of individuals committing specific criminal acts.

(2) The investigative procedures utilized for a case conducted under these alpha designators will be in accordance with established guidelines for the substantive offense of that alpha designator, except that coordination of the investigation and results thereof will be reported to the Domestic Terrorism/Counterterrorism Planning Section, National Security Division (NSD). For example, an investigation conducted as a 266A case would follow procedures set forth under the Violent Crimes Subprogram except for the coordination and reporting aspects.

(3) In accordance with the AGG, preliminary inquiries (PI) may be initiated by FBI field offices without FBIHQ authority to determine the scope of a terrorist group's criminal activities. Initiation of a PI allows the FBI to conduct a measured review, contact, or observe individuals to determine if there is a "reasonable indication" of criminal activity, warranting a full DS/T investigation.

(4) PIs are to be completed within 90 days after the initiation of the first investigative step. Extension of a PI requires FBIHQ authority. Written requests for PI extensions should arrive at FBIHQ seven work days prior to the expiration date.

(5) During the course of a PI, investigation may determine there is a reasonable indication that criminal activity has been, is being, or will be committed. At that time, the field supervisor is authorized to convert the 266 PI to a full 266 investigation. Upon doing so, a communication is to be sent to FBIHQ providing notification and predication for the conversion.

EFFECTIVE: 06/23/97

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 266 - 6

266-4 REPORTING REQUIREMENTS

Upon initiation of a 266 investigation, an electronic communication must be immediately forwarded to the Domestic Terrorism Operations Unit (DTOU), FBIHQ, providing the date the investigation was initiated and the predication for its initiation. Upon closing the investigation, in addition to immediately notifying DTOU, field offices should update records in the FBINET Automated Case System (ACS) to reflect this fact.

EFFECTIVE: 06/23/97

||266-5| CHARACTER - ACTS OF TERRORISM - DOMESTIC TERRORISTS
(AOTDT)

EFFECTIVE: 12/16/96

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SECTION 267. DRUG-RELATED HOMICIDE

267-1 BACKGROUND

(1) On 11/18/88, the President signed into law the Anti-Drug Abuse Act of 1988, which became Public Law 100-690. This Act, in part, amended Title 21, USC, by adding Subsection 848(e), entitled "Death Penalty."

(2) Under Subsection 848(e), the death penalty or lesser penalties may be imposed on:

(a) any person in or working in furtherance of a continuing enterprise, or any person engaged in an offense punishable under Title 21, USC, Section 841(b)(1)(A) or Section 960(b)(1) who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual; or

(b) any person during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation under Title 21, USC, who intentionally kills, or counsels, commands, induces, procures, or causes the intentional killing of any Federal, state or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties.

(3) Because of the addition of the act of homicide to Title 21, this amendment therefore created new jurisdiction for the FBI and Drug Enforcement Administration (DEA).

EFFECTIVE: 08/28/91

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 267 - 2

267-2 FBI/DEA Memorandum of Understanding (MOU)

"POLICY:

"1. The FBI and DEA recognize and agree that each agency has concurrent jurisdiction to investigate offenses under Section 7001 (of the Anti-Drug Abuse Act of 1988).

"2. The DEA will have investigative responsibility for drug-related slayings of nonlaw enforcement officers where DEA is the investigative agency in the predicate Title 21 investigation. In joint FBI/DEA investigations in which a nonlaw enforcement officer is killed, lead agency responsibility will be determined by the status of the individual killed. If the individual killed is an FBI informant or witness, the FBI will have lead investigative responsibility.

"3. The DEA will have investigative responsibility for the drug-related slayings of DEA Special Agents and employees, except as noted below. Informants, as well as deputized and nondeputized task force officers, are not considered to be employees for purposes of this MOU.

"a. If at any time during the investigation, facts or circumstances are developed which reasonably indicate that the slaying was an 'act of terrorism' as that term is defined in (Title) 18, U.S. Code, (Subsection) 3077(1), the investigation of the slaying will proceed as a joint investigation with the FBI being the lead agency.

"b. If there are simultaneous multiple slayings in the same predicate investigation resulting in the deaths of a DEA Special Agent and a deputized or nondeputized task force officer or the deaths of a DEA Special Agent and an FBI Special Agent, the investigation will be conducted as a joint investigation with the FBI being the lead agency.

"4. The FBI will have investigative responsibility for all other drug-related slayings.

"5. All investigations of this section of the Anti-Drug Abuse Act of 1988 are to be given top priority by the DEA and the FBI. It is agreed that any and all cooperation between the DEA and the FBI will be coordinated at the Special Agent in Charge level or the level designated by the Special Agent in Charge. Each agency will provide all available support and cooperation as requested and necessary to these investigations. Information will be exchanged as expeditiously

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 267 - 3

as possible and appropriate resources will be made available in all drug-related homicides investigated by the FBI and/or DEA.

"6. This MOU acknowledges the need to preserve the integrity of the DEA's ongoing drug investigations while also preserving the traditional investigative jurisdiction of the FBI and also its authority to investigate the felonious killings of state and local law enforcement officers as provided for by Section 7331 of the Anti-Drug Abuse Act of 1988.

"DISPUTE RESOLUTION

"In any situation in which this MOU proves to be ambiguous as to which agency has investigative responsibility for a drug-related slaying, any issues concerning the respective responsibilities of the FBI and the DEA for the conduct of the investigation will be promptly resolved between the DEA Assistant Administrator for Operations and the Assistant Director of the Criminal Investigative Division of the FBI.

"DEFINITIONS

"1. 'Lead Agency': The agency ultimately responsible for the management and direction of investigative activity.

"2. 'Law Enforcement Officer': A public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, prosecution or adjudication of an offense, and includes those engaged in corrections, probation or parole functions. (See Title 21, U.S. Code, Subsection 848(e)(2)).

"AMENDMENT

"This MOU may be amended by deletion or modification of any provision contained herein, or by addition of new provisions, after written concurrence of the parties."

EFFECTIVE: 08/28/91

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 267 - 4

267-3 EXCLUSIVE FBI JURISDICTION

The FBI has investigative jurisdiction in all other DRH cases with the exception of DEA-related cases (see Section 267-2 "Policy") and drug-related slayings of Department of Treasury (DOT) personnel. Pursuant to a 10/2/56 agreement, the DOT has investigative jurisdiction over the assault and killing of its Federal officers. Therefore, the DOT could handle its own drug-related homicide investigations if the homicide did not pertain to any ongoing FBI/DEA investigation. For further information concerning DOT or U.S. Postal Service jurisdiction, refer to Part I, Sections 89-2.13 and 89-2.14 of this manual.

EFFECTIVE: 08/28/91

267-4 INVESTIGATIVE FBI POLICY

(1) FBIHQ is aware that a large percentage of homicides, particularly in the larger urban areas, are drug-related and/or gang-related. Therefore, highly selective criteria must be established in order to maximize the efforts of the limited resources of the Violent Crimes and Major Offenders Program. Furthermore, since the underlying statute of the DRH classification is one of the few federal statutes that provides the death penalty, cases opened under this classification should be significant enough to warrant imposition of the death penalty.

(2) Criteria to be used in opening DRH investigations:

(a) The drug-related "felonious" killing of a federal, state, or local law enforcement officer warrants the imposition of the death penalty. If the underlying provisions of Title 21, Section 848 (e) (1), are satisfied, cases can be opened without FBIHQ authority.

(b) Cases can be opened on murders of FBI, DEA, U.S. Customs, Internal Revenue Service or other federal agency informants, cooperating witnesses, grand jury or trial cases witnesses who currently are, or in the past have assisted the U.S. Government in investigations of violations of Title 21, USC, Section 848 (e) (1). FBIHQ authority is required to open these cases. (See (5) below.)

(c) FBIHQ will consider authorizing investigations involving drug-related homicides of nonlaw enforcement officers or

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 267 - 5

noninformant(s)/witness(es) if the murders are perpetrated to maintain, expand, consolidate, and/or defend drug trafficking enterprises. These cases should be limited to persons or organizations that are conducting a "Continuing Criminal Enterprise" as defined in Title 21, Section 848 (c). FBIHQ authority is required to open these cases. |(See (5) below.)|

(3) In the event the United States Attorney (USA) is not willing to seek prosecution under this statute and the victim is a Federal law enforcement officer, a "Killing of a Federal Officer" investigation (see Part I, Section 89, of this manual) under Title 18, USC, Section 1114, should be promptly instituted. If the victim is a state or local police officer, consideration should be given to instituting a "Police Killing" investigation (see Part I, Section 184, of this manual) under Title 28, USC, Section 540.

(4) For information of field offices, DOJ requires all federal prosecutors who intend to seek the death penalty to provide the DOJ with the written summary of the completed DRH investigation in order to obtain the personal approval of the Attorney General. Therefore, a final determination of federal prosecution, with the death penalty, will not be known until the investigation is completed and the Attorney General's approval is obtained.

(5) It is not the intention of the FBI to interject itself into matters which can be or should be investigated, prosecuted or otherwise resolved by other state and local law enforcement entities. The intent of this legislation is to assist local and state law enforcement in a united front against drug traffickers and drug trafficking organizations who commit murder(s) to facilitate their drug trafficking activities. Therefore, local homicides which are drug-related, but do not involve victims who are members of federal, state or local law enforcement, or do not involve victims specified in Sections 267-4(2)(b) and (c), supra, should not be used as a basis for instituting a 267 investigation.

EFFECTIVE: 11/25/94

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 267 - 6

267-5 REPORTING REQUIREMENTS

(1) Within five days of opening a 267A or 267B case, field offices will provide the Violent Crimes/Fugitive Unit, Criminal Investigative Division (CID), with the following:

(a) A summary of facts surrounding the killing and the facts which support the Title 21, USC, Section 848 (e) (1) violation.

(b) The name of the commanding officer of the local or state police department where the killing occurred and verification of his/her request for the FBI to enter the investigation.

(c) The name of the district attorney or state prosecutor who has agreed that the FBI/DOJ should pursue federal death penalty prosecution for those individuals involved in the killing.

(d) The name of the USA who has agreed to prosecute those individuals who violated the DRH statutes.

(2) Prior to opening a 267C case, field offices will send a teletype to the Violent Crimes/Fugitive Unit, CID, under the 267-0 file, requesting authority. The teletype should contain:

(a) Background of murder and circumstances relating to DRH violation.

(b) Facts supporting Title 21, Section 848 (e) (1) violation.

(c) Name of USA/AUSA who has agreed to prosecute DRH violation and a statement that his/her opinion has been/will be confirmed in writing.

(d) If the victim(s) was an FBI informant or cooperating witness, designate a copy to the Criminal Informant Unit, Intelligence Section, CID.

EFFECTIVE: 11/25/94

267-6

CHARACTER - DRUG-RELATED HOMICIDE

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 267 - 7

EFFECTIVE: 08/28/91

267-7 CLASSIFICATION AND SUBCLASSIFICATIONS (See MAOP, Part II,
3-1.1, 3-1.2.)

(1) The classification is 267.

(2) Subclassifications are:

(FO) (a) 267A - Drug-Related Homicide - Federal Officers

(b) 267B - Drug-Related Homicide - State/Local
Officers (S/LO)

(c) 267C - Drug-Related Homicide - Nonlaw
Enforcement Victims

(3) Deleted

EFFECTIVE: 10/18/95

267-8 CASE TITLE

(1) The case title should include each subject(s) name,
the name of the victim(s), and the name of the drug trafficking
organization, if known.

(2) Example:

JOHN DOE;
JOHN DOE DRUG TRAFFICKING ORGANIZATION;
IAM A. GOODFELLOW - VICTIM;
DRH - S/LO;
OO: LOS ANGELES
(267B-LA-0001)

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 267 - 8

EFFECTIVE: 08/28/91

267-9 VENUE

Generally, venue in DRH matters is governed by Title 18, U.S. Code, Subsection 3237. This section states that venue lies in any district in which the offense was begun, continued or completed. Logically, in single homicide cases involving law enforcement officers, venue will lie in the district where the homicide occurred. In multiple homicide cases, involving a major drug trafficking organization, venue will usually lie in the district where the organization is headquartered.

EFFECTIVE: 08/28/91

267-10 OFFICE OF ORIGIN

In DRH violations, office of origin will be determined by the place where the homicide(s) occurred or where the drug trafficking organization is headquartered.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 268 - 1

|SECTION 268. ENGINEERING TECHNICAL MATTERS - FCI

| 268-1 ENGINEERING TECHNICAL MATTERS - FCI

The classification for "Engineering Technical Matters - FCI" was established for FBIHQ's use in capturing official correspondence related to classified engineering projects. The Technical Services Division (TSD), Engineering Section (ES) oversees these projects and generates most of the related documentation. Because it is strictly an administrative classification for recordkeeping purposes, the 268 classification is not intended for Time Utilization Recordkeeping (TURK) usage and will not be found in the FOIMS tables since it is mainly for FBIHQ's use. Field time expended on technical matters will continue to be recorded within the appropriate investigative program.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 269 - 1

| SECTION 269. ENGINEERING TECHNICAL MATTERS - NON-FCI

| 269-1 ENGINEERING TECHNICAL MATTERS - NON-FCI

The classification for "Engineering Technical Matters - Non-FCI" was established for FBIHQ's use in capturing official correspondence related to unclassified engineering projects. The Technical Services Division (TSD), Engineering Section (ES) oversees these projects and generates most of the related documentation. Because it is strictly an administrative classification for recordkeeping purposes, the 269 classification is not intended for Time Utilization Recordkeeping (TURK) usage and will not be found in the FOIMS tables since it is mainly for FBIHQ's use. Field time expended on technical matters will continue to be recorded within the appropriate investigative program.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 270 - 1

SECTION 270. COOPERATIVE WITNESSES

270-1 BACKGROUND

(1) Historically, the policy and procedures have not been established for the use of cooperative witnesses in criminal investigations. Interim guidelines on the use of cooperative witnesses have been established in this section until the new Attorney General Guidelines on the use of informants and cooperative witnesses are published.

(2) The policy and procedures for cooperative witnesses have been patterned after the Criminal Informant Program as closely as possible to help minimize differences in the administration of both programs.

(3) For details of the policy and procedures relative to the operation of cooperative witnesses, see the Memorandum to all Special Agents in Charge, number 8-90, entitled "Cooperative Witness (CW) Program - Interim Guidelines (IG)," dated 4/10/90.

EFFECTIVE: 02/12/92

270-2 DEFINITION

A cooperative witness is an individual whose relationship with the Government is concealed until testimony is required at trial and who, on a continuing basis and under the direction of an Agent, contributes substantial operational assistance to the resolution and/or direction of a case through active participation in the investigation.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 271 - 1

SECTION 271. ARMS CONTROL TREATY MATTERS

271-1 ARMS CONTROL TREATY MATTERS

Information concerning classification 271, Arms Control Treaty Matters, is set forth in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM MANUAL (NFIPM).

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 1

SECTION 272. MONEY LAUNDERING (SEE MIOG, PART I, 281-15.)

272-1 INTRODUCTION

(1) The laundering of money, with its wide range of criminal applications, plays an integral role in concealing, enhancing and expanding crime. The money laundering statutes (Title 18, U.S. Code, Sections 1956 and 1957) proscribe virtually any transaction which involves the proceeds of a wide range of criminal activity. Consequently, the use of the money laundering statutes should be thoroughly explored in ALL Bureau cases.

(2) The money laundering statutes should be used in conjunction with the Bank Secrecy Act (BSA), Title 31, U.S. Code, Sections 5311 - 5322.

(3) Title 18, U.S. Code, Section 1956 prohibits virtually any dealings with the proceeds of a wide range of "specified unlawful activities" (SUA) when those dealings are aimed at furthering or promoting the SUA or at concealing or disguising the nature, location, source, ownership, or control of the proceeds. (See Subsection 272-4(10) for a list of these SUAs.) Title 18, U.S. Code, Section 1956 also criminalizes money laundering transactions made with undercover law enforcement officers.

(4) Title 18, U.S. Code, Section 1957 effectively criminalizes any knowing monetary transaction or attempted monetary transaction in criminally derived property when three factors exist: (1) over \$10,000 is involved, (2) a financial institution is utilized as defined in Title 31, U.S. Code, Section 5312, and (3) the property is derived from an SUA. The statute does not require that the property be used for any additional criminal purpose.

(5) The major impact of the money laundering statutes is that although the Government must prove that the proceeds were IN FACT derived from a "specified unlawful activity," e.g., drugs, it need only prove that the defendant knew, by direct or circumstantial proof, that the property involved in the financial transaction was the proceeds of SOME state or Federal FELONY crime.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 2

EFFECTIVE: 10/26/93

272-2 MONEY LAUNDERING STATUTES

(1) Included in the Anti-Drug Abuse Act of 1986 and its amendments of 1988 are money laundering statutes that have a wide range of applications for many FBI cases. Violations of the money laundering laws are usually tied to other criminal activities, which range from the various RICO predicates and drugs, to bank fraud, espionage, etc.

(2) These money laundering laws are contained in Title 18, U.S. Code, Sections 1956 and 1957, with companion forfeiture provisions in Sections 981 (Civil) and 982 (Criminal).

(3) The following citations, 272-2.1 through 272-2.4 will assist the Agent in identifying these statutory areas.

EFFECTIVE: 10/26/93

272-2.1 Title 18, U.S. Code, Section 1956 (a)(1) - (Domestic Financial Transactions) (See MIOG, Part I, 272-2.)

(A)(i) is directed toward situations where the financial transaction involves illegal proceeds which are used to promote criminal activity (e.g., illegal proceeds are used to purchase drugs, storage facilities, vehicles, etc., in order to continue drug trafficking activity.)

(A)(ii) is directed toward situations where the financial transaction involves an intent to commit tax fraud or evasion.

(B)(i) is directed towards situations where the financial transaction involves illegal proceeds which are used to conceal the nature, location, source, ownership or control of the proceeds (e.g., the subject places the illegal proceeds into a "legitimate" business

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 3

in order to make the subject's wealth appear legitimate).

(B)(ii) is directed towards situations where the financial transaction is designed to avoid or attempt to avoid State or Federal reporting requirements (e.g., subject directs others (smurfs) to buy cashiers checks with illegal proceeds in amounts less than \$10,000 to avoid Currency Transaction Reporting requirements).

EFFECTIVE: 10/26/93

272-2.2 Title 18, U.S. Code, Section 1956(a)(2) -
International Financial Transactions (Transport,
Transmit or Transfer Funds) (See MIOG, Part I, 272-2.)

(A) is directed toward situations where funds or monetary instruments are being moved into or out of the U.S. with the intent to promote an illegal activity (e.g., the proceeds are moved out of the United States to buy drugs).

(B)(i) is directed toward situations where illegal funds or monetary instruments are moved into or out of the U.S. in order to conceal the nature, source, etc., of the illegal proceeds (e.g., the subject moves or transmits an "illegal" monetary instrument to an offshore account or business in order to conceal or legitimize the money).

(B)(ii) is directed toward situations where illegal funds are moved into or out of the U.S. in order to avoid a State or Federal transaction reporting requirement (e.g., subject moves the "illegal" funds out of the U.S. in amounts greater than \$10,000 and does not file the appropriate Currency and Monetary Instrument Report).

EFFECTIVE: 10/26/93

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 4

272-2.3 Title 18, U.S. Code, Section 1956(a)(3) -
Undercover Money Laundering Transactions (See MIOG, Part
I, 272-2.)

(A) is directed toward situations where a financial transaction involving government undercover (UC) funds or property is used to promote an illegal activity (e.g., a subject uses money provided by a UCA to purchase a stash house).

(B) is directed toward situations where a financial transaction involving UC funds is used to conceal the fact that the funds are (believed to be) illegal (e.g., a subject uses property provided by a UCA to conceal the nature or control of the so-called illegal proceeds by purchasing a vehicle with hidden compartments for drugs or drug proceeds).

(C) is directed toward situations where a State or Federal financial transaction involving UC funds is used to avoid a transaction reporting requirement (e.g., a subject using property provided by a UCA buys several cashiers checks in amounts less than \$10,000).

EFFECTIVE: 10/26/93

272-2.4 Title 18, U.S. Code, Section 1957 -
Monetary Transactions in Criminally Derived
Property Over \$10,000 (See MIOG, Part I, 272-2.)

This section is generally designed to address a subject who "knowingly" engages in a monetary transaction involving criminally derived proceeds greater than \$10,000 (e.g., an automobile dealer sells a \$20,000 car to a drug dealer for cash, and then deposits those funds to his/her bank account, "knowing" that these funds were derived from illegal drug sales).

EFFECTIVE: 10/26/93

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 5

272-3 PENALTIES

EFFECTIVE: 10/26/93

272-3.1 Title 18, U.S. Code, Section 1956 (a) (1) and (2)

(1) The criminal penalty for a violation of either Subsection (a) (1) or (a) (2) of Section 1956 is a maximum sentence of 20 years' incarceration for each offense and/or a maximum fine of \$500,000, or twice the value of the monetary instruments or funds involved, whichever is greater.

(2) Violators of Subsections 1956(a) (1) and (a) (2) are also liable to the United States for a civil penalty of not more than the greater of the value of the property, funds or monetary instruments involved in the transaction or \$10,000. Such civil penalty is intended to be imposed in addition to any fine imposed for the criminal offense.

(3) It should also be noted that the forfeiture provisions of this act (See Title 18, U.S. Code, Sections 981 and 982) may be applied in addition to civil and criminal penalties. (See FORFEITURE AND ABANDONED PROPERTY MANUAL for additional information regarding civil and criminal forfeiture.) Thus, a person who violates Section 1956 by laundering \$250,000 might have the funds civilly forfeited, be subject to a fine of up to \$500,000 if convicted of the criminal offense, and pay a civil penalty of another \$250,000. For payment of the criminal fine and civil penalty, the Government may look to other assets of the defendant not involved in the offense.

EFFECTIVE: 10/26/93

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 6

272-3.2 Title 18, U.S. Code, Section 1956(a) (3)

Maximum of 20 years' imprisonment; or a fine under Title 18; or both.

EFFECTIVE: 10/26/93

272-3.3 Title 18, U.S. Code, Section 1957

Maximum of 10 years' imprisonment; or a fine under Title 18 or twice the amount of the criminally derived property involved in the transaction; or both.

EFFECTIVE: 10/26/93

272-4 DEFINITIONS

(1) "Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" (as in Title 18, U.S. Code, Section 1956 (c) (1)) means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specifically defined as an SUA.

(2) The term "conducts" (as in Title 18, U.S. Code, Section 1956 (c) (2)) includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) The term "transaction" (as in Title 18, U.S. Code, Section 1956 (c) (3)) includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

Sensitive
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Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 7

(4) "Financial transaction" (as in Title 18, U.S. Code, Section 1956 (c) (4)) means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) "Monetary instruments" (as in Title 18, U.S. Code, Section 1956 (c) (5)) means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) The term "financial institution" (as in Title 18, U.S. Code, Section 1956 (c) (6)) includes the following:

- Act;
- United States;
- Act;
- Securities and Exchange Commission;
- checks, checks, money orders, or similar instruments;
- automobile, airplane, and boat sales;
- (A) an insured bank of the Federal Deposit Insurance Act;
 - (B) a commercial bank or trust company;
 - (C) a private banker;
 - (D) an agency or branch of a foreign bank in the United States;
 - (E) an insured institution of the National Housing Act;
 - (F) a thrift institution;
 - (G) a broker or dealer registered with the Securities and Exchange Commission;
 - (H) a broker or dealer in securities or commodities;
 - (I) an investment banker or investment company;
 - (J) a currency exchange;
 - (K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;
 - (L) an operator of a credit card system;
 - (M) an insurance company;
 - (N) a dealer in precious metals, stones or jewels;
 - (O) a pawnbroker;
 - (P) a loan or finance company;
 - (Q) a travel agency;
 - (R) a licensed sender of money;
 - (S) a telegraph company;
 - (T) a business engaged in vehicle sales, including automobile, airplane, and boat sales;
 - (U) persons involved in real estate closings and

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 8

settlements;

(V) the United States Postal Service;

(W) an agency of the United States Government or of a state or local government carrying out a duty or power of a business (described in this paragraph);

(X) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business (described in this paragraph) is authorized to engage; or

(Y) any other business (designated by the Secretary of Treasury) whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters."

(7) "Represented" (as in Title 18, U.S. Code, Section 1956(a)(3)) means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a federal official authorized to investigate or prosecute violations of Title 18, U.S. Code, Section 1956 (a) (3).

(8) "Monetary transaction" (as in Title 18, U.S. Code, Section 1957 (f) (1)) means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument by, through, or to a financial institution, but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution;

(9) "Criminally derived property" (as in Title 18, U.S. Code, Section 1957 (f) (2)) means any property constituting, or derived from, proceeds obtained from a criminal offense;

(10) "Specified Unlawful Activity" (SUA) (as in Title 18, U.S. Code, Section 1956) means: (See MIOG, Part I, 272-1(3).)

(a) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale or distribution of a controlled substance (as in Title 21, U.S. Code, drug-type offenses;

(b) any act or acts constituting a continuing criminal enterprise (21, USC, 848);

(c) an offense under the following: (See 272-9,
272-13.)

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 9

- 18 USC 152 (relating to concealment of assets; false oaths and claims; bribery),
- 18 USC 215 (relating to commissions or gifts for procuring loans),
- 18 USC 500 through 503 (relating to certain counterfeiting offenses),
- 18 USC 513 (relating to securities of States and private entities),
- 18 USC 542 (relating to entry of goods by means of false statements),
- 18 USC 545 (relating to smuggling goods into the United States),
- 18 USC 549 (relating to removing goods from Customs Custody),
- 18 USC 641 (relating to public money, property, or records),
- 18 USC 656 (relating to theft, embezzlement, or misapplication by bank officer or employee),
- 18 USC 657 (relating to lending, credit and insurance institutions),
- 18 USC 658 (relating to property mortgaged or pledged to farm credit agencies),
- 18 USC 666 (relating to theft or bribery concerning programs receiving Federal funds),
- 18 USC 793, 794 or 798 (relating to espionage),
- 18 USC 875 (relating to interstate communications),
- 18 USC 1005 (relating to bank fraud and embezzlement),
- 18 USC 1006 (relating to fraudulent credit institution entries),
- 18 USC 1007 (relating to bank fraud and embezzlement),
- 18 USC 1014 (relating to fraudulent loan or credit applications),
- 18 USC 1032 (relating to concealment of assets from a financial institution),
- 18 USC 1201 (relating to kidnapping),
- 18 USC 1203 (relating to hostage taking),
- 18 USC 1341 (relating to frauds and swindles against financial institutions involving mail),
- 18 USC 1343 (relating to wire fraud affecting a financial institution),
- 18 USC 1344 (relating to bank fraud),
- 18 USC 2113 or 2114 (relating to bank and postal robbery and theft),

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 10

- 18 USC 2251, 2251A, 2252, and 2258 (relating to sexual exploitation of children) (FBI) (USCS) (The jurisdiction of USCS under this SUA involves the importation or exportation of material involving the sexual exploitation of children.)
- 18 USC 2319 (relating to copyright infringement),
- 18 USC 2320 (relating to trafficking in counterfeit goods or services) (FBI),
- 19 USC 1590 (relating to aviation smuggling),
- 21 USC 830 (relating to precursor and essential chemicals),
- 21 USC 857 (relating to transportation of drug paraphernalia),
- Section 15 of the Food Stamp Act of 1977 (relating to Food Stamp Fraud) involving a quantity of coupons having a value of not less than \$5,000 (FBI),
- Section 38(C) (relating to criminal violations), of the Arms Export Control Act (22 USC 2778),
- Section 11 (relating to violations) of the Export Administration Act of 1979 (50 USC App. 2410),
- Section 206 (relating to penalties) of the International Emergency Economic Powers Act (50 USC 1702), or
- Section 16 (relating to offenses and punishment) of the Trading with the Enemy Act (50 USC App. 3);
- 33 USC 1251 et seq. (felony offenses relating to the discharge of pollutants into the Nation's waters),
- 33 USC 1401 et seq. (felony offenses relating to the dumping of materials into ocean waters),
- 33 USC 1901 et seq. (felony offenses relating to the discharge of pollutants from ships),
- 42 USC 300f et seq. (felony offenses related to the safety of public water systems),
- 42 USC 6901 et seq. (felony offenses relating to resource conservation and recovery); or

(d) Any act or activity constituting one of the predicate offenses to the Racketeer Influenced and Corrupt Organizations (RICO) Statute (Title 18, U.S. Code, Section 1961(1)) except an act which is indictable under the Currency and Foreign Transactions Reporting Act. (See MIOG, Part I, 183-1.2.) These offenses are as follows:

1. Any act or threat involving:

Murder
Kidnapping
Gambling

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 11

Arson
Robbery
Bribery
Extortion

Dealing in obscene matter, or
Dealing in a controlled substance or listed
chemical (as defined in Section 102 of the Controlled Substances Act) |
which is chargeable as a state felony;

2. Any act which is indictable under any of the
following:

- 18 USC 201 (relating to bribery),
- 18 USC 224 (relating to sports bribery),
- 18 USC 471-473 (relating to counterfeiting),
- 18 USC 659 (relating to theft from interstate
shipment) if the act indictable under section 659 is felonious,
- 18 USC 664 (relating to embezzlement from pension and
welfare funds),
- 18 USC 891-894 (relating to extortionate credit
transactions),
- 18 USC 1028 (related to fraud and related activity in
connection with identification documents) if the act indictable under
Section 1028 was committed for the purpose of financial gain,
- 18 USC 1029 (relating to fraud and related activity
in connection with access devices),
- 18 USC 1084 (relating to the transmission of gambling
information),
- 18 USC 1341 (relating to mail fraud),
- 18 USC 1343 (relating to wire fraud),
- 18 USC 1344 (relating to bank fraud),
- 18 USC 1461-1465 (relating to obscene matter),
- 18 USC 1503 (relating to obstruction of justice),
- 18 USC 1510 (relating to obstruction of criminal
investigations),
- 18 USC 1511 (relating to the obstruction of state or
local law enforcement),
- 18 USC 1512 (relating to tampering with a witness,
victim, or an informant),
- 18 USC 1513 (relating to retaliating against a
witness, victim, or an informant),
- 18 USC 1542 (relating to false statement in
application and use of passport) if the act indictable under Section
1542 was committed for the purpose of financial gain,
- 18 USC 1543 (relating to forgery or false use of
passport) if the act indictable under Section 1543 was committed for

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 12

- the purpose of financial gain,
 - 18 USC 1544 (relating to misuse of passport) if the act indictable under Section 1544 was committed for the purpose of financial gain,
 - 18 USC 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under Section 1545 was committed for the purpose of financial gain,
 - 18 USC 1581-1588 (relating to peonage and slavery),
 - 18 USC 1951 (relating to interference with commerce, robbery, or extortion),
 - 18 USC 1952 (relating to racketeering),
 - 18 USC 1953 (relating to interstate transportation of wagering paraphernalia),
 - 18 USC 1954 (relating to unlawful welfare fund payments),
 - 18 USC 1955 (relating to the prohibition of illegal gambling business),
 - 18 USC 1956 (relating to the laundering of monetary instruments),
 - 18 USC 1957* (relating to engaging in monetary transactions in property derived from SUA),
 - 18 USC 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire),
 - 18 USC 2251, 2251A, 2252 and 2258 (relating to sexual exploitation of children),
 - 18 USC 2312 and 2313 (relating to interstate transportation of stolen motor vehicles),
 - 18 USC 2314 and 2315 (relating to interstate transportation of stolen property),
 - 18 USC 2321 (relating to trafficking in certain motor vehicles or vehicle parts),
 - 18 USC 2341-2346 (relating to trafficking in contraband cigarettes),
 - 18 USC 2421-2424 (relating to white slave traffic);

3. Any act which is indictable under:

- 29 USC 186 (dealing with restrictions on payments and loans to labor organizations) or,
- 29 USC 501(c) (relating to embezzlement from union funds);

4. Any offense involving:

fraud connected with a case under Title 11 (except a case under Section 157 of this title), fraud in the sale of securities, or the

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 13

felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in Section 102 of the Controlled Substances Act), punishable under any law of the United States;

5. Any act which is indictable under the Immigration and Naturalization Act, Section 274 (relating to bringing in or harboring certain aliens), Section 277 (relating to aiding or assisting certain aliens to enter the United States), or Section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain.

NOTE: The investigatory jurisdiction for money laundering violations is shared by numerous federal law enforcement agencies and is set forth in a Memorandum of Understanding (MOU) among the Department of Justice, Treasury Department and the Postal Service. (See MIOG, Part I, 272-13.) Generally, this jurisdiction is determined by the particular SUA(s) involved. For further information regarding money laundering jurisdiction, see MIOG, Part I, 272-9.

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272-5

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10

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- Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552

Section 552a

(b)(1)

(b)(7)(A)

(d)(5)

(b)(2)

(b)(7)(B)

(j)(2)

(b)(3)

(b)(7)(C)

(k)(1)

(b)(7)(D)

(k)(2)

(b)(7)(E)

(k)(3)

(b)(7)(F)

(k)(4)

(b)(4)

(b)(8)

(k)(5)

(b)(5)

(b)(9)

(k)(6)

(b)(6)

(k)(7)

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 25

(USSS), Bureau of Alcohol, Tobacco and Firearms (ATF), and the Postal Inspection Service (USPS). The FBI has investigatory jurisdiction, in general, over SUAs relating to its existing jurisdiction, i.e., drugs, white-collar crime, violent crimes, foreign counterintelligence, etc.

(2) The investigatory jurisdiction of the FBI, DEA, USCS, USSS, ATF, and the USPS is determined by the specific SUAs involved. A list of these SUAs is set forth below followed by the abbreviated name of the agency or agencies having money laundering jurisdiction for that SUA:

- (a) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (FBI, DEA);
- (b) any act or acts constituting a continuing criminal enterprise (21, USC, 848) (FBI, DEA, USPS);
- (c) an offense under the following:
 - 18 USC 152 (relating to concealment of assets; false oaths and claims; bribery) (FBI),
 - 18 USC 215 (relating to commissions or gifts for procuring loans) (FBI),
 - 18 USC 500 through 503 (relating to certain counterfeiting offenses) (USSS, USPS) (The jurisdiction of USPS under this SUA involves counterfeiting of money orders, postcards, indicia of postage and postmarking stamps.)
 - 18 USC 513 (relating to securities of states and private entities) (FBI),
 - 18 USC 542 (relating to entry of goods by means of false statements) (USCS),
 - 18 USC 545 (relating to smuggling goods into the United States) (USCS),
 - 18 USC 549 (relating to removing goods from Customs Custody) (USCS),
 - 18 USC 641 (relating to public money, property, or records) (FBI, USPS),
 - 18 USC 656 (relating to theft, embezzlement, or misapplication by bank officer or employee) (FBI),
 - 18 USC 657 (relating to lending, credit and insurance institutions) (FBI, USSS) (The jurisdiction of USSS under this SUA involves theft, embezzlement or misapplication by employees of the Federal Deposit Insurance Corporation.)
 - 18 USC 658 (relating to property mortgaged or

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 26

pledged to farm credit agencies) (FBI),
- 18 USC 666 (relating to theft or bribery
concerning programs receiving federal funds) (FBI),
- 18 USC 793, 794 or 798 (relating to espionage)
(FBI),
- 18 USC 875 (relating to interstate
communications) (FBI),
- 18 USC 1005 (relating to bank fraud and
embezzlement) (FBI),
- 18 USC 1006 (relating to fraudulent credit
institution entries) (FBI),
- 18 USC 1007 (relating to bank fraud and
embezzlement) (FBI),
- 18 USC 1014 (relating to fraudulent loan or
credit applications) (FBI),
- 18 USC 1032 (relating to concealment of assets
from a financial institution) (FBI),
- 18 USC 1201 (relating to kidnapping) (FBI),
- 18 USC 1203 (relating to hostage taking) (FBI),
- 18 USC 1341 (relating to frauds and swindles
against financial institutions involving mail) (FBI),
- 18 USC 1343 (relating to wire fraud affecting a
financial institution) (FBI),
- 18 USC 1344 (relating to bank fraud) (FBI),
- 18 USC 2113 or 2114 (relating to bank and postal
robbery and theft) (FBI, USPS) (FBI and USPS share money laundering
jurisdiction regarding the Section 2114 SUA.),
- 18 USC 2251, 2251A, 2252, and 2258 (relating to
sexual exploitation of children) (FBI) (USCS) (The jurisdiction of
USCS under this SUA involves the importation or exportation of
material involving the sexual exploitation of children.)
- 18 USC 2319 (relating to copyright infringement)
(FBI),
- 18 USC 2320 (relating to trafficking in
counterfeit goods or services) (FBI),
- 19 USC 1590 (relating to aviation smuggling)
(USCS),
- 21 USC 830 (relating to precursor and essential
chemicals) (FBI, DEA),
- 21 USC 857 (relating to transportation of drug
paraphernalia) (FBI, DEA, USCS, USPS) (The jurisdiction of USCS under
this SUA involves the illegal importation or exportation of drug
paraphernalia.),
- Section 15 of the Food Stamp Act of 1977
(relating to Food Stamp Fraud) involving a quantity of coupons having
a value of not less than \$5,000 (FBI),

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 27

- Section 38(c) (relating to criminal violations), of the Arms Export Control Act (22 USC 2778) (USCS, ATF) (The jurisdiction of USCS under this SUA involves exportation, intransit, temporary import, or temporary export transactions. The jurisdiction of ATF under this SUA involves the importation of items on the U.S. Munitions Import List, except those relating to exportation, intransit, temporary import, or temporary export transactions.)

- Section 11 (relating to violations) of the Export Administration Act of 1979 (50 USC App. 2410) (USCS)

- Section 206 (relating to penalties) of the International Emergency Economic Powers Act (50 USC 1702) (USCS) or

- Section 16 (relating to offenses and punishment) of the Trading with the Enemy Act (50 USC App. 3) (USCS),

- 33 USC 1251 et seq. (felony offenses relating to the discharge of pollutants into the Nation's waters) (FBI, EPA),

- 33 USC 1401 et seq. (felony offenses relating to the dumping of materials into ocean waters) (FBI, EPA),

- 33 USC 1901 et seq. (felony offenses relating to the discharge of pollutants from ships) (FBI, EPA),

- 42 USC 300f et seq. (felony offenses relating to the safety of public water systems) (FBI, EPA),

- 42 USC 6901 (felony offenses relating to resource conservation and recovery) (FBI, EPA);

(d) Any act or activity constituting one of the predicate offenses to the Racketeer Influenced and Corrupt Organizations (RICO) Statute (Title 18, U.S. Code, Section 1961(1)) except an act which is indictable under the Currency and Foreign Transactions Reporting Act. These offenses are as follows:

1. Any act or threat involving:

Murder (FBI)

Kidnapping (FBI)

Gambling (FBI)

Arson (FBI, ATF)

Robbery (FBI)

Bribery (FBI)

Extortion (FBI)

Dealing in obscene matter (FBI), or

Dealing in narcotic or other dangerous drugs

which is chargeable as a state felony;

2. Any act which is indictable under any of the

following:

(FBI, DEA, USPS),

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 28

- USPS), - 18 USC 201 (relating to bribery) (FBI,
- (FBI), - 18 USC 224 (relating to sports bribery)
- counterfeiting) (USSS), - 18 USC 471, 472, and 473 (relating to
- 18 USC 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious (FBI, USCS) (The jurisdiction of USCS under this SUA involves theft from foreign shipment.),
- 18 USC 664 (relating to embezzlement from pension and welfare funds) (FBI),
- 18 USC 891-894 (relating to extortionate credit transactions) (FBI),
- 18 USC 1028 (relating to fraud and related activity in connection with identification documents) if the act indictable under Section 1028 was committed for the purpose of financial gain (FBI, USSS),
- 18 USC 1029 (relating to fraud and related activity in connection with access devices) (FBI, USSS, USPS),
- 18 USC 1084 (relating to the transmission of gambling information) (FBI),
- USPS), - 18 USC 1341 (relating to mail fraud) (FBI,
- 18 USC 1343 (relating to wire fraud) (FBI, USPS) (The USPS shares this wire-fraud money laundering jurisdiction with the FBI when the primary focus of the offense is mail fraud.),
- 18 USC 1344 (relating to bank fraud) (FBI),
- 18 USC 1461-1465 (relating to obscene matter) (FBI, USCS, USPS) (The jurisdiction of USCS under this SUA involves Sections 1461-63 and 1465 relating to illegal importation or exportation of obscene matter. The jurisdiction of USPS under this SUA involves Sections 1461 and 1463 regarding mailing of obscene matter.),
- 18 USC 1503 (relating to obstruction of justice) (FBI, USPS),
- 18 USC 1510 (relating to obstruction of criminal investigations) (FBI, USPS),
- 18 USC 1511 (relating to the obstruction of state or local law enforcement) (FBI, USPS),
- 18 USC 1512 (relating to tampering with a witness, victim, or an informant) (FBI, USPS),
- 18 USC 1513 (relating to retaliating against a witness, victim, or an informant) (FBI, USPS),
- 18 USC 1542 (relating to false statement in

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 29

application and use of passport) if the act indictable under Section 1542 was committed for the purpose of financial gain (FBI),
- 18 USC 1543 (relating to forgery or false use of passport) if the act indictable under Section 1543 was committed for the purpose of financial gain (FBI),
- 18 USC 1544 (relating to misuse of passport) if the act indictable under Section 1544 was committed for the purpose of financial gain (FBI),
- 18 USC 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under Section 1545 was committed for the purpose of financial gain (FBI),
- 18 USC 1581-1588 (relating to peonage and slavery) (FBI),
- 18 USC 1951 (relating to interference with commerce, robbery, or extortion) (FBI),
- 18 USC 1952 (relating to racketeering) (FBI, ATF) (The jurisdiction of ATF under this SUA involves traveling in interstate commerce with respect to arson and to liquor on which federal excise tax has not been paid. The jurisdiction of USPS under this SUA involves mailing in aid of racketeering enterprises.),
- 18 USC 1953 (relating to interstate transportation of wagering paraphernalia) (FBI),
- 18 USC 1954 (relating to unlawful welfare fund payments) (FBI),
- 18 USC 1955 (relating to the prohibition of illegal gambling business) (FBI),
- 18 USC 1956 (relating to laundering of monetary instruments) (FBI),
- 18 USC 1957 (relating to engaging in monetary transactions in property derived from SUA) (FBI),
- 18 USC 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire) (FBI),
- 18 USC 2251, 2251A, 2252, and 2258 (relating to sexual exploitation of children) (FBI, USCS) (The jurisdiction of USCS under this SUA involves the importation or exportation of material involving the sexual exploitation of children.),
- 18 USC 2312 and 2313 (relating to interstate transportation of stolen motor vehicles) (FBI),
- 18 USC 2314 and 2315 (relating to interstate transportation of stolen property) (FBI, USCS) (The jurisdiction of USCS under this SUA involves foreign transportation of stolen property.),
- 18 USC 2321 (relating to trafficking in certain motor vehicles or vehicle parts) (FBI, USCS) (The jurisdiction of USCS under this SUA involves importation or exportation of certain motor vehicles or vehicle parts.),

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 30

- 18 USC 2341-2346 (relating to trafficking in
contraband cigarettes) (ATF),
- 18 USC 2421-2424 (relating to white slave
traffic) (FBI);

3. Any act which is indictable under

- 29 USC 186 (dealing with restrictions on
payments and loans to labor organizations) or (FBI),
- 29 USC 501(c) (relating to embezzlement from
union funds) (FBI);

4. Any offense involving fraud connected with a
case under Title 11, fraud in the sale of securities, or the felonious
manufacture, importation, receiving, concealment, buying, selling, or
otherwise dealing in a controlled substance or listed chemical (as
defined in Section 102 of the Controlled Substances Act) (FBI),
punishable under any law of the United States.

5. Any act which is indictable under the
Immigration and Naturalization Act, Section 274 (relating to bringing
in or harboring certain aliens), Section 277 (relating to aiding or
assisting certain aliens to enter the United States), or Section 278
(relating to importation of alien for immoral purpose) if the act
indictable under such section of such Act was committed for the
purpose of financial gain.

EFFECTIVE: 10/02/96

272-10 INTERRELATED STATUTES

EFFECTIVE: 10/26/93

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 31

272-10.1 Interstate Transportation In Aid of Racketeering (ITAR)
Statute

The money laundering violations (Title 18, USC, Sections 1956 and 1957) and Title 31 violations dealing with reporting of currency transactions (acts indictable under subchapter II of Chapter 53 of Title 31, United States Code) have been added as predicate offenses ("unlawful activities") for the ITAR Statute (Title 18, USC, Section 1952).

EFFECTIVE: 10/26/93

272-10.2 Racketeer Influenced and Corrupt Organizations (RICO)
Statute

The money laundering violations (Title 18, USC, Sections 1956 and 1957) have been added as predicate offenses ("racketeering activities") for the RICO Statute (Title 18, USC, Section 1961).

EFFECTIVE: 10/26/93

272-10.3 Interception of Wire, Oral, or Electronic
Communications

Section 2516 of Title 18 of the USC, also referred to as "Title III," includes the money laundering violations (Title 18, USC, Sections 1956 and 1957) within the enumerated offenses which authorize the interception of communications.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 32

272-11 INTERNATIONAL LEADS

In ALL CASES, including drug matters, money laundering leads to be conducted in foreign countries will be covered by the appropriate FBI Legal Attache.

EFFECTIVE: 10/26/93

272-12 THE BANK SECRECY ACT (See MIOG, Part I, 272-5.1(1).)

(1) On October 26, 1970, the President signed the "Bank Records and Foreign Transaction Act" into law. Titles I and II of this Act constitute what is commonly known as the Bank Secrecy Act (BSA). The BSA is codified under Title 31, U.S. Code, Sections 5311 - 5322 and should not be confused with the "Money Laundering Statutes." The intent behind the BSA is to enhance law enforcement investigations of criminal enterprises dealing in large sums of currency, whether the underlying criminal activity involves drugs, organized crime or white collar crime. The primary purpose of the reporting requirements of the BSA is to identify the sources and movements of United States currency being transported into or out of the country or being deposited into financial institutions.

(2) The BSA has not been well understood since its passage. However, it is now being realized that the currency reporting statutes can be used to attack criminal enterprises by focusing on the profits they reap. The BSA is specifically designed to aid in this attack by creating a "paper trail" to trace those proceeds back to their illegal source.

EFFECTIVE: 10/26/93

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 33

272-12.1 BSA Reporting Requirements and IRS Form 8300

(1) Under the BSA requirements, individuals, banks, and financial institutions must report cash transactions which involve the payment, receipt, or transfer of cash of \$10,000 or more. The report is made on Internal Revenue Service (IRS) Form 4789, Currency Transaction Report (CTR).

(2) Casinos are required to report cash transactions of \$10,000 or more. Casinos file a Currency Transaction Report by Casino (CTRC), which is IRS Form 8362.

(3) The BSA requires two types of foreign financial reports.

(a) Individuals who transport "monetary instruments" into or out of the United States or receive such instruments in the United States from abroad must report the transaction. This report is made on United States Customs Service (USCS) Form 4790, International Transportation of Currency or Monetary Instrument Report (CMIR).

(b) Any person of the United States who has a financial interest in bank securities or other financial accounts in a foreign country must report certain information. This report is made on Department of Treasury Form 90-22.1, Foreign Bank and Financial Accounts Report (FBAR).

(4) In addition, under the authority of the Secretary of the Treasury, the IRS requires that businesses or other entities file a report when a product or service is paid for with United States currency of \$10,000 or more. That report is made on IRS Form 8300.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 34

272-12.2 Access to BSA Report Information

(1) Under the BSA, the Department of Treasury is responsible for collection, administration, and dissemination of BSA report information. United States Customs Service and Internal Revenue Service officials at their respective headquarters and field offices may disseminate BSA report information to Federal, state, and local law enforcement agencies.

(2) Because BSA report information consists of personal and sensitive financial data, strict guidelines have been adopted for disseminating BSA report information. Under these guidelines, BSA report information includes all data reported to the Department of Treasury on the following forms:

(a) Currency Transaction Report (CTR), IRS Form 4789;

(b) Currency Transaction Report by Casinos (CTRC), IRS Form 8362;

(c) International Transportation of Currency or Monetary Instrument Report (CMIR), USCS Form 4790;

(d) Foreign Bank and Financial Accounts Report (FBAR), Department of Treasury Form 90-22.1;

(e) IRS Form 8300.

EFFECTIVE: 10/26/93

272-12.3 Procedures for Requesting BSA Report Information (See MIOG, Part I, 272-12.5.)

All requests for BSA report information should be made to the appropriate USCS or IRS field office. Requests must be made in writing unless exigent circumstances exist. Requests should be made by letter, on letterhead, and signed by the SAC. The letter should state the intended purpose for the information, specific violations or potential violations of law involved, and identifying data for the individuals or businesses being checked. If a verbal request for BSA

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 35

report information is made under exigent circumstances, a written confirmation of the verbal request must be made.

EFFECTIVE: 10/26/93

272-12.4. Requesting Statistical BSA Report Information

Field offices may request statistical BSA report information where no specific personal or financial information is involved. For example, a request can be made for a list of all companies and individuals who have CTRs with a cumulative amount of \$1,000,000 filed by banks within a certain area. As almost 17 million CTRs were filed between 1987 and 1989, caution should be used when framing such a request. Investigative personnel may wish to contact IRS or USCS representatives regarding requests for statistical information in order to ensure a comprehensive and manageable work product.

EFFECTIVE: 10/26/93

272-12.5 Unsolicited Disclosure of BSA Report Information

The IRS or USCS may disclose BSA report information to the FBI or other Federal, state, or local law enforcement agencies when it is determined that such information may be useful in a particular investigation or procedure. Follow-up requests for additional BSA report information must be made according to MIOG, Part I, 272-12.3, above.

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Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 36

272-12.6 Disclosure of BSA Report Information Within Task
Force or Joint Investigations

Representatives of IRS or USCS may disclose BSA report information to other members of a joint or task force investigation, for use in that particular investigation. In such instances, no written request is necessary.

EFFECTIVE: 10/26/93

272-12.7 Direct Access to BSA Report Information by FBI Analysts

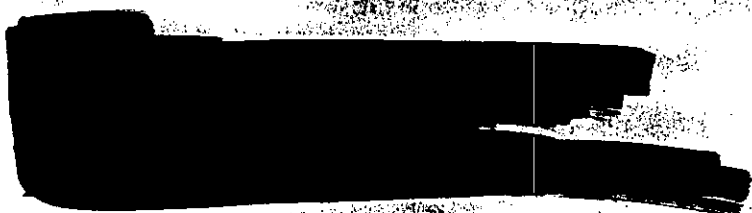
The Assistant Secretary of the Treasury has approved direct access to BSA report information by FBI analysts through the IRS or USCS. Prior to initial access to BSA report information the analyst will be required to acknowledge a statement reflecting that he/she understands the restrictions on disclosure outside the FBI.

EFFECTIVE: 10/26/93

272-12.8 Access to BSA Report Information Through the Financial
Crimes Enforcement Network (FinCEN)

(1) In those selective, high priority investigations where it would be beneficial to have additional information from FinCEN's criminal, commercial, and financial data bases, to include BSA report information, a letter should be forwarded to FinCEN requesting analytical assistance. The letter, on FBI letterhead, should be directed to:

b7C



(2) If exigent circumstances exist which would preclude a

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 37

written request, it is possible to telephonically contact the FinCEN Operations Center at telephone number 1 (800) 707-2825. It should be noted that FinCEN is an agency of the Department of Treasury which functions, in part, to support Federal, state, and local law enforcement agencies.

(3) It should be noted that under the operating procedures of FinCEN, records are maintained on each request received. The law enforcement agency which submitted the first request will be notified of all subsequent inquiries without exception.

EFFECTIVE: 10/26/93

272-13 "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations" (See MIOG, Part I, 183-1.2, 272-4(10)(d)4. & 272-9.)

"This Memorandum of Understanding (MOU) constitutes an agreement among the Secretary of the Treasury ("the Secretary"), the Attorney General and the Postmaster General as to the investigatory authority and procedures of Treasury and Justice bureaus and the Postal Service under 18 U.S.C sections 1956 and 1957, as amended by the Anti-Drug Abuse Act of 1988, Pub. L. 100-690 (Nov. 18, 1988). This replaces a previous MOU on this subject between the Secretary and the Attorney General effective May 20, 1987.

"Section I. Purpose

"The Attorney General, the Secretary and the Postmaster General have entered into this MOU in order to encourage effective and harmonious cooperation by Treasury and Justice bureaus and the Postal Service in the development of cases by bureaus with appropriate experience, to reduce the possibility of duplicative investigations, to minimize the potential for dangerous situations which might arise from uncoordinated multi-bureau efforts, and to enhance the potential for successful prosecution in cases presented to the various United States Attorneys.

"As clearly stated in the legislative history of the Act, this MOU does not confer any rights on any third party, including a defendant or other party in litigation with the United States. The fact that a bureau investigates a violation of section 1956 or section 1957 that

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 38

should have been investigated by another bureau under the terms of this MOU, or that any agency not a party to this MOU investigates a violation of section 1956 or section 1957, confers no rights and provides no defense to any party.

"While this MOU allocates jurisdiction to investigate violations of sections 1956 and 1957, nothing in this MOU is intended to augment or diminish the investigatory authority of any Justice or Treasury bureau or the Postal Service over violations of any Federal criminal law, independent of the money laundering statute, or to alter the existing allocation or delegation of such authority. This MOU governs all investigations involving 18 U.S.C. 1956 and 1957 and is intended to be used together with MOU's presently existing between the bureaus. This MOU does not supersede the provision of 26 U.S.C. 6103 (confidentiality and disclosure of returns and return information).

"Section II. Definitions

"1. 'Bureau' includes the Postal Inspection Service.

"2. 'Treasury bureaus' mean the Internal Revenue Service (IRS), the United States Customs Service, the Bureau of Alcohol, Tobacco, and Firearms (ATF), and the United States Secret Service.

"3. 'Justice bureaus' means the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI).

"4. 'Violations of section 1956' refers to both civil and criminal violations.

"5. 'Specified unlawful activities' has the definition set forth in 18 U.S.C. section 1956 (c) (7).

"6. 'Justice Department attorney' means the appropriate Assistant United States Attorney or designated Justice Department attorney assigned to the prosecution of the case.

"Section III. Investigatory Jurisdiction

"A bureau's investigatory actions in pursuit of a section 1956 or 1957 violation shall be conducted only in those areas in which the investigating bureau has existing jurisdiction, independent of the money laundering statutes, as set forth in this Section.

"A. Treasury Bureaus

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 39

"1. Internal Revenue Service

"The Internal Revenue Service will have investigative jurisdiction over all violations of Section 1956 and 1957 where the underlying conduct is subject to investigation under Title 26 or the Bank Secrecy Act.

"2. United States Customs Service

"a. The United States Customs Service will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the following specified unlawful activities: criminal offenses under 18 U.S.C. section 542, (relating to entry of goods by means of false statements), section 545 (relating to the smuggling of goods into the United States), section 549 (relating to removing goods from Customs custody), section 659 (relating to theft from foreign shipment), sections 1461-63 and 1465 (relating to illegal import or export of obscene matter), sections 2251-52 (relating to imports or exports of material involving sexual exploitation of children), section 2314 (relating to foreign transportation of stolen property), and section 2321 (relating to the import or export of certain motor vehicles or vehicle parts); 19 U.S.C. section 1590 (relating to aviation smuggling); 21 U.S.C. section 857 (relating to the illegal import or export of drug paraphernalia); criminal offenses under section 11 of the Export Administration Act of 1979 (50 U.S.C. App. section 2410); criminal offenses under section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705); criminal offenses under section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16); and criminal offenses under section 38(c) of the Arms Export Control Act (22 U.S.C. section 2778) (relating to exportation, intransit, temporary import, or temporary export transactions).

"b. The United States Customs Service will have investigatory jurisdiction over violations of section 1956(a)(2)(B)(ii), involving the international transportation of monetary instruments or funds which are proceeds of some form of unlawful activity and where the defendant knew that the transportation was designed in whole or in part to avoid a transaction reporting requirement under 31 U.S.C. 5316 (Reports on exporting and importing monetary instruments).

"3. United States Secret Service

"The United States Secret Service will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the specified unlawful activity of an offense under 18 U.S.C. sections

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 40

471-473 (counterfeiting of obligations or securities of the United States), sections 500-503 (counterfeiting of blank or postal money orders, postage stamps, foreign governments postage and revenue stamps, and postmarking stamps), section 657 (involving theft, embezzlement or misapplication by employees of the FDIC), and section 1029 (fraud and related activity in connection with access devices).

"4. Bureau of Alcohol, Tobacco and Firearms

"The Bureau of Alcohol, Tobacco and Firearms will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the specified unlawful activity of an offense under 18 U.S.C. sections 2341-2346 (trafficking in contraband cigarettes); section 38(c) of the Arms Export Control Act, 22 U.S.C section 2778 (relating to the importation of items on the U.S. Munitions Import List, except those relating to exportation, intransit, temporary import, or temporary export transactions); and 18 U.S.C. 1952 (relating to travelling in interstate commerce, with respect to liquor on which federal excise tax has not been paid and arson); or any act or activity constituting an offense listed in 18 U.S.C. 1961(1), with respect to any act or threat involving arson, which is chargeable under State law and punishable for more than one year.

"B. Justice Bureaus

"1. Federal Bureau of Investigation

"The Federal Bureau of Investigation will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the specified unlawful activities of an offense under 18 U.S.C. section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 513 (relating to securities of States and private entities), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), sections 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft), sections 2251, 2251A, 2252, and 2258 (relating to sexual exploitation of children); section 2319 (relating to copyright infringement); or section 2320 (relating to trafficking

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 41

in counterfeit goods and services); or 7 U.S.C. section 2024 (relating to food stamp fraud); 21 U.S.C. section 830 (relating to precursor chemicals), section 857 (relating to transportation of drug paraphernalia) and, with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act); and any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or any act or activity constituting an offense listed in 18 U.S.C. 1961(1), with respect to any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or in dealing in narcotics or other dangerous drugs which is chargeable under State law and punishable for more than one year; 18 U.S.C. 201 (bribery); 18 U.S.C. 224 (sports bribery); 18 U.S.C. 659 (theft from interstate shipment); 18 U.S.C. 664 (embezzlement from pension and welfare funds); 18 U.S.C. 891-894 (extortionate credit transactions); 18 U.S.C. 1029 (fraud and related activity in connection with access devices); 18 U.S.C. 1084 (the transmission of gambling information); 18 U.S.C. 1341 (mail fraud); 18 U.S.C. 1343 (wire fraud); 18 U.S.C. 1461-1465 (obscene matter); 18 U.S.C. 1503 (obstruction of justice); 18 U.S.C. 1510 (obstruction of criminal investigation); 18 U.S.C. 1511 (the obstruction of State or local law enforcement); 18 U.S.C. 1512 (tampering with a witness, victim or informant); 18 U.S.C. 1513 (retaliating against a witness, victim or informant); 18 U.S.C. 1951 (interference with commerce, robbery or extortion); 18 U.S.C. 1952 (racketeering, except with respect to untaxed paid liquor and arson); 18 U.S.C. 1953 (interstate transportation of wagering paraphernalia); 18 U.S.C. 1954 (unlawful welfare fund payments); 18 U.S.C. 1955 (the prohibition of illegal gambling businesses); 18 U.S.C. 1958 (use of interstate commerce facilities in the commission of murder-for-hire); 18 U.S.C. 2251, 2251A, 2252, and 2258 (sexual exploitation of children); 18 U.S.C. 2321 (trafficking in certain motor vehicles or motor vehicle parts); 18 U.S.C. 2312 and 2313 (interstate transportation of stolen motor vehicles); 18 U.S.C. 2314 and 2315 (interstate transportation of stolen property); 18 U.S.C. 2421-24 (white slave traffic); any act which is indictable under 29 U.S.C. 186 (restrictions on payments and loans to labor organizations) or 29 U.S.C. 501(c) (embezzlement from union funds); any offense involving fraud connected with a case under title 11, fraud in the sale of securities, and the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States."

|| (The above SUAs in Section 1956 and violations specified in Section

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 42

1961 are changed occasionally. See MIOG, Part I, 183-1.2 (for current RICO predicate offenses), 272-4, and 272-9 (for current SUAs.)

"2. Drug Enforcement Administration

"The Drug Enforcement Administration shall have investigatory jurisdiction over violations of sections 1956 or 1957 involving the specified unlawful activities of, with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purpose of the Controlled Substances Act) including 21 U.S.C. 830 (relating to precursor and essential chemicals) and 857 (relating to transportation of drug paraphernalia); or any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or any of the predicate offenses enumerated in 18 U.S.C. 1961(1) dealing in narcotics or other dangerous drugs which are chargeable under State law and punishable for more than one year, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotics or other dangerous drugs, punishable under any law of the United States.

"C. United States Postal Service

"The investigative jurisdiction of the Postal Inspection Service is limited by 18 U.S.C. 3061 to offenses regarding property in the custody of the Postal Service, property of the Postal Service, use of the mails; other postal offenses, and offenses for which the Postal Service has been delegated investigative authority pursuant to 18 U.S.C. 3061 (b) (2). Subject to these limitations, the Postal Inspection Service shall have investigative jurisdiction over violations of sections 1956 and 1957 involving the specified unlawful activities of 18 U.S.C. 201 (bribery of public officials and witnesses); 18 U.S.C. 500-503 (counterfeiting of money orders, post cards, indicia of postage and postmarking stamps); 18 U.S.C. 641 (theft of public money, property or records); 18 U.S.C. 1029 (fraudulent activity in connection with access devices) with respect to violations involving postal employees, fraud against the Postal Service or where the primary focus of the offense is mail fraud or a violation of 18 U.S.C. 2114 (postal robbery); 18 U.S.C. 1341 (mail fraud); 18 U.S.C. 1343 (wire fraud) where the primary focus of the offense is mail fraud; 18 U.S.C. 1461 and 1463 (mailing of obscene matter); 18 U.S.C. 1503, 1510-1513 (obstruction of justice); 18 U.S.C. 1952 (mailing in aid of racketeering enterprises); 18 U.S.C. 1961

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 43

(1)(A) (organized crime); 18 U.S.C. 2114 (robbery of mail, other property); 18 U.S.C. 2251, 2252 (sexual exploitation of minors); any 18 U.S.C. 1961 (1) offense dealing in narcotics and other dangerous drugs which are chargeable under state law and punishable for more than one year, or by the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotics or other dangerous drugs punishable under any law of the United States, or any act or acts constituting criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); 21 U.S.C. 843 (b) (use of mails to violate Controlled Substances Act); and, Section 1822 of the Mail Order Drug Paraphernalia Control Act (21 U.S.C. 857) (transportation of drug paraphernalia).

"Section IV. Undercover Operations

"This MOU will govern the conduct of all money laundering investigations under sections 1956 and 1957 in that all parties hereto agree that all undercover operations will be reviewed using each bureau's internal guidelines, the objectives of which are consistent with existing Attorney General Guidelines on undercover operations.

"Section V. Seizure and Forfeiture

"Any property involved in a violation of section 1956 or 1957 that a Treasury or Justice bureau or the Postal Service has authority to investigate under Section III of this MOU may be seized by that bureau or the Postal Service, if that property is subject to forfeiture to the United States under 18 U.S.C. 981(a)(1)(A) or 981(a)(1)(B).

"Where a Treasury or Justice bureau or the Postal Service would have authority to seize property under the authority stated in the preceding paragraph is not present to make the seizure, any Treasury or Justice bureau or the Postal Service that is present may seize the property and shall immediately turn over that property to the bureau having Section III investigatory jurisdiction, where the forfeiture processing shall occur.

"Any property seized under this Section shall, upon forfeiture under 18 U.S.C. 981 or 982, be apportioned among the appropriate Treasury or Justice bureaus or the Postal Service in accordance with their respective contribution to the overall efforts expended in the investigation, seizure, or forfeiture.

"Pursuant to 18 U.S.C. 981(e) and, where appropriate, the Justice Department, the Treasury Department or the Postal Service forfeiture

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 44

guidelines, apportionment may include equitable transfers to any other Federal agency or State or local authorities, which participated directly in any of the acts which led to the seizure or forfeiture.

"Any dispute regarding the seizure, forfeiture, apportionment, or disposition of property under this section shall be governed by the disputes resolution procedure in Section IX of this MOU.

"This MOU does not affect Treasury or Justice bureaus' or the Postal Service's authority to seize property or the disposition of such property under statutory seizure and forfeiture provisions not based on section 1956 and 1957 violations.

"A. Seizure of Attorney Fees: Treasury and Justice bureaus and the Postal Service will follow DOJ guidelines in reference to the seizure and forfeiture of any money or property that is held by an attorney for payment for the defense of a client. See United States Attorneys Manual 9-111.000, et seq.

"Section VI. Prosecution

"A bureau that conducts an investigation under the authority of this MOU shall coordinate with Justice Department attorneys.

"Section VII. Notice, Coordination, and Lead Bureau

"A. Notice

"1. If, during the investigation of a section 1956 or 1957 violation, a bureau discovers a specified unlawful activity or a transaction reporting violation over which another bureau has investigatory jurisdiction, that bureau shall give notice to the bureau which has investigatory jurisdiction over the specified unlawful activity or to the Internal Revenue Service or Customs, as appropriate, in the case of a transaction reporting violation, and to consult prior to taking any investigative actions impacting on the other bureau's jurisdiction.

"2. If a bureau discovers transactions involving the proceeds of a specified unlawful activity conducted with intent to engage in a violation of section 7201 or 7206 of the Internal Revenue Code, that bureau shall give notice to the Internal Revenue Service and coordinate the subsequent investigation with the IRS. To the extent that any IRS money laundering investigation requires the acquisition of evidence concerning an underlying specified unlawful activity, the IRS shall notify the bureau having jurisdiction over the specified

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Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 45

unlawful activity and coordinate the subsequent investigation with that bureau.

"3. Notice under this section will ordinarily be made at supervisory field level and will, at a minimum, require a complete summary of the facts and circumstances of the investigation. However, in those instances where a bureau undertakes an investigation in which it determines that field level disclosure would be detrimental to the investigation, the required notice will be made at the headquarters level and dissemination restricted to selected individuals consistent with the need to maintain security of the investigations.

"B. Coordination and Determination of Lead Bureau

"Investigatory actions which involve areas outside the investigating bureau's existing jurisdiction, independent of the money laundering statute, shall be conducted only in coordination with the bureau(s) which do have existing jurisdiction independent of the money laundering statute. Coordination requires, at a minimum, a determination of the degree of cooperation necessary between the coordinating bureau(s) and includes continuing dialogue as the case develops. At the request of any coordinating bureau, at any time as the case develops, there shall be a determination of the lead bureau for the Section 1956 or 1957 investigation. The determination of lead bureau does not preclude a subsequent request by a coordinating bureau for redetermination of the lead as compelling facts and circumstances warrant.

"The determination of the lead bureau will be made at the supervisory field level by the bureaus involved and will be governed by which bureau has the paramount investigatory interest. In determining which bureau has the paramount investigatory interest, the factors to be considered shall include, but not be limited to:

- . Likely impact on major criminal enterprises;
- . Likelihood of successful prosecution;
- . Existence of a specified unlawful activity, as defined in section 1956(c) (7);
- . Jeopardy to informants, undercover agents, or third parties;
- . Commitment of investigatory resources; and

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 46

- . Any other matter of substantive investigative interest.

"Section VIII. Jointly Conducted Investigations

"Treasury and Justice bureaus and the Postal Service are encouraged to enter into joint investigatory endeavors in circumstances that may necessitate or justify the use of skills and resources of more than one bureau. The specific details of each joint investigation, including the role of each bureau in the endeavor, will be formulated at the onset of the investigation and will be provided to each bureau's headquarters by each bureau's established procedures. While differing circumstances will result in varied arrangements from project to project, certain conditions will always apply:

- . Participating personnel will be supervised by their respective bureaus. This does not alter any other concerning supervision of investigatory personnel.
- . Only one evidentiary document, such as a record of interview will be prepared, and a copy will be furnished to the other bureau at the time the document is prepared.
- . Resources and investigatory expertise will be provided to the requesting bureau when the investigatory matter meets the criteria of the requested bureau and when available resources allow.
- . Any contact with the news media, such as press releases, will be coordinated and agreed to in advance by the bureaus involved.

"Section IX. Dispute Resolution

"The Secretary, the Attorney General and the Postmaster General contemplate that in cases of overlapping jurisdiction, the appropriate bureaus will work in concert to the extent authorized by law. Any disputes between bureaus should be resolved at the field level. When this cannot be accomplished, the matter will be referred to the respective headquarters' point of contact. In the event that disputes cannot be resolved by the bureau headquarters, the matter will be expeditiously referred to the Assistant Attorney General, Criminal Division, Department of Justice, and the Assistant Secretary for Enforcement, Department of the Treasury, and in disputes involving the Postal Service, to the Chief Postal Inspector, whose decisions shall

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 47

be final.

"Section X. Extraterritorial Jurisdiction

"Treasury and Justice bureaus and the Postal Service must immediately notify the appropriate prosecuting attorney or other designated Department of Justice official if, in the course of a section 1956 or section 1957 investigation, it becomes likely that extraterritorial jurisdiction under section 1956(f) or section 1957(d) will be invoked. See United States Attorneys Manual 9-105.100.

"Section XI. Amendment

"This MOU may be amended by deletion or modification of any provision contained herein, or by addition of new provisions, after written concurrence of all the parties to the MOU.

"Section XII. Termination

"This MOU will remain in effect until terminated by the Attorney General or the Secretary or the Postmaster General upon 30 days' written notice.

"Section XIII. Approval

"This MOU becomes effective when approved by the parties identified below.

Peter K. Nunez
Assistant Secretary (Enforcement)
U.S. Department of Treasury

William P. Barr
Deputy Attorney General
U.S. Department of Justice

JUL 31 1990
Date

8/11/90
Date

Charles R. Clauson
Charles R. Clauson
Chief Postal Inspector

8/16/90

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 272 - 48

Date"

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 273 - 1

SECTION 273. ADOPTIVE FORFEITURE MATTERS - DRUGS

273-1 ADOPTIVE FORFEITURE MATTERS - DRUGS

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 273 - 2

(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

| CLASSIFICATION NUMBER/ALPHA DESIGNATOR | CLASSIFICATION TITLE | PROGRAM/ SUBPROGRAM |
|----------------------------------------------|-------------------------------------------------------------------------------------|------------------------|
| 273A | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+ | OC/DP-OC/DP |
| 273B | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999 | OC/DP-OC/DP |
| 273C | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000 | OC/DP-OC/DP |
| 274A | ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+ | OC/DP-OC/DP |
| 274B | ADOPTIVE FORFEITURE MATTER - | OC/DP-OC/DP |

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 273 - 3

- OC - APPRAISED VALUE \$5,000
- \$24,999
- 274C ADOPTIVE FORFEITURE MATTER - OC/DP-OC/DP
OC - APPRAISED VALUE UNDER
\$5,000
- 275A ADOPTIVE FORFEITURE MATTER - WCC/
WHITE COLLAR CRIME (WCC) - ECONOMIC
APPRAISED VALUE \$25,000+ CRIME (EC)
- 275B ADOPTIVE FORFEITURE MATTER - WCC/EC
WCC - APPRAISED VALUE \$5,000
- \$24,999
- 275C ADOPTIVE FORFEITURE MATTER - WCC/EC
WCC - APPRAISED VALUE UNDER
\$5,000
- 276A ADOPTIVE FORFEITURE MATTER - VC MO/
VIOLENT CRIMES AND MAJOR INTERSTATE
OFFENDERS (VC MO) - APPRAISED THEFT (IT)
VALUE \$25,000+
- 276B ADOPTIVE FORFEITURE MATTER - VC MO/IT
VC MO - APPRAISED VALUE \$5,000
- \$24,999
- 276C ADOPTIVE FORFEITURE MATTER - VC MO/IT
VC MO - APPRAISED VALUE
UNDER \$5,000
- 277A ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC
COUNTERTERRORISM (CT) - TERRORISM
APPRAISED VALUE \$25,000+ (DT)
- 277B ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE \$5,000
- \$24,999
- 277C ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE UNDER
\$5,000

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 273 - 4

(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF PROGRAM

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Manual of Investigative Operations and Guidelines
Part I

PAGE 274 - 1

SECTION 274. ADOPTIVE FORFEITURE MATTERS - ORGANIZED CRIME

274-1 ADOPTIVE FORFEITURE MATTERS - ORGANIZED CRIME

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentages is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 274 - 2

(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

| CLASSIFICATION NUMBER/ALPHA DESIGNATOR | CLASSIFICATION TITLE | PROGRAM/ SUBPROGRAM |
|----------------------------------------------|-------------------------------------------------------------------------------------|------------------------|
| 273A | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+ | OC/DP-OC/DP |
| 273B | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999 | OC/DP-OC/DP |
| 273C | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000 | OC/DP-OC/DP |
| 274A | ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+ | OC/DP-OC/DP |

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 274 - 3

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|------|-------------------------------------------------------------------------------------------------------------|-----------------------------------|
| 274B | ADOPTIVE FORFEITURE MATTER - OC - APPRAISED VALUE \$5,000 - \$24,999 | OC/DP-OC/DP |
| 274C | ADOPTIVE FORFEITURE MATTER - OC - APPRAISED VALUE UNDER \$5,000 | OC/DP-OC/DP |
| 275A | ADOPTIVE FORFEITURE MATTER - WHITE COLLAR CRIME (WCC) - APPRAISED VALUE \$25,000+ | WCC/ ECONOMIC CRIME (EC) |
| 275B | ADOPTIVE FORFEITURE MATTER - WCC - APPRAISED VALUE \$5,000 - \$24,999 | WCC/EC |
| 275C | ADOPTIVE FORFEITURE MATTER - WCC - APPRAISED VALUE UNDER \$5,000 | WCC/EC |
| 276A | ADOPTIVE FORFEITURE MATTER - VIOLENT CRIMES AND MAJOR OFFENDERS (VCMO) - APPRAISED VALUE \$25,000+ | VCMO/ INTERSTATE THEFT (IT) |
| 276B | ADOPTIVE FORFEITURE MATTER - VCMO - APPRAISED VALUE \$5,000 - \$24,999 | VCMO/IT |
| 276C | ADOPTIVE FORFEITURE MATTER - VCMO - APPRAISED VALUE UNDER \$5,000 | VCMO/IT |
| 277A | ADOPTIVE FORFEITURE MATTER - COUNTERTERRORISM (CT) - APPRAISED VALUE \$25,000+ | CT/DOMESTIC TERRORISM (DT) |
| 277B | ADOPTIVE FORFEITURE MATTER - CT - APPRAISED VALUE \$5,000 - \$24,999 | CT/DT |
| 277C | ADOPTIVE FORFEITURE MATTER - CT - APPRAISED VALUE UNDER \$5,000 | CT/DT |

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 274 - 4

(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF PROGRAM

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SECTION 275. ADOPTIVE FORFEITURE MATTERS - WHITE COLLAR CRIME

275-1 ADOPTIVE FORFEITURE MATTERS - WHITE COLLAR CRIME

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 275 - 2

(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

| CLASSIFICATION NUMBER/ALPHA DESIGNATOR | CLASSIFICATION TITLE | PROGRAM/ SUBPROGRAM |
|----------------------------------------------|-------------------------------------------------------------------------------------|------------------------|
| 273A | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+ | OC/DP-OC/DP |
| 273B | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999 | OC/DP-OC/DP |
| 273C | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000 | OC/DP-OC/DP |
| 274A | ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+ | OC/DP-OC/DP |

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 275 - 3

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|------|-------------------------------------------------------------------------------------------------------------|-----------------------------------|
| 274B | ADOPTIVE FORFEITURE MATTER - OC - APPRAISED VALUE \$5,000 - \$24,999 | OC/DP-OC/DP |
| 274C | ADOPTIVE FORFEITURE MATTER - OC - APPRAISED VALUE UNDER \$5,000 | OC/DP-OC/DP |
| 275A | ADOPTIVE FORFEITURE MATTER - WHITE COLLAR CRIME (WCC) - APPRAISED VALUE \$25,000+ | WCC/ ECONOMIC CRIME (EC) |
| 275B | ADOPTIVE FORFEITURE MATTER - WCC - APPRAISED VALUE \$5,000 - \$24,999 | WCC/EC |
| 275C | ADOPTIVE FORFEITURE MATTER - WCC - APPRAISED VALUE UNDER \$5,000 | WCC/EC |
| 276A | ADOPTIVE FORFEITURE MATTER - VIOLENT CRIMES AND MAJOR OFFENDERS (VCMO) - APPRAISED VALUE \$25,000+ | VCMO/ INTERSTATE THEFT (IT) |
| 276B | ADOPTIVE FORFEITURE MATTER - VCMO - APPRAISED VALUE \$5,000 - \$24,999 | VCMO/IT |
| 276C | ADOPTIVE FORFEITURE MATTER - VCMO - APPRAISED VALUE UNDER \$5,000 | VCMO/IT |
| 277A | ADOPTIVE FORFEITURE MATTER - COUNTERTERRORISM (CT) - APPRAISED VALUE \$25,000+ | CT/DOMESTIC TERRORISM (DT) |
| 277B | ADOPTIVE FORFEITURE MATTER - CT - APPRAISED VALUE \$5,000 - \$24,999 | CT/DT |
| 277C | ADOPTIVE FORFEITURE MATTER - CT - APPRAISED VALUE UNDER \$5,000 | CT/DT |

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 275 - 4

(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF PROGRAM

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 276 - 1

SECTION 276. ADOPTIVE FORFEITURE MATTERS -
VIOLENT CRIMES AND MAJOR OFFENDERS

276-1 ADOPTIVE FORFEITURE MATTERS - VIOLENT CRIMES AND MAJOR
OFFENDERS

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 276 - 2

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

| CLASSIFICATION NUMBER/ALPHA DESIGNATOR | CLASSIFICATION TITLE | PROGRAM/ SUBPROGRAM |
|----------------------------------------------|------------------------------------------------------------------------------|------------------------|
| 273A | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+ | OC/DP-OC/DP |
| 273B | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999 | OC/DP-OC/DP |
| 273C | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000 | OC/DP-OC/DP |
| 274A | ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - | OC/DP-OC/DP |

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 276 - 3

- APPRaised VALUE \$25,000+
- 274B ADOPTIVE FORFEITURE MATTER - |OC/DP-OC/DP|
OC - APPRAISED VALUE \$5,000
- \$24,999
- 274C ADOPTIVE FORFEITURE MATTER - |OC/DP-OC/DP|
OC - APPRAISED VALUE UNDER
\$5,000
- 275A ADOPTIVE FORFEITURE MATTER - |WCC/
WHITE COLLAR CRIME (WCC) - ECONOMIC|
APPRAISED VALUE \$25,000+ CRIME|(EC)|
- 275B ADOPTIVE FORFEITURE MATTER - |WCC/EC|
WCC - APPRAISED VALUE \$5,000
- \$24,999
- 275C ADOPTIVE FORFEITURE MATTER - |WCC/EC|
WCC - APPRAISED VALUE UNDER
\$5,000
- 276A ADOPTIVE FORFEITURE MATTER - VC MO/
VIOLENT CRIMES AND MAJOR INTERSTATE
OFFENDERS (VC MO) - APPRAISED THEFT (IT)
VALUE \$25,000+
- 276B ADOPTIVE FORFEITURE MATTER - VC MO/IT
VC MO - APPRAISED VALUE \$5,000
- \$24,999
- 276C ADOPTIVE FORFEITURE MATTER - VC MO/IT
VC MO - APPRAISED VALUE UNDER
\$5,000
- 277A ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC
COUNTERTERRORISM (CT) - TERRORISM
APPRAISED VALUE \$25,000+ (DT)
- 277B ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE \$5,000 -
\$24,999
- 277C ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE UNDER
\$5,000

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 276 - 4

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF PROGRAM

EFFECTIVE: 11/28/95

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 277 - 1

SECTION 277. ADOPTIVE FORFEITURE MATTERS - COUNTERTERRORISM

277-1 ADOPTIVE FORFEITURE MATTERS - COUNTERTERRORISM

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

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(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

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(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

| CLASSIFICATION NUMBER/ALPHA DESIGNATOR | CLASSIFICATION TITLE | PROGRAM/ SUBPROGRAM |
|----------------------------------------------|-------------------------------------------------------------------------------------|------------------------|
| 273A | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+ | OC/DP-OC/DP |
| 273B | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999 | OC/DP-OC/DP |
| 273C | ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000 | OC/DP-OC/DP |
| 274A | ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+ | OC/DP-OC/DP |

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PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 277 - 3

- 274B ADOPTIVE FORFEITURE MATTER - |OC/DP-OC/DP|
OC - APPRAISED VALUE \$5,000
- \$24,999
- 274C ADOPTIVE FORFEITURE MATTER - |OC/DP-OC/DP|
OC - APPRAISED VALUE UNDER
\$5,000
- 275A ADOPTIVE FORFEITURE MATTER - |WCC/
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- 276A ADOPTIVE FORFEITURE MATTER - VC MO/
VIOLENT CRIMES AND MAJOR INTERSTATE
OFFENDERS (VC MO) - APPRAISED THEFT (IT)
VALUE \$25,000+
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VC MO - APPRAISED VALUE \$5,000
- \$24,999
- 276C ADOPTIVE FORFEITURE MATTER - VC MO/IT
VC MO - APPRAISED VALUE UNDER
\$5,000
- 277A ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC
COUNTERTERRORISM (CT) - TERRORISM
APPRAISED VALUE \$25,000+ (DT)
- 277B ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE \$5,000 -
\$24,999
- 277C ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE UNDER
\$5,000

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 277 - 4

(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF PROGRAM

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 278 - 1

SECTION 278. PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD MATTERS

278-1 PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD MATTERS POLICY

Information concerning the 278 classification is set forth
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM
MANUAL (NFIPM).

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 279 - 1

SECTION 279. WEAPONS OF MASS DESTRUCTION

279-1 STATUTES

WEAPONS OF MASS DESTRUCTION

Title 18, USC, Sections 175-178; Title 18, USC, Sections 2332a and 2332c; Title 18, USC, Section 921; and Title 18, USC, Section 831.

EFFECTIVE: 06/18/97

279-2 JURISDICTION

The FBI shall investigate all alleged or suspected criminal violations of the Weapons of Mass Destruction (WMD) statute and the Biological Weapons Anti-Terrorism (BWAT) Act.

EFFECTIVE: 06/18/97

279-3 DEFINITIONS

(1) WEAPONS OF MASS DESTRUCTION DEFINITIONS:

(a) "Weapons of Mass Destruction" (Section 2332a, Title 18, USC)- means:

1. any destructive device as defined in Title 18, Section 921;

2. any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

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Sec 279. Coordinated with R. Shapiro - NSD - 8-4-98

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Manual of Investigative Operations and Guidelines
Part I

PAGE 279 - 2

3. any weapon involving a disease organism; or

4. any weapon that is designed to release radiation or radioactivity at a level dangerous to human life. Note: Violations involving nuclear and radiological WMDs will be investigated under Bureau classification 117, "The Atomic Energy Act."

(b) The term "destructive device" means any explosive, incendiary, or poison gas -

1. bomb,

2. grenade,

3. rocket having an explosive or incendiary charge of more than four ounces,

4. missile having an explosive or incendiary charge of more than one-quarter ounce,

5. mine, or

6. device similar to any of the devices described in the preceding clauses.

(c) "Chemical Weapon," as defined in Title 18, USC, Section 2332c, means any weapon that is designed or intended to cause widespread death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or precursors of toxic or poisonous chemicals.

(d) "Nuclear Material" means material containing any

1. plutonium with an isotopic concentration not in excess of 80 percent plutonium 238;

2. uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

3. uranium that contains the isotope 233 or 235 or both in such amounts that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

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Manual of Investigative Operations and Guidelines
Part I

PAGE 279 - 3

4. uranium

Refer to the MIOG, Part I, Section 117 (Atomic Energy Act).

(2) BIOLOGICAL WEAPONS ANTI-TERRORISM ACT DEFINITIONS

(a) "Biological agent" (Title 18, USC, Sections 175-178) - means any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, as capable of causing:

1. death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

2. deterioration of food, water, equipment, supplies, or material of any kind; or

3. deleterious alteration of the environment.

(b) "Toxin" - means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including -

1. any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

2. any poisonous isomer or biological product, homolog, or derivative of such a substance.

(c) "Delivery system" - means:

1. any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

2. any vector.

(d) "Vector" - means a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 279 - 4

(e) "For use as a weapon" - does not include the development, production, transfer, acquisition, retention or possession of any biological agent, toxin, or delivery system for prophylactic, protective or other peaceful purposes.

EFFECTIVE: 06/18/97

279-4 VIOLATIONS

(1) Title 18, USC, Section 2332a (Use of Weapons of Mass Destruction) includes the following:

"(1) Offense against a national of the United States or within the United States. - A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction, including any biological agent, toxin, or vector (as those terms are defined in section 178) --

- "(a) against a national of the United States while such national is outside of the United States;
- "(b) against any person within the United States, and the results of such use affect interstate or foreign commerce or, in the case of the threat, attempt or conspiracy, would have affected interstate or foreign commerce; or
- "(c) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States;

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life."

"(2) Offense by national of the United States outside of the United States. - Any national of the United States, who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 279 - 5

or for life."

(2) Title 18, USC, Section 2332c (Use of Chemical Weapons) includes the following:

"(1) A person shall be punished under paragraph (2) if that person, without lawful authority, uses, or attempts or conspires to use, a chemical weapon against--

"(A) a national of the United States while such national is outside of the United States;

"(B) any person within the United States; or

"(C) any property that is owned, leased, or used by the United States or any department or agency of the United States, whether the property is within or outside of the United States."

"(2) Penalties.--A person who violates paragraph (1)--

"(A) shall be imprisoned for any term of years or for life; or

"(B) if death results from that violation, shall be punished by death or imprisoned for any term of years or for life."

(3) Title 18, USC, Sections 175-178 (BWAT Act of 1989) includes the following:

(a) Section 175 (Prohibitions with respect to biological weapons):

"In General - Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States."

(b) Section 176 (Seizure, forfeiture, and destruction):

"(a) In General - (1) Except as provided in paragraph (2), the Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any biological agent, toxin, or delivery system that -

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 279 - 6

- (A) exists by reason of conduct prohibited under Section 175 of this Title; or
 - (B) is of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.
 - (2) In exigent circumstances, seizure and destruction of any biological agent, toxin, or delivery system described in subparagraphs (A) and (B) of paragraph (1) may be made upon probable cause without the necessity for a warrant."
- "(b) Procedure - Property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing. At such hearing, the Government shall bear the burden of persuasion by a preponderance of the evidence. Except as inconsistent herewith, the same procedures and provisions of law relating to a forfeiture under the customs laws shall extend to a seizure and forfeiture under this section. The Attorney General may provide for the destruction or other appropriate disposition of any biological agent, toxin, or delivery system seized and forfeited pursuant to this section."
- (c) Section 177 (Injunctions):

"In General - The United States may obtain in a civil action an injunction against -

- "(1) the conduct prohibited under Section 175 of this Title;
- "(2) the preparation, solicitation, attempt, threat, or conspiracy to engage in conduct prohibited under Section 175 of this Title; or
- "(3) the development, production, stockpiling, transferring, acquisition, retention or possession, or the attempted development, production, stockpiling, transferring, acquisition, retention or possession of any biological agent, toxin, or delivery system of a type or in a quantity that under the circumstances has no apparent justification for

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 279 - 7

prophylactic, protective, or other peaceful purposes."

(d) Section 178 (Definitions):"

All definitions relating to the BWAT Act are set forth in Section 279-3, above.

EFFECTIVE: 06/18/97

279-5 RELATED VIOLATIONS

(1) Title 15, USC, Section 2615 (Toxic Substances Control Act).

Refer to the MIOG, Part I, Section 249-2.2.

(2) Title 18, USC, Section 371 (Conspiracy).

Refer to the MIOG, Part I, Section 62-16.

(3) Title 18, USC, Section 876 (Extortion).

Refer to the MIOG, Part I, Section 9.

(4) Title 18, USC, Section 1365 (Tampering with Consumer Products).

Refer to the MIOG, Part I, Section 250-2.

(5) Title 18, USC, Section 2153 and Section (Biological Warfare).

Refer to the MIOG, Part I, Section 98-3.5.

(6) Title 33, USC, Section 1319 (Clean Water Act).

Refer to the MIOG, Part I, Section 249-2.4.

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FOIPA
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Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552

Section 552a

(b)(1)

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(j)(2)

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(b)(7)(C)

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(b)(4)

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(k)(7)

Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.

Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 279 - 18

EFFECTIVE: 06/18/97

279-12 REPORTING PROCEDURES

(1) Follow procedures set out above in Sections 279-9 through 279-11.

(2) Prosecutive reports should be submitted to FBIHQ, when applicable.

EFFECTIVE: 06/18/97

279-13 DISSEMINATION OF REPORTS

Do not disseminate FBI communications to the USA, or other agencies locally without FBIHQ approval. Bureau communications will be disseminated to other appropriate federal agencies by FBIHQ, when appropriate.

EFFECTIVE: 06/18/97

279-14 CHARACTER - WEAPONS OF MASS DESTRUCTION (WMD)

279A - Weapons of Mass Destruction - Use,
Possession, Transfer, Production, Transport
- Domestic Terrorism

279B - Weapons of Mass Destruction - Attempt to Use,
Possess, Obtain, Manufacture or Transport -
Domestic Terrorism

279C - Weapons of Mass Destruction - Threats and All Other
Cases Relating to Weapons of Mass Destruction -
Domestic Terrorism

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 279 - 19

- 279D - Weapons of Mass Destruction - Use, Possession,
Transfer, Production, Transport - International
Terrorism - (Group or Country)
- 279E - Weapons of Mass Destruction - Attempt to Use,
Possess, Obtain, Manufacture or Transport -
International Terrorism - (Group or Country)
- 279F - Weapons of Mass Destruction - Threats and All Other
Cases Relating to Weapons of Mass Destruction -
International Terrorism - (Group or Country)

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 280 - 1

SECTION 280. EQUAL EMPLOYMENT OPPORTUNITY MATTERS

280-1 | BACKGROUND | (See MAOP, Part I, 4-5.3; Part II, 3-1.1,
3-1.2, 3-3.2, 3-4.5.) |

(1) Effective 6/14/95, all records pertaining to EEO matters, whether of an administrative or investigative nature, became part of the FBI's Central Records System under the 280 classification. Investigations of complaints of discrimination are handled under the 280A subclassification, while EEO administrative matters are handled under the 280D subclassification. The 280B and 280C subclassifications are NOT to be used for record retention, however, and should ONLY be utilized for TURK purposes.

(2) By way of background, since the establishment of the Office of Equal Employment Opportunity Affairs (OEEOA) in 1989; all EEO documentation had been maintained within the OEEOA, to include any and all documents produced by the Office of the General Counsel (OGC) during the appeal, hearing or discovery phases of EEO complaints. The 280 classification was originally established by the OEEOA and subdivided into 280A (EEO Complaint Investigations), 280B (EEO Counseling), and 280C (EEO Conferences). However, as set forth in an ALL SAC Memorandum dated 2/27/92, these subclassifications WERE FOR THE SOLE PURPOSE OF TRACKING TIME FOR TURK; therefore, no 280 classification files were to have been opened.

(3) With respect to investigations of complaints of discrimination, all related documents, even though generated by the FBI, are the property of the Equal Employment Opportunity Commission (EEOC) which, by federal statute, is the governmental entity responsible for the coordination of all federal EEO matters. As such, the proper handling of EEO records has been and continues to be subject to the recording requirements of the EEOC and to the published notice of availability of records pursuant to the Freedom of Information/Privacy Act (FOIPA) published by the EEOC (Title 29, Code of Federal Regulations (CFR), Part 1610, et seq.; 40 Federal Register (FR) 8171, February 26, 1975, as amended at 56 FR 10087, at 10900, March 14, 1991). The regulations make it clear that agencies act merely as custodians of the records for the EEOC.

(4) Following a study of the OEEOA in 1994, it was recommended to and approved by the Director that OEEOA convert its

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 280 - 2

present filing system to a classified and serialized system that meets the needs of the OEEOA, EEOC, and the OGC. The OEEOA was in complete agreement with this position, provided that certain restrictions/limitations could be placed on the system to maintain the confidentiality of the information and ensure that appropriate FOIPA requests and file destruction policies adhered to EEOC regulations.

EFFECTIVE: 12/11/95

280-2 INVESTIGATIONS OF COMPLAINTS OF DISCRIMINATION

(1) Investigations of complaints of discrimination are required pursuant to Title 29, CFR, Part 1614.108 and are handled by Relief Supervisory Special Agents (hereinafter referred to as EEO Investigators) in the field who have been trained specifically in EEO matters (see MAOP, Part I, 4-5.2).

(2) Following the acceptance of all or part of a complaint of discrimination received by the OEEOA, an EEO Investigator will be assigned to fully address, in a fair and neutral manner, the ACCEPTED bases and issues for investigation. All information relative to the complaint will be transmitted by the OEEOA directly to the Investigator for review and initiation of the investigation. The Investigator's Division Head will also be notified of his/her assignment; however, no information relative to the complaint itself will be provided. The Investigator is NOT to discuss any aspect of the investigation with his/her division management.

(3) In all complaint investigations, the OEEOA is shown as the Office of Origin (OO) with a corresponding 280A file number. All records relative to the complaint that are produced by the investigation and/or obtained during the investigation, are to be maintained within the OEEOA. NO records are to be maintained within a field office or FBIHQ division, unless specific approval is granted by the OEEOA.

(4) It is absolutely essential during any stage of a complaint investigation, that information relative to the complaint be kept confidential to the extent possible. At no time are individuals to be made aware of the complaint or facts of the investigation, unless they are directly involved in the complaint investigation.

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 280 - 3

EFFECTIVE: 12/11/95

280-2.1 Authority and Role of EEO Investigator

(1) EEO Investigators are authorized to administer oaths and require that statements of witnesses shall be under oath or affirmation. Investigators are authorized to investigate all aspects of complaints of discrimination, require all employees of the agency to cooperate with them in the conduct of the investigation, and require employees of the agency having any knowledge of the subject matter regarding the complaint to furnish testimony under oath or affirmation without a pledge of confidence.

(2) A complaint that is not successfully resolved in the initial stages and meets requirements for processing under prescribed EEO guidelines is assigned to an EEO Investigator. As neutral fact finders, EEO Investigators will conduct a fair, impartial and objective investigation of the facts relevant to the complaint issue(s) so that a determination can be made as to whether the action complained of was related or unrelated to any of the prohibited discriminatory factors (race, age, sex, sexual orientation, etc.). The investigation of allegations of discrimination in matters pertaining to sexual orientation is an entitlement derived from DOJ policy and not from EEOC regulations. In this regard, complainants are not entitled to a hearing before an Administrative Judge of the EEOC or an appeal to the EEOC. Upon completion of an investigation concerning a basis of discrimination based on sexual orientation, a Departmental Adjudication Officer will conduct a review and issue a final decision. Complaints accepted on a basis of sexual orientation will be investigated in the same manner as any other allegation of discrimination accepted by the Department. In the event a complaint is received which contains an allegation of discrimination based on sexual orientation and additional bases covered by EEOC regulations, all allegations will be investigated concurrently; however, following the investigation, those allegations not based on sexual orientation will be processed according to existing procedures outlined in 29 C.F.R. Part 1614. Investigators have no vested interest in the outcome of the investigation. They are not advocates of management or the complainant. Investigators draw no conclusions, make no findings of discrimination or recommendations relative to such findings. The factual record compiled by the investigator is submitted to the OEEOA in the form of a Report of Investigation (ROI).

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 280 - 4

(3) Reports of Investigations are to be compiled in accordance with instructions and format contained in the most current edition of the "EEO Investigator's Training Guide," and guidance received in periodic issues of the "Helpful Hints" newsletter published by the OEEOA.

EFFECTIVE: 03/07/97

280-2.2 Files Available to Investigator (See MAOP, Part I, 4-5.1.2.)

(1) The Investigator is authorized to review all relevant files in connection with the investigation of the complaint. This includes relevant personnel files in the field offices as well as the Official Personnel File (OPF) at FBIHQ. Relevant OPFs include only the files of those persons logically connected to, or having some bearing on, the allegations of discrimination. In addition, the Investigator is authorized to review pertinent administrative records in field offices and FBIHQ which have a direct bearing on the issues being investigated. Such records include, but are not limited to, control files, medical records, administrative inquiry files of the Office of Professional Responsibility and Administrative Summary Unit, as well as written documentation and taped recordings of Career Board deliberations, to the extent such records have a bearing on the allegations raised by the complainant.

(2) With regard to field office and FBIHQ Career Board records, and/or field office or FBIHQ OPR records, Investigators should discuss the matter with the OEEOA and follow the established procedures set forth in the "EEO Investigator's Training Guide." Access to OPR documents is currently limited to the predication only for pending matters, or the investigative file on closed matters.

(3) It should be noted, however, that an Investigator seeking access to relevant Employee Assistance Program files must obtain the prior written authorization, or a statement evidencing such a waiver of confidentiality, from the subject of such files.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 280 - 5

EFFECTIVE: 12/11/95

280-2.3 EEO Investigation and Documentation

(1) The investigation will address a thorough review of:
(a) the circumstances under which the alleged discrimination occurred;
(b) the treatment of the complainant as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred (i.e., those similarly situated); and (c) any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant.

(2) When preparing the signed sworn statements reflecting the interview of each witness involved in an investigation, the Investigator will ensure that information regarding a person's membership or nonmembership in the complainant's group (i.e., the complainant's race, sex, etc.), needed to assist the fact-finder or other government official in any adjustment of the complaint or to make an informed decision on the complaint, shall be recorded in the investigative file. The term "investigative file" refers to the various documents and information acquired during the investigation, including signed sworn statements of the complainant and witnesses, and copies of, or extracts from records, policy statements, or regulations of the agency organized to show their relevance to the complaint or the general environment out of which the complaint arose.

EFFECTIVE: 12/11/95

280-2.4 Investigative Report/Review by the Office of the General Counsel

Upon completion of the investigation, the EEO Investigator will prepare a written investigative record, which will include all appropriate documents gathered during the investigation. These documents will be placed in a bound encasement and thereafter provided to the complainant through the Office of Equal Employment Opportunity Affairs (OEEOA). Inasmuch as a copy of the investigative record may

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 280 - 6

eventually be provided to the Equal Employment Opportunity Commission, no classified documentation or any information the disclosure of which would violate any statute (as examples, the Privacy Act, Title 5, United States Code (USC), Section 552a, or the Freedom of Information Act, Title 5, USC, Section 552, as amended), may be placed in the file. To that end, it is essential that all material intended to be released to the complainant be referred for review by the OEEOA to Office of the General Counsel's (OGC) Civil Discovery Review Unit prior to such release. After OGC's CDRU completes its review, the OEEOA will release the investigative record to the complainant.

EFFECTIVE: 12/11/95

280-2.5 Theories of Discrimination

There are five recognized theories of discrimination, each requiring different investigative approaches and evidentiary standards. The five theories are: Disparate Treatment; Disparate or Adverse Impact; Perpetuation of Past Discrimination; Failure to Accommodate; and Retaliation.

(1) Disparate Treatment

(a) Definition and Description

Disparate Treatment is the most commonly alleged complaint. It occurs whenever "similarly situated" individuals of a different race, color, religion, sex, sexual orientation, national origin group, disabling condition or age, are accorded disparate treatment, or are treated differently, in the context of a similar employment situation.

(b) Investigation and Evidence

1. A PRIMA FACIE case of discrimination under this theory, as it relates to hiring or promotions, requires that the complainant: (a) be a member of a protected class (race, color, religion, sex, sexual orientation, national origin group, disabling condition or age); (b) be qualified for and have applied for a position for which applicants were sought (minimum qualifications are sufficient); and, (c) despite being qualified, was rejected.

Alternatively, element (b), above, may consist of the member of a

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 280 - 7

protected group receiving disparate treatment in some term or condition of employment, e.g., disciplinary treatment, transfers, assignments, etc.

2. In pursuit of evidence regarding claims of discrimination under this theory, the investigator looks for a discriminatory motive which can be inferred from uncontroverted facts indicating difference in treatment.

3. To make a valid comparison of treatment, the investigator should determine who would be expected to receive the same treatment, and locate or identify other individuals who are situated in similar, or if possible, identical employment situations. Thereafter, the treatment afforded each is compared to support or refute the allegation that such factors as race, color, religion, sex, sexual orientation, or national origin group were considered in the employment decision at issue.

4. In response to the complainant's claim, management officials must have an opportunity to rebut the complainant's claims. In age cases, for example, the manager may be able to cite a "reasonable factor other than age" to account for the difference in treatment.

5. The investigator may then afford the complainant an opportunity to provide evidence showing that the management official's explanations are false or "pretextual" or in some way concealing discriminatory behavior.

(2) Adverse or Disparate Impact

(a) Definition and Description

Adverse impact results from an employment practice that, although applied equally to all applicants or employees, has the effect of excluding or adversely impacting upon persons in protected classes, in significant numbers. This most often occurs when a testing device or screening technique has an adverse impact on hiring or promotion of protected classes. For example, a hiring standard of 6 feet, 200 pounds, for Hawaiian police officers, would automatically exclude a disproportionate number of Asian applicants.

(b) Investigation and Evidence

1. Any policy or practice that, as an example,

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 280 - 8

results in a proportionately lower selection rate for a protected class, and is not justified by a business necessity, constitutes a discriminatory policy. It is the consequences of the policy or practice, not the motivation, that is the key. Therefore, the complainant is not required to show proof of intent; instead, a statistically significant imbalance is relied upon to show the discriminatory impact of the challenged practice.

2. It is difficult in individual cases to prove a motive of discrimination. In the absence of direct evidence of motive, statistical data showing a pattern of nonselection or underutilization of the group in question may be sufficient to establish that motive. Adverse impact cases are generally "class action" cases, as opposed to investigations of allegations brought by individuals.

(3) Perpetuation of Past Discrimination

(a) Definition and Description

This situation occurs when the effect of past discrimination is being continued by the present operation of a neutral employment system. The employment system is neutral when it applies evenly to all applicants or employees.

(b) Investigation and Evidence

1. The theory is similar to the adverse impact theory in that there is no requirement that the complainant prove present discriminatory motive. Past discriminatory motive must be shown, along with evidence that a facially neutral employment policy perpetuates past discrimination. If such a circumstance is shown by plaintiff, the agency's response must justify the continued use of the policy as a business necessity.

2. In such instances, we are usually looking at the consequences of specific employment practices, along with evidence of a causal relationship between the past discrimination and the current policy's adverse effects.

(4) Failure to Accommodate

(a) Definition and Description

This situation occurs when an employer refuses to make reasonable accommodation for the religious practices or

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 280 - 9

physical handicaps of employees and prospective employees unless to do so would create an undue hardship on the conduct of the employer's business.

(b) Investigation and Evidence

Accommodation is different from other theories of discrimination because proof of a failure to accommodate does not involve comparisons between the treatment accorded the complainant and other similarly situated employees, or a determination of whether neutral employment practices have an adverse impact on the employment opportunities of women and minorities. A PRIMA FACIE case of discrimination is established if a complainant shows that he or she informed the agency of the need for an accommodation, and there was a failure to do so. The agency is then given the opportunity to establish that accommodation would have created an undue hardship on the conduct of its normal course of business.

(5) Retaliation

(a) Definition and Description

This situation occurs when there is any act of discrimination, restraint, interference, coercion, or reprisal against any person because he or she has opposed the practices made unlawful by Title VII, the Rehabilitation Act or the Age Discrimination in Employment Act (ADEA), or because he or she participated in any stage of the administrative or judicial proceedings concerning a complaint. This section requires an investigator to thoroughly investigate allegations of mistreatment brought by previous complainants as well as any witnesses who have provided testimony in EEO proceedings or otherwise engaged in any EEO protected activity. As examples, a complaining party may raise allegations that, as a result of his or her participation in an EEO protected activity, some Bureau employee has assigned him or her to undesirable duties routinely assigned to others. One other example might be the failure of Bureau official(s) to select for promotion or assignment an eminently and obviously qualified candidate who happens to have been involved recently in EEO protected activity.

(b) Investigation and Evidence

The analysis of evidence in a retaliation case is similar to that in other disparate treatment cases. The investigator should first establish that the agency knew of a complainant's opposition to unlawful employment practices or his or

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 280 - 10

her participation in the processing of a complaint, and the date when the agency became so aware. If the evidence indicates that the complainant was subsequently treated differently, it raises the inference of retaliation for the complainant's actions in opposing such employment practices. The agency must then show that the treatment was not related to the complainant's protected activity. The complainant could still prevail if the agency's explanation was, in fact, a pretext for discrimination.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 1

|SECTION 281. ORGANIZED CRIME/DRUG INVESTIGATIONS

| 281-1 JURISDICTION

(1) Title 18, United States Code, Sections 1961-1968; and Title 21, USC, Section 801 et seq.

(2) Attorney General Order Number 968-82, dated January 28, 1982 (See, Title 28, Code of Federal Regulations (CFR), Section 0.85) authorizes the Director of the FBI concurrently with the Administrator of the Drug Enforcement Administration (DEA), to investigate violations of the criminal drug laws of the United States. These violations are located in the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, also referred to as the Controlled Substances Act (Title 21, USC, Section 801 et seq.)

(3) In passing the Organized Crime Control Act of 1970, Public Law 91-452, Congress made a "Statement of Findings and Purpose," a portion of which details how organized crime derives power and wealth from illegal activities. The "Statement" appears in Part I, Section 182-1.1 of this manual.

EFFECTIVE: 11/01/93

| 281-2 COMMONLY USED STATUTES/PENALTIES (See MIOG, Part I, 245-1(2).)

The following are only the most commonly used statutes in prosecuting these crimes.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 2

281-2.1 Drug Statutes, Penalties, and Venue

EFFECTIVE: 11/01/93

281-2.1.1 Manufacture and Distribution of a Controlled
Substance; Title 21, U.S. Code, Section 841

To manufacture, distribute, dispense, or possess with
intent to manufacture, distribute, or dispense, a controlled
substance; or to create, distribute, or dispense, or possess with
intent to distribute or dispense, a counterfeit substance.

EFFECTIVE: 11/01/93

281-2.1.2 Use of a Communication Facility; Title 21, U.S.
Code, Section 843(b)

To knowingly or intentionally use any communication
facility in committing, causing, or facilitating the commission of any
felony act under subchapters I and II of Title 21. Each separate use
of a communication is a separate offense under this subsection.

EFFECTIVE: 11/01/93

281-2.1.3 Simple Possession, Title 21, U.S. Code, Section 844

To knowingly or intentionally possess a controlled
substance.

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 3

EFFECTIVE: 11/01/93

281-2.1.4 Distribution To Persons Under Age Twenty-One, Title
21, U.S. Code, Section 845

Any person at least 18 years of age who distributes a
controlled substance to a person under 21 years of age.

EFFECTIVE: 11/01/93

281-2.1.5 Distribution or Manufacture In or Near Schools or
Colleges; Title 21, U.S. Code, Section 845a

Any person who distributes or manufactures a controlled
substance within 1,000 feet of a public or private school or college.

EFFECTIVE: 11/01/93

281-2.1.6 Employment or Use of Persons Under 18 Years of Age
in Drug Operations; Title 21, U.S. Code, Section
845b(a)

Any person at least 18 years of age who employs, hires,
uses, persuades, induces, entices, or coerces a person under 18 years
of age to violate the Controlled Substance Act or the Controlled
Substances Import and Export Act or assist in avoiding detection or
apprehension by any law enforcement official under those Acts. (See
281-2.1.7.)

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Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 4

281-2.1.7 Employment or Use of Persons Under 15 Years of Age;
and Distribution of Controlled Substance to Employee
Under 18 Years of Age; Title 21, U.S. Code, Section
845b(d)

Any person who violates Title 21, USC, Section 845b(a)
(see 281-2.1.6 above) by providing or distributing a controlled
substance to any person under 18 years of age; or any person who
violates Title 21, USC, Section 845b(a) if the person employed or used
is 14 years of age or younger.

EFFECTIVE: 11/01/93

281-2.1.8 Distribution of Controlled Substance to Pregnant
Individual; Title 21, U.S. Code, Section 845b(f)

Any person who distributes any controlled substance to a
pregnant individual.

EFFECTIVE: 11/01/93

281-2.1.9 Attempt and Conspiracy; Title 21, U.S. Code, Section
846

Any person who attempts or conspires to commit any offense
defined in subchapter I (Title 21, USC, Sections 801 through 904).

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Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 5

281-2.1.10 Continuing Criminal Enterprise (CCE); Title 21, U.S.
Code, Section 848(a)

(1) Any person, acting in a supervisory position involving five or more other persons, who commits a felony act under subchapters I and II of Title 21, and commits a continuing series of related violations, from which such person obtains substantial income and resources.

(2) Criminal Forfeiture - Any person convicted of engaging in a continuing criminal enterprise shall forfeit to the United States, in addition to any other forfeiture-

(a) the profits obtained by him/her in such enterprise, and

(b) any of his/her interest in, claims against, and property or contractual rights affording a source of influence over, the continuing criminal enterprise.

NOTE: Criminal forfeiture is under the exclusive direction of the court. In most instances the Agent's role is limited to supplying evidence to the court through indictment, testimony, investigation, etc., while the actual seizure and disposition of the property is carried out by the U.S. Marshal's Service.

EFFECTIVE: 11/01/93

281-2.1.11 Continuing Criminal Enterprise - Principal
Administrator; Title 21, USC, Section 848(b)

Title 21, USC, Section 848(b) requires the imposition of a life sentence for any person who engages in a continuing criminal enterprise (Title 21, USC, Section 848(a)) and is the principal (or one of several principal) administrators, organizers or leaders, and

(1) the violation involved at least: 30 kg. of heroin; 150 kg. of cocaine; 1.5 kg. of cocaine base; 3 kg. of PCP or 30 kg. of PCP mixture; 300 gm. of LSD; 12 kg. of n-phenyl-n propanamide or 3 kg. of a mixture of n-phenyl-n propanamide; 30,000 kg. or more of a mixture or substance containing marijuana or 30,000 or more marijuana

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I.

PAGE 281 - 6

plants regardless of weight; or 3 kg. or more of methamphetamine or 30 kgs. or more of a mixture or substance containing a detectable amount of methamphetamine; or

(2) the enterprise or any other enterprise in which the person was the principal (or one of several principals), administrator, organizer or leader, received \$10 million in gross receipts during any twelve-month period of its existence for the manufacture, importation or distribution of heroin, cocaine, PCP, LSD, fentanyl or fentanyl analogue.

EFFECTIVE: 11/01/93

281-2.1.12 Continuing Criminal Enterprise - Intentional Killing; Title 21, U.S. Code, Section 848(e)

(1) Any person engaging in or working in furtherance of a continuing criminal enterprise or engaging in an offense punishable under Title 21, USC, Sections 841(b)(1)(A) or 960(b)(1) "who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results, violates Title 21, USC, Section 848(e)(1)(a).

(2) Any person who, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for a felony violation of the Controlled Substance Act (Title 21, USC, Sections 801-960), who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, state or local law enforcement officer engaged in, or on account of, such officer's official duties and such killing results, violates Title 21, USC, Section 848(e)(1)(b).

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Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 7

281-2.1.13 Importation of Controlled Substances; Title 21, U.S.
Code, Section 952

To illegally import any controlled substance into the
United States from any place outside the United States.

EFFECTIVE: 11/01/93

281-2.1.14 Exportation of Controlled Substances; Title 21, U.S.
Code, Section 953

To illegally export any controlled substance from the
United States.

EFFECTIVE: 11/01/93

281-2.1.15 Possession on Board Vessels, etc., Arriving In Or
Departing From the United States; Title 21, U.S.
Code, Section 955

To unlawfully possess, on board any vessel, aircraft or
vehicle arriving in or departing from the United States, or the
customs territory of the United States, a controlled substance in
Schedule I or II or a narcotic drug in Schedule III or IV.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 8

281-2.1.16 Possession, Manufacture, Distribution For Purposes
Of Unlawful Importation; Title 21, U.S. Code,
Section 959

It is unlawful for any person to manufacture or distribute a controlled substance in Schedule I or II intending or knowing that such substance will be unlawfully imported into the United States. This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates this section shall be tried in the U.S. District Court at the point of entry where such person enters the United States, or in the U.S. District Court for the District of Columbia.

EFFECTIVE: 11/01/93

281-2.1.17 Attempt and Conspiracy; Title 21, U.S. Code, Section
963

Any person who attempts or conspires to commit any offense defined in subchapter II (Title 21, USC, Sections 951 through 970).

EFFECTIVE: 11/01/93

281-2.1.18 Use of a Firearm During a Crime of Violence or Drug
Trafficking Crime; Title 18, U.S. Code, Section 924 (c) (1)
(See MIOG, Part I, 4-1.1.)

"Whoever, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm, shall, in addition to the punishment provided for such crime . . . , be sentenced to imprisonment for five years"

NOTE: In BAILEY V. UNITED STATES (U.S. Supreme Court, 12/6/95), the Court held that 924(c) (1) requires an "active" use of the firearm during the crime. Therefore, the nearby possession of a firearm, e.g., in the trunk of a car, during a drug trafficking or

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 9

violent crime, does not qualify as a "use" under the statute. However, a person who "carries" a firearm, on or about his/her person during such a crime, could be properly charged under this statute.

EFFECTIVE: 05/10/96

|| 281-2.1.19 | Penalties

(1) Title 21, USC, Sections 841, 952, 953, 955, and 959: There are three levels of penalties according to the quantity of the controlled substance involved in the offense.

(a) A mandatory 10 years, maximum life, maximum \$4 million fine for offenses involving certain quantities of Schedule I and II controlled substances, including:

- 1 kilogram or more of heroin;
- 5 kilograms or more of cocaine;
- 1,000 kilograms or more of marijuana.

(b) A mandatory 5 years, maximum of 40 years, maximum \$2 million fine for offenses involving other quantities of the same controlled substances, including:

- 100 grams or more of heroin;
- 500 grams or more of cocaine;
- 100 kilograms or more of marijuana.

(c) Nonmandatory jail terms are to be imposed for offenses involving lesser quantities of the same controlled substances and all other Schedule I and II substances. Maximum penalties are 20 years' imprisonment and a \$1 million fine.

(d) Offenses involving less than 50 kilograms of marijuana, or less than 10 kilograms of hashish or less than 1 kilogram of hashish oil and all Schedule III Controlled Substances are subject to a maximum of 5 years' imprisonment and a \$250,000 fine.

(e) Offenses involving Schedule IV Controlled Substances are subject to a maximum of 3 years' imprisonment and a \$250,000 fine.

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 10

(f) Offenses involving Schedule V Controlled Substances are subject to a maximum of 1-year imprisonment and a \$100,000 fine.

(g) Increased penalties are provided for persons having prior drug-related convictions, and when death or serious bodily injury results from the use of the substance in question. Increased fines are established if the defendant is other than an individual. Mandatory minimum jail terms may not be suspended or the defendant placed on probation or released on parole during the term of imprisonment. Mandatory terms of supervised release are imposed after the term of imprisonment. Defendants who provide substantial assistance in the investigation and/or prosecution of another criminal offender may be sentenced to less than the mandatory minimum jail term.

(2) Title 21, USC, Section 843(b): Maximum of 4 years and a \$30,000 fine for offenses involving the use of a communications facility.

(3) Title 21, USC, Section 844(a): Maximum of 1 year and a \$5,000 fine for the first offense involving simple possession.

(4) Title 21, USC, Section 845: Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving distribution to persons under age 21.

(5) Title 21, USC, Section 845(a): Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving distribution or manufacture in or near schools or colleges or within 100 feet of a playground, public or private youth center, public swimming pool or video arcade.

(6) Title 21, USC, Section 845b(a): Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving employment of persons under age 18.

(7) Title 21, USC, Section 845b(d): Maximum of 5 years and a \$50,000 fine in addition to up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving employment of persons under age 15 or distribution to persons under age 18.

(8) Title 21, USC, Section 845(f): Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving distribution to a pregnant individual.

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 11

(9) Title 21, USC, Section 846: Same penalty for attempt and conspiracy as for the substantive offense of the Controlled Substances Act.

(10) Title 21, USC, Section 848(a): Not less than 20 years' to life imprisonment and a fine not exceeding \$2 million for the offense of engaging in a Continuing Criminal Enterprise (CCE).

(11) Title 21, USC, Section 848(b): Life imprisonment and a fine not exceeding \$2 million for the offense of engaging in a CCE as the principal administrator.

(12) Title 21, USC, Section 848(e) (1) (a) and (b); up to life imprisonment or death penalty.

(13) Title 21, USC, Section 963: Same penalty for attempt and conspiracy as for the substantive offense of the Controlled Substances Import and Export Act.

EFFECTIVE: 05/10/96

|| 281-2.1.20 | Venue

Any district in which the offense was begun, continued or completed.

EFFECTIVE: 05/10/96

281-2.2 Racketeer Influenced and Corrupt Organizations Statutes, Penalties, and Venue

(See MIOG, Part I, Sections 183-1.2 through 183-1.10.)

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 12

EFFECTIVE: 11/01/93

281-2.2.1 Title 18, U.S. Code, Section 1961 (Definitions) (See MIOG, Part I, 183-1.2.)

(1) "Racketeering activity" was expanded under the "Motor Vehicle Theft Law Enforcement Act of 1984" to include interstate transportation of stolen motor vehicles and trafficking in certain motor vehicles or motor vehicle parts. State offenses are included by generic designation. Federal offenses are included by specific reference. The term "racketeering activity" is a key statutory term. Under Section 1962, racketeering activity is one of three prerequisites to commission of an offense. If there is no racketeering activity or no collection of an "unlawful debt," there can be no violation of the provisions of this title.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof;

(3) "Person" broadly includes any individual or organization that may hold any property interest. Any such "person" who violates the prohibitions of Section 1962 is subject to the sanctions of Sections 1963 and 1964, including forfeiture, divestiture, dissolution, and prohibition of future holding of interest.

(4) "Enterprise" includes associations in fact, as well as legally recognized associative entities. Thus, infiltration of any associative group by an individual or group capable of holding a property interest can be reached.

(5) "Pattern of racketeering activity" requires at least two acts of racketeering activity. One act in the pattern must be engaged in after the effective date of the legislation. The two acts necessary to establish the pattern must occur within a period of ten years, excluding any period the perpetrator was in confinement.

(6) "Unlawful debt" includes debts that are incurred either in connection with an illegal gambling business or an illegal usury business where the rate is at least twice the enforceable rate. This includes "loansharking" as a racketeering activity in connection

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 13

with the acquisition or conduct of a legitimate business.

(7) "Racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect these sections.

(8) "Racketeering investigation" means any inquiry conducted by a racketeering investigator to determine if there has been any violation of these sections or any final order, judgment, or other decree of any court duly entered in any case or proceeding arising under these sections.

(9) "Documentary material" includes any books, papers, records, recordings, and other materials.

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General, or any department or agency employee designated by the Attorney General or Deputy Attorney General to carry out the powers conferred upon the Attorney General under these sections.

EFFECTIVE: 11/01/93

281-2.2.2 Title 18, U.S. Code, Section 1962 (Prohibited Racketeering Activities) (See MIOG, Part 1, 183-1.3)

(1) Section 1962 establishes a threefold prohibition aimed at stopping the infiltration of racketeers into legitimate organizations.

(2) Subsection (a) makes it unlawful to invest funds derived from a pattern of racketeering activity, as defined in Section 1961 (1) and (5), or collection of unlawful debt as defined in Section 1961(6) in any enterprise engaged in interstate or foreign commerce. The funds must have been derived by the investing party from activity in which he/she participated as a principal. An exception has been provided for the purchase on the open market of less than 1 percent of a company as securities where there is no degree of control in law or in fact to the investor.

(3) Subsection (b) prohibits acquisition or maintenance of an enterprise through the proscribed pattern of racketeering

Sensitive

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 14

activity or collection of unlawful debt. There is no 1 percent limitation here as in subsection (a) because (a) focuses on legitimate acquisition with illegitimate funds. Subsection (b) focuses on illegitimate acquisition with illegitimate funds. Subsection (b) focuses on illegitimate acquisition through the proscribed pattern of activity or collection of debt. Consequently, any acquisition meeting the test of subsection (b) is prohibited without exception.

(4) Subsection (c) prohibits the conduct of the enterprise through the prohibited pattern of activity or collection of debt. Again, the prohibition is without exception.

(5) Subsection (d) makes conspiracy to violate (a), (b), or (c) equally subject to the sanctions of Sections 1963 and 1964.

EFFECTIVE: 11/01/93

281-2.2.3 Title 18, U.S. Code, Section 1963 (Criminal Penalties) (See MIOG, Part I, 183-1.4.)

(1) Section 1963 provides criminal penalties--including criminal forfeitures--for violation of Section 1962.

(2) Subsection (a) The maximum penalty authorized under subsection (a) is a \$25,000 fine and imprisonment for 20 years. But, in addition, violations shall be punished by forfeiture to the United States of all property and interests, as broadly described, which are related to the violations. Interests in an enterprise include profits and proceeds derived from a violation of Section 1962.

(3) Subsection (b) provides for the entering of restraining orders and prohibitions and the requiring of performance bonds to prevent preconviction transfers of property to defeat the purposes of the new statutes.

(4) Subsection (c) provides rules governing the forfeited property. In general, it incorporates by reference the long-tested customs law provisions. It adds a provision that those rights which are not exercisable or usable by the United States shall expire. The United States is required to dispose of property as promptly as is practical, making due provision for the rights of innocent persons.

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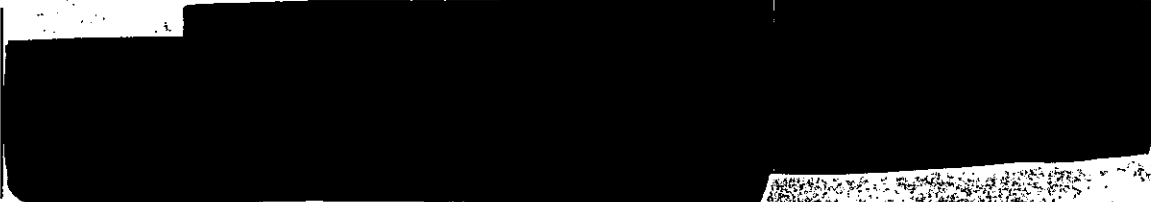
Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 15

EFFECTIVE: 11/01/93

281-2.2.4 Title 18, U.S. Code, Section 1964 (Civil Remedies) (See MIOG, Part I, 183-1.5.)

(1) Section 1964 provides civil remedies for the violation of Section 1962.



EFFECTIVE: 11/01/93

281-2.2.5 Title 18, U.S. Code, Section 1965 (Venue and Process for RICO Statutes) (See MIOG, Part I, 183-1.6.)

The broad venue provisions of this legislation are set out at length in Section 1965. Any question of venue should be resolved with the United States Attorney with the concurrence of the Department.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 16

281-3 POLICY (See MIOG, Part I, 92-9, 245-4(2) & MAOP, Part II, 3-1.1 & 3-1.2.)

(1) To maximize the impact on the organized crime/drug problem, investigations conducted under the restructured Organized Crime/Drug Program (OC/DP) will concentrate on the major international and domestic criminal organizations and important regional groups controlling significant segments of the illegal activities in the United States.

(2) OC/DP CLASSIFICATIONS/ALPHA DESIGNATORS:

Investigations conducted under the OC/DP will concentrate on the criminal organizations, notwithstanding the statutory violations committed by the group. The following alpha designators apply to cases classified under the OC/DP as 92, 245, and 281 matters. Case titles should be carried as: Organized Crime/Drug Investigations (OC/DI) - Criminal Organization - Organizational Identity (

(See MIOG, Part I, 281-3.1(1).)

281A - LCN and Italian Organizations -

281B - Central/South American Organizations -

281C - Mexican Organizations -

281E - Asian Organizations -

281F - Other Major Criminal Organizations -

281G - African Organizations -

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 17

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281H - Russian/Eastern European/Eurasian
Organizations - [REDACTED]

281I - Caribbean Organizations [REDACTED]

281J - Alien Smuggling Organizations - [REDACTED]

NOTE: OC/Drug Racketeering Enterprise Investigations (REIs), which have as their goal the acquisition of information concerning the composition, structure, and activities of major organizations, will be conducted under the 92 classification and will bear the character "REI." The Intelligence Section will manage all OC/Drug REI matters with appropriate input by OC/Drug Operations Sections 1 and 2.

(3) All OC/DP investigations in the 245, 272 and 281 classifications may be opened on SAC authority. Furthermore, the SAC may wish to delegate this authority to the appropriate ASAC and/or SSA designated OC/DP manager or coordinator. Any such delegation, however, must be in writing.

(4) All OC/DP investigations of criminal groups or organizations will be conducted under the 281 classification.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 19

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EFFECTIVE: 10/01/97

281-3.1 Investigations Regarding Sports Teams

(1) Personal use and/or distribution cases concerning players of professional or amateur sports teams do not warrant FBI investigation unless the player's involvement in the operation would meet the criteria set forth in MIOG, Part I, 281-3(2).

(2) If an investigation is not warranted by the FBI, information regarding the use and/or distribution by particular players should be indexed for future retrieval and, if appropriate, referred to DEA or local/state authorities. Field divisions should advise FBIHQ, Organized Crime/Drug Branch (OC/DB), by airtel of the facts in these matters.

(3) If an investigation is warranted, in addition to the drug trafficking violation, Agents should be cognizant of potential

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 20

sports bribery and illegal gambling violations. The involved players/trainers/coaches should be interviewed regarding these additional matters at the appropriate time.

EFFECTIVE: 11/01/93

281-4 INVESTIGATIVE/REPORTING PROCEDURES

OC/Drug Investigations will generally be complex investigations and should be closely coordinated with FBIHQ and with the appropriate United States Attorney.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 21

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EFFECTIVE: 07/20/95

281-4.1.1 Clandestine Laboratories (See MIOG, Part I, 281-8.1.5.)

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(1) Investigations involving clandestine laboratories should be initiated as set forth in MIOG, Part I, 281-4.1 with a particular note that DEA has an [REDACTED]

(2) Special caution must be taken relative to the seizure of clandestine laboratories by Agent personnel. The common presence of explosive chemicals and the delicate nature of closing down an in-process operation presents acute dangers.

(a) FBI personnel will not KNOWINGLY attempt the seizure of a laboratory without the presence of an experienced DEA chemist.

(b) The initial entry into the laboratory will be limited to the arrest team whose immediate objective is to secure the subjects present. Once this is accomplished the DEA chemist will enter the site, conduct an overall survey of the operation, and then shut down any ongoing chemical process.

(c) Law enforcement personnel should not attempt to shut down any ongoing chemical process or tamper with laboratory equipment unless under the direct supervision of the DEA chemist.

(d) Under no circumstances will there be any smoking, eating or drinking on the laboratory site. Agents should avoid placing their hands on or near their mouths or breathing strong vapors.

(e) Dry-type fire extinguisher, neoprene gloves, safety glasses and suitable air filtration masks should be on hand to assure the safety of the personnel involved.

(f) Photographs of the facility should be taken with

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4.1.1 Info prev. rel. - see

Pt 1 sec. 12-9.1 (p 58.05 & 58.06)

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 22

an electronic flash, NOT flash bulbs.

(g) Personnel not engaged in the dismantling and inventorying of the evidence must stay away from the processing area.

(h) The case Agent, together with the chemist, will determine the appropriate means of processing the evidence.

(i) Drug evidence (finished product) should be processed in accordance with instructions set forth in MIOG, Part I, 281-8 through 281-8.1.11.

(j) Laboratory equipment: process as nondrug evidence, or, if it is to be submitted to the DEA laboratory for trace analysis, process as drug evidence.

(k) Miscellaneous items instrumental to the laboratory operation, but not needed as evidence (e.g., bulk quantities of glassware, nonhazardous chemicals, etc.): photograph and seize for forfeiture under Title 21, USC, Section 881.

(3) Hazardous Chemicals

(See MIOG, Part I, 281-8.2 & 281-8.2.1.)

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281-4.1.2 Funding Drug Cases and Purchase of Drug Evidence

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 23

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Justification for employing this technique must be documented in the field office file, if approved by the SAC, or included in the communication requesting FBIHQ authority for its use.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 24

EFFECTIVE: 07/05/94

281-4.1.3 Fronting of Funds for Drug Purchases

(1) As a matter of general policy, Government funds should not be "fronted" (advanced on the promise of a subsequent delivery of drugs). When this technique is deemed necessary, prior FBIHQ authority must be obtained. In requesting authority, an appropriate communication should be submitted to FBIHQ detailing the circumstances, plans for minimizing the risk of loss and justification for the use of this technique.

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(2) Prior FBIHQ authority is not required to advance funds for purchases of [REDACTED] on the promise of a subsequent delivery of drugs. SACs are authorized to approve the fronting of drug purchase money in those instances which, in the judgment of the SAC, justify utilizing this technique. The circumstances and justification for employing this technique must be documented in the field office file.

EFFECTIVE: 11/01/93

281-4.1.4 Reverse Undercover Operations (RUO)

(1) An RUO involves an undercover (UC) technique in which the UCA, CW, or informant poses as a drug seller or trafficker rather than a drug buyer. RUOs and the tactics employed in their execution

[REDACTED] present unique circumstances and involve certain risks and dangers which can be minimized only through close managerial control, careful planning, and discreet coordination with other federal, state, and local law enforcement agencies.

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(2) Authority to participate in a domestic RUO rests with the SAC in situations involving [REDACTED]

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 26

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EFFECTIVE: 07/24/96

281-4.1.5 Furnishing Controlled Substances and Allowing Drugs
to Enter Traffic

(1) There are certain circumstances in which it is advantageous to a priority investigation to furnish a controlled substance to a subject through a UCA, CW, or informant. In these instances the Government, after having prior possession, makes a conscious decision to put them into traffic. This highly sensitive technique, [REDACTED] requires the approval of the CID Section Chief responsible for the criminal investigative program, in unilateral FBI investigations or joint investigations with other law enforcement agencies. While the concurrence of the DEA Administrator is not necessary in these scenarios, DEAHQ will be notified of the intended drug walk by FBIHQ. In requesting authority to allow drugs to enter traffic, a priority secure teletype should be submitted to FBIHQ, summarizing:

- (a) The facts of the case;
- (b) Source of drugs (whether Government is the source or acting as a broker);
- (c) The importance of the investigation or significance of the trafficker;
- (d) Amount, purity, and type of substance to be released;
- (e) Objectives of furnishing controlled substances and allowing drugs to enter traffic;
- (f) Statement as to any incriminating conversations which have been recorded or source information which establishes the subjects' prior involvement or predisposition to engage in drug trafficking;

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 27



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(g) A statement reflecting that appropriate law enforcement agencies have been contacted to preclude their inadvertent involvement in this sensitive investigative technique;

(h) Statement detailing security procedures to be utilized;

(i) Concurrence of the prosecuting attorney for the utilization of the technique;

(j) Where a DEA Laboratory is the source for the drugs, a statement that the DEA Laboratory has been contacted and advised as to the type of drug needed, purity, packaging, amount, and date when required;

(k) Name of the Agent(s) authorized to receive the drugs and name of supervisor handling the case.



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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 30

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EFFECTIVE: 11/01/93

281-4.1.10 Drug Show Scenarios

(1) In some instances, in order to develop evidence of a subject's involvement in a major drug conspiracy, CWs, informants, or UCAs may pose as drug manufacturers or distributors which may require the display of quantities of controlled substances.

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(3) Each field office will ensure coordination with the appropriate agencies in order to avoid a confrontation situation.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 33

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NOTE: 14 C.F.R. 91.12 permits common carriers to cooperate with law enforcement in transporting shipments of controlled substances.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 34

EFFECTIVE: 06/10/94

281-4.2 Civil Investigative Procedures for OC/DP Cases (See MIOG,
Part I, 183-3.1.)

(1) These investigations are conducted pursuant to Title 18, USC, Section 1964(a) (equitable relief) and/or 1964(c) (treble damages) and provide the Government with powerful tools, in the form of permanent injunctions and organizational reformation, to eradicate entrenched criminal influence by disassociating the criminal enterprise from its economic base. The general investigative procedures of MIOG, Part I, 183-3 are applicable to civil investigations. Civil investigative target selection and vigorous enforcement of injunctive orders by the FBI provide program managers and squad supervisors with new opportunities to achieve success in their respective investigative areas. Examples of these injunctive orders and remedial actions range from the lifetime bar of individuals from their profession or craft to restoration of democratic processes (union election reform) and competitive business practices (removal of extortionate payments.)

(2) Investigative experience has demonstrated that the composition of the civil complaint contributes significantly to the success of the litigation and the protection of Bureau interests. The complaint must be structured to protect the integrity of ongoing criminal investigations and programs, e.g., informants, from inadvertent disclosure. Government attorneys litigating a civil investigative matter must adhere to the strict provisions of the Federal Rules of Civil Procedure (FRCP) which prohibit their access to, or use of, certain privileged information derived from the criminal investigative process. To satisfy the FRCP and to assure Bureau interests, a segregation process for this information has been developed and successfully employed in prior civil investigations of both national and local targets. The process requires that all documentation or other supporting evidence used in the case be reviewed and coordinated by personnel from the Office of the General Counsel, Civil Discovery Review Unit (CDRU). The CDRU will conduct comprehensive fieldwide file reviews and indices searches for all subjects prior to complaint filing. Subsequently, the CDRU will conduct similar reviews and searches to satisfy court-ordered discovery motions after the complaint is filed. This review process permits the CDRU to excise protected information by asserting various constitutional, statutory, and governmental privileges, prior to disclosure to Government attorneys for complaint and/or trial

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 35

preparation.

(3) In view of the complexity of this investigative technique, the demands made on both field and FBIHQ resources, and its impact upon criminal investigations nationwide, all civil investigations will require approval from the FBIHQ substantive section prior to case initiation. The field division will forward to FBIHQ a copy of the draft complaint coincidental to the United States Attorney's submission of the draft complaint to the Department of Justice (DOJ). The draft complaint will be reviewed by the CDRU and substantive section and assessed for discovery impact on FBI files and informant sources as well as potential resource dedication for processing.

EFFECTIVE: 09/09/94

281-4.3 Department Policy Concerning RICO Investigations
(See MIOG, Part I, 183-6.)

(1) In its guidelines concerning Title IX of the "Organized Crime Control Act of 1970," the Department has issued instructions that no criminal or civil prosecutions or grand jury investigations are to be pursued without the initial clearance of the Department.

(2) In addition, the Department has indicated that the Attorney General may designate any department or agency to conduct investigations and, in the absence of such designation, jurisdiction to conduct investigations for violations lies with the Agency having jurisdiction over the violations constituting the pattern of racketeering activity listed in Title IX of the "Organized Crime Control Act of 1970."

EFFECTIVE: 11/01/93

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 36

281-5 REPORTING REQUIREMENTS

EFFECTIVE: 07/20/95

281-5.1 Criminal Investigations (See MIOG, Part I, 183-8.1, 245-5
& 281-4.1; MAOP, Part II, 10-9(20).)

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Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 37

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| 281-5.2 Civil Investigations (See MIOG, Part I, 183-8.2.)

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| 281-6 INTERNATIONAL INVESTIGATIONS

EFFECTIVE: 11/01/93

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 38

281-6.1 Conduct of Foreign Investigations

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(2) In FBI drug investigations where there is minimum DEA participation, the request for foreign drug investigations will be transmitted by teletype to FBIHQ.

EFFECTIVE: 11/01/93

281-6.2 International Travel by FBI Personnel, Cooperative Witnesses (CWs) or Informants (See MIOG, Part II, 23-8.2.)

(1) Certain investigations may require FBI personnel, CWs, or informants, to travel to foreign countries in furtherance of an OC/Drug investigation. In all foreign countries the American Ambassador is the personal representative of the President of the United States and represents the highest U.S. authority in that country. Therefore, no foreign activity may occur without prior notification to FBIHQ, where the necessary liaison and notification procedures will be effected.

(2) FBI personnel, CWs or informants will not be allowed to travel internationally in connection with matters involving criminal investigative programs without approval of the appropriate CID Section Chief.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 39

281-7 ADMINISTRATIVE SUBPOENAS

EFFECTIVE: 11/01/93

281-7.1 Authorization

(1) Title 21, USC, Section 876, authorizes the Attorney General to subpoena witnesses, compel attendance and testimony of witnesses, and require the production of records relevant to a controlled substance investigation. This authority has been redelegated through the Director of the FBI to SACs, ASACs, and SSRAs.

(2) This subpoena may compel the witness to attend, testify, or produce records from any place within the jurisdiction of the United States; however, a witness may not be required to travel more than 500 miles from the place he/she was served in order to attend the hearing. Witnesses will be paid the same fees and mileage that are paid witnesses in United States courts.

EFFECTIVE: 11/01/93

281-7.2 Service of Administrative Subpoenas

Administrative subpoenas (FD-617) may be served by any person designated in the subpoena to serve it. Proof of service affidavit will consist of the party who served the subpoena completing the "certification of service" section on the reverse side of the original copy of the FD-617.

EFFECTIVE: 11/01/93

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 40

281-7.3 Enforcement

The United States court in the jurisdiction of the investigation or residence of the subject may order compliance with the subpoena. Failure to comply with this court order may be punished by contempt of court proceedings.

EFFECTIVE: 11/01/93

281-7.4 Instructions

(1) Administrative subpoenas are to be used only in investigations involving violations of the Controlled Substances Act (Title 21, USC, Section 801 et seq.).

(2) Restraint should be exercised in the use of the administrative subpoena as it is not a substitute for a search warrant.

(3) Primary use of the administrative subpoena will be in obtaining record information from telephone and telegraph companies, hotels, utilities, banks, and other business institutions. When obtaining bank records, Agents must comply with the Right to Financial Privacy Act.

(4) The subpoena (FD-617) is printed in two copies, original and attested copy.

(5) The service return is located on the reverse side of the original copy. The original with executed return of service will be kept in the case file. A photocopy of the original should be maintained in a control file for administrative subpoenas in each field division.

(6) The attested copy of the subpoena should be delivered to the person named therein.

(7) FBIHQ, Office of the General Counsel, must be contacted prior to any administrative subpoena for records not in the hands of a third party (i.e., subjects and associates).

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 41

NOTE: Administratively subpoenaed information is not rule 6(e) material.

(8) In instances where an office of origin is requesting information to be subpoenaed by an auxiliary office, either the office of origin or the auxiliary office may issue the administrative subpoena(s). In either case the original subpoena should be forwarded to the office of origin along with the subpoenaed information.

EFFECTIVE: 07/20/95

281-8 EVIDENCE HANDLING (CONTROLLED SUBSTANCES) (See MIOG, Part I, 281-4.1.1(2)(i).)

EFFECTIVE: 11/01/93

281-8.1 Drug Evidence (See MIOG, Part I, 281-4.1.1(2)(i).)

(1) Two Agents/officers (not support employees), one designated the sealing Agent/officer and one the witnessing Agent/officer are responsible for ensuring that drug evidence is sealed, transmitted for laboratory analysis, or placed in storage. Opening and resealing of drug evidence must be conducted in the presence of at least two Agents/officers.

(2) Laboratory analyses of seized drugs will be conducted by the DEA laboratories. Whenever the package of drug evidence is not prohibitively large, the entire package should be heat sealed in plastic bags at the earliest opportunity. DEA Form 7 is to be utilized when transmitting drug evidence to the DEA laboratory.

(3) Certain procedures should be followed when filling out DEA Form 7. Failure to do so can create problems for DEA laboratories. (See also MAOP, Part II, Section 2-4.4.7 re execution of DEA Form 7.)

(a) The form should be typed. Handwriting does not print through to all copies.

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 42

(b) There is a limit of three exhibits per each form. DEA laboratories use the top page of the form as the original report and there is not sufficient space for the results of analyses of more than three exhibits.

refer [Redacted]

[Redacted]

(e) Each exhibit accompanying DEA Form 7 should be placed in a heat-sealed pouch.

(f) File and exhibit numbers should be placed on all pouches so they can be matched with the accompanying correspondence.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 45

EFFECTIVE: 05/17/94

281-8.1.1 Weight Determinations (See MIOG, Part I, 281-4.1.1(2)(i) & 281-8.1.9.)

(1) Investigative personnel will weigh and record all drug evidence at time of seizure or as soon thereafter as practicable. This initial weight will be prefaced by the word "approximate" in recording the weight on an FD-302 or memorandum. The DEA laboratory weight will continue to be the official weight for prosecutive and statistical accomplishment purposes.

(2) This initial weighing should be accomplished in sealed KAPAK containers on a scale capable of weighing in gram increments. If the field-reported gross weight varies by 1 percent or more from the gross laboratory weight, the appropriate squad supervisor will prepare a memorandum of explanation for the SAC or SAC's designee. Variations will be reported to field offices by the DEA laboratory upon completion of the analysis.

(3) If the drug seizure involves tablets or capsules, the number of tablets or capsules can be determined by either of two methods:

(a) By actual count if the quantity is small; or

(b) If too voluminous to count, by computation based on relative weights, i.e., count and weigh 100 units to determine a unit weight and then divide this weight into the net weight of the entire exhibit to determine the total number of units.

(4) If liquids are involved, the gross quantity will be reported by volume. Estimates will be based on the known or apparent size of the container.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 46

281-8.1.2 Laboratory Reports (See MIOG, Part I, 281-4.1.1(2)(i).)

On completion of laboratory analyses the DEA Laboratory Report (copy 1 of DEA Form 7) will be returned to the submitting field division. DEA Laboratory Reports should be filed in the 1A exhibit section of the case file.

EFFECTIVE: 11/01/93

281-8.1.3 Nondrug Forensic Examinations (See MIOG, Part I, 281-4.1.1(2)(i).)

(1) All other forensic laboratory examinations, such as firearms, documents, biological materials, etc., will continue to be performed by the FBI Laboratory.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 47

EFFECTIVE: 10/16/96

281-8.1.4 Storage of Drug Evidence (See MIOG, Part I,
281-4.1.1(2)(i).)

(1) Upon completion of the analysis of DEA Laboratory and/or FBI Laboratory, all evidence will be returned to the submitting field division for retention and eventual destruction. The DEA Laboratory and FBI Laboratory will not accept the responsibility for storage of drug evidence.

(2) The retention of drug evidence should be in accordance with instructions set forth in MAOP, Part II, 2-4.4.7. The intrinsic value of drug evidence requires the establishment of strict, documented accountability.

EFFECTIVE: 11/01/93

281-8.1.5 Storage of Bulk Drug Evidence (See MIOG, Part I,
281-4.1.1, 281-8.2.2; MAOP, Part II, 2-4.4.7.)

(1) Whenever feasible, store bulk quantities of drug evidence in the field office evidence room except in the case of hazardous chemicals.

(2) If the quantity of drug evidence is of such volume that it cannot be secured in the field office evidence room, it may be stored in a bonded warehouse and must be afforded appropriate security.

(3) Any other alternative deemed appropriate by the SAC, after consultation with FBIHQ, and after careful consideration of the safety of employees, possible contamination of evidence, chain of custody restrictions, security of evidence, and other pertinent factors, will be acceptable.

(4) From a safety point of view, normal office space building codes are considered adequate for storage of drugs. However, the manner in which drugs of abuse are packaged is more significant than the location where they are kept. Large quantities of drugs can

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 48

be sealed in any type container available such as heat seal pouches, heavy plastic sheets or paint cans so long as the drug cannot leak from its package and contaminate the storage area. The seals should be airtight since spilled drugs can inadvertently be picked up on the hands or temporarily be made airborne by a sudden burst of air.

(5) Wet or freshly harvested marijuana will mildew if not thoroughly dried before being permanently stored. It is also advisable to fumigate marijuana to curb insect growth within the bundles. Additionally, marijuana and crude preparations of some other drugs, such as cocaine, PCP and methamphetamine, are highly odoriferous and will require more than normal ventilation for odor control. It is noted that these odors are not caused by the active drug substance itself, but rather by impurities in the preparation.

(6) Drugs should be stored in a reasonably controlled environment as elevated temperatures or humidity may result in some drug decomposition. Thus, with some additional ventilation, along with adequately sealed packaging, an area, such as the Bulky Evidence Room of most field offices, is suitable for drug storage.

EFFECTIVE: 10/16/96

281-8.1.6 Destruction of Drug Evidence (See MIOG, Part I, 281-4.1.1(2) (i); MAOP, Part II, 2-4.4.7.)

(1) Controlled substances will not be destroyed prior to indictment, except for those routinely destroyed under the bulk destruction policy set forth in MIOG, Part I, 281-8.1.7. The following, therefore, applies only to NON-BULK drug evidence.

(2) Postindictment Destruction. The U.S. Attorney's Manual, Chapter 101, page 22, provides in part that "After the return of an indictment, at the arraignment and plea, the U.S. Attorney shall file a 'Notice of Intent to Destroy Controlled Substances' (hereinafter 'Notice') in all cases unless he/she believes unusual circumstances justify maintaining all seized evidence for use at trial. The U.S. Attorney has the sole and exclusive authority to make such a decision and when such circumstances are present, said 'Notice' will not be filed with the court and the controlled substances shall not be destroyed.... At the time the 'Notice' is filed with the court at the arraignment and plea, a copy shall be immediately served upon the defendant, or his/her attorney." Seized evidence will not be

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 49

destroyed until the field office receives a copy of the "Notice" and has complied with the procedures set forth therein.

(3) Posttrial Destruction. If "Notice" is not filed, seized evidence will be held until the conclusion of the judicial proceedings, to include the appellate process. Disposition of controlled substances in such cases should be approved in writing by the U.S. Attorney and follow the forfeiture procedure set forth in the FORFEITURE AND ABANDONED PROPERTY MANUAL.

(4) Seizure Without Trial. In those instances where there is no identifiable defendant involved and a decision is made not to pursue the investigation, seized controlled substances will be disposed of in accordance with the forfeiture procedure set forth in the FORFEITURE AND ABANDONED PROPERTY MANUAL. Final destruction should follow the provisions of MIOG, Part I, 281-8.1.6(5) below.

(5) Following either a determination by the U.S. Attorney that seized controlled substances need no longer be retained for evidence and proper notice is given or a decision is made to discontinue an investigation involving seized controlled substances, the forfeiture provisions of the FORFEITURE AND ABANDONED PROPERTY MANUAL should be followed. Prior to destruction, the Supervisor or Relief Supervisor and the case Agent will withdraw the drugs from storage and ensure that all evidence seals are intact. Actual destruction of the drugs is to be accomplished by burning in the presence of the case Agent, his/her Supervisor or Relief Supervisor, and one other witness. [See 281-8.1.10 for documentation of evidence destruction.] (See MIOG, Part I, 281-8.1.8(3)(a).)

EFFECTIVE: 12/23/96

281-8.1.7 Destruction of Bulk Drug Evidence (See MIOG, Part I, 281-4.1.1(2)(i) & 281-8.1.6.)

(1) The Bulk Drug Evidence Destruction Rule became effective 4/14/88 and applies to both the FBI and DEA. It is not retroactive and cannot be used to authorize destruction of bulk drug evidence seized prior to that date. The rule requires that threshold amounts of seized Schedule I or II drugs be retained and stored as evidence pending conclusion of trials and appeals. The bulk of the drug evidence in excess of the threshold amount may be destroyed at the direction of the FBI SAC after 60 days from the date that the

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 50

FBI's written notice of the seizure is provided to the appropriate United States Attorney's (USA) Office. Upon receipt of the written notice of the seizure, the USA, or his/her designee, may provide written concurrence for destruction of the seized bulk drug evidence, or the USA may submit a written request that an exception be granted by the SAC. Should the SAC deny the exception request, the USA may appeal the denial to the Assistant Attorney General (AAG) of the Criminal Division. The appeal must be filed with the AAG within 30 days of the SAC's denial. Destruction is stayed pending the final decision of the AAG.

(a) Field offices are not required to report bulk drug seizures to FBIHQ. The only exception to this policy will occur when an SAC's decision to retain or destroy bulk drug evidence is appealed by a USA to the Department of Justice. In the unlikely event that such a dispute arises and cannot be resolved between the SAC and USA, FBIHQ must be notified.

(b) The authority to request an exception, and the authority to grant or deny an exception request rests solely with the USA and the SAC, respectively, and cannot be delegated. Since the bulk of the drug evidence will be destroyed prior to trial, it is imperative that high-quality, large-format photographs of the total seizure be made and properly documented. It is possible that some Judicial Districts or Circuit Courts of Appeal may have established legal precedent prohibiting the destruction of bulk drug evidence seizures prior to trial. Such precedent is controlling, but the SAC should urge the USA's Office to file immediate appeals to such orders.

(2) Exceptions to the destruction rule should be extremely limited. Exceptions should not be granted by an SAC based on rationales such as: "jury appeal," "to forestall legal challenges," or as a matter of "prior practice," as opposed to legal precedent in the district of seizure.

(3) The rule defines a bulk seizure as any one seizure from a single source, equal to or greater than the quantity specified as the threshold amount. With the exception of marijuana, the rule sets out the threshold amounts of specific Schedule I and II Controlled Substances. The threshold amounts should be exceeded by 10 percent of this amount to offset the weight of packaging materials. For example, the threshold amount for heroin is 1 kilogram; however, 1.1 kilograms should be retained as a threshold amount to ensure that mandatory minimum sentencing requirements can be met. The threshold amounts of Schedule I and II Controlled Substances are as follows:

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 51

- (a) Two kilograms of a mixture or substance containing a detectable amount of heroin;
- (b) Ten kilograms of a mixture or substance containing a detectable amount of--
 1. coca leaves, except leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 2. cocaine, its salts, optical and geometric isomers, and salts of isomers;
 3. ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 4. any compound, mixture, or preparation which contains any quantity of any of the substances referred to in the subclauses above;
- (c) Ten kilograms of a mixture or substance which contains cocaine base;
- (d) 200 hundred grams of phencyclidine (PCP) or two kilograms of a mixture or substance containing a detectable amount of PCP;
- (e) 20 grams of mixture or substance containing a detectable amount of Lysergic Acid Diethylamide (LSD);
- (f) 800 hundred grams of a mixture or substance containing a detectable amount of N-phenyl-N(1-(2-phenylethyl)-4-piperidinyl) propanamide (commonly known as fentanyl) or 200 grams of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N(1-(2-phenylethyl)-4-piperidinyl) propanamide; or
- (g) Two kilograms or 2,000 dosage units (tablets, capsules, or as determined by the regional DEA laboratory) of a mixture or substance containing a detectable amount of any Schedule I or II Controlled Substance in the Controlled Substances Act for which no threshold amount has been specified.
- (h) There is no threshold amount defined for marijuana. Instead, a representative sample will be retained. Procedures regarding marijuana sampling will be set out under the 'Bulk'

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 52

Marijuana Seizures Section. (See MIOG, Part I, 281-8.1.8(4).)

(4) An explanation of the relationship between threshold amounts and bulk amounts is best illustrated by an example. A shipment consisting of 50 kilograms of cocaine is seized. The rule defines the threshold amount for cocaine as ten kilograms. The total seizure must be weighed and photographed. Thereafter, the threshold amount, ten kilograms, plus one kilogram to offset packaging materials included in the weighing process, will be retained and stored in a secure vault pending conclusion of trial. The 39-kilogram bulk amount will be stored in a secure facility for the 60-day holding period. If an exception request to destruction is not filed by the USA, the 39 kilograms will be destroyed on the authority of the SAC as soon as possible after the 60-day period has expired. It should be noted that in the above example, any seizure over ten kilograms of cocaine, or over the threshold amount of any specified drug, qualifies as a bulk drug seizure and the destruction procedures of this rule will apply.

(5) Notice and Appeal

(a) Verbal Notice: The case Agent or Supervisory Special Agent will telephonically advise the AUSA assigned to the case or the district duty AUSA that a bulk drug evidence seizure has been made. The notifying Agent will provide to the AUSA specific details regarding the subject(s) identity, the FBI case file number, the identity of case Agent and Supervisor, the date, time and place of the seizure, the type of drug seized and an estimate of the quantity seized. Verbal notice must be given to the appropriate AUSA no later than the business day following the date of actual seizure.

(b) Written Confirmation: A letter confirming the verbal notice will be forwarded to the USA with a copy directed to the AUSA receiving verbal notice no later than five workdays after the date of the actual drug seizure. In addition to the file copy of this letter, two additional copies should be prepared. One copy will be routed to the SAC who will retain this copy in a control file specifically designated for Bulk Drug Evidence Seizures. The second copy will be retained by the squad supervisor as a tickler copy available for ready reference. Other control mechanisms are left to the discretion of the SAC.

(c) Letter Format: Confirmation form letters may be devised by individual field offices. The letter of confirmation will contain the phrase, "BULK DRUG EVIDENCE SEIZURE," in capital letters on the first reference line of the letter, followed by the full case title and file number. The letter should contain, at a minimum, the

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 53

place, date, and time of seizure; the names of all subjects associated with the seizure; the names and telephone numbers of the case Agent and his/her supervisor; the type of drug seized; and the estimated weight of the total seizure. The final paragraph of the letter must provide the date after which the bulk of the evidence may be destroyed. This date will be calculated as 60 CALENDAR days from the date of the letter giving the USA notice of the seizure. This paragraph will also inform the USA that a request for an exception to the destruction procedure must be in writing directed to the personal attention of the SAC.

(6) Exception Requests: The USA may request an exception to the destruction process at any time during the 60-day holding period. The SAC must personally review and either approve or deny the USA's written request for an exception. Granting of an exception is left to the sole discretion of the SAC; however, the extended storage of large-volume bulk drug seizures is clearly contrary to the spirit and intent of this policy. A USA should provide compelling reasons in support of an exception to destruction request. Copies of this request will be filed in the same manner as notice of seizure letters.

(7) SAC Response: The SAC will personally review and sign the letter either granting or denying the USA's request for an exception. Responses should be provided within ten calendar days of the date of the request. An expeditious response is of particular importance when a USA's request for an exception is being denied. The SAC's letter of denial will inform the USA that written appeals should be directed to the AAG of the Criminal Division within 30 days from the date of the denial letter. The USA must also direct a copy of this AAG appeal letter to the personal attention of the SAC in order to stay the destruction procedure. A failure to appeal the denial, or to provide a copy of the letter of appeal to the SAC, will result in the destruction of the bulk drug evidence as soon as practical after the 60-day holding period or the subsequent 30-day appeal period has expired. It should be noted that bulk evidence destructions cannot be conducted prior to the expiration of the 60-day holding period.

281-8.1.10. (8) Documentation of Destruction: See MIOG, Part I,

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 58

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281-8.1.10 Documenting Bulk Drug Destruction (See MIOG, Part I,
281-4.1.1 (2) (i), 281-8.1.6 and 281-8.1.7(8).)

(1) Upon completion of the evidence destruction, the case Agent will prepare an electronic communication (EC) to the file setting forth the date, method, and location of the destruction and a complete description of items destroyed and the names of the Agents who participated in or witnessed the removal of the evidence from storage and its destruction. This EC will be initialed by all participants and serialized in the file. Appropriate destruction notation will be made on the FD-192 in file with a cross-reference to the destruction EC. The evidence copy of the FD-192 will be placed in the 1A section of the file.

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EFFECTIVE: 12/23/96

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 59

281-8.1.11 Drug Evidence Destruction Coordinators (DEDCs) (See MIOG,
Part I, 281-4.1.1(2)(i).)

(1) Each SAC will appoint a DEDC to provide assistance in the coordination of field office procedures for the handling, documentation, and disposition of bulk drug seizures.

(2) Deleted

EFFECTIVE: 10/31/94

281-8.2 Hazardous Chemicals (See MIOG, Part I, 281-4.1.1(3).)

EFFECTIVE: 11/01/93

281-8.2.1 Exposure

While drugs themselves do not represent safety or health hazards unless they are injected, some of the chemicals used to manufacture them are extremely dangerous as flammable, explosive, corrosive or toxic substances. Advice on safety considerations may be obtained from the nearest DEA Laboratory prior to conducting raids where exposure to such substances may occur. Upon request, DEA chemists will be available to participate in closing down a clandestine laboratory and should enter the premises IMMEDIATELY after Special Agents have secured the area. (See MIOG, Part I, 281-4.1.1(3).)

EFFECTIVE: 10/16/96

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 60

281-8.2.2 Storage and Destruction (See MIOG, Part I, 281-8.1.5.)

(1) The chemist will categorize chemical substances according to their evidentiary and/or hazardous nature; however, he/she cannot dispose of the substance on site due to safety and environmental contamination considerations.

(2) It is the responsibility of each field division involved in drug investigations to make contingency plans for storage and eventual destruction of hazardous chemicals which may be seized as evidence. Such chemicals may be handled, stored and disposed by Environmental Protection Agency-(EPA) approved contractors. A list of EPA-approved contractors can be obtained from DEA field laboratories. Under no circumstances should hazardous chemicals be stored within FBI office space.

(3) Chemicals deemed hazardous will be seized for forfeiture. Although all such property has theoretical value as evidence, in practice not all of it will be physically introduced as such in court. Through prior coordination with the U.S. Attorney, it can be decided that the Government's interest in preserving these chemicals as evidence does not equate to the danger involved in doing so. In fact, most chemicals routinely deemed "hazardous" are common organic solvents, which are of minimal value as evidence.

(4) Chemicals deemed hazardous will not be retained for evidentiary purposes, but will be disposed of forthwith. The search warrant inventory should distinguish the difference between property handled in this manner and that retained as evidence and/or pending completion of forfeiture proceedings. Furthermore, a separate forfeiture action should be brought against this property as distinguished from property held in custody pending completion of forfeiture proceedings.

(5) Disposal of property prior to completing forfeiture proceedings against it is an approach commonly used by the Government for property which is perishable or which presents an imminent danger to public health. Although the approach allows for prompt disposal, it has the potential disadvantage that, should the subsequent forfeiture proceeding be successfully contested, the Government may be required to recompense the owner to the extent of the property's fair market value.

(6) On occasion, a situation may arise where a chemical deemed hazardous is also a critical item of evidence (e.g., a

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 61

controlled substance dissolved in a hazardous solvent), and the amount is too large to safely submit as a whole to the DEA Laboratory. In this situation, the chemical should be photographed and sampled (samples should be of sufficient size to permit subsequent examination by the defense), and then disposed of.

To assure the admissibility of this evidence, the prosecutor may wish to routinely seek advance court approval to cover any such situation, or he/she may prefer to seek it after-the-fact.

EFFECTIVE: 11/01/93

281-9 CIVIL FORFEITURE

See FORFEITURE AND ABANDONED PROPERTY MANUAL.

EFFECTIVE: 11/01/93

281-10 IMPORTATION INTERDICTION

The U.S. Customs Service (USCS) enforces smuggling violations and is responsible for interdicting and seizing contraband, including narcotics and dangerous drugs. Information disseminated to the USCS will be maintained in a control file in each field office.

EFFECTIVE: 11/01/93

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 62

281-11 DIVERSION CONTROL

(1) DEA's Diversion Operations Program is responsible for policing the legitimate pharmaceutical industry that handles the domestic manufacture and distribution of controlled substances. It is the program's function to:

(a) ensure that all individuals and firms dispensing, manufacturing or distributing controlled substances are properly registered under the provisions of the Controlled Substances Act of 1970 and

(b) prevent and detect diversion; develop intelligence and by means of its cyclic investigation program, ensure that all registrants comply with the security and recordkeeping provisions of the Act.

(2) Any inquiries or information relative to this program should be referred to the local DEA representative.

EFFECTIVE: 11/01/93

281-12 ALLEGATIONS CONCERNING FOREIGN GOVERNMENTS AND
FOREIGN GOVERNMENT OFFICIALS' INVOLVEMENT IN DRUG
SMUGGLING INTO THE UNITED STATES

Allegations concerning foreign governments and foreign government officials' involvement in drug smuggling into the United States will receive priority attention.

(1) Agents will vigorously pursue any allegations of this nature utilizing all available investigative techniques, including consensual monitoring and polygraph, to substantiate these allegations.

(2) If allegations of this nature are made to other law enforcement or Government agencies, determine to what extent these allegations have been substantiated.

(3) After obtaining all available information concerning these allegations, immediately submit a summary teletype to FBIHQ,

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 63

Attention: OC/Drug Branch, captioned "Drug Matters - Allegations Concerning Foreign Government or Foreign Government Officials Involved in Drug Smuggling into the United States" - identify country against which allegation has been made.

(4) FBIHQ will advise if further investigation is warranted.

(5) In order to obtain all available information concerning these matters, SACs should ensure that appropriate liaison is established with other Government agencies within their division so that they will be aware of FBI interest in this matter.

(6) FBIHQ will coordinate closely with DEA and other Government agencies to ensure coordination in these investigations.

EFFECTIVE: 11/01/93

281-13 DISSEMINATION OF THIRD PARTY INFORMATION

(1) Drug investigations MAY involve joint investigations between FBI, DEA, and other Federal, state, and local law enforcement agencies. As a result, valuable and sensitive intelligence information is constantly being passed from one agency to another. It is imperative that the sanctity of third party intelligence information be maintained; therefore, before the FBI or DEA can disseminate information received from one agency to another agency, it must have the approval of the originating agency.

(2) Relative to dissemination by DEA or FBI of information which impacts on the other agency's jurisdiction, such information should be disseminated at the local level on a timely basis. If, however, some legitimate reason exists why the information cannot or should not be disseminated to the interested agency at the local level, the information will be expeditiously referred for review by DEA to DEAHQ or by the FBI to FBIHQ, whichever is appropriate.

EFFECTIVE: 11/01/93

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 64

281-14 CORRUPTION OF PUBLIC AND LAW ENFORCEMENT OFFICIALS
IN DRUG INVESTIGATIONS

(1) Although not a distinct classification, allegations of official or police corruption should be thoroughly pursued in relation to the particular drug trafficking organization under investigation. The identification of official or police corruption, which is directly facilitating drug trafficking activity, will become an integral part of all drug investigations.

(2) When allegations of official or police corruption arise in relation to drug trafficking activity, such cases will be addressed under the appropriate 281 or 245 classification describing the type of drug trafficking group which the corrupt activity supports.

EFFECTIVE: 11/01/93

281-15 FINANCIAL FLOW INVESTIGATIONS (SEE MIOG, PART I,
SECTION 272, MONEY LAUNDERING.)

EFFECTIVE: 11/01/93

281-16 CROSS-DESIGNATION OF NON-TITLE 21 FEDERAL AGENTS

(1) Pursuant to Title 21, USC, Sections 873(b) and 965, the AG has the authority to request another Federal agency to assist in the enforcement of the Controlled Substances Act, Title 21, USC, Sections 801-904, and the Controlled Substances Import and Export Act, Title 21, USC, Sections 951-971. The process of requesting assistance is commonly referred to as cross-designation.

(2) The AG has delegated authority to cross-designate to the Director of the FBI and the Administrator of DEA, pursuant to the provisions of Title 28, CFR, Sections 0.85(a) and 0.100, respectively. In turn, the Director has delegated his authority to

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 65

cross-designate Federal Agents to the Deputy Assistant Director of the CID.

EFFECTIVE: 11/01/93

281-16.1 General Policies

- (1) The FBI cross-designation program envisions authorizing non-Title 21 law enforcement officers of the GS 1811 series to actively conduct drug investigations under the supervision of an FBI Supervisory Special Agent (SSA).
- (2) Although the cross-designation process will most commonly be requested in the course of an OCDETF investigation, the OCDETF designation is not required for cross-designation, nor is the fact that non-Title 21 Federal Agents are participating in an OCDETF investigation sufficient cause to request cross-designation.
- (3) Cross-designation is required only when non-Title 21 Federal Agents are to actively engage in investigations of Title 21 violations.
- (4) Cross-designation is not required in a multiagency investigation in which the FBI is investigating violations of Title 21 and other participating Federal agencies are contemporaneously investigating violations within their own statutory jurisdiction.
- (5) The FBI will cross-designate non-Title 21 Federal Agents only in Title 21 investigations in which the FBI is able to provide direct supervision of the cross-designee by an FBI SSA.
- (6) Cross-designation will be provided by the FBI in Title 21 investigations in which the FBI is the lead or sponsoring agency, irrespective of DEA's participation.
- (7) Although the authority to cross-designate rests with the DAD, CID, a request to cross-designate must originate from the SAC of the FBI field office requiring the assistance of non-Title 21 Federal Agents. Direct requests to cross-designate from other agency SACs, their respective headquarters or departments will not be granted.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 66

EFFECTIVE: 11/01/93

281-16.2 Scope of Cross-Designation Authority

- (1) Cross-designated Federal Agents (designees) are authorized to assist the FBI in the investigation of Title 21 violations only. The statute does not authorize a grant of general FBI jurisdiction to designees.
- (2) The scope of authority conferred by cross-designation is further limited by the FBI requirement of direct supervision of the designees.
- (3) The authority of an FBI SSA to supervise case management and to control case direction as they relate to a designee's investigative actions is coextensive with that SSA's authority to supervise and direct the investigative actions of FBI Agents during the course of the same investigation.
- (4) Sound management requires the FBI SSA to provide the necessary training and orientation to FBI policies, procedures, rules and regulations relating to Title 21 investigations to all designees and to take into account the total experience and training of those designees in determining the nature and extent of supervision required.
- (5) Under no circumstances is unilateral action by a designee Agent in a Title 21 investigation contemplated or authorized by the cross-designation process.
- (6) The rights and duties of a designated Agent to his/her parent agency are not affected by cross-designation. Pay and promotion status remain the exclusive responsibility of the designee's parent agency.
- (7) Designees will abide by the investigative rules and regulations of the FBI when assisting the FBI in a Title 21 investigation.
- (8) Cross-designation will be granted on a case-specific basis only. The FBI's cross-designation program does not contemplate standing multiagency task forces that require blanket cross-

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 67

designations for an indeterminate period.

EFFECTIVE: 11/01/93

281-16.3 Civil Liability

(1) The FBI and DEA share primary jurisdiction to conduct Federal drug investigations. The U.S. Forest Service has the authority to investigate violations of Section 841 of Title 21 relating to controlled substances manufactured, distributed or dispensed on National Forest System lands. The USCS has customs enforcement jurisdiction under Title 19. Such authority does not, however, constitute drug enforcement authority generally.

(2) The grant of generally exclusive jurisdiction for drug enforcement to both the FBI and DEA, coupled with the explicit authority under Title 21 to request the assistance of other agencies in conducting drug enforcement investigations, impliedly requires the FBI to exercise the same type of supervision, guidance, training, oversight and managerial controls over the designee as is provided to FBI personnel.

(3) The Federal Tort Claims Act (FTCA), as amended, provides, in pertinent part, that the exclusive remedy for common-law torts committed within the scope of a Federal employee's employment is an action against the United States under the FTCA. Therefore, FBI personnel involved in the act or process of cross-designation would not be sued in their individual capacities for the alleged common-law torts committed by designees acting within the scope of their employment.

(4) It is unlikely that Government liability will result under the FTCA for FBI policy decisions relating to the conduct of drug investigations, to include the decision to request and cross-designate non-Title 21 Federal Agents. The issue of supervision of these designees, however, may directly impact on the potential Government liability that may arise under the FTCA.

(5) Negligent or grossly negligent supervision or non-supervision of designees increases the Government's exposure to liability under the FTCA.

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(6) Constitutionally based civil actions filed against Federal officers (Bivens actions), grounded in simple negligence or negligent supervision, will not succeed. The general rule appears to be that for liability to be imposed under Bivens or under Title 42, USC, Section 1983, a supervisory official must exhibit conduct amounting to deliberate indifference or tacit authorization to commit constitutional violations about which he/she knew or should have known. The process of cross-designation does not create independent drug enforcement jurisdiction for those requested to assist the FBI in drug enforcement investigations such that drug investigations could be conducted without FBI supervision and training.

(7) FBI personnel involved in the cross-designation and supervision process should be sufficiently protected from civil liability, provided that appropriate orientation and supervision have been afforded. The designated Federal Agent should be advised that he/she may nevertheless be liable in Bivens-type actions based on activities which violate a person's constitutional rights.

EFFECTIVE: 11/01/93

281-16.4 Training of Designees

(1) Given the concept of cross-designation, it is not feasible or practical for the FBI to develop a curriculum and institute formal, FBI Academy-based instruction for designees. Field training on an ad hoc basis is the only feasible method of training. The nature of the assistance requested and the duties to be performed by the designee will be a principal factor in determining the extent and nature of training required. Each designated Agent must be evaluated individually. In addition to the tasking of the designated Agent, the following factors are among those to be considered:

- (a) Prior cross-designation;
- (b) Prior cross-training in drug enforcement by either DEA or the FBI;
- (c) Prior drug enforcement training provided by the non-Title 21 parent agency;
- (d) Experience in a joint drug investigation with

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 69

either the FBI or DEA, without cross-designation;

(e) Extent of investigative experience in parent agency non-Title 21 cases.

(2) The above list provides a general, but not inflexible, guide to assessing the training needs of the designee. Historically, non-Title 21 agencies will nominate only their most experienced and accomplished Agents for cross-designation and any particular nominee may have all of the above qualifications. Conversely, nominees with none of the above experience or training should not be considered for cross-designation unless mitigating circumstances exist, such as substantial police drug enforcement experience prior to entry on duty with the parent Federal agency.

(3) At a minimum, all nominees should be provided the opportunity to review the MIOG, Part I, Sections 245 and 281, and to review the "Activities and Standards of Conduct" section of the MAOP, Part I, Section 1. Thereafter, SAC memoranda that update relevant sections of the MIOG and MAOP should be provided to the cross-designees for their review.

(4) It is expected that designees who have been cross-designated or cross-trained in the recent past will require no more formal training than the minimum suggested. Thereafter, such designees should be assigned to work closely with an FBI Special Agent (SA) experienced in drug investigations. Other options for designees with less drug investigative experience or training may include a block of instruction on Title 21 provided by the field office's Principal Legal Advisor or assignment to work directly with an FBI SA for an appropriate orientation period.

(5) In addition to the above, SACs should certify that the designee has been afforded firearms training in accordance with the parent agency's standards and ensure that the designee has qualified under those standards within the past year.

(6) The range and extent of training necessary and provided will be made on an individual basis and will support the certification of the FBI SAC that the designee meets the FBI's standards for cross-designation in the requesting teletype. Documentation to support the SAC's certification will be maintained by the field office in an appropriate control file.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 70

EFFECTIVE: 11/01/93

281-16.5 Duration of Cross-Designation Authority

(1) Cross-designation authority runs from the date of approval by the DAD, CID, not from the date of notice to the designee. Each SAC will ensure that appropriate controls are established to track the duration of a designee's authority. FBIHQ will NOT notify field offices of authority expiration.

(2) Cross-designation authority will terminate or expire under any of the following conditions:

(a) The reassignment, transfer, retirement or other administrative action by the parent agency that affects the availability of the designees. FBIHQ must be advised.

(b) Automatically, at the end of the requested period for cross-designation. Any reasonable period of one year or less may be requested; however, a minimum of six months is suggested.

(c) Automatically, after one year from the last day of the month in which cross-designation was authorized by FBIHQ. The one-year maximum applies to all cross-designations.

(d) The investigation under which authorization was granted has been concluded and the assistance of the designee(s) is no longer required. FBIHQ must be notified in those instances in which investigative activity ceases prior to the expiration of the requested period of cross-designation.

(e) The SAC terminates for "cause," defined as: (1) any action by the parent agency that affects the designation suitability of the Agent; (2) any investigative action by the designated Agent that is unilateral, uncoordinated, or unsupervised relating to the Title 21 phase of the investigation; or (3) any other objectionable designation. FBIHQ must be advised.

EFFECTIVE: 11/01/93

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 71

281-16.6 Notice of Termination

In all instances, the designee must be formally advised that his/her cross-designation authority has expired or has been terminated.

EFFECTIVE: 11/01/93

281-16.7 Procedures to Request Cross-Designation (See MIOG, Part I, 281-16.8(2).)

(1) The decision to request the cross-designation of a non-Title 21 Federal Agent rests with the FBI SAC of the appropriate field office. The authority to cross-designate rests with the Director of the FBI, and has been delegated to the DAD, CID, to improve the efficiency of the process. Formal notice to the designee upon authorization of cross-designation is required; however, a formal swearing-in ceremony or credential cards are not required.

(2) In order for the FBI SAC to properly assess the suitability of each designee candidate, the parent agency SAC or other appropriate management official will be required to provide a written recommendation for cross-designation, directed to the appropriate FBI SAC, containing the required background information for each designee candidate. The letter of recommendation will be retained in a field office control file specifically designated for cross-designation requests.

(3) The background information on each candidate, listed below, will thereafter be incorporated into a teletype to FBIHQ, Attention: Administrative Unit, Operational Support Section, CID, and will be captioned: CROSS-DESIGNATION PROGRAM. Since many cases later become OCDETF matters, one copy of this teletype must be designated to the OCDETF regional coordinator in the OCDETF core-city field office whether or not the case is initially designated an OCDETF matter. The following information must be provided for each designee candidate:

- (a) Full Name
- (b) Title and GS Series

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 72

- (c) Parent Agency
- (d) Post of Duty
- (e) Social Security Account Number
- (f) Date of Birth
- (g) EOD Parent Agency
- (h) FBI Case (file number only) to which designee will be assigned
- (i) Anticipated duration of cross-designation
- (j) Identity of the FBI supervisor designated by the SAC for supervision and training of the designee
- (k) Date of designee's last firearms qualification
- (l) SAC certification or recitation of FBI's needs and that the designee meets the qualifications for cross-designation.

(4) For multiple cross-designations requested at the same time in the same case, a single teletype would suffice as long as elements (a) through (l) listed above are covered for each designee.

(5) Upon receipt of the requesting teletype, FBIHQ will prepare an individual notice memorandum for each designee. The notice memorandum will be completed, except for the designee's signature, by FBIHQ based only on the information provided in the requesting teletype. Field offices should allow at least 15 workdays for processing by FBIHQ during the initial phase of implementation of the Cross-Designation Program.

(6) An original of the partially completed notice memorandum will be approved by the DAD, CID, and will be forwarded to the requesting field office as an enclosure to the authorization airtel. The authorization airtel will contain the name(s), parent agency and SSAN of all approved designees.

(7) Upon receipt of the authorizing airtel, the FBI supervisor charged with supervising the designee(s) will present the notice memorandum to the designee for his/her signature and date of notice. The original signed notice memorandum will be retained by the

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 73

field office for filing in the cross-designation control file, matched with the appropriate letter(s) of recommendation from the parent agency official. Three copies of the signed original notice memorandum will be made and disseminated as follows: one copy will be presented to the designee; one copy will be directed to the regional OCDETF coordinator; and one copy will be directed to FBIHQ, Attention: Operational Support Section, CID, under a cover airtel.

(8) It is expected that most cross-designation requests will arise from OCDETF investigations. The OCDETF regional coordinator is being provided with a copy of the requesting teletype and the signed notice memorandum for statistical and compliance purposes only. As opposed to OCDETF deputation requests, approval by the OCDETF regional coordinator or AUSA coordinator is not required in the cross-designation process.

(9) Upon approval of the designee for cross-designation, FBIHQ will direct a letter to the appropriate parent agency or department head notifying that official that the named Agent(s) have been cross-designated by the FBI. The specific FBI case file number and duration of cross-designation authority will be included in this letter. It should be noted that, as a matter of current policy, the Internal Revenue Service (IRS) will not request cross-designation of IRS agents.

EFFECTIVE: 11/01/93

281-16.8 Renewals of Cross Designations

(1) To minimize the administrative requirements, every effort should be made to accurately estimate the duration of cross-designation authority requested in the initial teletype. In those instances in which the designee's assistance is required beyond the requested period, or one year, renewals will be granted only for the same investigation for which authority was originally approved.

(2) To streamline the renewal process, the renewal teletype will be directed to FBIHQ as set out under MIOG, Part I, 281-16.7 with the word "Renewal" included in the caption. The renewal teletype need only include the designee's full name, parent agency, SSAN, date of original cross-designation, file number, and the duration of cross-designation renewal authority required.

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 281 - 74

(3) Renewal authority will be granted by a return teletype from FBIHQ to the requesting field office. This renewal teletype will reiterate the name(s) of the designees and will be approved by the DAD, CID. A second notice memorandum will not be enclosed. The designee will be provided with the original of his/her notice memorandum and will be requested to re-sign and redate the memorandum. The original notice memorandum will be matched with the renewal authority teletype from FBIHQ and refiled in the field office control file. Copies of the re-signed notice memorandum will be disseminated as above.

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281-17 CHARACTER - ORGANIZED CRIME/DRUG INVESTIGATIONS
(OC/DI)

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SECTION 282. COLOR OF LAW

282-1 STATUTES

The statutes covered under Section 282 of this manual are as follows:

(1) Title 18, Section 241, USC, Conspiracy Against Rights (See MIOG, Part I, 50-1.5, 56-3.1 & 177-2 (6).)

(2) Title 18, Section 242, USC, Deprivation of Rights Under Color of Law (See MIOG, Part I, 50-1.6, 56-3.2.)

EFFECTIVE: 01/31/94

282-1.1 Title 18, U.S. Code, Section 241 - Conspiracy Against Rights (See MIOG, Part I, 44-1, 44-1.1, 50-1.5, 50-2.4, 56-3.1, 56-3.1, 177-2 (6) & 177-2.6.)

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory or District in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, or because of his/her having exercised the same. It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured. Among the rights secured from interference by private individuals over the years by the courts which have described them as basic substantive rights of Federal citizenship are the following:

- (1) The rights enumerated under the Homestead laws
- (2) The right to vote in a Federal election
- (3) The right of a voter in Federal elections to have his/her ballot fairly counted

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 2

(4) The right to be free from violence while in Federal custody

(5) The right to assemble and petition the Federal Government

(6) The right to testify in Federal courts

(7) The right to inform a Federal officer of a violation of Federal law

(8) The right to furnish military supplies to the Federal Government for defense purposes

(9) The right to enforce a decree of a Federal court by contempt proceedings

(10) The right of a Federal officer not to be interfered with in the performance of his/her duties (See MIOG, Part I, 89-2.2.)

(11) The right to be free to perform a duty imposed by the Federal Constitution

(12) The right to travel freely from one state to another

In addition to the above rights, the United States Supreme Court in UNITED STATES V. PRICE, 383 US 787 (1966), held that where state participation was involved in the conspiracy, Section 241 covers those rights secured under the 14th Amendment to the U.S. Constitution, which include protection against state action depriving any person of life, liberty, and property without due process of law.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 3

282-1.2 Title 18, U.S. Code, Section 242 - Deprivation of Rights
Under Color of Law (See MIOG, Part I, 282-3.1 (6).)

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any inhabitant those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any inhabitant to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such inhabitant being an alien or by reason of his/her color or his/her race. These are two separate violations within this statute. The Department of Justice (DOJ) has advised that case law defines inhabitant as a person whose mere transitory or momentary presence within the United States, its possessions or territories, either legally or illegally, is sufficient to bring that person within the jurisdiction of this section. Acts under "color of any law" include acts not only done by Federal, state, or local officials within the bounds or limits of their lawful authority (law, statute, ordinance, regulation, or custom), but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official, to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, any officials, such as Mayor, Councilman, Judge, nursing home proprietor, security guard, etc. and who are bound by laws, statutes, ordinances, or customs. A private citizen, who is a willful participant with Federal, state or local officials in the commission of "color of law" violations, may also be charged with violation of Title 18, USC, Section 242.

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282-2 TIME UTILIZATION RECORDKEEPING (TURK) DESIGNATION IN 282
MATTERS (SEE MAOP, PART II, 3-1.1 & 3-1.2.)

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 4

EFFECTIVE: 01/31/94

282-2.1 282A Investigations

Any allegation of a violation of Title 18, USC, Sections 241 or 242, involving the use of force and/or violence by INDIVIDUAL(S) ACTING UNDER COLOR OF LAW is to be handled as a 282A matter.

EFFECTIVE: 01/31/94

282-2.2 282B Investigations

Any allegation of a violation of Title 18, USC, Sections 241 or 242, which does NOT involve the use of force or violence by INDIVIDUAL(S) ACTING UNDER COLOR OF LAW is to be handled as a 282B matter.

EFFECTIVE: 01/31/94

282-3 HANDLING OF COMPLAINTS - INITIATION OF INVESTIGATIONS

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 5

282-3.1 Initiation of Investigation

The following circumstances represent examples of situations in which an investigation should be initiated:

(1) Upon receipt of an allegation from a complainant or victim not known to be unreliable.

(2) Upon receipt of either a written or verbal request from the Civil Rights Division (CRD), Department of Justice (DOJ), the latter of which will also be documented by CRD, DOJ and transmitted to the field by airtel from FBIHQ. If a field office strongly disagrees with the requirements of the DOJ investigative request(s) and taskings, the field office should contact the DOJ attorney generating the investigative request and attempt to resolve any issues. If the field office cannot resolve the matter with DOJ, contact the CRU. The United States Attorney (USA) does not have the authority to advise a field office to discontinue investigation specifically requested by the DOJ. Any questions regarding the deletion of any portion of a DOJ request must be promptly referred and discussed with the DOJ. If no resolution is obtained, contact the CRU.

(3) Upon receipt of a request from a USA. If the field office believes the USA's request is not warranted and cannot resolve this with the USA, promptly advise the Civil Rights Unit (CRU), Criminal Investigative Division (CID), FBIHQ. (See MIOG, Part I, 282-4.2 (7).)

(4) Upon receipt of specific information appearing in the legitimate news media reporting apparent violation(s) of color of law (Title 18, USC, Section 242) or conspiracy against rights (Title 18, USC, Section 241).

(5) From any source not known to be unreliable.

(6) Federal Law Enforcement Officials

The FBI has investigative jurisdiction for any color of law complaint against any FEDERAL, state, or local law enforcement officials. Upon receipt of a complaint involving allegations against personnel of a Federal law enforcement agency, obtain initial facts of the complaint from complainant, victim or other original source and advise FBIHQ. Conduct no further investigation unless specifically instructed to do so by FBIHQ. The complaint will then be discussed by FBIHQ with the CRD, DOJ, for a determination as to whether the

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 6

Department will request a criminal civil rights investigation by the FBI or whether the CRD, DOJ, will decline criminal prosecution in favor of an administrative inquiry. You may assume that complaints against Federal law enforcement officials which have been made directly to CRD, DOJ, and which resulted in CRD, DOJ requesting FBI investigation, transmitted to the field by airtel, have been previously coordinated between CRU, FBIHQ, and CRD, DOJ, and do not require further consultation with CRU to initiate an investigation. Color of Law allegations against any Federal law enforcement agency official should be promptly brought to the attention of the CRU, FBIHQ. "Color of Law" can also apply to nonlaw enforcement officials who have lawful authority due to their position, such as mayor, councilman, tax collector, proprietor of a nursing home, security guard, etc., and who are likewise bound by laws, statutes, ordinances, regulations or customs. Law enforcement personnel are therefore only a few of the "officials" who act under color of law. "Color of Law," is further defined in Section 282-1.2.

(7) Upon receipt of a complaint involving color of law allegations against FBI PERSONNEL, the following procedures are to be followed: (See MIOG, Part I, 263-8.)

(a) Advise the CRU, CID, and the Office of Professional Responsibility (OPR), Inspection Division (INSD), by telephone, followed by appropriate communications so that FBIHQ may furnish appropriate guidance. The CRU will coordinate with OPR and other FBIHQ components and advise the SAC concerning the proper handling of the matter;

(b) If a civil rights complaint arises during an administrative inquiry, the pertinent administrative inquiry relating only to the civil rights allegation must stop in order to resolve any criminal violations. That portion of the administrative inquiry may not resume until authorized by FBIHQ.

(c) OPR, INSD, and CRU, CID, will coordinate the presentation of the facts of the allegations to OPR, DOJ, and the CRD, DOJ, to determine if a criminal investigation is warranted. If no criminal investigation is warranted, the matter will be administratively handled by OPR, INSD. If CRD, DOJ requests a criminal civil rights investigation, the CRU, FBIHQ, will advise the SAC to initiate an investigation which should be reported to FBIHQ pursuant to the existing provisions of this section of the MIOG unless advised to the contrary by FBIHQ.

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 7

EFFECTIVE: 08/10/94

282-3.2 Special Circumstances in Which Investigation May Not Be Required

The following circumstances, not all inclusive, represent examples of situations where investigation should not be initiated:

(1) Upon receipt of information involving mass demonstrations, such as riots, marches, parades, student demonstrations, and major confrontations between local law enforcement officers and groups of persons, immediately advise FBIHQ of the details pursuant to instructions set forth in Part I, Section 157 of this manual entitled "Civil Unrest." Furnish the CRU, FBIHQ with a copy of any "Civil Unrest" communications which contain information indicating possible color of law violations.

(2) It is not necessary to initiate a color of law investigation upon receipt of a letter from a Federal or state prison inmate unless specific criteria are met. Pursuant to an agreement between FBIHQ and DOJ, the following specific criteria have been established and must be met prior to initiation of a civil rights investigation based on an inmate letter alleging brutality:

(a) The complainant is the victim or someone with first-hand knowledge of the incident;

(b) The complainant indicates the kind of injuries sustained as well as whether the injuries required medical treatment; and

(c) Names of witnesses provided.

These criteria do not include death cases and only apply to written complaints from inmates of Federal and state prisons. This policy does not apply to prison inmate letters from lesser facilities (i.e., city or county jails). If all of the above criteria are not satisfied, a letter should be directed to the writer requesting the necessary information. If the writer does not respond or the information furnished still does not meet the criteria, conduct no further investigation. The letter(s) should be indexed and filed in the field office 282-0 file, or a control file.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 8

(3) Each field office is also authorized to place letters in an appropriate zero or control file if the writer is obviously mentally deranged and makes no legitimate or specific color of law complaint. Letters which contain a questionable or borderline complaint should continue to be resolved by sending a letter to the writer requesting additional specific information. If the information thereafter does not indicate a possible color of law violation, there is no need to forward the letter(s) to FBIHQ; however, they must be properly indexed and filed in the field office. Letters which allege a pattern of violations, or which are submitted by a legitimate civil rights organization but do not contain sufficient predicate information, should be referred to FBIHQ.

EFFECTIVE: 01/31/94

282-4 INVESTIGATIVE PROCEDURE - 282A MATTERS - FORCE AND/OR VIOLENCE

EFFECTIVE: 01/31/94

282-4.1 Initial Investigation (See MAOP, Part II, 2-5.2.4.)

(1) Interview the victim(s) and/or complainant(s) for full details of allegation(s). As a part of each interview, secure the identity of subject(s) and witness(s) to the incident. Have victim execute a medical release form (FD-465) if injuries sustained were treated by a physician or if victim required hospitalization. Advise victim that information furnished may be used in court of law. See Section 282-8.6(9) regarding the need for signed statements. (See MIOG, Part I, 282-6 (1).)

(2) Observe, describe, and photograph, in color, any complaint-related injuries visible on body(ies) of victim(s) at the time of interview. If victim's wounds are bandaged, determine whether the bandages can be removed so that the victim's wounds can be photographed. If the bandages can safely be removed, photograph the

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 9

unbandaged wounds. If the bandages cannot be safely removed, photograph the bandaged wounds. Photographs made available from other sources may be used if the authenticity of the photographs can be established and used for court purposes.

(3) At the outset of any investigation involving a possible "Color of Law" violation (Title 18, USC, Section 242), the responsible head or appropriate official of the agency or institution involved is to be notified of the initiation of the investigation. This includes all local, state and Federal agencies and institutions. DUE TO POSSIBLE RETALIATION AGAINST THE COMPLAINANT, DO NOT FURNISH THE IDENTITY OF THE COMPLAINANT TO THIS OFFICIAL OR ANY PERSON OUTSIDE OF THE FBI OR DOJ.

(4) Obtain copies of all police reports relevant to the incident under investigation with the exception of Internal Affairs reports. Internal Affairs reports are only collected as part of a "Substantial Case" (see Section 282-4.2(4)) and are not collected as part of the "Initial Investigation." A cover FD-302 should be prepared identifying the source of these records and date obtained. Ensure copies of records are readable. Determine what criminal and judicial action has been taken or is contemplated by authorities against victim(s) and subject(s). Conduct appropriate criminal record checks for each victim and subject. An inquiry with the state computerized law enforcement system is normally sufficient. In death cases, obtain a copy of the report of the autopsy if conducted, or coroner's report. Do not delay completion of investigation awaiting these reports but show in your report what steps have been taken to obtain relevant records.

(5) Obtain copies of any medical records relating to treatment received by each victim for injuries allegedly sustained at the hands of subject(s). Most hospitals and doctors will require a release (FD-465) signed by victim or a subpoena before making records available. If a subpoena is necessary, obtain the name of the person for whom a SUBPOENA DUCES TECUM should be issued. An FD-302 should be prepared identifying the source of these records and date obtained. Ensure copies of these records are readable.

(6) Conduct field office indices search and set out information regarding other civil rights allegation(s) made against each subject. Also, conduct an indices search regarding victim(s) and summarize information contained in field office file(s).

At this point, a 282A case may be closed when, in the opinion of the SAC, the investigation establishes that the totality of the

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 10

circumstances indicates that the case is not of a serious or substantial nature and therefore does not warrant further investigation. Minimal injury to the alleged victim, by itself, is not sufficient justification to terminate any investigation. Furnish results of investigation to FBIHQ for transmittal to the DOJ. (See Section 282-5 for reporting guidelines.)

EFFECTIVE: 01/31/94

282-4.2 Additional Investigation Required - Substantial Case

If the case is determined to be serious and substantial in nature, conduct the following additional investigation:

(1) Interview all or a sufficient number of witnesses to fully develop the facts of the case. Identity of witnesses may be obtained from subject(s), victim(s), or police reports. Obtain and document the names and addresses of all witnesses who were not interviewed during the investigation. As a part of the interview with each witness, obtain full name, address, telephone number, employment, race, sex, date of birth and social security number. Advise witnesses that information furnished may be used in a court of law.

(2) Identify and interview all physicians and other medical and paramedical personnel who treated victim(s) for injuries allegedly sustained at the hands of subject(s), including the ambulance attendants who transported victim(s) to the hospital, the hospital admission clerks, orderlies, and the nurses involved in the treatment of victim(s). In the interviews with the doctors and other medical personnel, also determine the following information: the severity of victim's injuries, whether victim's injuries could have been caused the way he/she or subject(s) claim, whether victim appeared intoxicated (especially if subject(s) claim the victim was), and whether victim was belligerent and/or unruly (especially if subject(s) claims he/she was). In death cases, interview the pathologist or medical examiner who performed the autopsy.

(3) Interview each subject for full details of the incident. Obtain a complete physical description and background for each subject during interview or from police records. (See Section 282-8.6(9) regarding the need for signed statements.) Be aware of GARRITY considerations as noted in Section 282-4.2(4), below.

Sensitive

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Sensitive

(4) Contact appropriate officials at the subject officer's agency to obtain pertinent records, i.e., Internal Affairs Report, personnel file, etc., and any other complaint(s) against subject. It should be noted that the Supreme Court has held that a statement given by a public employee under an express threat of dismissal for failure to answer cannot constitutionally be used against the employee in a subsequent criminal proceeding (GARRITY v. NEW JERSEY, 385 US 493 (1967)). Furthermore, subsequent case law has held that the fruits of these statements are likewise not admissible. Accordingly, do not review any of these compelled subject statements but instead forward them to FBIHQ in a sealed envelope marked "potential GARRITY statements enclosed." Upon receipt, CRU, FBIHQ will transmit the GARRITY material to the DOJ where the report will be reviewed and any compelled subject statements will be removed before the entire investigative report is reviewed by the case Attorney at CRD, DOJ. The cover communication should also note that an Internal Affairs Report is enclosed and it may contain GARRITY statements. If the subject officer consents to make such statements available, that fact should be recorded on an FD-302 and it should also be noted in the administrative section of the report. (See MIOG, Part I, 282-4.1 (4).)

(5) Where there are conflicts as to the facts, attempt to resolve same. For example, if there is a conflict in the sequence of events, inspect and copy records, such as police logs, tape-recorded radio transmissions, or hospital admission records, that would help resolve the conflict.

(6) Describe the scene of the incident; where appropriate, supplement description with photographs or a diagram.

(7) After completion of the investigation, advise the USA of the results and ask USA if further investigation is warranted. Regardless of the USA's answer, submit report of investigation completed. If USA requests further investigation, conduct whatever investigation USA requests as long as such requests are reasonable and pertinent to the case. If a problem arises with a request of this nature, handle pursuant to instructions set forth in 282-3.1(3) of this manual. The results of this investigation should be furnished in an investigative report supplementing the initial report. When the USA states that the investigation is adequate, request the USA to furnish an opinion as to the prosecutive merit of the matter. Do not delay the submission of any report pending a prosecutive opinion by the USA. USA's prosecutive opinion can be furnished in a supplementary report.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 12

EFFECTIVE: 01/31/94

282-5 REPORTING GUIDELINES - 282A MATTERS (SEE MIOG, PART I,
282-4.1.)

EFFECTIVE: 01/31/94

282-5.1 Submission of FD-610

The FD-610 is to be submitted to FBIHQ within five workdays of the receipt of the complaint pursuant to instructions set forth under Section 282-8.1.

EFFECTIVE: 01/31/94

282-5.2 Format of 282A Investigative Report

(1) All investigative activity is to be reported utilizing the FD-263 cover page, the FD-204 synopsis page, FD-302s and investigative inserts. Do not use an LHM unless specifically authorized by FBIHQ. All investigative activity is to be completed and reported within 21 workdays of receipt of complaint. (See Section 282-8.2 and 282-8.4 for exceptions to this rule.) These cases are to be given prompt, preferred, and continuous attention and handled in an impartial manner by mature Agent(s). (See MIOG, Part I, 282-7.2 (1).)

(2) Reports are to be organized in a logical progression. A table of contents should be utilized in order to assist review of the investigation by the case Agent, field supervisor, CRU, FBIHQ, and DOJ Attorneys. Civil Rights reports should be organized as follows:

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 13

(See MIOG, Part I, 282-7.2 (1).)

(a) Complete the FD-263 and set forth the identity of the responsible head or appropriate official of the agency or institution involved who was advised of the initiation of a Civil Rights investigation under the Administrative Section of the form. Ensure date of this notification is included. See Section 282-5.2 (2) (m) below, for instructions regarding CRD, DOJ notification to this individual of its decision to close the case after its review of the FBI report(s).

(b) Complete the FD-204 including a DETAILED synopsis which succinctly sets forth the investigative content of the report. Do not use phrases such as "interview set forth" or "details set forth" in the synopsis.

(c) Predication paragraph is to follow as the first item under "Details" of the report. The predication must contain a brief statement as to the basis for the case being opened.

(d) Interview(s) of victim(s) is to be set forth on an FD-302(s).

(e) Photographs of victim's injuries not submitted to FBIHQ for developing are to be made part of the report and should be handled as enclosures to the report. Observations relative to injuries, photographed or not photographed, are to be recorded on an FD-302.

(f) When necessary, a diagram of the scene where the incident occurred should be made a part of the report.

(g) Interview(s) of witness(s) is to be set forth on FD-302(s) or investigative insert(s). See also Section 282-8.6(9).

(h) Interview(s) of subject(s) is to be set forth on FD-302(s). See also Section 282-8.6(9).

(i) Police records of less than ten (10) pages are to be included as pages in the report. Records of ten (10) or more pages are to be made enclosures to the report. An FD-302 is to be prepared containing the source of these records and date obtained. Ensure these records are readable. Summarize contents of police records in an FD-302 if they are not readable.

(j) Medical records of less than ten (10) pages are

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 14

to be included as pages in the report. Records of ten (10) or more pages are to be made enclosures to the report. An FD-302 is to be prepared containing the source of these records and date obtained. Ensure these records are readable. Summarize contents of medical records in an FD-302 if they are not readable.

(k) Interviews of medical personnel are to be set forth on FD-302s.

(l) Prior arrest records of subject(s) and/or victim(s) are to be made pages in the report and/or set forth on an investigative insert. The source(s) of these records and date obtained are to be set forth on an investigative insert.

(m) Results of the field office file review; USA's opinion; SAC's authority to close the case; and list of subject(s) and victim(s) addresses are to be set forth on investigative insert(s). With respect to the notification list, which normally appears at the end of the report, the CRD, DOJ has established a procedure by which subject law enforcement agency officers, victims and complainants are notified by letter of the DOJ's decision to close Civil Rights cases after reviewing FBI reports. To assist the DOJ in notifying subject(s), victim(s), and complainant(s), a list of the subject(s), victim(s), and complainant(s), along with addresses where they may be notified is to be clearly set forth on the last page of a report. If during the course of the investigation, the head or other appropriate official of the subject officer's department or agency SPECIFICALLY requests to be notified, that specific request should be noted in the details of your report on the last page. Clearly state that this official SPECIFICALLY desires departmental notification. Without this statement the DOJ will not advise the official. Set forth the name and title of the appropriate official and the address to which notification may be sent. (See (a) above.)

(n) The original and two (2) copies of each report and three copies of report enclosures are to be submitted to FBIHQ. One copy of report and enclosures is to be forwarded to the USA.

EFFECTIVE: 01/31/94

Sensitive
PRINTED: 02/18/98

Sensitive

282-6 INVESTIGATIVE PROCEDURE - 282B MATTERS - NONBRUTALITY

(1) Interview complainant and/or victim(s) if readily available. Secure same information as set forth under 282-4.1(1) during interview.

(2) Where appropriate to round out the investigation, check police records, office indices, court records, institution records and any other records pertinent to the case.

(3) Examples of nonbrutality allegations are as follows:

(a) Unlawful arrest or detention

(b) Unlawful search or seizure

(c) Police harassment or abuse of power

(d) Failure of any public official to take official action. This involves cases in which a public official, who is a witness to, or cognizant of, a deprivation of civil rights of an individual, such as an assault upon that individual, fails to take appropriate action to protect that individual's person or rights.

(e) Deprivation of civil rights in connection with trial, conviction, or sentence. Includes allegations of improper extradition procedures.

(f) Deprivations relating to or growing out of treatment of incarcerated persons or concerning administration of prisons or jails.

(g) Alleged unlawful deprivation of property by purported action of any public agency. Involves cases relative to imposition of zoning restrictions on property, exercise of eminent domain without due process of law, and like situations.

EFFECTIVE: 01/31/94

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 16

282-7 REPORTING OF INVESTIGATION - 282B MATTERS

EFFECTIVE: 01/31/94

282-7.1 Submission of FD-610

The FD-610 is to be submitted to FBIHQ within five workdays of the receipt of the complaint pursuant to instructions set forth in Section 282-8.1.

EFFECTIVE: 01/31/94

282-7.2 Format of 282B Investigative Report

(1) Any matter which contains extensive investigation is to be reported in the same manner as a 282A case. Instructions relating to 282A case reports are set forth under 282-5.2(1) and (2).

(2) All other investigation may be reported by LHM. The LHM must contain a comprehensive description of the investigation conducted. Any FD-302s, investigative inserts, and records of less than ten (10) pages should be appropriately designated as pages in the LHM. Large numbers (over 10 pages) of reproduced records are to be forwarded as enclosures to the LHM.

(3) When an LHM is submitted in a 282B matter, furnish FBIHQ with the original and two (2) copies of the LHM. Furnish local USA with one (1) copy of the LHM.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 17

282-8 ADMINISTRATIVE INSTRUCTIONS

EFFECTIVE: 01/31/94

282-8.1 Submission of the FD-610 (See MIOG, Part I, 44-7.1, 44-8.1, 50-4, 173-1, 177-6.1, 177-8.1, 189-4, 204-4, 214-2, 282-5.1, 282-7.1, & 282-8.6 (6).)

(1) The purpose of the FD-610 is to promptly provide FBIHQ with a complete set of pertinent facts for each "color of law" case investigated by the FBI. "Purpose" and "Instructions" are also listed on the reverse side of the FD-610. Data contained on the form is entered by the CRU, FBIHQ, directly into the Civil Rights Information System (CRIS) which assists in a more effective, efficient, and economical management of the Civil Rights program by FBIHQ and the field. Field divisions may request that FBIHQ provide information/analysis based on data from the FD-610.

(2) INITIAL SUBMISSION. Instructions are set forth on the reverse of the FD-610. Upon receipt of a complaint or request for investigation which requires the initiation of a color of law case, the initial FD-610 must be submitted within five (5) workdays. Every effort should be made to complete items (1-9) on the FD-610. If the complaint is received by an auxiliary office, the auxiliary office should obtain sufficient facts regarding the matter; advise the potential office of origin in an expeditious manner (preferably by facsimile) about the complaint; and file the complaint in the 282-0 file. The office of origin should then submit the FD-610 to FBIHQ within five (5) workdays of receipt of the complaint from the auxiliary office.

(3) SUPPLEMENTAL SUBMISSION. Instructions are set forth on the reverse of the FD-610. A supplemental FD-610 should be submitted whenever the field office determines the additional information should be submitted to FBIHQ. This may include information which was not known previously, was previously omitted, or was previously incorrectly reported. When submitting a supplemental FD-610, provide data only for those items requiring a change from the initial FD-610.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 18

(4) The following sets forth specific instructions regarding completion of items 1 through 9 of the FD-610:

Item 1 - Title: Provide the full case title to include name of subject(s), victim(s), and complainant. Fully identify the rank/position of the subject and agency including city and state. If the victim is deceased, write "deceased" behind victim's name and place in parentheses. Thereafter, the classification and office of origin should be listed. The following is an example:

CAPTAIN JOHN DOE,
HUNT POLICE DEPARTMENT,
HUNT, NEW JERSEY;
MICHAEL SMITH (DECEASED) - VICTIM;
MARY SMITH - COMPLAINANT;
COLOR OF LAW
OO: NEWARK

Ensure any previous communications are referenced.

Item 2 - Office of Origin File Number: Self-explanatory.

Item 3 - Auxiliary Office File Number: Obsolete.

Item 4 - Initial/Supplemental Submission:
Self-explanatory.

Item 5 - Matter Type: Check appropriate block(s) to best describe the type of case initiated. The type of matter is self-explanatory and has been set forth in such a manner as to best describe separate civil rights subprogram priorities. This format is also used to describe civil rights cases submitted to the CRD, DOJ.

Item 6 - Date of Incident: Self-explanatory. If the date of the alleged violation is unknown or ongoing (harassment, failure to take action, etc.), use the latest incident date.

Item 7 - Date of Complaint: This is the date that the complaint is received in the field office/resident agency.

Item 8 - Synopsis of Case: The synopsis should provide a concise summary of the allegation(s). Do not use such phrases as "See LHM" or "Details set forth."

Item 9 - Significant Case: Instructions are on the reverse of the FD-610. If the case is of such a nature that FBIHQ

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 19

should expedite handling of this case, the "yes" block should be checked. Significant cases are those receiving extensive media attention, involving a prominent individual or extensive media attention, or involving an FBI employee as the subject or victim. Significant cases are also those wherein FBI investigation has determined the allegations to be serious and substantial thus warranting a full investigation. When prosecution becomes imminent, FBIHQ should be advised promptly and a supplemental FD-610 would be submitted designating the case "significant if not so designated on the initial FD-610." If there is a question as to whether a case is "significant," contact the CRU, FBIHQ, to resolve the issue.

A "Remarks/Administrative" Section is provided at the bottom of the FD-610 and should be utilized to advise FBIHQ of unusual or administrative matters.

EFFECTIVE: 01/31/94

282-8.2 Deadlines (See MIOG, Part I, 282-5.2 (1).)

Investigations are to be given prompt, preferred, and continuous attention and handled in an impartial manner by mature Agents. Deadlines have been established primarily to limit the time period that an allegation against a police officer remains unresolved. INVESTIGATIONS ARE NOT TO BE CONDUCTED WITH LOCAL LAW ENFORCEMENT OFFICERS AND ARE TO BE INDEPENDENTLY CONDUCTED BY THE FBI. Investigations of all color of law cases are to be reported to FBIHQ in accordance with the following deadlines:

(1) FD-610 - Upon receipt of a complaint, the receiving office must submit the FD-610 within five (5) workdays. In those instances where FBIHQ is advised by telephone or teletype of a new case, the FD-610 still must be submitted within five (5) workdays of the receipt of the complaint.

(2) 282A - Substantial Case - Upon receipt of a complaint that initiates a 282A case, and the investigation has determined the matter is substantial, complete investigation and mail the report to FBIHQ within twenty-one (21) workdays. If the investigation cannot be completed and a "Closing" report mailed on or before the expiration of 21 workdays, then mail an initial "Pending" report within the 21-workday deadline and follow with subsequent reports within 21

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 20

workdays of the prior report. For further instructions regarding complex investigations, see the last paragraph in this section.

(3) 282A - Nonsubstantial Case - Upon receipt of a complaint that initiates a 282A case and investigation determined the matter was NOT substantial, submit completed investigation by report mailed within 21 workdays.

(4) Upon receipt of a complaint that initiates a 282B case, submit completed investigation by report/LHM mailed within 21 workdays.

Initial deadlines are established utilizing the date of receipt of the complaint which should be noted on the FD-610. Deadlines for subsequent reports are based on the date of the previous communication. Under normal conditions, 282B matters should be completely resolved and reported within 21 workdays. In 282A cases, every effort should be made to complete the investigation and submit the report within 21 workdays. If the investigation is not completed within that time frame, a pending report should be submitted and contain at a minimum, the complainant and/or the victim interview(s), and the police incident report. In a case in which investigation will be extensive and cannot be completed and mailed within 21 workdays, the field office should advise FBIHQ of the investigative steps to be pursued and, UACB, the date the results will be furnished to FBIHQ. (See (2).)

EFFECTIVE: 01/31/94

282-8.3 Procedures when Local, State, or Federal Agencies are Investigating Same Incident

From time to time questions have arisen concerning the procedures to be followed by the FBI in conducting investigations of alleged violations of criminal Civil Rights statutes when local or state agencies are simultaneously conducting an investigation of the same incident. Departmental policy in such circumstances is as follows:

(1) Upon receipt of information by the FBI sufficient to justify initiation of a color of law investigation, an investigation should be conducted regardless of the fact that a local or state

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 21

investigation of the same incident is also being conducted. If, during the course of the FBI's investigation, state or local criminal charges arising out of the incident are filed against the subject(s), the FBI's investigation should be suspended and the USA and FBIHQ should be notified of the nature of the criminal charges and the likely timetable for prosecution of such charges. In all other situations, the investigation should continue to completion.

(2) Exceptions to this procedure may be necessary on infrequent occasions. Authority should be sought from FBIHQ, on such occasions before suspending the investigation in the absence of filing of state or local criminal charges against the subject(s). FBIHQ, CRU will consult with DOJ, CRD on such requests.

EFFECTIVE: 01/31/94

282-8.4 Subpoena Matters (See MIOG, Part I, 282-5.2 (1).)

Upon receipt of a subpoena for Agent's testimony, production of material or disclosure of information pertaining to a pending or closed color of law investigation, the following procedures must be followed:

(1) Promptly notify the USA for the district in which the demand arose. The USA is under obligation to immediately contact the Deputy Assistant Attorney General, CRD, DOJ, for referral to the appropriate Section Chief for review of the information for which disclosure is sought.

(2) Notify FBIHQ, Attention: CRU, CID, by appropriate communication (i.e., teletype, facsimile, telephone, or airtel) of receipt of the subpoena, the results of your contact with the USA and all pertinent factors you believe appropriate for consideration in reaching a resolution to the demand. The above information will be forwarded to the CRD, DOJ for its final determination of action to be taken in response to the demand. CRD, DOJ will generally notify the concerned USA directly of its decision concerning the subpoena and advise FBIHQ of its instructions to the USA. FBIHQ will then advise the concerned field office of this information. The original and one copy of the airtel with three copies of the subpoena must be provided to FBIHQ.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 22

(3) In all instances, keep FBIHQ advised of all developments concerning each subpoena.

(4) No release of information should be made without FBIHQ and DOJ authority.

EFFECTIVE: 01/31/94

282-8.5 Assignment of Special Agents to Color of Law Investigations

Situations may dictate that certain FBI Agents not be assigned color of law cases. Those situations are as follows:

(1) Special Agents who are former police officers, when the subject(s) is a law enforcement officer; (See (5).)

(2) Special Agents who have close relatives in the agency involved; (See (5).)

(3) Special Agents who have close working or personal relationships with the officers who are the subjects of a color of law investigation; (See (5).)

(4) Special Agents who have a close working relationship with the specific law enforcement agency involved and a question of propriety may be involved; and, (See (5).)

(5) Special Agents assigned to a Resident Agency who fall into categories (1), (2), (3), or (4). Resident Agents may conduct the initial interview of the victim(s) and/or complainant(s) and obtain records for any 282 case in their territory. Unless unusual circumstances exist, Resident Agents may be assigned to 282B cases involving agencies in their territory.

(6) Special Agents falling into the above categories can be assigned to investigate all other matters within the Civil Rights Program. They can also assist in noninterview assignments in police misconduct cases by conducting police record checks, obtaining medical records, and/or court documents.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 23

EFFECTIVE: 01/31/94

282-8.6 Miscellaneous

(1) Promptly advise FBIHQ of any imminent prosecution, criticism, controversy, or extensive publicity arising in connection with color of law cases.

(2) If victim or complainant indicated he/she is in fear for his/her life or safety, ensure that the appropriate local authorities are advised without revealing the source of the complaint. This notification should be documented in the field office file and should be provided to FBIHQ only when a civil rights case is initiated.

(3) If victim(s) or witnesses are confined to hospitals or institutions and cannot be interviewed except in the presence of those charged with their custody, interviews should not be conducted and FBIHQ should be advised of such information.

(4) A subject, victim, or other witness may refuse to be interviewed except in the presence of his/her attorney. The SAC may authorize an interview of this nature if, in the opinion of the SAC, such an interview is necessary.

(5) Obtain FBIHQ authority prior to contacting a judge or a judicial officer in a civil or criminal action to determine disposition of a matter which may be pending before the court. Advise FBIHQ precisely why such information cannot be obtained from sources other than the court or judicial officer and furnish recommendation of SAC as to whether or not a particular judge should be interviewed. This information will be conveyed to the DOJ for review. Upon receipt of DOJ approval, the field division will be notified by FBIHQ. This course of action is necessary inasmuch as the CRD, DOJ, prosecutes the majority of color of law cases and has supervisory responsibility for almost all such prosecutions. Therefore, the DOJ must be made aware of such contacts.

(6) In certain urgent situations the auxiliary office receiving a color of law complaint should notify FBIHQ and the office of origin by teletype and/or telephone prior to submission of the FD-610. The auxiliary office should forward the victim/complainant interview, FD-302s, inserts, or other pertinent information to the

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 24

office of origin within ten (10) workdays. If the investigation in the auxiliary office is extensive and such that the information cannot be furnished to the office of origin in ten workdays, mail the details of the original complaint (victim/complainant interview) within 10 workdays and mail the remainder within 21 workdays. In those instances where the office of origin has a color of law case initiated by an auxiliary office, the office of origin should still mail an FD-610 to FBIHQ within 5 (five) workdays of receipt of the complaint (See MIOG, Section 282-8.1 above) and a complete investigative report to FBIHQ within 21 workdays.

(7) No arrests are to be made or complaints filed without prior CRU, FBIHQ notification.

(8) When exhibits, including photographs, are obtained, furnish one copy to the USA and three copies to FBIHQ. Field offices should keep one copy of the exhibit for their files, including photograph negatives.

(9) Interviews of victims, subjects, and witnesses should be reduced to a signed statement only in the following instances: (See MIOG, Part I, 282-4.1 (1), 282-4.2 (3), 282-5.2 (2) (g) & (h).)

(a) Upon specific instructions from FBIHQ.

(b) Upon specific request of USA.

(c) Upon specific request of DOJ.

(d) When deemed appropriate by the Special Agent during the course of the interview.

Interviews should be conducted even though a person declines to furnish a signed statement. If the interviewee is requested to provide a signed statement and declines, note this in the FD-302.

EFFECTIVE: 01/31/94

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 282 - 25

282-9 PENALTIES

(1) Title 18, USC, Section 241 - maximum of \$10,000 and/or imprisoned not more than 10 years. If death results, any term of years or for life. (See MIOG, Part I, 44-10, 50-1.5 (3), 50-2.4.)

(2) Title 18, USC, Section 242 - maximum of \$1,000 and/or imprisoned not more than 1 year; if bodily injury results, fined under this title and/or imprisoned not more than 10 years or both. If death results, imprisonment for any term of years or for life. (See MIOG, Part I, 50-1.6, 50-2.5.)

EFFECTIVE: 01/31/94

282-10 CHARACTER - COLOR OF LAW

EFFECTIVE: 01/31/94

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 283 - 1

SECTION 283. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

283-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 283 classification is set forth
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM
MANUAL (NFIPM).

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 284 - 1

|SECTION 284. ECONOMIC COUNTERINTELLIGENCE

| 284-1 ECONOMIC COUNTERINTELLIGENCE

| Information concerning the 284 classification is set forth
| in a separate manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM
| MANUAL (NFIPM). |

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 285 - 1

|SECTION 285. ACTS OF ECONOMIC ESPIONAGE

| 285-1 ACTS OF ECONOMIC ESPIONAGE

| Information concerning the 285 classification is set forth
| in a separate manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM
| MANUAL (NFIPM).|

EFFECTIVE: 02/14/97

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 291 - 1

| SECTION 291. ANIMAL ENTERPRISE PROTECTION (AEP)

| 291-1 STATUTES

| Title 18, USC, Section 43 (AEP Act of 1992).

EFFECTIVE: 01/10/97

| 291-2 JURISDICTION

| In accordance with 28, Code of Federal Regulations,
| Section 0.85(a), the FBI shall investigate all alleged or suspected
| criminal violations of the AEP Act of 1992.

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| 291-3 VIOLATIONS

| Title 18, USC, Section 43 (AEP Act of 1992) includes the
| following:

| Section 43. Animal enterprise terrorism

| "(a) OFFENSE. - Whoever -

| "(1) travels in interstate or foreign commerce, or
| uses or causes to be used the mail or any facility in interstate or
| foreign commerce, for the purpose of causing physical disruption to
| the functioning of an animal enterprise; and

| "(2) intentionally causes physical disruption to the
| functioning of an animal enterprise by intentionally stealing,
| damaging, or causing the loss of, any property (including animals or
| records) used by the animal enterprise, and thereby causes economic
| damage exceeding \$10,000 to that enterprise, or conspires to do so;
| shall be fined under this title or imprisoned not more than one year,

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 291 - 2

or both.

"(b) AGGRAVATED OFFENSE.

"(1) SERIOUS BODILY INJURY. - Whoever in the course of a violation of subsection (a) causes serious bodily injury to another individual shall be fined under this title or imprisoned not more than 10 years, or both.

"(2) DEATH. - Whoever in the course of a violation of subsection (a) causes the death of an individual shall be fined under this title and imprisoned for life or for any term of years.

"(c) RESTITUTION. - An order of restitution under section 3663 of this title with respect to a violation of this section may also include restitution -

"(1) for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense; and

"(2) the loss of food production or farm income reasonably attributable to the offense.

"(d) DEFINITIONS. - As used in this section -

"(1) the term 'animal enterprise' - means

"(A) a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing;

"(B) a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or

"(C) any fair or similar event intended to advance agricultural arts and sciences;

"(2) the term 'physical disruption' does not include any lawful disruption that results from lawful public, governmental, or animal enterprise employee reaction to the disclosure of information about an animal enterprise;

"(3) the term 'economic damage' means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, or the loss of profits; and

"(4) the term 'serious bodily injury' has the meaning given that term in section 1365 of this title."

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 291 - 3

291-4 INVESTIGATIVE/PROSECUTIVE/REPORTING PROCEDURES

In handling complaints involving the AEP Act, immediately present facts to the United States Attorney (USA) for a prosecutive opinion. If the USA will not consider federal prosecution, conduct no investigation, advise complainant, and confirm conversation to USA and complainant in writing. Where appropriate, refer matter to law enforcement agency having jurisdiction over violation and also furnish this information to USA and complainant. Upon initiation of a 291 investigation, an electronic communication must be immediately forwarded to the Domestic Terrorism Operations Unit (DTOU), FBIHQ, providing the date the investigation was initiated and the predication for its initiation. Upon closing, a communication with summary of the incident should be forwarded to DTOU, FBIHQ. In addition, should the USA render a favorable prosecutive opinion, DTOU, FBIHQ, should be advised.

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291-5 CHARACTER AND CLASSIFICATION

The character for these violations is "Animal Enterprise Protection (AEP)." The classification for AEP cases is 291.

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