

**SPECIAL AGENT
HANDBOOK**

CHAPTER 15

**USCS OF SPECIAL AGENT HANDBOOK
CONTROLLED DELIVERIES**

April 3, 1997

Official Use Only

CONTROLLED DELIVERIES

CHAPTER 15

15.01.00 PURPOSE

This chapter provides policies, procedures, legal considerations, and definitions pertaining to the planning and execution of controlled deliveries.

15.02.00 OVERVIEW

Special Agents in Charge (SACs) are responsible for ensuring that all personnel within their jurisdictions implement the provisions of this chapter.

A controlled delivery (including a cold convoy) is a highly effective investigative technique involving the transportation of contraband to suspect violator while it is under the direction or surveillance of law enforcement officers (LEOs). The contraband may be discovered subsequent to a seizure at the United States (US) border or through other investigative means such as undercover (UC) operations.

Controlled deliveries are conducted to:

- Identify, arrest, and convict violators.
- Disrupt and dismantle criminal organizations engaged in smuggling contraband across US borders.
- Broaden the scope of an investigation, identify additional and higher level violators, and obtain further evidence.
- Establish evidentiary proof that the suspects were knowingly in possession of contraband.
- Identify the violator's assets for consideration in asset forfeiture.

15.03.00 PLANNING

The case agent in the originating office should consider the following when planning a controlled delivery:

- Consult the United States Attorney's Office (USAO) in the originating and receiving judicial districts to ensure coordination and to determine the prosecution potential of the controlled delivery. The USAO must be advised of controlled deliveries involving arrests or seizures in accordance with 19 USC 1603.

- Substitute “sham” in place of narcotics (leaving a testable quantity) when possible and approved by the USAO.
- Ensure coordination between the originating, transited, and receiving SACs.
- Obtain court orders for non-consensual communication interceptions when using electronic tracking devices as necessary. (See Section **15.03.01, Electronic-Tracking Devices.**)
- Obtain consensual communication interception approvals as necessary.
- Advise the USCS National Law Enforcement Communications Center (NLECC), Operations Division, prior to the start of a controlled delivery. This notification will enable NLECC to coordinate their resources and provide satisfactory technical support throughout the operation.
- Prepare an Operational Plan (see Appendix A) and briefing sheet detailing each special agent's assignment.
- Consider surveillance requirements:
 - Aerial surveillance
 - Voice privacy radios
 - Portable radios for state and local participants
 - Assignment of surveillance team members to watch for counter surveillance
- Assess specialized equipment needs.
- Obtain and evaluate information on the delivery location as well as photographs, fingerprints, vehicle registrations, property ownership, National Crime Information Center (NCIC) data, and criminal histories of the suspect parties.
- Obtain facts to establish probable cause for warrants.
- Obtain all pertinent information from the Office of Field Operations personnel at the Port of Entry (POE) including entry documents. Statements may be in draft form.
- Brief participants involved in the delivery. (Consider conference calls with personnel at receiving office.)
- Designate state and local LEOs operating outside their areas of responsibility as United States Customs Service (USCS) officers under 19 USC 1401 (i) or request that they assist USCS pursuant to 19 USC 507.
- Substitute a UC LEO or a reliable confidential informant for the arrested subjects if practical. Ensure that UC LEOs have appropriate UC identification.
- Assign a UC LEO to transport the conveyance to the proximity of the delivery drop off location unless counter surveillance would compromise the operation. The cooperating defendant may then transport the conveyance the remainder of the distance to the drop off location at the direction of the controlling LEO.
- Prepare the conveyance to the extent practical by:
 - Applying identifying marks on the conveyance.
 - Searching the conveyance.
 - Installing a kill switch capable of disabling the engine on the conveyance from surveillance team vehicles or aircraft.

NOTE: *The operator should activate the kill switch when the conveyance is stationary. If this is not possible, the operator must consider the risks to the public before attempting to stop a moving conveyance.*

 - Installing appropriate recording devices in the conveyance.

NOTE: *The recording device must be deactivated if the vehicle is turned over to the suspects. Otherwise the interception of communications would become non-consensual and require court orders.*

- Installing electronic tracking devices. (See Section **15.03.01, Electronic-Tracking Devices.**)

15.03.01

ELECTRONIC TRACKING DEVICES

The use of electronic tracking devices is governed by the Fourth Amendment and case law rather than by Title III. (See the US Department of Justice/Criminal Division Electronic Surveillance Manual.) If the device is to be installed *inside* a container or conveyance in which the suspect has a reasonable expectation of privacy, a search warrant or court order is required unless an exception to the warrant requirement exists (e.g., consent). Courts have held that installation of beepers in containers during a proper Customs border examination or on the outside of vehicles or containers while present on public roads, etc., does not require a court order or search warrant. If there is any doubt as to whether the installation of a tracking device constitutes a “search,” agents should obtain a search warrant and court order.

If during the course of monitoring, the container or conveyance travels into a location which carries a reasonable expectation of privacy (e.g., a garage, residence, business premises not accessible to the public, etc.), a search warrant or court order is required before monitoring may continue. Because it is often difficult to determine where a container or conveyance may travel, it is recommended that a court order or search warrant be obtained in advance whenever possible. (See Law Course for Customs Officers, Section 2.424g [1995].)

15.04.00

INITIATION

When Customs inspectors discover contraband, they must notify OI before taking any action. OI special agents will assess the situation to determine the feasibility of a controlled delivery by:

- Determining a violator’s willingness to become a cooperating defendant.
- Attempting to identify the intended recipient, destination, route and mode of travel, communication procedures, etc.
- Contacting state and local law enforcement agencies (LEAs) to obtain local intelligence and addresses connected to the violator. (This is the responsibility of agents in the receiving office.)
- Considering the feasibility of a continuous surveillance to the final destination.
- Weighing the Federal, state, or local prosecutorial and investigative potential in the delivery and originating locations.
- Judging whether a delay or an extensive search may preclude a controlled delivery.

The case agent in the originating office will coordinate the controlled delivery with agents in the transited and receiving offices when the destination becomes known.

The respective USAOs will determine the venue for prosecution with input from the SAC offices involved. Operational control of the investigation will be determined by the probable venue.

15.05.00

RESOURCE REQUIREMENTS

As a controlled delivery moves cross-country, a senior special agent (or higher-graded agent) will direct the surveillance and ensure frequent communication with the originating, transited, and receiving offices. This agent will make operational decisions regarding security, manpower assignments, and continuation of the controlled delivery. However, once a controlled delivery is delayed en route (other than for routine food, fuel, and rest stops), the SAC providing resources in the area of the delay will decide operational matters in conjunction with the originating and receiving SACs. The SAC in the area of the delay may authorize arrests and seizures or take down a controlled delivery *only* when personal safety or the security of the contraband is jeopardized. This take down must be coordinated with the receiving office. The receiving SAC is responsible for providing resources and ensuring the security of the contraband to its destination.

Group supervisors must schedule work shifts as soon as possible to avoid disruption of other case activities. The case agent should coordinate the delivery with Federal, state, and local LEAs.

The following factors necessitate strict attention to resource allocations:

- The controlled delivery and subsequent search warrant can require the dedication of substantial personnel and equipment.
- Surveillance activities can be lengthy and geographically broad.

Although the nature of the contraband, the method of its introduction into the US, and actions taken by LEOs may require changes in tactics, procedures for all controlled deliveries are the same. The following section explains the different types of controlled deliveries.

15.06.00

TYPES OF CONTROLLED DELIVERIES

15.06.01

Controlled Deliveries with Cooperating Defendants

Controlled deliveries involving cooperating defendants generally follow the discovery and seizure of contraband by Customs inspectors and the subsequent arrest of violators at a POE. They may also stem from other investigative activities including undercover operations. LEOs must make every effort to protect persons in custody from harm and to ensure that those in custody do not injure other persons.

In this type of controlled delivery, the operator of the conveyance and the violators agree to cooperate with the Government and deliver the contraband to the intended recipient. Only adult cooperating defendants (age of 18 or older) under the control of LEOs are allowed to participate in controlled deliveries and investigations unless requirements in section 15.06.01(2) of this chapter have been met.

Cooperating defendants are:

- Under arrest (unless they are documented sources).
- In the custody of special agents.
- Willing to assist in the controlled delivery.

15.06.01(1)

Use of Cooperating Defendants in Controlled Deliveries

Prior to allowing a cooperating defendant to participate in a controlled delivery, follow these procedures when feasible:

1. Search defendant and conveyance thoroughly for weapons and evidence.
2. Arrest and process defendant.
3. Debrief defendant to determine the contraband's intended destination and to obtain foreign or domestic contact telephone numbers. Immediately report these numbers to the Customs representative in the DEA Special Operations Division (SOD). (See Appendix B.)
4. Advise AUSA of anticipated delivery and use of cooperating defendant, and obtain signed waiver of Miranda rights and initial appearance. (See Appendix C.)
5. When appropriate, utilize body wires/recorders for evidentiary and security purposes.

After completing the controlled delivery, follow these procedures:

1. Follow the cooperating defendant from the delivery site to a predesignated location and search the conveyance and the defendant again as soon as possible.
2. Document all actions taken and other pertinent information in the respective Reports of Investigation (ROIs).

15.06.01(2)

Juveniles as Cooperating Defendants or Accompanying Cooperating Defendants

Although OI strongly discourages the use of juvenile defendants (defendants under the age of 18) they *may* participate in a USCS investigation or accompany adult cooperating defendants in controlled deliveries outside the POE in extraordinarily compelling circumstances if the agent obtains *all* of the following:

- Verbal (followed by written) authorization from the appropriate AUSA.
- Written consent of parent(s) and/or legal guardian(s) if they are available.
- Verbal approval of the Director, Investigative Operations Division.

If USCS special agents believe that a reasonable risk of harm to a juvenile exists during a controlled delivery, the operation should be terminated. When special agents know that a juvenile is accompanying an adult suspect or is acting alone in a controlled delivery, they should remove the juvenile and resume the operation if possible. If the controlled delivery cannot be completed without the juvenile, the controlled delivery should be terminated.

After the arrest of the adult defendant, a controlled delivery with the adult may be attempted if juveniles are placed in the care of proper authorities. Special agents should follow state or local agency guidelines for juveniles (e.g., Child Protective Services, etc.).

15.06.02

Controlled Deliveries with Non-Cooperating Violators (Cold Convoy)

A cold convoy is an investigative technique used when contraband discovered in the course of an inspection or other law enforcement activity is allowed to proceed from the border to its intended destination within the US while under surveillance by special agents. In this technique, the violator is unaware that the contraband has been discovered and is *not* cooperating with the agents in the controlled delivery. In some cases involving freight containers, the transporter may be unaware of the hidden contraband. Special agents do not control the transporter's actions and usually do not know the actual destination of the contraband within the US.

15.06.02(1)

Problems with Cold Convoys

Impediments to this type of enforcement technique include counter surveillance, possible loss of load, and the violators' awareness that their contraband has been discovered by law enforcement authorities. Therefore, the reaction of the discovering officers must be restrained so as not to alert the violators of the discovery.

15.06.02(2)

Non-Cooperating Violators

The non-cooperating violator is neither under arrest nor in custody. The LEO should attempt to identify the destination, travel route, and other pertinent facts concerning the smuggling violation including the identity of the intended recipients.

15.06.02(3)

Juveniles Involved in Cold Convoys

The SAC, with local AUSA concurrence, may approve a cold convoy involving a juvenile.

15.06.03

Controlled Importation/Exportation: "Pass Through"

A "pass through" is an investigative technique authorizing the controlled importation or exportation of merchandise, controlled substances, contraband, currency, monetary instruments, and restricted or prohibited items in furtherance of law enforcement objectives. "Pass throughs" differ from other types of controlled deliveries in that the contraband is imported or exported *at the direction* of the Government. Confidential informants are fully aware of and cooperating in the activity while under the control and direction of LEOs.

The operational procedures outlined in this section pertain to contraband imported or exported for investigative purposes. They do not apply to importations intended for laboratory analysis or for evidentiary purposes.

“Pass through” may be initiated by UC LEOs (with or without the assistance of a confidential informant) to provide a transportation conduit for contraband into the US for law enforcement purposes. This type of controlled delivery may also originate from foreign seizures destined for the US subsequent to foreign law enforcement investigations or interdictions. LEOs or informants may accompany the contraband (e.g., contraband concealed within a vehicle). Upon entry into the US, the LEO will place appropriate security controls on the contraband.

15.06.03(1)

Roles and Responsibilities in “Pass Through”

The SAC with jurisdiction over the area of importation or exportation will act as the principal point of contact for other SAC offices and for outside LEAs requesting transportation of contraband through the SAC’s jurisdiction.

The SAC or RAC responsible for the area where the importation occurs will coordinate with the Port Director and assist the SAC office or LEA requesting the “pass through.” The SAC or RAC at the POE will maintain a log book (see Appendix D) for recording all controlled importations by identifying the investigating agency, commodity, point of contact, date of request, and date of entry. In “pass through” involving controlled substances, the Federal Drug Identification Number (FDIN) should also be included in the log. The LEA requesting the “pass through” will be responsible for obtaining the FDIN from the El Paso Intelligence Center (EPIC) prior to the contraband’s departure from the POE or border area.

Upon concurrence of the local head of a requesting LEA, the USCS SAC with jurisdiction over the controlled importation may assign USCS special agents to the requesting agency’s “pass through” operation, especially when the contraband has not been inventoried.

15.06.03(2)

Sensitive Contraband

SAC concerns regarding particularly sensitive contraband (e.g., nuclear materials, etc.) should be addressed to the appropriate branch in the Investigative Operations Division.

Controlled exportations involving controlled substances must be approved by the Director, Investigative Operations Division, and by the Director of Operations, Drug Enforcement Administration (DEA). DEA will coordinate the delivery of controlled substances transported through the US to recipients in foreign countries in accordance with the Title 21 USC Memorandum of Understanding (MOU) between USCS and DEA, dated August 8, 1994, referred to hereafter as “the Title 21 MOU.” (See Appendix E.)

15.06.03(4)

Controlled Exportation of Non- Drug Merchandise

Any USCS investigation involving the “pass through” of non-drug merchandise to a foreign country must be closely coordinated with the appropriate USCS Attaché.

15.06.03(5)

“Pass Through” Notification Requirements

LEAs requesting “pass through” must provide written notification to the SAC with jurisdiction over the POE or the border area within 48 hours prior to its occurrence. Accountability and control of the delivery of controlled substances during a “pass through” are the responsibility of the requesting LEA.

In “pass through” operations involving aircraft, the local USCS aviation component with responsibility for the area involved in the “pass through” should receive a copy of the Operational Plan. The case agent should forward copies of the final Plan to the local USCS aviation component and to the USCS Domestic Air Interdiction Coordination Center (DAICC). If USCS aircraft is required to support the mission, the USCS aviation component should participate in the drafting of the Operational Plan.

If the request involves a controlled substance and is from an agency other than DEA, the USCS SAC office will notify DEA by forwarding a copy of the request as mandated by the Title 21 MOU.

The request for any “pass through” operation must include the following:

- Date/Time of anticipated controlled delivery.
- Port/Location of arrival or departure.
- LEA requesting “pass through” (include case number).
- Name, address, and telephone/pager numbers of case agent and supervisory point of contact at requesting agency.
- Processing instructions for Customs inspectors.
- Type and quantity of contraband to be delivered.
- Conveyance identification (i.e., aircraft tail number, vehicle license number and registration number, maritime vessel name and registry, container number, method of concealment, etc.).

Under exigent circumstances, the procedures outlined above, including the requirement for the 48 hours notice, may be waived by the USCS SAC with investigative jurisdiction over the POE or border area where the controlled importation is expected to occur.

15.06.04

Mail and Express Courier Service Controlled Deliveries

These controlled deliveries originate from the discovery and seizure of contraband in the US mail or in international courier parcels at USCS Mail and Courier Service Examining facilities (e.g., DHL, UPS, FEDEX, etc.). This technique involves the delivery of contraband to the addressee by LEOs. In seizures involving US mail, controlled deliveries will be pursued with the assistance of United States Postal Service (USPS) inspectors.

USPS mail containing contraband should be routinely forwarded by express mail. Registered mail may be used when time is not critical. USCS has the option of hand-carrying mail when warranted by an investigation. In compliance with USPS regulations, a LEO may not transfer mail entering the US via the USPS to a private sector carrier (e.g., FEDEX) and later reintroduce that mail to the USPS for domestic delivery.

USPS mail containing contraband should not be forwarded directly to a LEA. Controlled deliveries of USPS mail must be executed by USPS inspectors and not by regular mail carriers. LEAs may participate. USCS special agents should meet locally with USPS inspectors or courier service representatives to establish mutually agreeable procedures for conducting controlled deliveries.

15.06.04(1)

Mail or Courier Deliveries with Controlled Substances

In accordance with the Title 21 MOU, the seizing OI office will notify DEA of a mail or courier delivery involving controlled substances.

(See section **15.07.00, CONTROLLED DELIVERY OF CONTROLLED SUBSTANCES.**)

This applies as long as the investigation remains in the control of USCS or if USCS personnel continue to participate in a controlled delivery, which has been turned over to a state or local LEA.

15.06.04(2)

Threshold Levels

The seizing office will notify the receiving office regarding mail or courier seizures involving controlled substances. If the shipment does not meet Federal prosecutorial threshold levels, the receiving SAC office should contact the state and local LEAs in its area to determine if they are interested in pursuing a controlled delivery.

Although the receiving office has the discretion to accept mail and express courier service seizures involving controlled substances, Headquarters has established minimum thresholds in keeping with the USPS guidelines to limit the processing of small seizures. Mail and express courier seizures involving controlled substances will be forwarded when these thresholds are met or exceeded.

Minimum resources should be expended on mail seizures that do not meet established thresholds.

The USPS controlled substance threshold levels are:

Heroin	.....	14 grams
Opium	.....	300 grams
Cocaine	.....	28 grams
Hashish	.....	1,000 grams
Marijuana	.....	3,000 grams
Steroids	.....	1,000 units

For those not listed, ensure that they conform to either category I or II case levels established by USPS inspectors. (See Appendix F.)

These levels may be adjusted accordingly if a controlled delivery is necessary to develop a more significant investigation based on any one of the following:

- TECS or NADDIS records.
- Multiple or similar prior shipments to the same person or location.
- An agreement by all parties that a controlled delivery is necessary.

15.06.04(3)

Exports of Controlled Substances in Mail and Courier Deliveries

In situations involving exports, the local DEA office will arrange for the transfer of evidence to the appropriate DEA Attaché and foreign law enforcement agencies.

1. Express courier services commingle domestic and international parcels. Prior to an OI office proposing a controlled delivery, a special agent should ensure that the evidence was lawfully obtained pursuant to a border search or search warrant.
2. The OI office proposing the controlled delivery should contact the express courier service and attempt to identify any previous shipments or concurrent shipments to or from the same consignee or shipper (based on customer account numbers, billing numbers, common telephone numbers, tracking numbers, or addresses). This information should be provided to the receiving SAC office.

15.06.04(4)

Mail and Express Courier Delivery Controlled Procedures

3. To coordinate investigative activities and minimize delays, special agents must notify the USPS inspector's office in both the seizing and receiving offices of any proposed controlled delivery of contraband discovered in the US mail.
4. Special agents should advise the USPS or courier service to amend their computerized package tracking record to indicate that the package was lost or delayed rather than seized.

5. If the contraband is retained by USCS or is turned over to a state or local LEA, the Chain of Custody (CF 6051) signed by the LEA must be returned to OI and to the Fines and Penalties Office (FP&F) in the originating area. This must be completed within 48 hours of receipt of the contraband by the receiving OI office. This mandatory requirement enables FP&F in the seizing office to close its file and comply with audit regulations and precludes the issuance of a notice of seizure to the intended recipient.
6. Once it is determined that the contraband retained by USCS is no longer needed, the receiving OI office must advise the FP&F office in the seizing area in writing within 30 days so that a destruction order can be initiated.
7. If circumstances necessitate holding the contraband for an extended period, the special agent will forward a status report to the FP&F office in the seizing area to maintain accountability.

15.07.00

CONTROLLED DELIVERIES OF CONTROLLED SUBSTANCES

Seizures of non-drug contraband in US mail and courier parcels will be evaluated for a controlled delivery on a case-by-case basis.

Procedures for conducting drug investigations by USCS special agents are outlined in the Title 21 MOU. Accordingly, only cross-designated special agents and supervisory special agents are authorized to conduct Title 21 investigations. When USCS concludes that a controlled delivery of drugs is appropriate, the USCS office originating the investigation must adhere to the following requirements of the MOU.

15.07.01

Notice to DEA of Proposed Operation-Operational Plan

The cross-designated USCS first-line supervisor proposing the controlled delivery will verbally notify the counterpart DEA supervisor of the proposed operation prior to its commencement and will follow up with a completed Operational Plan within 48 hours after the commencement of the operation. Cases involving violations by international passengers may require immediate enforcement action within the POE (i.e., meeting the co-conspirator outside the International Arrivals area).

NOTE: *Always attempt verbal notification. In exigent circumstances involving controlled deliveries with airline or cruise ship passengers or in cold convoys, controlled deliveries should not be delayed to the detriment of the investigation.*

The DEA first-line supervisor will forward the Operational Plan to the DEA Assistant Special Agent in Charge (ASAC) of the receiving office for review. The USCS first-line supervisor will forward the Plan to the USCS counterpart in the receiving office for appropriate action.

As indicated in the Title 21 MOU, a designated DEA ASAC will appoint a DEA first-line supervisor at the receiving location as a point of contact for the responsible cross-designated USCS first-line supervisor. The DEA point of contact will render appropriate assistance to the

USCS operation and will relay information regarding it to the designated DEA ASAC.

The DEA ASAC will determine if the proposed operation will interfere with another operation or investigation and whether or not the Operational Plan is consistent with applicable DEA policy and procedures and the provisions of the Title 21 MOU.

The designated DEA ASAC is responsible for advising the designated USCS ASAC of any objections to the Operational Plan. Both ASACs will work together to resolve such issues.

15.07.02

Review of Proposed Controlled Delivery Operations

Any issues unresolved by the ASACs will be referred to the responsible DEA and USCS SACs at the location of the intended delivery. *A controlled delivery will not be executed without approval of the Operational Plan by both USCS and DEA at the destination.* In accordance with the provisions of the MOU, the DEA SAC will have the final decision regarding Title 21 operational matters. However, if the DEA SAC disapproves a proposed Title 21 activity by cross-designated USCS special agents, the DEA SAC will provide the counterpart USCS SAC with reasons in writing for the disapproval. Each SAC will forward their reasons for disapproval to their respective Headquarters. If USCS Headquarters disagrees with the decision of the DEA SAC, the matter may be discussed with DEA Headquarters to resolve the dispute.

15.07.03

Changes in the Operational Plan and Newly Developed Information

If a controlled delivery does not proceed on schedule due to unexpected delay, loss of load, change in location or route of delivery, or change in intended recipient, the responsible cross-designated USCS first-line supervisor will advise the DEA first-line supervisor point of contact as soon as possible. Both first-line supervisors are responsible for relaying this information to their respective designated ASACs as soon as possible. This notification process also applies to newly developed information unknown at the initiation of the operation (e.g., identification of the intended delivery location, recipient, or targets who were previously unknown). Any change in the Operational Plan is subject to the review and approval process described in this section.

15.08.00

CONTROLLED DELIVERIES OF NON-DRUG MERCHANDISE

SAC offices involved in seizures of non-drug merchandise are responsible for notifying and coordinating the investigation with the receiving office. The SAC office initiating the investigation will advise the appropriate Headquarters, Investigative Operations Division, personnel of the seizure and anticipated controlled delivery.

15.09.00

CONTROLLED DELIVERIES INVOLVING THE INTELLIGENCE COMMUNITY

In accordance with Treasury Order 113-01, *all* controlled delivery requests from an "intelligence community agency" (e.g., the National Security Division of the Federal Bureau of Investigation [FBI]) must be submitted to USCS Headquarters, Intelligence and Communications Management Division, OI, for transmittal and approval by the Department of the Treasury as outlined in Customs Directive 4320-004, Assistance to or from US Intelligence Agencies, June 4, 1991.

15.10.00

SEARCH WARRANTS

A border search may be conducted at the conclusion of a controlled delivery only when the elements of a legal border search are present. Be prepared to obtain a search warrant if needed.

Consent searches may be conducted but are subject to subsequent judicial review (see Appendix G). If the receiving office has been determined, special agents assigned to that office should contact the AUSA and prepare an affidavit for a search warrant or obtain a telephonic search warrant.

15.10.01

Anticipatory Search Warrants

Although case law and policy governing anticipatory search warrants differ among the various judicial districts, an anticipatory search warrant may be acquired prior to delivery if the destination is known. Consultation with the AUSA in the delivery area is imperative as soon as a decision is made to execute a controlled delivery.

15.10.02

Telephonic Search Warrants

The magistrate judge may authorize a warrant via telephone or facsimile transmission if information provided by the requesting agent confirms that issuance of the warrant is authorized without requiring a written affidavit (i.e., the information provided to the magistrate must meet the same requirements as the content of a written affidavit). Conversations with the magistrate judge must be tape recorded *with their knowledge*. If no tape recorder is available, a verbatim longhand or stenographic record of the conversation must be made. A written warrant must be prepared by the agent and read verbatim to the magistrate judge for consideration.

If authorized, the agent will sign the warrant on behalf of the magistrate judge and an "original" prepared by the magistrate judge will be filed with the Court along with a transcript of the telephone call.

A copy of the warrant and a receipt of the property taken must be provided to the person from whom, or from whose premises, the property was taken. Consult with an AUSA in the delivery area prior to requesting a "telephonic warrant" to address issues such as local prosecutorial guidelines.

Evidence will be processed in accordance with Customs Directives 099 3290-017, Non-Drug Evidence, November 27, 1995, and 099 3290-001, Processing Narcotic, Drug, and Controlled Substance Evidence, October 9, 1991. (See chapter on **EVIDENCE**.)

15.11.00

EVIDENCE HANDLING

The following should be considered in light of the type of controlled delivery, the potential risks to officer safety, and the dictates of operational integrity:

- Identify, process, and secure all evidence relating to the seizure.
- Photograph, videotape, or photocopy the evidence both upon discovery (before application of fluorescent powder) and after removal from its place of concealment.
- Mark the evidence and the container for future identification. (This may not be practical in cold convoy situations.)
- Field test any narcotic evidence.
- Obtain DEA lab analysis for the case file after completion of a controlled delivery involving controlled substances.
- Remove all but a testable quantity of the contraband and replace it with a “sham” to prevent destruction of evidence.

(NOTE: Duplicating the original packaging as much as possible is crucial.)

For prosecutorial considerations, coordinate all decisions regarding the amount of contraband utilized in a controlled delivery with the appropriate AUSA.

- Disable any evidence (e.g., firearms, electronic instruments, etc.) to prevent any potential use by the violator.
- Place fluorescent powder on evidence to assure its connection with the suspects.
- Install a tracking device on or inside the evidence. Confer with the AUSA regarding applicable law, court orders, etc.
- Utilize currency/monetary instrument procedures (including noting serial numbers, creating sham packages, counting or estimating, etc.) for accountability purposes.

15.11.01

Contraband Handling

The surreptitious nature of cold convoys may inhibit evidence processing as conducted in routine controlled deliveries. Opportunity, practicality, and safety will dictate the feasibility of the following procedures:

- Remove a sample of the contraband, perform a field test, and substitute the contraband with a "sham" substance. SACs should ensure that controlled deliveries adhere to local US Attorney guidelines concerning the use of “sham” substances and to the quantity of drugs to be substituted.
- Apply fluorescent powder to the contraband and to the container door.
- Attach an electronic tracking device on or inside the contraband or conveyance. (Confer with the AUSA regarding court orders, etc.)
- Arrange for aerial surveillance if needed. Every effort should be made to use USCS aviation resources before contacting other agencies for air support.

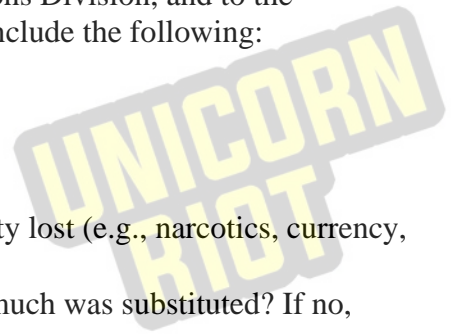
- Obtain background information on any corporations involved (i.e., corporate record checks, Automated Commercial System, etc.) and personal information on the suspect driver (i.e., address, criminal history, local police checks, employment, etc.)

15.12.00

ACCOUNTABILITY FOR LOST CONTRABAND

If contraband is lost during enforcement operations, the following steps must be taken as outlined in Headquarters memorandum file ENF 3 OO:IA:PR:O dated June 16, 1994, Evidence Accountability Control Requirements:

1. Immediately notify the local or servicing office of Internal Affairs during business hours. After hours, notify the duty officer in the local or servicing Internal Affairs office.
2. Immediately notify the Director, Investigative Operations Division, during business hours. After hours, notify the OI duty agent, Headquarters, who will notify the appropriate Headquarters, Investigative Operations Division, personnel.
3. Within 24 hours, the SAC where the contraband was lost will forward a memorandum via facsimile or E-Mail to the Director, Investigative Operations Division, and to the servicing Internal Affairs office. The memorandum will include the following:
 - Case number.
 - Case/Operation name.
 - Date, time, location, and number of seizure.
 - Point of entry.
 - Estimate of type, amount, and weight of commodity lost (e.g., narcotics, currency, weapons, etc.).
 - Contraband substitution. (Yes or No. If yes, how much was substituted? If no, explain.)
 - Delivery type (e.g., flashing, controlled, cold convoy, money laundering undercover, etc.).
 - Informant/Source participation.
 - Type and number of electronic devices utilized.
 - Initiating/Receiving SAC offices.
 - Date, time, and location of loss.
 - Statement of facts surrounding the loss including descriptions of any irregularities or unusual circumstances.
 - Customs personnel involved.
 - Other agencies involved.
 - Brief description of efforts to locate lost contraband.
 - Originating, receiving, and prosecuting judicial districts involved.
 - Biographical information on cooperating defendant (i.e., fingerprints, photographs, criminal history, etc.).
 - Identification of anticipated media coverage.



15.13.00

REPORT PREPARATION

In the majority of controlled delivery cases, the USCS participating special agent will initiate the controlled delivery with the surveillance team prior to the completion of most of the paperwork. The supervisory Customs inspector will ensure that all participating inspectors complete incident reports and prepare the CF-151, Search, Arrest and Seizure (SAS) report. To ensure the safety of the LEOs and the integrity of the operation, the distribution of the CF- 151 must be restricted until the completion of the controlled delivery. Once the delivery has been completed, the case agent should notify the supervisory inspector of additional searches, arrests, and seizures.

As soon as possible after a seizure, the case agent and discovering and seizing officers should complete a written chronological narrative of the circumstances surrounding the seizure. Contemporaneous notes, witness statements, and other written reports should be turned over to the case agent.

USCS ROIs in Title 21 cases will be attached to a DEA-6 cover sheet. A completed DEA-202 must be provided to DEA on any Title 21 arrests made by USCS.

The SAS should be prepared utilizing USCS reporting guidelines and should identify the personnel responsible for discovering and seizing the contraband. If the contraband cannot be completely inventoried or weighed at the original POE, the SAS will report only a trace amount of the actual seizure. Then, following the completion of the controlled delivery, the original SAS will be updated to reflect the correct weight or amount.

Seizures and arrests are reported on a SAS where they occur. (For example, an initial seizure or arrest in SAC "A" requires a completed SAS by that office. Subsequent seizures and arrests in SAC "B" require another SAS referencing the initial seizures and arrests.)

Narratives in the SAS and SEAR reports will be concise. The narratives must agree with the individual statements prepared by officers who are directly involved with the seizure or arrest.

SPECIAL AGENT HANDBOOK

CHAPTER 18

USCS OI SPECIAL AGENT HANDBOOK EVIDENCE

August 11, 1997

Official Use Only

EVIDENCE

CHAPTER 18

18.00.00 EVIDENCE

18.01.00 PURPOSE

This chapter provides guidelines for the identification, collection, preservation, storage, analysis, presentation, and disposition of evidence.

18.02.00 BACKGROUND

Evidence consists of drugs, currency, packaging, documents, fingerprints, recorded statements, etc., which support or establish violations of law. It is gathered during investigations through search warrants, consent searches, Grand Jury subpoenas, administrative summonses, Purchases of Evidence (POE), undercover meetings, surveillances, wiretaps, trash runs, and numerous other means that are limited only by Federal and state laws, statutes, and codes as well as individual resourcefulness.

18.03.00 CLASSIFICATION OF EVIDENCE

The United States Customs Service (USCS) classifies evidence under two broad categories:

- *Single status* - not forfeitable (e.g., documents, surveillance tapes, clothing and accessories, items acquired from trash runs, items obtained through summonses, etc.).
- *Dual status* - forfeitable (e.g., laundered currency, drug proceeds, vehicles outfitted for drug smuggling, items purchased through POE, etc.). Dual status evidence must be submitted to the Seized Property Custodian (SPC) within three days of seizure. Exceptions may be requested in writing to the Fines, Penalties, and Forfeiture (FP&F) staff by the Special Agent in Charge (SAC) or Resident Agent in Charge (RAC).

18.04.00 COLLECTION, SEIZURE, AND IDENTIFICATION

18.04.01 Collection and Seizure

Consider the following when collecting and seizing evidence:

- Examining evidence and surroundings for fingerprints.

- Weighing evidence (especially controlled substances).
- Packaging and sealing evidence in appropriate containers.
- Identifying all flammable, volatile, or potentially toxic evidence as such on the exterior of the evidence packaging.
- Minimizing the number of law enforcement officers (LEOs) having custody of evidence because defense attorneys may require all LEOs in the chain-of-custody to testify. Only one LEO should be assigned to take custody of the evidence.
- Conducting an inventory of the evidence.
- Photographing or videotaping the evidence in its original location before and after the search to show its original and subsequent condition.

NOTE: *If a large seizure is anticipated, the national seizure contractor should be contacted in advance (through FP&F) so they will be on site to take custody of any seizures.*

Types of acceptable evidence containers include:

- *Evidence envelopes*
- *Vials and bottles*
- *Boxes*
- *Plastic or heavy paper bags*

NOTES: *1) When more than one container is used to seal similar items they should be numbered sequentially (e.g., five boxes of documents would be numbered 1/5, 2/5, 3/5, etc.). 2) To prevent deterioration, damp evidence (e.g., clothing) should be allowed to dry before sealing in airtight containers. If such items must be stored before they dry, they should be sealed in porous containers (e.g., cardboard boxes). 3) All containers should be secured with evidence tape or seals.*

18.04.02

Identification

Evidence should be carefully identified, packaged, and labeled to avoid mixing with or contaminating evidence from other seizures. A copy of the inventory must be securely taped to the container, which should be identified as follows:

- **Marking** - Evidence should be marked for identification as soon as possible after it is seized. If feasible, the initials of the seizing and witnessing agents should be placed directly on the item together with an inventory number, case number, date, and location of discovery. Otherwise, the above information should be placed on an evidence tag and affixed to the evidence.
- **Labeling** - Evidence containers should have labels permanently affixed. These labels should be completed in ink and contain the case number, line item number, date of seizure or purchase, name of seizing officer, and name of witnessing officer.

18.05.00

ACCOUNTABILITY

18.05.01

Chain-of-Custody

Chain-of-custody is defined as the written and witnessed record of all individuals who have maintained control over evidence since its acquisition. Its goal is to demonstrate to the court that the evidence presented is in the same condition as when it was first seized (except for any material removed for testing and processing). Important points:

- The CF-6051, Custody Receipt for Seized or Retained Items, must be used to document chain-of-custody: the seizure of evidence and the transfer of its custody.
 - The original must remain with the evidence and a copy should be maintained in the case file. (Exception: The original must not remain with the evidence when suspected controlled substances are sent to a Drug Enforcement Administration [DEA] lab for analysis.) The CF-6051 will again be used for documenting the chain of custody when the narcotics are later retrieved from the lab.
 - When a CF-6051 is referenced in a CF-23, Report of Investigation (ROI) or other reports, its serial number (top right hand corner) should be noted.
 - If additional chain-of-custody signature blocks are needed on the CF-6051, an additional CF-6051 must be completed and attached to the original.
 - Forfeitable and nonforfeitable evidence *must* be listed on separate CF-6051s.
 - Multiple forfeitable items may be listed on the same CF-6051.
 - Nonforfeitable items may be listed on the same CF-6051, even though they may follow different custody routes.
- At least one individual must be able to testify as to the source, validity, and chain-of-custody of all evidence.
- Evidence must be preserved and accounted for from the time of seizure to the date of disposition.
- The same line item numbers must be assigned to evidence on both the CF-6051 and the Search, Arrest, Seizure Report (SAS)/Incident Report. Therefore, nonforfeitable evidence seized with forfeitable evidence must be assigned different line item numbers on the same SAS/Incident Report. These items must be listed on separate CF-6051s with the same line item numbers they were assigned on the SAS/Incident Report.
- Seizing agents may use separate original CF-6051s for each line item so the chain-of-custody for each item is easier to determine.
- The seizing officer must complete a CF-58, Vehicle/Vessel/Aircraft Inventory and Receipt form, in addition to a CF-6051 when these items are seized.

18.05.02

SEACATS & SAS/ Incident Report

The Seized Asset and Case Tracking System (SEACATS), which is integrated with TECS II, is the USCS mechanism for tracking all revenue actions, seized property, penalties, and arrests.

The SAS/Incident Report is used to record statistical and enforcement information relating to searches, arrests, and seizures made by Customs officers. The SAS/Incident Report must be entered by the Customs officer and approved by the supervisor within 24 hours after the arrest or

seizure. Items that are seized with the expectation that they will be used as evidence must be documented in an SAS/Incident Report. The only exceptions to this requirement are electronic surveillance and consensually monitored cassette and videotapes. Items that are acquired with POE funds are also to be documented in a SAS/Incident Report.

The SEACATS database issues each report an *incident number* which serves as a national tracking number and includes the fiscal year, a computer-generated sequence number, and a two-letter code identifying the enforcement action taken (e.g., a seizure and arrest are identified by the code "SA"). The incident number should be placed in box 4 (other control number) on the CF-6051. SEACATS also generates a *seizure number*Ca local tracking number which equates to the old SAS number and includes the fiscal year, the seizing port code, and a computer-generated sequence number. The seizure number must be referenced as the primary tracking number on all CF-6051s. Seized items of a similar nature (e.g., 5 boxes of documents) may be entered on the SAS/Incident Report as a single line item. Every document does not have to be inventoried and entered on the SAS/Incident Report or the CF-6051.

18.05.03

Lost Evidence

The loss of evidence must be documented and reported to FP&F, the principal OI field or Headquarters (HQ) officer, and the servicing IA office in a timely manner. In addition, the procedures for handling incidents of lost contraband during enforcement operations must be followed. (See **Chapter 15, CONTROLLED DELIVERIES**, Section **15.12.00, ACCOUNTABILITY FOR LOST CONTRABAND**).

18.06.00

EVIDENCE STORAGE (GENERAL)

18.06.01

Storage Considerations

SACs or their designees are responsible for proper storage and final disposition of all evidence. Each office will designate an Evidence Custodian and at least one alternate. This will be a collateral duty in most offices.

18.06.02

Single-Status Evidence Storage

Requirements for evidence storage:

- Secure rooms.
- Changeable combination locks.
- File cabinets with security lock-bars.
- Provisions for the overflow of bulk evidence or items requiring special handling (i.e., narcotics or currency).

OI offices are responsible for storing single status evidence. Each office is responsible for maintaining the integrity and accountability of all seized evidence stored in their offices and must conduct an annual inventory of those items.

Seizing agents must be accompanied by another Customs employee while in evidence rooms *with individual locking containers*. All individuals must sign the evidence room sign-in sheet. However, the Evidence Custodian does not have to sign the CF-6051.

Seizing agents must be accompanied by the Evidence Custodian or alternate while in evidence rooms *without individual locking containers*. The Evidence Custodian will take custody of the evidence by signing the CF-6051.

18.06.02(1) **Procedures for Small Offices**

In small offices with part-time Evidence Custodians, single status evidence must be stored in a locked, limited access location within the office, or with SPCs (with the FP&F officer's permission). Part-time Custodians are responsible for inspecting the evidence storage room regularly to ensure its orderliness and the proper maintenance of both the sign-in sheet and the evidence log.

18.06.02(2) **Procedures for Large Offices**

Full-time Evidence Custodians in large offices must sign CF-6051s upon receipt of evidence. They may also require a more detailed inventory sheet before accepting the packaged evidence. The Evidence Custodian must maintain a sign-in sheet for the evidence room and a manual or computerized inventory of its contents.

18.06.03 **Security**

The lock combination for the evidence room must be stored in a sealed envelope and in a locked container controlled by a second-line supervisor. Combinations must be changed annually, upon changes of Custodians, or as deemed necessary by the Custodian. These changes must be documented in the evidence room records maintained by the Evidence Custodian. Evidence Custodians and their alternates will always have access to lock combinations. When they cannot be present for an entry, a designated manager may have access to the combination.

18.06.04

Grand Jury Materials

When handling Grand Jury evidence, applicable secrecy rules C the Federal Rule of Criminal Procedure 6 (e) C must be followed. Unless officers are included on the Grand Jury access list, they may not have access to the Grand Jury materials. Grand Jury materials must be separated from other evidence and, if stored in the same room as other evidence, kept in a separate locked area.

18.07.00

RETENTION & DISPOSITION OF EVIDENCE (GENERAL)

Evidence must be retained:

- Until after the trial.
- Until all appeals are completed.
- If defendant becomes a fugitive prior to adjudication of the case.

Because investigative notes, ROIs, and CF-9Bs (Case Chronology) are part of the investigative record and may be introduced as evidence, case agents should maintain them in accordance with **Chapter 37, Case Management, Special Agent Handbook**.

18.07.01

Disposition of Non-Drug Evidence

To avoid unnecessary accumulation of non-drug evidence, case agents should maintain continuing dialogues with prosecutors. Within 10 working days of determining that non-forfeitable property held by the SPC is not needed for evidentiary purposes, case agents must return the property to the owner. If the property was stored in an OI evidence room, it must also be returned to the owner.

The supervisor will only close cases after receiving completed CF-6051s and CF-4613s, Order to Destroy and Record of Destruction of Forfeited, Abandoned, or Unclaimed Merchandise.

18.07.02

Single-Status Evidence and Personal Effects

OI personnel should avoid seizing non-evidentiary personal effects from defendants. These items should be turned over to family members, associates, or defense counsel as soon as possible. Because prisons will not usually accept personal effects when defendants are incarcerated, it becomes the responsibility of the arresting officer to safeguard and return them.

OI personnel should attempt to notify the rightful owner within 10 working days after determining that single status evidence is no longer needed and return it unless it will be abandoned or transferred to another agency.

18.07.03

Forfeited or Abandoned Property

Dual Status evidence will be forfeited by FP&F, and the case agent must keep the Assistant United States Attorney (AUSA) apprised as to the changing status of such property.

Abandoned property such as personal effects and single status evidence which cannot be returned to the owner should be disposed of by the case agent or OI Evidence Custodian in accordance with 41 CFR Part 101-48, Utilization, Donation, or Disposal of Abandoned and Forfeited Personal Property, and after the following steps have been taken:

- Attempts have been made to notify defendants in writing at their last known address that their personal effects will be destroyed within 30 days if not claimed.
- The property has been inventoried on a CF-6051.
- The AUSA and defendant's attorney have been notified in writing that the property will be destroyed within 30 days if not claimed.

18.07.04

Destruction of Property

NOTE: *Agents are responsible for coordinating cases among the AUSA, FP&F, and Associate/Assistant Chief Counsel, particularly when subsequent civil forfeitures of evidence are anticipated.*

After the above steps have been taken, the property may be destroyed by the Evidence Custodian in the presence of a witness—preferably the case agent or an agent familiar with the case. Destruction must be documented on a CF-4613. The original CF-4613 must be placed in the case file and a copy placed in the Evidence Custodian's files.

The case agent's first-line supervisor must sign the CF-4613 in the block designated for the Authorizing Customs Officer. The Evidence Custodian must sign the block designated for the Customs Officer and the witnessing agent must sign in the witness block. Destruction may be accomplished by any safe method including shredding, cutting, or crushing. The remains of nontoxic materials may be disposed of in trash receptacles. The SAC may request the assistance of FP&F in the destruction of bulky or voluminous items.

18.08.00

CATEGORIES OF EVIDENCE

18.08.01

Electronic Surveillance Evidence

A good deal of evidence gathered during an investigation is electronic surveillance evidence obtained from officers, witnesses, or suspects through consensual and non-consensual recordings.

- Tapes should be obtained by the designated technical agent (DTA) through normal procurement procedures when possible.

- Only new, high quality reel tapes, cassettes, micro-cassettes, and video cassettes may be used.
- Reel tapes should be 7 inches in diameter, 2400 feet in length, and 1 to 1.5 millimeters in thickness.
- Cassettes should be leaderless 60 or 90-minute cassettes.
- Video cassettes should not exceed 120 minutes.
- An identification label including the case number, date and time of the recording, and the name of the case agent should be placed on all tape reels and cassettes before recording begins.
- Record on one side of the tape only.
- Do not erase or record over any tape.
- Used video and audio cassettes should have the protective erase tab removed to prevent the cassette from being recorded over.
- Original notes, tapes, and transcripts (regardless of form) must be preserved for possible presentation in court.
- Tapes must be documented on a CF-6051.
- Malfunctioning tapes must not be discarded. Save the tape and mark it "Tape Malfunction" so that the malfunction can be demonstrated if challenged in court.

Upon assuming custody of original tapes, the DTA should store them in a secure container or in a secured area in the evidence room.

18.08.01(1) **Handling**

To minimize the risk of demagnetization or other damage to tapes, avoid exposure to the following during handling, transportation, and storage:

- Magnets (e.g., emergency light bases, mobile radio antennas).
- Extreme heat or cold (maintain 55-85 . Fahrenheit).
- Sunlight or ultraviolet rays.
- Dirt and dust.
- Moisture, vapors, liquids, chemicals, and chemical fumes.
- Electromagnetic fields and strong radio frequency signals (emitted by televisions, radio transmitters, receiver speakers, microwave systems, etc.).

18.08.01(2) **Retention**

- Tapes that were entered into evidence in a hearing or trial may only be destroyed with permission from the AUSA.
- Recordings made pursuant to a court order (e.g., wiretaps) must be retained for a minimum of 10 years and may not be disposed of without a court order.
- Original electronic media obtained without a court order (e.g., consensual recordings) must be retained in the case file for 5 years after the conclusion of the investigation.

NOTE: For additional information, see Chapter 40, *Technical Surveillance, Special Agent Handbook*.

18.08.02 **Firearms**

Upon seizure, a firearm must be unloaded, its safety engaged, and (if possible) a tie wrap placed through the barrel or other part of the weapon to render it unusable.

Seized firearms must be queried by serial number through the National Crime Information Center (NCIC) to determine if they were stolen. When no longer needed, and if subject to forfeiture or being held as single status evidence by the SPC, FP&F and the National Firearms Programs Staff (NFPS) must be notified. If stolen, the weapon must be forwarded to NFPS which will forward it to the agency that entered the NCIC record.

Forfeitable weapons must be sent to the SPC after an SAS/Incident Report and CF-6051 are completed. FP&F will then send the weapons to NFPS for disposition.

Weapons seized from individuals who do not legally own them must be stored as single status evidence until Federal or state prosecution is determined. Weapons must be returned if legally owned, and no longer needed as evidence in a legal proceeding. The return must be documented on a CF-6051.

18.08.03 **Controlled Substance Evidence**

OI personnel must adhere to the procedures for processing controlled substance evidence as established in Customs Directive, 099 3290-001, Processing Narcotic Drug and Controlled Substance Evidence, October 9, 1991. To comply with the USCS/DEA Memorandum of Understanding, cross-designated Customs agents must use DEA procedures for processing drug evidence.

18.08.03(1) **Field Testing**

The following should be adhered to when field-testing suspected drug evidence:

- Wear protective gloves when handling suspected narcotics and test kits.
- Dispose of used test kits (which are toxic) properly.
- Do not taste or smell drug evidence to identify the substance.

Field tests are used to establish probable cause but are not conclusive. Therefore, do not dispose of suspected drug evidence based solely upon a negative field test. The following test information must be documented in an ROI:

- Date test was performed.
- Results.

- Brand name and type.
- Name of agent.
- Names of witnessing officers.

18.08.03(2)

Photographs

Photograph the suspected drug evidence in its original location and packaging prior to disassembly and removal when possible. To depict the method of concealment, consider photographing the various stages of disassembly and removal from the original packaging (i.e., a false compartment in luggage).

18.08.03(3)

Damaged Containers

Place loose drug evidence from a damaged container in a substitute container. The damaged container should be placed in a separate sealed container (bag or box) and marked as a sub-exhibit. (For example, cocaine discovered in a damaged vial should be placed in a heat-sealed bag, and the damaged vial should be placed in a separate heat-sealed bag as a sub-exhibit.)

18.08.03(4)

Measuring and Weighing

The gross metric weight of each sealed drug exhibit, substance container, and envelope will be determined and reported on an ROI, DEA Form 7, and CF-6051. If the gross weight is under one kilogram, the nearest tenth of a gram should be noted. If the weight is one kilogram or more, the nearest gram should be noted.

Because certain narcotics (e.g., marijuana, cocaine, heroin, etc.) weigh considerably more when damp, they will probably weigh less when retrieved from FP&F for examination or trial purposes.

NOTES: 1) Tablets and capsules must be quantified by total count. If the number of tablets or capsules is large, the quantity may be computed by relative weights (i.e., determine the weight of 100 units and divide the result by 100 to determine a unit weight. Then divide the unit weight into the weight of the entire seizure to determine the total number of units). 2) Liquids must be quantified by total volume. 3) The make, model, and type of scale used to weigh narcotics should be annotated on an ROI or CF-6051.

18.08.03(5)

Spillage

Care should be exercised to ensure that the evidence does not become contaminated or lost through spillage. If spillage occurs, the evidence recovered must be submitted as a sub-exhibit. The spillage and recovery efforts should be documented in an ROI.

18.08.03(6)
DEA Lab Submissions

USCS policy requires that entire bulk drug evidence seizures for all controlled substances must be submitted to the DEA laboratory except marijuana exceeding 10 kilograms. (See Section 18.08.03 [8], **Bulk Marijuana Evidence**.) The DEA laboratory will conduct sampling procedures and will separate the seizure into two portions: the threshold amount which must be retained and stored as evidence and the remaining bulk amount which may be destroyed prior to trial. Upon completion of the analysis, the DEA lab will return both the threshold amount and the bulk amount of the drug evidence (packaged separately) to the submitting USCS office for storage.

When drug evidence cannot be submitted to a DEA lab immediately after seizure, the evidence must be processed (identified, labeled, and sealed) prior to temporary storage by USCS. SACs should have secure, short-term storage facilities with limited access. These facilities will be used to store drug evidence pending transfer to a DEA lab. The storage facilities of DEA or another law enforcement agency may be used if USCS does not have an adequate short-term storage facility available.

18.08.03(6a)
DEA Form 7

The DEA Form 7 is a written request for drug analysis to a DEA lab and the document upon which the lab results are recorded. It also serves as a receipt for the transmission of drug evidence to the lab for chain-of-custody purposes (the only instance when the CF-6051 is not used). Drug exhibits should be assigned consecutive numerical designations beginning with "Exhibit #1" on the DEA Form 7. The OI case number should be entered in the upper right-hand corner of the form in the "file number" box.

Upon completing the drug analysis, DEA will furnish a report to the submitting USCS office. The return of the drug evidence to Customs will be documented on a DEA Form 12, Receipt for Cash or Other Items.

18.08.03(6b)
Sealing Drug Evidence

- Use USCS or DEA evidence seals when plastic evidence envelopes or bags are used and submitted to the DEA lab.
- Initial the name block (case agent and witness) and enter the date of the sealing and the case number.
- Affix the seal to the outside of the evidence envelope and parallel to the opening so that it is centered over the line of the heat seal.
- Inspect the envelope to ensure a complete seal.

When an evidence box is used, it should be reinforced with plastic tape so that the tape ends meet at one place on the package. An evidence label should be affixed as described above and should cover the connecting points of the tape ends.

18.08.03(6c)

Opening and Resealing

Under normal circumstances, evidence should be sealed once and submitted to the DEA lab. However, when the sealed evidence must be opened, it should be done without destroying the original seal and label. Upon resealing, the evidence and all parts of the old envelope should be placed in a new evidence envelope or package and then resealed. Evidence should be opened and resealed (in the presence of another agent) by the agent who initially processed the evidence.

The following information should be reported in an ROI: Reason for and date of opening, name of the person who opened and resealed the package, and a notation that the contents were unchanged.

18.08.03(6d)

Mailed Submissions

Ideally, all drug evidence should be hand-delivered to a DEA lab by special agents. However, in cases where agents are not located near a lab, it may be delivered to the lab by registered US Mail (return receipt requested) according to the following procedures:

1. An envelope clearly marked "INVOICE" and containing the DEA Form 7 should be securely attached to the sealed exhibit.
2. The sealed exhibit (with envelope attached) should be wrapped in a sturdy package suitable for mailing. The outer wrapping should bear no indication as to the nature of its contents.
3. Upon delivery to the post office, the case and exhibit numbers should be entered in the margin of the return receipt on the package (Postal Form 3811) and to the registry receipt.
4. Both documents should be placed in the case file (the registry receipt upon mailing and the return receipt after delivery).

18.08.03(7)

Securing and Retrieving Drug Evidence

Drug evidence returned to USCS after DEA analysis will be transferred to FP&F immediately. Any narcotics exhibit turned over to the SPC must be accompanied by a CF-6051 and a copy of the approved SAS/Incident Report.

The SPC will assume custody of both threshold and bulk amounts after conducting a quantity or weight verification of the exhibit.

The threshold amount will be retained until trial or adjudication. The bulk amount will be placed aside for pretrial destruction upon consent of the SAC.

Retrieval of drug evidence from the SPC must have the prior written approval of the USCS SAC. DEA does not usually store drug evidence for USCS cases. Therefore, temporary retrieval of

evidence from a DEA lab will most likely occur only when a joint task force uses the DEA lab for storage. In this case, a DEA Form 12 will be used to document such removal.

18.08.03(8)

Bulk Marijuana Evidence

Marijuana evidence is often seized in quantities too large to be collected, handled, and disposed of in the same manner as other controlled substances.

18.08.03(8a)

Photographs

The entire bulk marijuana seizure should be photographed at the original site using a 35mm camera or videotape. Two sets of photos should be obtained—one for the case file and one for documentary evidence purposes. The name of the photographer should be written on the back of each photograph. In addition, a sign containing the following information should be included in the photograph:

- USCS file number.
- Names of seizing officers.
- Exhibit number.
- Date, time, and location of seizure.
- Ruler (for scale).

NOTE: *The gross weight of the marijuana must be determined by actual weighing, such as on truck scales, not by computation or estimates.*

18.08.03(8b)

Bulk Exhibits Technique for Marijuana

Procedures:

1. Unload, assemble, display, and photograph the marijuana in a manner that clearly shows where the samples will be removed.
2. Remove and clearly mark one kilogram of marijuana with the letter "1A".
3. Remove an additional ten samples of five grams each from ten randomly dispersed bales.
4. Mark each of these samples consecutively as sub-exhibits 1B through 1K. Each of these 10 samples should be submitted as sub-exhibits to the total exhibit.

NOTE: *Including the first kilogram designated "1A", there will be a total of 11 items in the representative sample.*

5. Place each sub-exhibit in a substitute container.
6. Photograph (twice) or videotape the bulk exhibit with its sub-exhibits. (Photos should display all marked sampling locations.)
7. Place all substitute containers in one sealed container for submission to the DEA lab.

The bulk marijuana evidence remaining after sampling will be transferred immediately to the custody of the SPC for storage. Upon return from the lab, the representative sample will be transferred immediately to the SPC until needed for trial or until no longer of evidentiary value.

18.08.03(8c)

Samples Provided to Defense Counsel

Samples may only be provided to defense counsel pursuant to a court order a copy of which must be obtained by the case agent. Defense attorneys will acknowledge receipt of any samples by signing a CF-6051. Samples will be in the smallest amounts agreed upon by the AUSA and the defense. Any independent laboratory that conducts testing for the defense must be licensed by DEA.

18.08.03(9)

Disposition of Drug Evidence

Once a case has been adjudicated, the case agent must return the drug exhibits to FP&F immediately. Case agents must alert FP&F within 10 days of notification by the U.S. Attorney (USAO) that the exhibits are no longer needed for evidence so that the items may be destroyed. The destruction of all drug exhibits must be performed in accordance with the guidelines set forth in Manual Supplement 5200-06, Security Standards for Seized and Detained Narcotics, August 27, 1979.

18.08.03(10)

Pretrial Destruction of Bulk Drug Evidence

Title 28 Code of Federal Regulations (CFR), Section 50.21, describes the procedures for the destruction of contraband drug evidence in the custody of Federal law enforcement authorities. Its intent is to avoid the warehousing of large quantities of seized contraband drugs (i.e., Schedules I and II Controlled Substances), which is unnecessary for due process in criminal cases. USCS policy permits destruction of bulk quantities of seized controlled substances while providing for the retention of quantities sufficient for evidentiary purposes. (See Appendix A: Commissioner's memorandum, "Threshold Levels for Immediate Narcotics Destructions", August 15, 1996.)

Within 60 calendar days of seizure, USCS will attempt to destroy seized controlled substances greater than threshold amounts—or in the case of marijuana, those in excess of a representative sample. To accomplish this, SACs must immediately notify the appropriate Federal, state, or local prosecutor that the amount of seized drugs exceeding the thresholds will be destroyed after 60 days from the date the notice is provided. A copy of the notification will be furnished to the FP&F office responsible for the evidence.

18.08.03(11)

Pretrial Destruction Approval

Under the provisions of 28 CFR 50.21, USAOs may delegate to their assistants the authority to enter into such agreements. If such an agreement is received, the case agent will forward it to FP&F to initiate destruction.

The USAO may request an exception to USCS destruction policy. This exception request must

be in writing to the SAC and must be received prior to the end of the 60-day notification period. The USAO must explain why retention of this drug evidence will significantly affect any legal proceedings. This authority may not be re-delegated. USCS policy requires SACs to deny all requests for exceptions made by USAOs. Pursuant to 28 CFR 50.21, the USAO may appeal to the Assistant Attorney General, Criminal Division, DOJ. In the event of an appeal, the SAC must receive a copy of the Assistant Attorney General's approval of the appeal within 60 days of the SAC's denial of the exception. Otherwise, destruction will be initiated by FP&F.

The retained portions (i.e., the threshold amount for all controlled substances and the representative sample for marijuana) will be maintained until the evidence is no longer required for legal proceedings. The ASAC or RAC will authorize destruction by FP&F.

The case agent will obtain consent from the appropriate AUSA or the responsible state or local prosecutor to destroy the retained narcotics or representative samples when the related suspect has been a fugitive from DOJ for a period of five years. A sample sufficient for testing will be retained.

18.08.03(12)

Transfers to Other Agencies

All transfers of custody of drug evidence between USCS agents and other law enforcement agencies (other than to a DEA lab) must be documented on a CF-6051. A legible carbon copy of the signed CF-6051 must be forwarded to FP&F so that they may clear the seizure from SEACATS.

18.08.03(13)

Prosecution Declinations

Seizures that are declined by the USAO (e.g., Zero Tolerance seizures, abandonments, etc.) must not be processed through the DEA lab. Attempts should be made to transfer the seizure to state or local authorities for prosecution. Where there is no potential for prosecution (e.g., abandoned drugs) the narcotics must be transferred to FP&F for storage and disposal.

18.08.04

Monetary and Negotiable Instruments

Monetary instruments are defined in 31 CFR 103.11 and include the following: US and foreign coins and currency, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which the title is passed on delivery, and similar material.

Negotiable instruments are defined as personal checks, business checks, bank checks, cashier's checks, third party checks, promissory notes, and money orders that are in bearer form, or endorsed without restriction, or made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery, regardless of whether they are dated, antedated, or postdated.

18.08.04(1)

Collection and Processing

The seizing special agent is responsible for the security of the seized currency and monetary instruments from the time of seizure until transfer to the SPC. Special agents are authorized to have temporary custody of the seized currency or monetary instruments for examination or for presentation in criminal proceedings.

Procedures for monetary instruments (excluding currency):

- Photocopy (front and back) regardless of volume.
- Initial and date each copy.
- Notify the issuing financial institution of the seizure immediately (to preclude the violator from claiming that the instruments were lost or stolen).

Procedures for currency:

- Arrange for a secure location free from nonessential persons for conducting the inventory.
- Photograph the seized currency in bulk at the seizure location.
- Conduct the inventory immediately after seizure when practical. (This is the responsibility of the seizing agent's supervisor.)

NOTE: *Two USCS special agents should be present during seizure, initial counting (and subsequent verification), and transportation of the seizure (except if transported by a contract security agency such as Brinks).*

Certain offices have arrangements with local banks to count large currency seizures. In these instances:

- The currency should be seized, photographed, and sealed in evidence bags by USCS agents.
- The currency is then transported to the local banks for inventorying by bank officials. Transfers of currency to banks or to contract security agencies should be documented. (The seizing agents should be present for the inventory).
- After the inventory, the bank will retain the currency and issue a cashiers check to USCS for the amount seized. (Counterfeit bills are removed at this time and turned over to the Secret Service. Seizing agents must confer with the bank to determine who is responsible for any counterfeit bills later detected when the bank delivers the currency to the Federal Reserve. If agents conduct the inventory, the seizing agent should remove the counterfeit bills and any bills requiring chemical or laboratory analysis before the inventorying commences. These bills should be counted last, and bagged and labeled separately.)

NOTE: *See CD 099 5310-014, Currency/Monetary Instruments: Seizure, Inventory and Reporting Procedures, June 18, 1990.*

18.08.04(2)

Currency/Monetary Instrument Seizure Inventory

A CF-4605, Currency/Monetary Instrument Seizure Inventory should be completed and placed in or attached to each evidence bag containing currency. If a single CF-4605 is used for multiple bags, a legible copy must be attached to each bag with the number of the identifying bag circled and initialed on the sheet. In addition, the seizing agent must initial each CF-4605 attached to each bag.

18.08.04(3)

Packaging and Labeling

Currency and monetary instruments should be heat-sealed in plastic evidence bags immediately after inventorying. An evidence label should be folded over the sealed end of each bag and should be signed and dated by the seizing agent. Each bag should be sequentially numbered and labeled with the seizure number.

A CF-6051 must be completed and a copy attached to each bag. It may be stapled to the bag past the end of the heat seal, but must not be fastened in a manner which would damage the container.

A CF-4605 must be attached to the currency seizure by either securing it to the CF-6051 on the outside of the seizure, or by enclosing it inside one of the evidence bags facing outwards. The CF-4605 must identify the types of monetary instruments, denominations of currency, and total number of bills.

After the evidence bag is sealed and the CF-6051 attached, the bag should not be opened until its contents are deposited in the proper account by the SPC. Any currency or monetary instruments, which were set apart as counterfeit, or for laboratory or other analysis, should be placed in a separate evidence bag and assigned the last sequence number.

18.08.04(4)

Security

Seizing agents must deliver all evidence bags of currency and monetary instruments to the SPC within three days of seizure. A departure from this time limit must be approved by the SAC and FP&F. Those items identified for further fingerprint or counterfeit examination are excluded. The signature of the SPC on the seizing special agent's copy of the CF-6051 will indicate that the bags containing the seizure were received intact, properly sealed, and undamaged.

SPCs must ensure that bags in their custody are not opened except when their contents are deposited in a designated account. Any exception to this policy must be approved by the FP&F Officer. In instances when the monetary instruments are needed for evidentiary purposes, FP&F will obtain the concurrence of the SAC prior to release. The case agent, through the SAC or RAC, must notify the SPC in writing if the seized currency or monetary instruments are required for court presentation. If sealed bags of seized monetary instruments must be opened, the

custodian (i.e., SPC or special agent) will ensure that there is another USCS officer present as a witness. When the bags are resealed, the original bag (with labels) will be sealed inside the new bag with the monetary instruments.

18.08.04(5)
Evidentiary Seizures

Seized currency or monetary instruments should be considered as evidence until the SAC (in conjunction with the AUSA) consents to treating such items as non-evidentiary. Seized currency or monetary instruments may be needed as evidence in both criminal and civil cases. The following rules governing the storage of evidence (see Appendix B) should be followed as set forth in Department of the Treasury, Executive Office of Asset Forfeiture, Directive #4, "Seized Cash Management Policy", June 19, 1996:

Following a seizure, the case agent should consult with the local USAO to establish whether the seized currency or monetary instruments are either evidentiary or non-evidentiary. This determination must be obtained within 60 days after seizure, or 10 days after indictment (whichever occurs first) and must be reported to FP&F in writing by the SAC upon such determination. SACs must advise FP&F immediately when currency and monetary instruments are no longer needed as evidence.

To assure a timely decision regarding the evidentiary status of the seizure, FP&F will request the case agent to arrange for written authorization from the supervisory AUSA to retain the currency as evidence. If the seizure is less than \$5,000, written approval from a supervisory AUSA must be provided to USCS within 60 days of seizure or within 10 days after indictment. For amounts of \$5,000 and greater, the USCS case agent will ensure that the AUSA obtains the written approval from the Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, DOJ. This written approval will be obtained within the same time frame above and will be provided to:

Director, Executive Office for Asset Forfeiture
740 15th Street, NW
Suite 700
Washington, D.C. 20220
FAX: 202-622-9610

Unless the appropriate written permission from the AUSA (as described above) is furnished, the seizure will be considered non-evidentiary and will be deposited.

APPENDIX A

THE COMMISSIONER OF CUSTOMS



WASHINGTON, D.C.

Threshold Levels for Immediate Narcotics Destructions

August 15, 1996

FO:TC:S:T MJC

96 136

MEMORANDUM FOR: Assistant Commissioners
Service Port Directors
Special Agents in Charge

FROM: Commissioner



SUBJECT: Threshold Levels for Immediate Narcotics Destructions

In a November 25, 1994 memorandum (attached) procedures for the destruction of bulk quantities of seized narcotics were established. It has become evident, regardless of these procedures that the storage of bulk narcotics seizures for excessive periods of time continues. To address this problem, the procedure established in paragraphs numbered 6 and 7 on page 3 of my November 25, 1994, memorandum are revised as follows:

6. In the event of an appeal, the Special Agent in Charge **MUST** receive within 90 days of denial of the. Request for exception, a copy of the Assistant Attorney General, Criminal Division's approval of the U.S. Attorney or responsible state/local prosecutor's appeal. The Special Agent in Charge **MUST THEN IMMEDIATELY** deliver a copy of this approval letter to the appropriate Fines, Penalties & Forfeiture Officer/Seized Property Custodian. **IF A COPY OF THIS APPROVAL LETTER SIGNED BY THE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION IS NOT RECEIVED WITHIN 90 DAYS OF THE DENIAL ISSUED IN ITEM 5 ABOVE, DESTRUCTION SHALL BE**

7. To ensure that approval letters from the Assistant Attorney General, Criminal Division (as described in item 6) have not been misdirected, the Fines, Penalties and Forfeitures Officer will, 60 days after denial of the request for exception described in item 5, write the U.S. Attorney or responsible state/local prosecutor, with a cc to the Special Agent in Charge. This

correspondence will advise the U.S. Attorney or state/local prosecutor that approval from the Attorney General, Criminal Division has not been received, and that, barring receipt of such approval, destruction of the narcotics will proceed as scheduled. INITIATED BY THE SEIZED PROPERTY CUSTODIANS.

These revised procedures are to take effect immediately. This is a significant change in procedure in that it establishes a timeframe for approval of appeals. Please ensure that all correspondence to U.S. Attorneys or responsible state/local prosecutors regarding denial of exception to destruction advises these individuals of the new procedures.

Attachment



THE COMMISSIONER OF CUSTOMS



WASHINGTON, D.C.
CO:TO:S:F JAG/AW

MEMORANDUM FOR Regional Commissioners
 Assistant Commissioners
 Special Agents in Charge

FROM: Commissioner

SUBJECT: Threshold Levels for Immediate Narcotics Destructions

It has recently come to our attention that Customs operations in the storage and destruction of narcotics are being improperly and unnecessarily burdened by storing bulk narcotics seizures for excessive periods of time. A critical element in the safe, secure and accurate processing of narcotics seizures involves the strict compliance with procedures defined in 28 CFR 50.21. In its own words, the intent of that regulation is to "prevent the warehousing of large quantities of seized contraband drugs, which are unnecessary for due process in criminal cases."

By policy and federal interagency agreements, the U.S. Customs Service is governed by the requirements of 28 CFR 50.21. Procedures adopted by Customs for the implementation of this rule permit destruction of unnecessary seized controlled substances while facilitating the retention of quantities sufficient for evidentiary purposes.

Due to the widespread noncompliance with our current procedures, we are restating Customs policy regarding retention and storage of bulk narcotics. Customs policy regarding bulk narcotics seizures is that they constitute a real and potential threat to the safety and security of Customs Operations and personnel. As such, Customs officers involved in the seizure, storage, security and destruction of narcotics MUST make every effort to expediently destroy all seized narcotics as governed by 28 CFR 50.21.

Below are the new procedures adopted by Customs for pretrial destruction of bulk drug evidence as governed by 28 CFR 50.21:

1. When drug evidence is seized in quantities greater than the "threshold amount," which is defined in Section 50.21, or, in the case of marijuana, the representative sample, also defined in

section 50.21, the Special Agent in Charge will IMMEDIATELY notify the appropriate U.S. Attorney, or the responsible state/local prosecutor in writing, that the amount of seized drugs exceeding the threshold amount and its packaging will be destroyed after 60 days from the date notice is provided of the seizure, unless Customs is requested in writing by the authority receiving notice not to destroy the excess contraband drugs. The Special Agent in Charge may not redelegate this written destruction notification requirement.

2. Notification to the U.S. Attorney or responsible state/local prosecutor MUST be in writing and forwarded NO LATER THAN 5 BUSINESS DAYS subsequent to the seizure. A copy of the written notification-MUST be furnished to the-Fines, Penalties and Forfeitures office and Seized Property Custodian (SPC) responsible for the evidence/seizure case within the / same 5 day period.

3. When notified of Customs intent to destroy excess contraband drugs, the U.S. Attorney or the District Attorney (or equivalent) MAY agree to the destruction of the drugs in excess of threshold amounts prior to the normal 60-day period. The U.S.-Attorney MAY re-delegate this "early destruct" agreement authority to his/her assistants. If any such "early destruct" agreements are received, the Special Agent in Charge will IMMEDIATELY forward them to the appropriate Fines, Penalties and Forfeitures office/Seized Property Custodian to initiate destruction.

4. The U.S. Attorney or responsible state/local prosecutor may request an exception to the destruction policy. This request MUST be in writing to the Special Agent in Charge and must be received prior to the end of the 60-day notification period. The notification MUST explain why retention of bulk drug evidence in excess of threshold amounts will SIGNIFICANTLY affect any legal proceedings.

5. In light of recent determinations regarding the hazardous/toxic nature of bulk narcotics, as well as the inherent safety and security risks involved with the storage of large quantities of drugs, all Special Agents in Charge are directed to automatically deny ALL requests for exception to the destruction policy and refer the requesting office to the appeal procedures specified in part 50.21 (f)(3) as a matter of policy. Any such appeals of these denials MUST be made from the U.S. Attorney or State/local prosecutor to the Assistant Attorney General, Criminal Division of the Department of Justice.

NOTE: Under the provisions of 28 CFR 50.21, the U.S. Attorney MAY NOT re-delegate the authority to appeal the denial. This appeal shall stay the destruction until the appeal is complete.

6. In the event of an appeal, the Special Agent in Charge MUST receive within 30 days of denial, a copy of the appeal letter that was sent by the U.S. Attorney or responsible state/local prosecutor to the Assistant Attorney General, Criminal Division. The Special Agent in Charge MUST THEN IMMEDIATELY deliver a copy of this appeal letter to the appropriate Fines, Penalties & Forfeiture Officer/Seized Property Custodian.

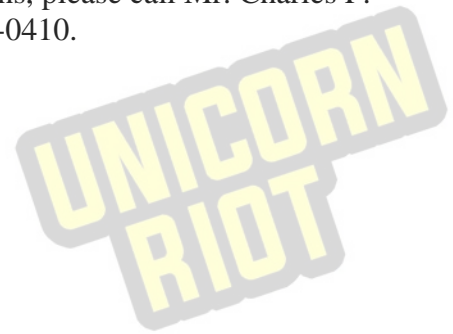
IF A COPY OF THIS LETTER IS NOT RECEIVED WITHIN 30 DAYS OF THE DENIAL ISSUED IN ITEM 5 ABOVE, DESTRUCTION MUST BE INITIATED BY THE SEIZED PROPERTY CUSTODIANS.

7. If an appeal of the denial is granted by the Assistant Attorney General, Criminal Division, the Special Agent in Charge will provide a copy of the decision to the appropriate FP&F Officer/Seized, Property Custodian to stay the destruction.

8. The retained portions of the contraband drugs will be maintained until the evidence is no longer required for legal proceedings, at which time it may be destroyed, on approval of the U.S. Attorney, Assistant U.S. Attorney or the responsible State/local prosecutor. A copy of this approval will be furnished to the FP&F office responsible for the evidence.

9. The appropriate FP&F Officer will coordinate with the appropriate Special Agent in Charge to notify the appropriate U.S. Attorney, Assistant, U.S. Attorney or the responsible State/local prosecutor (with a copy to the SAC) to obtain consent to destroy the retained amount or representative sample whenever the related suspect(s) has been a fugitive from justice for a period of 5 years. An exemplar sufficient for testing will be retained consistent with this section.

Please ensure that these policies and instructions are passed to all your employees involved with Narcotics Seizures and Case Processing. If you have any questions, please call Mr. Charles P. Bartoldus, Director, Seizures and Penalties Division at (202) 927-0410.



APPENDIX B
Seized Cash Policy

APPENDIX B

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE



DATE: AUGUST 15, 1996

FILE: ENF-107 OI:IO JC

TO : All Special Agents In Charge

FROM : Director
Investigative Operations

SUBJECT: Seized Cash Policy

On June 27, 1996, the Treasury Executive Office for Asset Forfeiture, revised the policy on seized cash (see attached Directive Number:4). This is to remind all Special Agents in Charge (SAC) that we are to adhere to the seized cash policy. The current policy is as follows:

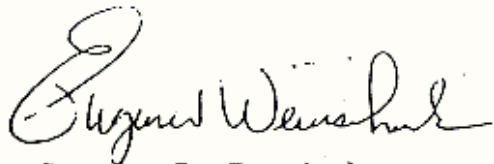
- 1) If the amount of seized cash to be retained for evidentiary purposes is less than \$5,000, permission to retain the cash must be granted by the supervisory U.S. Attorney, within 60 days of seizure or 10 days of indictment.
- 2) If the amount of seized cash is in excess of \$5,000 an approval is required by the Chief, Asset Forfeiture and Money Laundering Section, in the Department of Justice (DOJ). A copy of the authorization is to be provided to FP&F officers for forwarding to the Treasury Executive Office for Asset Forfeiture.
- 3) If an approval document is not provided to the FP&F officer within 60 days from the date of seizure or 10 days after indictment, whichever occurs first, the money is to be deposited in the U.S. Customs suspense account immediately.

Seized cash not needed as evidence is to be deposited within 60 days after seizure, or 10 days after indictment, or within 5 days after the seizing agency learns the cash may be deposited.

SAC's are requested to disseminate the policy to all Special Agents and immediately review all pending cases where cash is being held as evidence. It is imperative that the case agent and Assistant United States Attorney (AUSA) obtain the proper DOJ

approval and forward the written copy to the FP&F officer as soon as possible.

Questions regarding this policy may be directed to SSA John Chakwin at 202/927-6732.


For Connie J. Fenchel

**UNICORN
RIOT**

Seized Cash Management Policy

1

Department of the Treasury
Executive Office for Asset Forfeiture

Directive Number: 4
(Revised 6/17/96)

DATE: June 19, 1996

SUBJECT: Seized Cash Management Policy

I. BACKGROUND

The security, budgetary, and accounting problems caused by retention of large amounts of cash has caused great concern within the Department and the Congress and raises both financial management and internal control issues.

The timely deposit of cash assets is important to the effective management of the Treasury Forfeiture Fund. This directive establishes Treasury policy on the management of seized cash. Treasury law enforcement agency management and supervisory personnel are responsible for ensuring compliance with this policy. While this directive will address the deposits as "cash", the term "cash" shall include currency, personal and commercial checks, cashiers checks, bank checks, travelers checks, money orders, etc.

Currency seized for Title 26 violations *may not* be deposited into the U.S. Customs Suspense Account or the Treasury Forfeiture Fund.

II. DISPOSITION OF CASH SEIZED FOR FORFEITURE

Cash seized for forfeiture, *except where it is to be used as evidence*, is to be deposited either within sixty (60) days after seizure or ten (10) days after indictment; or within five days after the seizing agency learns that the cash may be deposited, whichever occurs first, into the U. S. Customs Suspense Account pending forfeiture. The Director, Executive Office for Asset Forfeiture, may grant exceptions to this policy in extraordinary circumstances. Transfer of cash to the United States Customs Service Suspense Account shall be accomplished in accordance with these instructions.

- A In some instances currency has a significant, independent, tangible, evidentiary purpose. This may be due to the presence of fingerprints, packaging in an incriminating fashion, or presence of notations or other

writings. *In most cases, however, photographs or videotapes of the seized currency should be taken for later use in court as evidence.*

Where it is required that seized currency be held for evidentiary purposes, the following must be adhered to:¹

1. If the amount of seized cash to be retained for evidentiary purposes is less than \$5,000, written approval to retain the cash must be granted at a supervisory level within the appropriate U.S. Attorney's Office. Such approval must be presented to the Treasury law enforcement agency within 60 days of seizure or within 10 days of indictment whichever comes first.

2. If the amount of seized cash to be retained for evidentiary purposes is more than \$5,000, the Treasury law enforcement office shall obtain a copy of the required approval document issued by the Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, Department of Justice, who has authority to approve exceptions to the DOJ Seized Cash Management Policy. (*This document is obtained by the AUSA.*) Treasury law enforcement field offices shall promptly submit a copy of the document to: Director, Executive Office for Asset Forfeiture, Suite 700, 740-15th Street, N.W., Washington, D.C. 20220. FAX: (202) 622-9610.

If an approval document is not provided to the Treasury law enforcement agency within 60 days from the date of seizure or ten(10) days after indictment, whichever occurs first, the Treasury law enforcement agency should take those steps necessary to deposit the money into the U.S. Customs Suspense account immediately.

¹See generally Department of Justice (DOJ) Seized Cash Policy 87-1, March 13, 1987. DOJ Seized Cash Management Policy 91-9, June 6, 1991; and DOJ Delegation of Authority Directive 91-166, December 13, 1991.

III. DEPOSITING SEIZED CASH TO THE U. S. CUSTOMS SUSPENSE ACCOUNT

The U.S. Customs Suspense Account is located at the Federal Reserve Bank of New York. There are several methods available to Treasury law enforcement agencies for the deposit of cash into the U.S. Customs Service Suspense Account.

Processing Procedures

Cash seizures shall be expeditiously counted, processed and prepared for transfer to the U.S. Customs suspense account in accordance with each agency's procedures and the following two conditions.

The currency will be transported with appropriate security measures to ensure safe transportation to the physical site of the deposit. Agency personnel shall remain at the site until the currency is recounted, if necessary, by the financial facility and a proper receipt is provided for the deposit.

Discrepancies shall be immediately resolved at the financial facility by the agency's representatives and the financial facility's representatives. Agency representatives will verify the count and retain a receipt for the deposit. All reports of shortages, overages, or counterfeit currency shall be appropriately resolved before agency representatives leave the facility.

A. U. S. CUSTOMS SERVICE SEIZURES

Customs personnel will follow Customs policies and procedures to make deposits into the Suspense Account, to transfer the seized cash to the Forfeiture Fund, or return the seized cash.

B. SEIZURES MADE BY IRS, ATF, AND USSS

Methods and Procedures for Depositing Seized Cash to the U.S. Customs Suspense Account

[Any of the four methods shown below may be used for making

deposits into the Customs Suspense Account. *However, the fourth alternative is the least acceptable. Therefore, seizing agency representatives will make every attempt to comply with one of the first three methods before using the 4th alternative.*

1. **Direct Deposits at Federal Reserve Banks**

Direct deposits of funds may be made at Federal Reserve Banks. Agencies will be required to have the following information to deposit monies into the Customs Suspense Account.

- A. Suspense Account Number - 20X6875(06)
- B. Agency Locator Code - 20060094
- C. Title of Account - U.S. Customs Suspense Account
- D. Your Agency Class Code -

<u>Seized Currency</u>	<u>Cost Bond</u>
IRS = 732	IRS = 736
USSS = 733	USSS = 737
ATF = 734	ATF = 738
- E. Amount (Must be punctuated with commas and decimal points, e.g. \$247,186.58 - The \$ sign is optional)
- F. Narrative (The narrative must be used to further identify the deposit, e.g. seizure number, district, depositor's name and phone number, and other pertinent information)

2. **Fed Wire (Wire Transfers) Deposits**

Fed Wire or Electronic Funds Transfers (EFT) can be accomplished by the agency utilizing a commercial bank to forward funds to the Customs Suspense Account at the Federal Reserve Bank in New York.

A copy of the Deposit Ticket and a copy of the Deposit Information Form, Attachment "A", shall be FAXED to the ASD Forfeiture Fund Team the same day the EFT is executed.

There is no standardized format or form in the banking industry for the processing of wire transfers. Each bank is able to design a system that suits the bank's needs while effecting the business of wire transfers.

Most banks require the agency to have an account with the bank from which wire transfers will be drawn. Banks also charge a "fee" for the wire transfer which currently averages about \$12.00 per transfer. The agency cannot have this fee amount deducted from the monetary amount being transferred. Each agency shall implement procedures to provide for the payment of the fee as incurred. Some banks may allow the wire transfer of funds without the sender having an account with the bank. Treasury law enforcement agencies may wish to negotiate an agreement to have such a bank process the wire transfer without establishing an account with the bank when this is the process of choice.

Since there is latitude on the part of commercial banks in their handling of wire transfers, it will be necessary for agency personnel to develop a business relationship with a bank in their geographical area and process wire transfers in accordance with their protocols and requirements.

Most banks have specific wire transfer forms that must be completed by the sender (Treasury law enforcement agency), prior to the acceptance of the wire transfer order. Some banks don't require such a form, but do require information which is input into a data system that prints out a form. The following information is generally required to send wire transfers to the U.S. Customs Suspense Account.

- A. ABA Number of Bank Receiving Funds - 021030004
- B. Name of Bank - FEDERAL RESERVE BANK NEW YORK
- C. Bank Address - New York, New York
- D. Amount of Transfer - \$000,000.00
- E. Title of Account Receiving Funds - U.S. Customs Suspense Account

- F. Account Number - **20X6875(06)**
- G. Special Instructions/Remarks: **Include Seizure Number, Agency Class Code [See References in 1.D.-above.] If not a seizure, provide other identifying information the agency feels is pertinent.**
- H. Account Number from which funds are being drawn on (If Applicable)
- I. Account Name (Your Agency Account Name)-If Applicable
- J. Name, Address, Telephone Number of Sender
- K. A copy of the Wire Transfer Form shall be FAXED to the ASD, Forfeiture Fund Team, with the Deposit Information Form, Attachment A.

3. **OPAC Deposits/Transfers**

OPAC is Online Payments and Collections. It is an electronic transfer program that utilizes the GOALS ²system to transfer monies inter-agency. It requires that monies be placed in an agency suspense account in order to be able to transfer the monies to the U.S. Customs Service Suspense Account.

GOALS is utilized by the Fiscal Management Offices within your agency. This office requires specific information to complete the GOALS form and transfer the monies. Agency representatives will need to furnish the following information to effect a transfer.

- A. Agency Locator Code - **20060094**
- B. Agency Class Codes: (See 1. D. above.)
- C. Remarks Section of the GOALS transaction form will require a statement regarding the transaction. e.g.

²GOALS = Government On-line Accounting Link System

"This transfer to the USCS Suspense Account is for monies seized under seizure number 1234567 by IRS, ACC 732. North Central Region."

4. **Delivery of Monies to Treasury - EOAF**

If the methods noted in 1,2,3 above cannot be accomplished by the agency, the agency may deliver cash, in the form of a cashier's check or other negotiable instrument made payable to the Department of the Treasury or the U.S. Customs Service, to the Executive Office for Asset Forfeiture for deposit into the U.S. Customs Suspense Account.

The monies can be delivered in person or mailed to the

Executive Office for Asset Forfeiture
Suite 700
740-15th Street, N.W.
Washington, D.C. 20220
Attn: Revenue Desk

Specific documentation to identify the check or other negotiable instrument must accompany the submission. Such documentation must include a seizure number, Agency Class Code, an indication whether the cash represents a seizure or a cost bond, a contact person and phone number of submitting office. The Deposit Information form, Attachment A, should accompany the transmission of the monies.

IV DEPOSIT REPORTING REQUIREMENTS

Except for the U.S. Customs Service, whenever a deposit is made to the Customs Suspense Account by the other Treasury law enforcement agencies, a report of the deposit along with a copy of the Deposit Information Form, attachment A, must be FAXED to the ASD within 48 hours of the deposit. The purpose of this form is to ensure timely notice to the Customs Accounting Services Division (ASD) of the transmission of monies into the Suspense Account

This process will enhance the ability of the Treasury Forfeiture Fund to maintain more effective and timely control of deposits to the Suspense Account.

- A. The Treasury law enforcement agency shall FAX to the **Accounting Services Division**(formally the NFC) **Forfeiture Fund Team**, the *Deposit Information* form as provided in Attachment A to this Directive.
- B. This form is not to be used in reporting cash and net proceeds of forfeited property received by Treasury agencies as their share from non-Treasury agencies. These funds, also known as Reverse Asset Sharing, shall continue to be forwarded to the Executive Office for Asset Forfeiture, Attn: Revenue Desk, in accordance with VIII. B., page 16, of the Secretary of the Treasury's Guidelines for Seized and Forfeited Property, 10/1/93.

V. **DISPOSITION INSTRUCTIONS FOR SEIZED, FORFEITED CURRENCY AND COST BONDS IN THE CUSTOMS SUSPENSE ACCOUNT OR TREASURY FORFEITURE FUND**

All Treasury law enforcement agencies will implement the following procedures to ensure the uniformity of procedures within the administration of the Treasury Forfeiture Fund. Three forms have been developed to implement these procedures in providing disposition instructions for monies held in the U.S. Customs Service Suspense Account and/or the Treasury Forfeiture Fund. These forms are generic in substance, but agency specific by name. Their purpose is to allow the Treasury Forfeiture Fund to more efficiently and effectively control the disposition of funds on deposit in the Customs Suspense Account and/or the Treasury Forfeiture Fund. These forms are entitled:

"Disposition Instructions for Currency Held in Customs Suspense Accounts";
[Attachment B]

NOTE: USCS SHALL NOT PREPARE ATTACHMENT B UNLESS THERE ARE ASSET SHARING REQUESTS PENDING AND/OR THERE IS A DISTRIBUTION OF FUNDS IN WHOLE OR IN PART OTHER THAN TO THE FORFEITURE FUND.

"Cost Bond Disposition Instructions";
[Attachment C]

"Request for Post Forfeiture Refund"
[Attachment D]

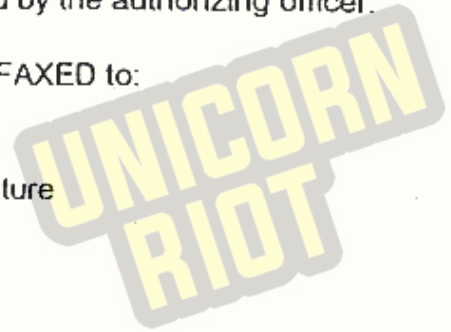
PROCEDURES

These forms have been developed to serve as the standard documents to effect the Disposition of Currency Held in Customs Suspense Accounts; Cost Bond Disposition Instructions; and Requests for Post Forfeiture Refunds. These forms will serve as authorizing and control documents to effect the action required. No other documentation will generally be required by EOAF or the Accounting Services Division.

1. Except for those portions of the form notated for EOAF use, the submitting agency should ensure that all applicable portions of the form are legibly completed, and the form is signed by the authorizing officer.
2. Completed forms should be submitted to or FAXED to:

Disposition Desk
Executive Office for Asset Forfeiture
Suite 700
740-15th Street, N.W.
Washington, D.C. 20220
FAX: (202) 622-9610

3. Each agency is responsible to maintain the operative documents, as established by agency policy, that direct the required dispositions.



Treasury Forfeiture Fund Forms

I

TREASURY FORFEITURE FUND U.S. Customs Service

REQUEST FOR POST FORFEITURE REFUND

This form is to be used to request a refund of monies that were previously forfeited and deposited to the Treasury Forfeiture Fund. Please FAX this form to the Treasury Executive Office for Asset Forfeiture (FAX: 202-622-9610).

Seizure #: - - -

Date of Forfeiture: _____

Cash Receipt Number (entered by TEOAF):

Reason for Refund: Court Order Other (state reason below)

Special Instructions: _____

Amount(s) to be Refunded:

Pay To: _____ Amount: _____

Address: _____

Pay To: _____ Amount: _____

Address: _____

Name: _____ Title: _____

Agency: _____ District: _____ Phone: _____

P.O.#/ACT#:	PROJECT:	OCC:
BFYS:	FUND:	AMOUNT:
BUDPLN:	ORG:	
PROGRAM:	SIGNATURE:	

#7

June 1, 1996

Treasury Forfeiture Fund Forms

I

TREASURY FORFEITURE FUND U.S. Customs Service

REQUEST FOR POST FORFEITURE REFUND

This form is to be used to request a refund of monies that were previously forfeited and deposited to the Treasury Forfeiture Fund. Please FAX this form to the Treasury Executive Office for Asset Forfeiture (FAX: 202-622-9610).

Seizure #: - - -

Date of Forfeiture: _____

Cash Receipt Number (entered by TEOAF):

Reason for Refund: Court Order Other (state reason below)

Special Instructions: _____

Amount(s) to be Refunded:

Pay To: _____ Amount: _____

Address: _____

Pay To: _____ Amount: _____

Address: _____

Name: _____ Title: _____

Agency: _____ District: _____ Phone: _____

P.O.#/ACT#:	PROJECT:	OCC:
BFYS:	FUND:	AMOUNT:
BUDPLN:	ORG:	
PROGRAM:	SIGNATURE:	

#7

June 1, 1996

SPECIAL AGENT HANDBOOK

CHAPTER 41

USCS OI SPECIAL AGENT HANDBOOK INFORMANTS

June 23, 1997

Official Use Only

INFORMANTS

CHAPTER 41

41.00.00 INFORMANTS

41.01.00 PURPOSE

This chapter provides guidance on policies and procedures for managing the three categories of informants:

- Cooperating individuals provide information concerning unlawful activity to USCS-designated representatives **and**
 - Have no reasonable expectation of confidentiality or anonymity.
 - Are documented in compliance with the provisions of this chapter.
 - Work under the direction and control of a USCS-designated representative **or**
 - Are paid more than 2,500 within a one-year period (i.e., the US Government's fiscal year: October 1 - September 30).
- *Confidential informants* are cooperating individuals (see above) who have a reasonable expectation of confidentiality and anonymity.
- *Sources of information* provide information concerning unlawful activity to a USCS-designated representative and are not paid more than \$2,500 within a one-year period. These informants are managed by *controlling agents*:
 - special agents
 - marine enforcement officers (MEOs) *under the direction* of Group Supervisors or their special agent designees.

41.02.00 BACKGROUND

The cultivation of informants by the United States Customs Service (USCS) has contributed significantly to the success of its law enforcement mission. However, due to the unpredictability of human behavior, their use is a potential threat to the integrity of investigations and to the safety of all personnel involved. It is critical that managers recognize this risk and carefully monitor investigations to minimize its impact.

The guidance in this chapter conforms with standard national policies established jointly by the Department of the Treasury and the Department of Justice (DOJ) concerning informants.

NOTE: *The USCS (not its individual controlling agents) reserves the right to direct and decide all matters related to informants.*

41.03.00

MANAGEMENT ROLES

- *Senior Headquarters (HQ) Manager* - In this chapter, this term will be used exclusively to refer to the Director, Investigative Operations Division who exercises managerial oversight of the operational and investigative functions and programs of the Office of Investigations (OI) through Assistant Directors.

Assistant Directors review all requests for financial compensation to informants within their program areas for investigative merit, operational necessity, and compliance with established policy. They provide recommendations to a review committee regarding an informant's compensation package. In addition, they monitor investigations and prosecutions involving informants to ensure compliance with all agreements and ensure timely responses to correspondence from informants or their respective counsels.

- *Senior Field Manager* - SAC, DSAC, or ASAC at the GS-15 grade or higher with operational, investigative, or programmatic oversight responsibilities at the field level.
- *Mid-Level Field Manager* - ASAC or RAC at the GS-14 level with operational, investigative, or programmatic oversight responsibilities at the field level.
- *Group Supervisor* - Supervisory special agent at the GS-13/14 level with first-line operational responsibilities at the field level.

41.04.00

INFORMANT PROFILE

41.04.01

CHARACTERISTICS OF SUCCESSFUL INFORMANTS

Because informants are often critical in the successful investigation and prosecution of violators of Federal law, controlling agents must cultivate this valuable investigative resource.

Accordingly, controlling agents must be able to identify the characteristics of successful informants:

- Current or past association with or knowledge of criminals.
- Knowledge of criminal activities (e.g., drug smuggling, money laundering, textile counterfeiting, arms/munitions exporting).
- Occupation or residence, which lends itself to gathering information about criminals or the crimes, they plan to commit.
- Status in the criminal justice system (e.g., parole, probation, out-on-bail, pre-trial release, etc.).

41.04.02

SOURCES OF PROSPECTIVE INFORMANTS

Valuable information can be obtained by establishing personal contacts in certain fields of employment (e.g., marine and airport operators, vessel and aircraft dealers and rental agents, employees of customs brokerage firms, workers in high technology businesses and financial institutions, security officers, hotel and motel employees).

Guidance in obtaining informants can be acquired through the EXODUS Command Center for Project GEMINI and the Fraud Investigations Division for Project CICERO. These extremely successful programs are industry liaison programs designed to create a cooperative effort between the Government and the private sector in disrupting the flow of illegally imported or exported merchandise.

41.04.03

MOTIVATION OF INFORMANTS

Controlling agents must be aware of what motivates people to become informants:

- Money.
- Revenge against co-workers, business competitors, romantic interests, etc.
- Desire to be a law enforcement officer (LEO), to feel important, or to establish a bond with LEOs for personal gain.
- Desire for prosecutorial or judicial leniency—a strong motivator (i.e., "Rule 35").
- Desire to perform a public service by assisting law enforcement agencies (LEAs).

41.04.04

EVALUATING THE SUITABILITY OF INFORMANTS

First-line supervisors will evaluate and determine the suitability of informants (initially and annually) during meetings with controlling agents and informants. In conducting this evaluation, supervisors must consider the following factors:

- Reliability, truthfulness, and motivation.
- Indictment status.
- Juvenile status.
- Alien status.
- Substance abuse history.
- Occupation: public officials, LEOs, military personnel, news media employees and parties to privileged communications (e.g., clergy, physicians, lawyers, etc.).

NOTES: 1) *US military personnel who are working in their official capacities with a FLEA do not qualify as informants.*

2) *LEA employees who are working in their official capacities do not qualify as informants unless involved in an investigation of corruption within the law enforcement community.*

- Employment history
- Record as an informant for another FLEA. (Was the potential informant terminated for cause?)
- Relationship to LEA employees. (Immediate relatives of Customs employees may be used as informants. They may be paid only with prior approval by the Senior HQ Manager.)
- Membership in a group advocating the overthrow of the US Government or any local government.
- Willingness to submit to polygraph examinations.
- Criminal history:
 - Poses a danger or criminal threat to the public.
 - Convicted of perjury or crimes involving moral turpitude.
 - Is the subject or target of a pending investigation.
 - Is reasonably believed to pose a risk of flight.

NOTE: *Computerized criminal records queries will be conducted by the controlling agent initially and annually thereafter during the month of February in NCIC (i.e., criminal history, wants and warrants), TECS, state and local records, etc. NADDIS queries should be completed for all informants involved in narcotics investigations. Assumed names will be queried on all available indices. State record checks will be made for all states in which the informant lived over the past five years. A notation will be made to the Criminal History Check form (see Appendix A) indicating which indices were queried, the results, date of query, etc.*

First-line supervisors will prepare memoranda to document initial and annual ("face-to-face") suitability evaluations. Second-line supervisors will review and initial these memoranda prior to their placement in the Source file.

41.04.04(1)

Special Approval Requirements

- *DOJ, Criminal Division* - FLEAs must receive written approval from the Office of Enforcement Operations (OEO), Criminal Division, DOJ, prior to using in an investigation:
 - Informants who are Federal *prisoners*: persons arrested, arraigned, and remanded to the custody of the US Marshals Service (USMS) or the Bureau of Prisons (BOP). They may be sentenced or unsentenced, housed in a halfway house, or incarcerated in a county jail facility or Federal correctional facility or BOP facility. (See Appendix B, DOJ Guidelines on Federal Prisoners.)
 - Informants who are current or former *protected witnesses*: participants in the Federal Witness Security Program (OEO will coordinate approvals with the USMS.)
 - Informants to engage in the warrantless interception of one of the "Seven Sensitive" verbal communications which involve:
 - Investigations of Members of Congress, Federal judges, members of the Executive Branch at Executive Level IV or above, or persons who have served in such capacity in the previous two years.

- Consenting or non-consenting foreign diplomats.
 - Investigations of Federal law enforcement officials.
 - Consenting or non-consenting current or former participants in the Federal Witness Security Program (i.e., protected witnesses).
 - Specific investigations in which the Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorney General for the Criminal Division, or a United States Attorney has requested prior written consent.
 - Consenting or non-consenting persons in the custody of the BOP or USMS.
 - Investigations of public officials when the offenses are bribery, conflict of interest, or extortion relating to the performance of their official duties.

- *Director, Investigative Operations Division* - The written approval of this manager is required before any of the following individuals may be used as an informant:
 - An informant who has been designated as undesirable or unreliable.
 - A member of any organization advocating the overthrow of the US Government or any local government.
 - Juveniles (less than age 18)-without written consent of parents or legal guardians.
 - Members of the news media.
 - Foreign nationals assigned to the diplomatic corps.
 - A documented informant traveling to a foreign country in furtherance of an investigation. (Coordination with the respective Customs Attaché and the approval of the Director, Foreign Operations Division, is also required.)
 - An individual known or alleged to be an informant or contract employee of a US or foreign intelligence agency.

- *Special Agent in Charge* - Written approval of the SAC must be obtained prior to using any of the following as informants:
 - Drug users or former drug users participating in a recognized treatment program.
 - Persons with two or more state or Federal felony convictions resulting from two separate arrests or indictments.
 - Persons designated unreliable or undesirable by other LEAs.
 - Persons on Federal or state probation. (Written approval must also be obtained from the probation officer.)
 - *Parolees* (Persons serving the remainder of a sentence outside the prison on condition of adhering to specific terms. Written approval must also be obtained from the parole board.)
 - Active duty military personnel. (Written approval must also be obtained from the US Attorney.)

Written approvals will be included in the Source file without exception.

41.04.05

UNDESIRABLE OR UNRELIABLE INFORMANTS

Informants may be judged *undesirable or unreliable* if they:

- Provide false information knowingly.
- Lie under oath.
- Are arrested for engaging in unauthorized unlawful conduct (other than a petty crime or a minor traffic offense).
- Endanger the safety or lives of civilians or LEOs.
- Violate the controlling agent's direction or act in a manner inconsistent with the guidelines in this chapter.

When it has been determined that an informant may be unreliable or undesirable, the controlling agent will forward a memorandum through the chain of command recommending that the informant be so designated. The reasons for this recommendation will be clear, specific, and a result of the agent's objective and impartial judgment. In taking this action, the controlling agent must be cognizant of any pending legal proceedings at which the informant may have to appear.

The memorandum will be forwarded for approval to the Senior HQ Manager. The HQ Source File Custodian will notify other investigative field offices in which the informant may have operated and been documented. If there are any legal proceedings pending in other judicial districts, the investigative field office will be notified. The investigative field office shall notify the appropriate prosecutor that there has been a determination that the informant is unreliable or undesirable.

All information concerning an unsuitable informant will be noted by the HQ Source File Custodian on the Source Card (see Appendix C). The informant's name will be placed in TECS as a NON-SUSPECT record and will include a standard remark to call the HQ Source File Custodian. When the informant has been entered into TECS as an undesirable or unreliable informant, the Custodian will notify all field offices who may have documented the informant.

41.04.05(1)

Exceptions

If an investigative field office determines that it is in the best interests of the investigation or of public safety to use an undesirable or unreliable informant, that office will request prior approval from the Senior HQ Manager via a memorandum signed by the SAC which describes in detail the investigation and how the informant will be utilized, controlled, and extracted from the investigation.

NOTE: *When other LEAs intend to use an undesirable or unreliable informant in task force situations, Senior Field Managers are responsible for determining if the USCS will continue to participate. This authority may not be re-delegated below the second-line supervisor.*

41.05.00 MANAGING INFORMANTS

Informants are managed by controlling agents who:

- Cultivate, develop, control, and direct informants.
- Conduct suitability determinations of informants in conjunction with first-line supervisors.
- Create Source files with the required documentation.
- Maintain primary and frequent contact with informants.

(See section 41.01.00, **PURPOSE**, for clarification of "controlling agent".)

Controlling agents are supported by *alternate agents*-special agents who:

- Contact informants after notifying controlling agents.
- Assist controlling agents in directing and maintaining informants.
- Witness payments and attend meetings with informants.

NOTE: *Controlling agents and alternate agents will not provide an informant with their home telephone numbers (or any other personal information) nor invite an informant to their respective residences. If it is necessary for informants to reach controlling agents at home, they should notify the National Law Enforcement Communications Center (NLECC) which makes contact.*

Group Supervisors and higher level agents will not be permitted to document or control informants. When controlling agents are promoted to the level of Group Supervisor, their documented informants will be transferred to case-carrying agents. However, this does not apply in small offices where supervisors are case carrying agents. In these instances, the next level supervisor must exercise proper review over the first-line supervisor.

When informants provide information concerning planned criminal activity that is not within the purview of Customs, the controlling agent will (with supervisory concurrence) notify the appropriate LEA.

41.05.01 Assessing Abilities of Informants

In deciding how best to use informants, controlling agents should consider the following assessment factors:

- What is the informant's motivation?
- Does the informant know the violator or members of the criminal organization? If so, how?
- Can the informant make contact with them?
- Can the informant penetrate a criminal organization with which the informant has not been associated?
- Can the informant gain the trust of the violators to the extent that would allow the introduction of an undercover (UC) agent?
- Can the informant work independently?

41.05.02

Personal Assistance Agreements

When in the best interests of the Government to negotiate an agreement with the informant or when an informant is to be used in a certified UC operation, a Personal Assistance Agreement (see Appendix D) will be drafted by the controlling agent, reviewed by the appropriate Associate/Assistant Chief Counsel (and, when appropriate, the United States Attorney's Office [USAO]) and approved by the SAC. These agreements should include the specific terms detailing available financial compensation in exchange for information or services.

If the informant is to retain profits, commissions, and bonuses while acting under Government direction, such an arrangement must be included in the agreement. Consideration should be given to limiting the amount of these funds by estimating the potential income an informant might legally earn by providing the same services without Government involvement. The receipt of these funds, which must be documented in Source files, ROIs, and in UC accounting records, is considered a fee to the informant (e.g., a predetermined brokerage fee or a percentage charged to launder a specific amount of currency during a certified UC operation).

When informants waive claims to awards of compensation (moiety) in lieu of POI/POE payments or other monetary consideration, a Waiver of Award of Compensation (see Appendix E) will be executed and attached to the personal assistance agreement.

41.05.03

Meetings and Debriefings with Informants

Controlling agents should meet often with informants to evaluate their productivity and activate or deactivate them as appropriate.

Meetings and debriefings with informants should be attended by:

- The controlling agent and the alternate agent. (If neither is available, one of the special agents conducting the debriefing must be a USCS employee while the other may be a Federal, state, or local LEO.)
- An LEO of the same sex as the informant to witness the interview, payment, or debriefing.
-

NOTE: *Controlling agents are expected to interact with informants in a professional manner at all times and to refrain from behavior that might give the appearance of impropriety and thereby discredit themselves and embarrass the Service.*

Controlling agents will not meet or debrief informants without another LEO in attendance unless they obtain supervisory approval.

To maintain control of informants and to protect their confidentiality, controlling agents must always dictate where, when, and how meetings and debriefings will occur. The controlling agent must consider the appropriateness of the environment and locale chosen.

In some neighborhoods, the controlling agent's occupation may be common knowledge. Meetings with "strangers" might draw unwanted attention to informants and jeopardize their safety. In addition, meetings should take place in environments where informants feel comfortable and blend in with the regular clientele.

When informants provide information subject to a legal claim of privilege, controlling agents will notify the appropriate prosecuting attorney.

41.05.04 Supervisory and IA Debriefings

Informants must be debriefed by a supervisor when they receive single payments of \$3,000 or more or when their compensations reach an aggregate total of \$3,000 per case.

In debriefings attended by the informant, the controlling agent, and a supervisor, the supervisor will use the "Supervisory Debriefings of Confidential Sources" checklist (see Appendix F). This debriefing will be documented by memorandum to the Source file with a copy forwarded to the second-line supervisor for review. The true identity of the informant must not appear on the debriefing memorandum--only the Source Number should appear. If a single informant payment equals \$100,000 or more, a second-line supervisor must conduct the debriefing.

In the case of foreign offices or foreign-based informants, exceptions may be made when making payments. When meetings are not possible, the appropriate SAC will be consulted for approval of alternate payment methods. Arrangements must be made with the appropriate USCS Attaché for the payment of informants in foreign countries by domestic offices. In foreign offices, where distances will not allow for debriefings as stated above, debriefings will occur as soon as possible.

When IA conducts an investigation or audit, a debriefing of the informant by an IA special agent may be required. In these instances, the SAC/IA will request the appropriate SAC/OI to provide the necessary files and to make the informant available. The SAC/OI will direct the controlling office Source File Custodian to comply with the IA request. IA must conduct Source file reviews at the controlling office. Copies of the Source file will be provided to IA if requested. If IA must remove the original file for evidence, an annotated copy of the Source file will be retained in the controlling office indicating the IA action.

NOTES: 1) *The refusal of informants to attend debriefings will result in their not being used further, the suspension of their payments or pending actions, and the consideration of their refusal in making final determinations regarding future payments and pending actions.*

2) *Controlling agents refusing to make informants available are subject to disciplinary action.*

3) *Examinations of Source files by outside agencies must have prior approval from the Senior HQ Manager.*

41.05.05

Unsolicited, Illegally Obtained, Tainted Information

The USCS may receive unsolicited evidence or information, that was illegally obtained or tainted, from an informant who is contacting Customs for the first time. When that contact is made, the "Instructions to Confidential Source" checklist (see Appendix G) will be reviewed with the informant who will also be instructed not to obtain information illegally. While payments for such information are discouraged by the USCS, they are not prohibited. Before proceeding with an investigation using illegally obtained or tainted information or evidence purchased from an informant, the AUSA and the local Associate Chief Counsel must be so advised.

41.05.06

Documenting Information Received from Informants

Information received from informants will be recorded in a CF-23, Report of Investigation (ROI) under a non-administrative OI case number. The ROI will always refer to informants by Source Number. Documentation of POI/POE payments will not be included in ROIs.

If a CF-4621, Memorandum of Information Received (MOIR), is prepared by other USCS entities, a copy will be placed in the Source file. The MOIR should not reveal the true identity of informants.

41.05.07

Disclosing Information to Informants

Informants may have access to documents they have signed or provided. However, informants are not authorized access to information they did not provide. Examples of restricted information include, but are not limited to, ROIs, DEA-6s, FBI/FD 302s, Criminal Organization Charts, printouts from TECS, NADDIS, NCIC, NLETS, or any other law enforcement or intelligence retrieval system.

41.05.08

Anonymous Informants

Informants wishing to remain entirely anonymous, such as those in the Drug Smuggling Awareness Program, should be managed according to instructions contained in Customs Directive 099 4210-015, 1-800 BE ALERT, June 29, 1994. (*See Appendix H.*)

41.05.09

Violations of Law by Informants

If an active informant is arrested or believed to have engaged in unauthorized unlawful conduct other than a petty crime or a minor traffic offense, continued use of the informant must be reviewed, at a minimum, by the agency's Senior Field Manager.

In addition:

- If more than one FLEA is involved in an investigation using such an informant, coordination among all of the relevant FLEAs Senior Field Managers should occur *and*
- If a prosecutor is either participating in the conduct of the underlying investigation using the informant *or* working with the informant in connection with a prosecution, the FLEA must immediately inform the prosecutor of the arrest or nature and extent of the alleged unauthorized unlawful conduct.

41.05.10

Notification of Deactivation or Termination of Informants

If informants are deactivated or their relationships are terminated for cause, appropriate notification will be made to the informants if they can be located through reasonable efforts. Such notification will be documented by memorandum. The original will be placed in the Source file and a copy forwarded to the HQ Source File Custodian and placed in the HQ file. Notification of termination will be witnessed by two LEOs.

41.06.00

DISCOVERY AND DISCLOSURE

Cooperating individuals, by definition, expect no confidentiality or anonymity. If they have actively participated in an investigation (i.e., by wearing a body wire, meeting with the violators, or obtaining evidence that could not otherwise be obtained) it can reasonably be expected that cooperating individuals (versus confidential informants) will testify in government or judicial proceedings. Summons or subpoenas may be issued to the LEA for information from the Source file.

Confidential informants, by definition, have a reasonable expectation of confidentiality and anonymity. Therefore, the investigative agency should protect their identities by removing them from investigations as soon as possible. If it is not practical to exclude confidential informants from the start of the investigation, then ensure that they are not alone when meeting with the violators. This will allow for a corroborative witness and may negate the need to have confidential informants testify--thereby protecting their identities.

Under the Brady rule, the prosecution is often required to furnish the defense with a summary of payments to informants concerning the prosecution in which the informant will testify. However, the defense will usually attempt to obtain other information about the informant under the Federal Rules of Criminal Procedure, Rule 16. In response to such attempts, the prosecution may attempt to demonstrate to the court that such information is not relevant to the case.

The Government may request the court to review any information directly related to the informant *in camera, ex parte*. Usually, the court will agree. If not, the case agent, the Assistant United States Attorney (AUSA) and the Associate/Assistant Chief Counsel should seek the necessary protective orders to limit access and dissemination. In rare instances, the USAO may decline prosecution rather than reveal an informant's identity.

NOTE: *In situations involving LEO safety and security, disclosure of an informant's true identity is authorized.*

41.07.00

INFORMANTS WORKING WITH OUTSIDE AGENCIES

The release of a USCS informant to work with an outside agency must be approved by the SAC of the controlling office. If the informant agrees to work with an outside agency, the controlling agent should ensure that the responsibility for the informant's protection and funding is understood and agreed on at the outset by all parties. In cases involving national security issues, the SAC may order the debriefing of an informant by an outside agency.

In areas where agreements exist to share and co-document informants, the Source Card should reflect the outside agency documentation.

Special agents are authorized to work cases jointly with outside agencies who are managing their own informants. However, agents may not participate when these informants are engaged in illegal activities that have not been authorized by the outside agencies and the USAO.

41.08.00

INFORMANTS IN FOREIGN COUNTRIES

Controlling agents working with informants who are foreign nationals or US citizens in a foreign country must obey host country laws as well as the requirements of the US Embassy. Drug investigations and investigations involving Immigration and Naturalization Service (INS) paroles require specific procedures when using informants residing or operating outside of the US.

Special agents assigned to Customs Attaches may cultivate individuals who have information on US criminal activity. Restrictions apply if they intend to supply national security intelligence. However, US LEAs are obligated to accept and act upon any information they reveal concerning criminal activity. Foreign nationals must be documented in the same way as domestic informants.

Senior Field Managers must report written or verbal information received by USCS that an informant in *any* status (i.e., documented, active, inactive, or undesirable/unreliable) has been arrested, detained, or jailed by *any* foreign law enforcement, military, or government entity to the Senior HQ Manager.

41.08.01

Drug Investigations

Pursuant to the Memorandum of Understanding (MOU) between the USCS and the Drug Enforcement Administration (DEA), dated August 8, 1994, all investigative activity being conducted under the provisions of Title 21 and involving drugs must be coordinated with DEA. Informants who are operating in foreign countries and providing information concerning drug investigations to domestic field offices may continue to do so *only* with the approval of appropriate DEA Attaches.

When a domestic field office documents a foreign national as an informant, that office will provide the appropriate USCS Attaché, through the Director, Foreign Operations Division, with the following information:

- Source Number.
- Country in which the informant resides.
- Name of domestic field office.
- Name of controlling agent.

If the informant will be active in a foreign country:

- Notify and coordinate with the respective Customs Attaché.
- Conduct suitability assessments.
- Verify the informant's identity (using fingerprints, photos, etc.).
- Complete the informant documentation process.

Informants traveling overseas in furtherance of domestic investigations must get clearance from the US Embassy in the country of destination. The SAC requesting approval will route the request to the Senior HQ Manager for approval and coordination with the Director, Foreign Operations Division. The designated desk officer will coordinate the informant's travel with the DEA counterpart if appropriate. The agencies will notify their Attaches.

41.08.02 INS Paroles

Foreign nationals deported for criminal activity are jointly designated as excludable aliens by the Department of State (DOS) and the INS. Reentry into the US is prohibited. Many excludable aliens are successful informants who must travel internationally to meet investigative needs. To facilitate their reentry, controlling agents must coordinate with INS and DOS. Separate procedures have been established by INS when agencies requests parole status for excludable alien informants involving contiguous and non-contiguous land border crossings.

41.08.02(1) Contiguous Land Borders (i.e., Canada and Mexico)

The SAC must coordinate with the District Director, INS, to secure a parole for an excludable alien informant. The request will be written on official USCS stationery and include:

- Short synopsis of the investigation.
- Reason for bringing the informant into the US.
- Name, DPOB and PPN, NCIC #s, TECS #s, and NADDIS #s.
- Informant's Port of Entry.

41.08.02(2) Non-Contiguous Borders

When an excludable alien informant enters the US through an international airport or seaport, coordination becomes more complex and sensitive in nature. The SAC requesting the parole must route the request through HQ, Investigative Operations Division. The request will contain

the same information noted above. The HQ Confidential File Custodian will coordinate the parole request with INS, which will cable the information to the appropriate US Embassy. Informants are responsible for obtaining their parole documents from the Embassy.

41.08.03

Silent Waivers

Informants may enter the country legally with target violators who may or may not be entering the US legally. A silent waiver will expedite such an entry.

Requests for silent waivers will be coordinated with the appropriate USCS Attaché who will arrange the details of the entry with the US Embassy and the Port of Entry. The activities of individuals who are granted entry into the US through silent waivers will be monitored by a controlling agent until they depart the US. The controlling agent will then notify the Attaché that the individuals have departed.

41.08.04

"S" Visas

The Violent Crime Control Act of 1994 (VCCA), section 130003, Public Law 103-322, created the "S" classification for certain aliens that Federal, state, or local law enforcement agencies believe have crucial information necessary for the successful investigation or prosecution of a criminal organization or information concerning a terrorist organization. The classification permits aliens to remain in the US in a temporary nonimmigrant status for up to three years. Immediate relatives (i.e., spouse, parent, or child) may also apply for an "S" classification. This program will be beneficial in obtaining key alien witnesses in major cases who are excludable under current immigration law because of their prior criminal activity.

In emergency situations, the LEA may seek parole from the INS for aliens (and qualified family members) to expedite their entry into the US for the purpose of applying for an "S Nonimmigrant" classification.

41.09.00

DOCUMENTING INFORMANTS

This process establishes a basis for the informant's confidentiality and payment. While Customs inspectors, import specialists, and other employees are encouraged to identify potential informants, only special agents and MEOs are authorized to document or control informants.

41.09.01

Assignment of Source Number

The Source File Custodian for the office of the controlling agent will issue a Source Number to each informant as a unique identifier.

This number will be constructed as follows: SA, followed by a sequential number, followed by

the two-letter office designator of the issuing office. For example, a Source Number for the OI, SAC Los Angeles, would read: SA-76 LA.

IA will assign Source Numbers in chronological order as informants are indexed. The Source Number will be preceded by the letters SA (already printed on the Source Card), followed by a numeric identifier and the two-letter office designator and the letters "IA." For example, a Source Number for the IA, SAC New York, would read: SA-36 NY IA.

An informant will be referred to by Source Number in reports and memoranda unless a specific need or circumstance allows for the informant's true identity to be revealed (e.g., Plea Agreement, Use of Prisoner memoranda, Witness Security application, etc.)

41.09.02

Source Assignment Log

The office assigning Source Numbers will maintain a Source Assignment Log (see Appendix I), which will be stored with the Source File folders and will contain the following information:

- Source Number and date of assignment.
- Name of controlling agent.
- OI case number.
- Verification (initials and date) by Source File custodian or designee of Source Card's issuance.

The above information will also be placed on the sealed Source Card envelope in the Source file.

41.09.03

Source Card

The controlling agent will type the Source Card in triplicate prior to using an informant except in exigent circumstances when it must be done as soon as possible. Improper informant documentation will result in returned Source Cards and delayed payment requests. The Source Card should include the following information:

- Source Number*.
- True name*.
- A.K.A.* (assumed name--controlling agents will not assign silly names, single names, names of famous people, etc.).
- Addresses (current and former)*.
- Date and place of birth*.
- Social security number.
- Drivers license number.
- Race and sex*.
- Height, weight, eye color, hair color*.
- Case number*.
- Identifying marks, scars, tattoos, moles, etc.
- Other identification (e.g., passport, FBI #, etc.)

- Criminal record (e.g., TECS, NCIC, etc.)
- Motivation
- Area of expertise (i.e., textiles, drug smuggling, high technology, marine or aviation operations, language ability, etc.) **NOTE:** Indicate former USCS employee status and alien registration status here if applicable.
- Name of controlling agent.
- Name of alternate agent*.
- Date documented.

** Mandatory -unless a written justification is approved by the group supervisor or manager.*

The completed Source Card will be reviewed and signed by the first-line supervisor upon verification of the informant's identity and the completion of criminal records checks.

41.09.04

Source Card Amendment

The data on Source Cards will be updated by executing a new Source Card with updated information when:

- Informants change their assumed names. (Assumed names appearing on payment requests not recorded on original or amended Source Cards will delay payment.)
- Controlling agents or their alternates are transferred.
- Additional identifying data is received.

The Card will be marked "Amended" below the Source Number (i.e., the number used on the original Source Card). When documenting informants who have been previously documented by another OI office, the prior Source Number will be listed on the Card under the new number.

41.09.05

Mailing Procedures

The original and first copy of the Source Card will be double-enveloped and forwarded by registered mail, with a return receipt requested, to:

US Customs Service
Office of Investigations
Assistant Director, Investigative Services Division
Room 5138
1301 Constitution Avenue
Washington, D.C. 20229

The inner envelope will be addressed to the Custodian, Central Source Files, and marked "TO BE OPENED BY ADDRESSEE ONLY."

The return receipt will be maintained in the Source file as evidence that the Card has been received in HQ. When an office mails multiple Source Cards in a single envelope, a copy of the

return receipt should be made for each respective Source file and included therein.

Documents disclosing the true name of the informant (e.g., correspondence to parole boards, judges, courts, etc.) must be mailed in a double-sealed envelope.

TECS I.D.#s, FBI#s, NCIC#s, and DL#s, etc., which identify the informant must be stored in sealed envelopes in the Source file. These printouts should *not* be sent to HQ.

41.09.06

Source File Contents

A Source file will be maintained for each informant at the documenting field office. It will be labeled by Source Number only and secured in a safe or in a file cabinet with a combination lock. This container will also house the files of inactive informants and the Source Assignment Log. The container will remain locked when not in use. The office supervisor will assign at least one Source File Custodian and one alternate to maintain the Source files. It is suggested that someone be available to respond 24 hours a day to access Source files. The Custodian and alternate should not be first-line supervisors. The Required Documentation Checklist (see Appendix J) will be used to ensure that all required items are included in the Source file.

Each Source file will contain the following documents:

- The Source Card contained in a sealed envelope.
- Suitability evaluation memorandum.
- An exemplar of the informant's signature (using an assumed name).
- The "Instructions to Confidential Source" checklist.
- All MOIRs and cover sheets of OI ROIs related to information furnished by the informant.
- A Payment Summary form (see Appendix K) listing each award, purchase of information, or per diem payment to the informant along with signed copies of receipts for such payments and the associated case numbers. Also, include:
 - SF-1164s, Claim for Reimbursement for Expenditures on Official Business, relating to object class code (OCC) 25.83 or other payments.
 - Copies of supporting documents for the above payments.
- Debriefing reports prepared and signed by the controlling agent's first-line supervisor.
- The Confidential Source Semi-Annual Review sheet (see Appendix L).
- Originals of all CF-293s, Confidential Expenses Transaction Receipt.
- Copies of any memoranda requesting approval for payments.
- Copies of any other memoranda or reports written concerning the informant such as those written to DOJ to enter the informant into the Federal Witness Security Program, etc. (If the informant is identified by name or Source Number, these memoranda and reports must be stored in a sealed envelope.)
- Criminal History Check form.
- Agreements between the informant and the Government.
- Photograph of informant and FD-353, Fingerprint Card, (if completed) in a sealed envelope. (See Appendix M.)

NOTE: *Fingerprints are no longer required; they are an option of the investigative field office. Photographs may be taken or obtained from other sources (e.g., DMVs, passports, etc.).*

- A contact name and phone number other than the informant's in a sealed envelope on a 3" x 5" card.

41.09.07

Supervisory Review of Source Files

To verify the accuracy of Source files and to ensure that *active informants* are so designated, a second-line supervisor will review these records semiannually during the months of March and September. The Confidential Source Semi-Annual Review form will be used with all Source files to ensure that they are complete and current. A Source file review will also be conducted by a supervisor at the time an informant is designated as an *inactive informant*.

Active informants provide information or evidence or act under the direction or control of a USCS controlling agent within a 6-month period and are considered active until all payments or contractual obligations owed to them are met.

Inactive informants are defined as those who have not provided information within a 6-month period or those whose information no longer generates investigative interest. Their cases are closed and all obligations owed them have been met.

Accountability is essential to the informant program. To ensure that proper procedures are being followed, periodic reviews of field offices will be initiated by HQ. The responsibility for the internal control of Source Cards, etc., will rest with the manager in charge of the respective field office.

The first-line supervisor must meet annually with each active informant and the controlling agent to reevaluate the informant's suitability. When necessary, group supervisors and managers are authorized to open envelopes containing the informant's information to verify the identity of the informant in accordance with this chapter.

41.09.08

Retention of Deactivated Source Files

Inactive Source files must be retained in the field office for a period of 10 years. If informants have not been reactivated within this period of time, their files will be transferred to a regional Federal Records Center (FRC) for a period of 50 years and then destroyed. If an informant is reactivated, the Source file must be updated in accordance with the requirements outlined in this chapter for the documentation of new informants with the exception of the Source Number, which will remain the same.

41.09.09

Instructions to Informants

When documenting informants, controlling agents will review the following written instructions with them regarding their responsibilities to and their relationship with the USCS (see Appendix G, "Instructions to Confidential Source" checklist). This checklist must be reviewed yearly with the informant and signed by the controlling agent, a witness, and the informant (using the informant's assumed name). These instructions will state that informants:

- Will be prosecuted for any unlawful acts that are not authorized by a Senior Field Manager of the USCS and the USAO.
- Must always provide truthful information.
- Will follow the instructions of the controlling agent and must not attempt any independent action on behalf of the Government.
- Are not employees or officers of the Government and may not represent themselves as such.
- Must not engage in witness tampering; witness intimidation; entrapment; or the fabrication, alteration, or destruction of evidence.
- Are liable for taxes on Government payments.
- Are not guaranteed compensation by the Government.
- Will not be guaranteed reduced sentences if they are cooperating defendants. (The prosecuting attorney will be advised of the nature and extent of the informant's assistance to the LEA.)
- Who are foreign nationals are made no promises regarding alien status or their right to enter or remain in the US.
- Will be instructed that the Government will make every effort to prevent the disclosure of their identities but cannot offer guarantees.
- May not enter into any contractual agreements or incur any obligations on behalf of the Government unless authorized in advance by the USCS.

In addition, if an informant is judged qualified, the controlling agent will explain the investigative goals as well as the actions allowable in achieving those goals. In addition, the controlling agent must explain to informants what they are expected to accomplish during covert meetings with violators and during the absence of the controlling or UC agent.

The controlling agent or any other LEO will not make specific representations (e.g., regarding monetary compensation, sentence reductions, etc.) which may encourage informants to fabricate evidence, badger targets, or perjure themselves. Controlling agents and informants must sign and date the document listing these written instructions (see this section above) and the agent must place it in the Source file.

41.09.09(1)

Entrapment Issues

The entrapment defense is based on proving that defendants were not predisposed to commit the crimes with which they are charged but rather that they were induced to do so through trickery, persuasion, or fraud by the Government. In addition, some courts have held that predisposition

involves both the desire as well as the ability (through Government involvement) to commit the crime charged. Therefore, prior to an informant's engaging in cooperative activity with the Government, the controlling agent will explain to the informant how to elicit statements from the suspect establishing a predisposition to unlawful activity and what prohibited actions might give rise to an entrapment defense.

41.09.10

Transfer of Controlling Agent

The following actions will be taken when a controlling agent changes duty stations:

- The appropriate supervisor and the departing agent will review all Source file folders (active and inactive) to evaluate the future potential of each informant to provide valuable information.
- After completing the evaluation, the supervisor (in consultation with the departing agent) will reassign informants to other agents. First consideration for assignment will be given to alternate controlling agents. (Departing agents should introduce informants to their new controlling agents.)
- The Source file will be updated and an amended Source Card will be completed by the new controlling agent.

41.10.00

COMPENSATION OF INFORMANTS

The USCS compensates its informants through:

Purchases of information (POI).

Purchases of Evidence (POE) for related travel expenses.

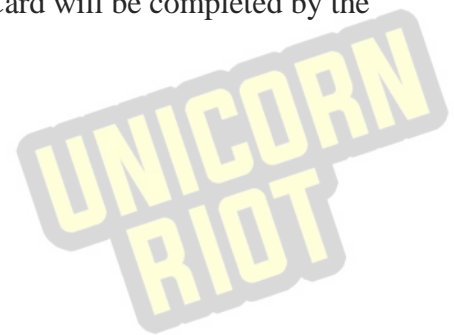
Payments from the Confidential Fund.

Awards of compensation (moiety).

The expeditious payment of informants is critical. Payments to informants that may have an adverse impact during legal proceedings should be brought to the attention of the USAO. When prosecutors are participating in the conduct of an underlying investigation using informants working with them in connection with a prosecution, payments to informants will be coordinated with the USAO.

Payments to informants and the signing of CF-293s should be witnessed by two LEOs--one of whom must be a USCS LEO. Exceptions must be approved by the Senior Field Manager. At the time of payment, informants must be advised that the monies (except those representing payments for documented expenses) are taxable income.

The first page of the CF-293 must be signed by witnesses and informants--carbon signatures are acceptable on subsequent pages. LEOs signing the witness portion of a CF-293 without observing the payment are subject to disciplinary action and may be in violation of 18 USC 1001, False Statements.



41.10.01

Authorities for Compensation

Compensation to informants is paid under the following authorities:

- Title 19, USC 1619, limits compensation for original information regarding fraud upon Customs revenue or the violation of other Customs laws to 25% of the net recovery not to exceed \$250,000 in any case.
- Title 19, USC 1600, outlines procedures for the inclusion of recoveries and seizures resulting from the enforcement of Federal laws nonspecific to Customs.
- Title 31, USC 5323, limits compensation for original information leading to a criminal fine, civil penalty, or a forfeiture exceeding \$50,000 to 25% of the net fine, penalty, or forfeiture collected or \$150,000, whichever is less.
- Title 19, USC 2081 defines the payment of POI/POE expenses as a reasonable and necessary expenditure of the agency and payable out of agency appropriations. In addition, it allows for POI/POE payments from the proceeds of a certified UC operation.

41.10.02

Purchase of Information/Purchase of Evidence (POI/POE)

Payments from POI/POE funds are known as:

- *Purchases of information* (POI): payments for information or services provided to the Government *or*
- *Purchases of evidence* (POE): payments for the purchase of tangible evidence pursuant to an investigation.

POI/POE payments differ from payments under Title 19, USC 1619, in that recovery by the Government is not a condition of POI/POE payments. In addition, USCS policy prohibits representations to informants involving *contingent payments*: awards of specific amounts that depend upon giving certain testimony or the conviction or punishment of an individual.

41.10.03

Approval of POI/POE Payments

Requests for POI/POE payments exceeding the Senior Field Manager's authority must be forwarded to the appropriate desk officer for evaluation and approval by the Senior HQ Manager. Each request will pertain to only one formal case and must include a *fourteen-point memorandum* containing the following information for each case:

- Case number, Source Number, and date the informant was documented.
- Type of seizure (e.g., diamonds, gold, currency, narcotics, etc.) and seizure numbers.
- Quantity and quality of all seizures and their domestic value (merchandise only).
- Names, ages, and addresses of violators and suspects.
- Criminal background and reputation of violators and suspects.
- Names and locations of arresting or seizing officers.
- Violations of laws involved and a brief case synopsis.

- Whether or not a petition for relief from any fine, penalty, or forfeiture is anticipated or pending when merchandise and conveyance seizures are involved.
- Probability of forfeiture (when merchandise or conveyances are involved) and probability of asset sharing (identify other agency).
- Importance of violators.
- Informant's potential and past performance.
- Statement pertaining to the role of the informant.
- List of total payments made to an informant.
- Investigative Statistics and TECS Reports:
 - On-demand report under Management Information Case on Demand reports (MICO), Status Report 02, Detailed Status for Each Case.
 - On-demand report under MICO, Statistics Report 06, Hours/Stats by Case.
 - Copy of the Single Case Status (CM30).
 - Copy of the screen print for each subject identifying violations, seizures, and penalties.

Include EFT (electronic funds transfer) instructions if appropriate.

NOTE: For payments below the HQ threshold, Senior Field Managers should require either the fourteen-point memorandum or a shorter and less detailed written justification.

41.10.04

Delegated POI/POE Payment Approval Levels

Designated USCS officials may approve *separate* POI and POE payments *per case and per informant* up to the limits indicated below (e.g., a Senior Field Manager may approve a maximum of \$50,000 per case-\$25,000 for POI and an additional \$25,000 for POE).

- | | |
|--|-------------|
| • Commissioner or Deputy Commissioner | > \$100,000 |
| • Assistant Commissioners (OI & IA) | \$100,000 |
| • Senior HQ Manager
(Director, Investigative Operations Division) | \$100,000 |
| • Senior Field Managers
(SACs, DSACs, and GS-15 ASACs) | \$25,000* |
| • Mid-Level Field Managers
(GS-14 ASACs and RACs) | \$2,500* |
| • Customs Attaches and Senior Customs
Representatives (GS-15 and above) | \$25,000 |

*Per "Treasury General Guidelines on the Use of Cooperating Individuals and Confidential Informants," August 30, 1996.

The above authorities are subject to verification of availability of funds in the approving official's financial plan prior to authorization. If not available, written confirmation that funds will be provided by HQ must be obtained from the Director, Administrative Services Division, before the payment is authorized.

41.10.04(1)

Approval for Single POI/POE Payments

Single payments *per case and per informant* may be approved as follows:

- Senior Field Manager (GS 15 and above)\$2,500 - \$25,000
- Mid-Level Field Manager (GS-14)\$0 - \$ 2,500

41.10.04(2)

Approval for Aggregate Annual POI/POE Payments

After an informant reaches a *cumulative* fiscal year payment total of \$100,000, subsequent payment requests must be forwarded to the Senior HQ Manager for approval.

- Senior Field Managers may request that the payment be considered individually *or*
- Senior Field Managers may request that the Senior HQ Manager authorize additional aggregate annual payments in increments of \$50,000 or less (a rollover).

The Senior HQ Manager may authorize more than one rollover per informant. Senior Field Managers may disburse the funds at their authority level *per case and per informant*.

41.10.04(3)

Approval for Aggregate Lifetime POI/POE Payments

After an informant reaches a cumulative "lifetime" payment total of \$200,000, all subsequent requests for payment must be forwarded to the Senior HQ Manager for processing.

Senior Field Managers may request that the payment be considered individually *or* Senior Field Managers may request that the appropriate designated HQ official authorize additional aggregate payments in increments of \$100,000 or less. This official may authorize more than one rollover per informant. Senior Field Managers may disburse the funds at their authority level *per case and per informant*.

41.10.04(4)

Approval for POI/POE Payments from UC Proceeds

Authorization to pay POI/POE from UC proceeds requires the same approval authority as appropriated funds. It should be noted that POI and moiety payments would reduce the proceeds available for asset sharing.

When making POI payments from UC proceeds, the yellow copy of the CF-293 will be filed with the UC project records rather than being forwarded to the Accounting Services Division (formerly the NFC).

41.10.05

Restrictions on POI/POE Payments to Customs Officers

The purchase of food or beverages for Customs officers with POI/POE funds under OCC 25.81

is prohibited. However, under certain circumstances food and non-alcoholic beverages may be purchased for a Customs officer under OCC 25.83, Cultivation and Development of Sources of Information, when used to provide surveillance or security for UC agents or informants in a bar or restaurant setting or during UC meetings conducted by a supervisor.

Expenses for meetings with state or local LEOs are not authorized payment from POI/POE monies because LEOs are obligated to pass on such information if developed in the performance of their official duties.

41.10.06

Use of POI/POE Funds to Enhance the Cooperation of Foreign Officials

The payment of reasonable and necessary expenses for enhancing relationships between USCS Attaches and foreign officials is authorized from OCC 25.83. However, discretion should be exercised to avoid the appearance of impropriety when using these funds in countries whose governments have agreed to provide information to the US Government.

41.10.07

POI Payment Guidelines

- POI payments will only be made to documented informants.
- Only USCS LEOs are authorized to make POI payments.
- Payments for the purchase of food and drink for an informant or for information and expenditures for the development and cultivation of an informant will be paid from OCC 25.83. Such expenses for undocumented informants must be entered on an SF-1164.

It is USCS policy to pay informants either POI or a claim for moiety but *not* both. Furthermore, 19 CFR 161.14 states that, "Any Customs officer who receives information shall advise the informant that, in the event of a recovery, he may be entitled to compensation. He shall also advise the informant that, if the informant has executed a stipulation to that effect, any amount received by the informant in the form of purchase of evidence or purchase of information will be deducted from any compensation which may be awarded." This statement does not authorize Customs officers to make promises to potential informants regarding monetary compensation. (See Customs Directive 099 51735-009, Reporting Violations of Customs Laws by Non-Employees, October 26, 1992.)

41.10.08

Judgment Criteria for POI Payment Amounts

Criteria for determining POI payment amounts:

- Significance of violators to the Government and to their own organization.
- Degree of informant's responsiveness and amount of control exercised.
- Level of informant's:
 - Participation (i.e., time, effort, personal expense, etc.)
 - Personal and family risk.

- Active involvement (i.e., wearing a recording or transmitting device, serving in UC capacity, testifying, etc.).
- Impact on the violator or criminal organization.
- Future potential of informant to provide information.
- Impact of a seizure or of a dry conspiracy in dismantling a criminal organization.
- Amounts of any other payments (e.g., per diem, awards of compensation, etc.).

NOTE: *These factors should be addressed in the fourteen (14) point memorandum required for single POI payments.*

41.10.09

POI Payments to Defendants

Any defendant providing information as the result of a plea bargain (in return for favorable consideration at sentencing or to avoid prosecution) will not be eligible to receive POI payments without prior approval by the appropriate Senior Field Manager.

41.10.10

POI Payments to Prisoners

Meetings with inmates must be coordinated with BOP or officials from a state's Department of Corrections. Financial compensation must be in the form of a check or money order. Controlling agents may give checks to inmates and have them sign a CF-293. This does not negate the agency's prohibition against compensating informants who are eligible for "Rule 35" consideration.

41.10.11

POI Payments to Informants in the Federal Witness Security Program

Once a witness has been relocated by the USMS, the controlling agent should not have any further contact with the witness--the prosecutorial and appeals phases notwithstanding. Payments due to the witness must be coordinated through the USMS, HQ, and Witness Security Division. The contacting of these protected witnesses by controlling agents is prohibited.

41.10.12

POI Payments to Former Customs Employees

POI payments to former Customs employees are allowed for information they obtained after their separation from the Service. However, POI payments to former Customs employees are prohibited for information they deliberately withheld until separation in order to receive payment.

41.10.13

POE Payment Guidelines

POE payments:

- Are authorized for purchases of evidence and related travel.
- May be made by controlling agents or others authorized by the SAC.
- Are authorized if in furtherance of an investigation but must be documented in the Source file.

41.10.14

POE for Informant Travel

POE funds are authorized for informant travel that is directly related to obtaining or gathering evidence through UC meetings or purchasing evidence. Travel expenditures are permissible if the:

- Case is open.
- Targets are identified.
- Travel is necessary to obtain evidence.

Receipts for transportation and lodging must be included with the CF-293 in the case file. POE funds may not be used for debriefings of informants, witness preparation, or trial testimony. In addition, they may *never* be used to pay for a UC agent's travel.

41.11.00

CONFIDENTIAL FUND

The Confidential Fund may be used by OI and IA and consists of monies maintained outside usual agency accounting systems and is not subject to external audit. It is a sub-allotment appropriated and administered by the Secretary of the Treasury to cover expenses for unforeseen confidential emergencies, which cannot be reimbursed through normal USCS fiscal channels (see Appendix N: Treasury Directive 33-02, Expenses for Unforeseen Confidential Emergencies, June 13, 1995).

Receipts, disbursements, and audits of fund payments are conducted by the Confidential Fund Cashier at USCS HQ. Confidential expenditures are authorized for:

- The purchase of information or evidence from individuals whose identities must remain confidential--including the development of undocumented informants.
- Meeting emergencies threatening the personal safety of Government employees and informants--as well as the safety of their respective families.

SACs should forward funding requests to the Assistant Commissioner, OI, through the Senior HQ Manager. All expenditures must be documented on an SF-1012, to which invoices, receipts, and memoranda, etc., must be attached. Excess funds must be returned to the Cashier at least one week prior to the close of the fiscal year.

Because the initial annual Fund allotment is \$200,000, funds may not be available near the end of a fiscal year. Therefore, funding requests should be forwarded to the Cashier as soon as possible to allow time to obtain additional funds from Treasury.

41.12.00

MOIETY CLAIMS

Moiety claims are submitted on a CF-4623, Claim for and Award of Compensation for Original Information, to the Fines, Penalties, & Forfeiture (FP&F) Officer where the forfeiture will take place or where recoveries were made. Moiety claims from documented informants will be placed in the Source file--claims from undocumented informants will not.

When information is provided to the USCS, receiving officers will advise individuals of their right to submit a claim for an award. It is the policy of the USCS to pay informants either Purchase of Information, (POI), or moiety, but not both.

If an informant intends to file a claim for moiety, an advance partial payment using POI funds can be made with the understanding that it will be deducted from the final moiety payment. The monetary advance cannot be more than 10% of the anticipated amount of the moiety claim. In this case, the informant should sign an Advance Against Moiety Agreement (see Appendix O) allowing the Government to subtract from awards of compensation any moiety amount previously paid for POI.

NOTES: 1) *Receipt of moiety by employees of FLEAs is prohibited.*
2) *Payments will be made to the estates of informants in the event of death*

41.12.01

Filing Claims

To ensure that moiety claims are properly prepared, the controlling agent who received the original information will verify that the CF-4623 is complete. The request will be in triplicate.

The claimant will complete the following blocks:

- Claimant's true name and social security number. In cases involving issues of confidentiality assumed names could be used.
- Claimant's address (c/o Special Agent in Charge).
- Circumstances supporting the claim.
- Signature (Each form will be signed with the informant's true name. Controlling agents may not sign the form as a representative for the claimant. All copies will bear original signatures.)
- Date claimant presented the CF-4623 to the receiving officer.

The controlling agent who was advised of the moiety request will complete the following blocks:

- Port (where the violation occurred).
- District Number (where forfeiture or recovery will occur).

- Date of Seizure.
- Seizure Number.
- Section of Law (e.g., 31 USC 5323).
- Certification block. (Include the OI case number; date of the claim; and name, title, and signature of the controlling agent who received the original information.)

NOTE: *The controlling agent must sign each individual copy of the CF-4623.)*

41.12.02

Memorandum of Certification

The controlling agent receiving the information will submit a memorandum of certification containing an in-depth explanation of the information on the CF-4623 including:

- Identifying information regarding the claimant.
- Means by which the information was furnished.
- Date the information was furnished.
- Details of claimant's connection with the case.
- Statement indicating that an assumed name or Source Number in any documentation refers to the claimant.
- List of POI payments made to the claimant. (If no payments were made, so state.)
- Recommendation of an award of compensation not to exceed 25% of net recovery.

41.12.03

Submission of Moiety Claim

The moiety request package will be prepared in triplicate and forwarded to the FP&F office where the seizure occurred. The package will contain the following:

- CF-4623.
- Memorandum of Certification.
- Copies of ROIs that document the claimant's information that resulted in the seizure/penalty, forfeitures and recoveries.
- Copies of Search, Arrest, Seizure (SAS) reports.
- Copies of CF-293s that document payments to the claimant.

41.12.04

Final Payment to Claimant

Upon approval of the request, the Accounting Services Division will process the claim and generate a check made payable to the claimant listed on the CF-4623 and mail it to the claimant c/o the Special Agent in Charge. All moiety payments will be documented on a CF-293 signed by the claimant and witnessed by two individuals designated by the SAC.

(Wire transfers must be requested on the memorandum of certification. Bank information is the same as for POI/POE requests.)

41.12.05

Awards to State and Local Employees

- Under the provisions of 19 USC 1619, state and local LEOs are not prohibited from receiving compensation although such payments are often forbidden by their employers.
- 31 USC 5323 prohibits employees of state and local LEAs who provide information in the performance of their official duties from receiving moiety.

41.13.00

FUNDING AND REIMBURSEMENT

41.13.01

Receipt of Funds from Imprest

Funds disbursed on interim receipts will be reconciled at intervals not to exceed five (5) days. If needed for a longer period and for the original purpose, recipients or their supervisors should advise the imprest fund cashier accordingly. New initials and dates on the original receipt will suffice if expenditure is imminent. Otherwise, a brief note should be included in the records. This note should contain only that information which is essential in substantiating the extension and must not reveal any data that might compromise the integrity of the investigation or the identity of the informant.

If the surveillance of a UC meeting requires officers to purchase food or beverages for themselves, those expenses may be reimbursed from the imprest fund.

41.13.02

Per Diem Expenses

Informants may be placed on per diem or actual expenses in high rate geographic areas and prepare vouchers after the travel is completed.

Travel, transportation, and per diem expenses for informants have specific OCCs:

- 21.31 - Per Diem and Subsistence (Informers).
- 21.33 - Common Carrier (Informers).
- 21.34 - Privately Owned Vehicles (POV) – Informers.
- 21.37 - Other Travel-Related Expenses – Informers.

Informant travel authorizations and vouchers are prepared and filed by the controlling agent in accordance with Customs travel guidelines. For all checks issued to controlling agents, they will obtain and place in the Source file signed receipts from informants.

41.13.03

Relocation Funds

Informants cannot benefit from Permanent Change of Station (PCS) funds. Their relocation expenses will be covered from the investigative office's budget plan or the Treasury Forfeiture Fund.

41.13.04

Expenses for Cultivation of Informants

The evaluation of an informant's potential to provide valuable information may require the purchase of food and beverages with cash from the imprest fund. Each expense must be documented separately on an SF-1164. A copy of the approved SF-1164 will be forwarded to the imprest fund cashier. Single charges of more than \$25 for food and beverages should be accompanied by a receipt. If receipts are not available, the following statement must be included on the SF-1164: *"To protect the safety of the officer and integrity of the UC meeting, receipts could not be obtained."* If the informant is documented, the Source Number will be entered on the SF-1164 and a copy placed in the Source file. Second-line supervisors will examine this during the six-month file review.

All OCC 25.8 cash expenditures (not for food or beverage) made to an informant must be documented on a CF-293. All OCCs on a CF-293 (for POI/POE) or SF-1164 should be checked to ensure the correct OCC has been assigned to each expense.

41.13.05

Improper POI/POE Expenses

Examples of improper POI/POE expenses are:

- Routine surveillance expenses (e.g., meals for agents, etc.).
- Lease lines for pen registers.
- Meals for Federal, state, and local LEOs.
- Rental or purchase of vehicles or other equipment.
- Costs of serving warrants and subpoenas.
- Travel disguised as POI expenses.



The use of POI/POE funds for other than approved expenditures is unauthorized and will subject those responsible to possible disciplinary action.

41.13.06

Reimbursement of POI/POE Payments

POI/POE payments are reimbursed from the discretionary or non-discretionary portions of the Treasury Forfeiture Fund based on the following:

- Discretionary

The Fund statute authorizes payments involving money laundering, drug smuggling, Customs fraud and smuggling criminal statutes, and the reporting requirements of the Bank Secrecy Act.

- Non-discretionary

The Fund statute authorizes payments involving a seizure if:

- The case file contains documentation proving that the seizure is associated with a specific payment and could not have been accomplished without the payment *and*
- The amount of the payment bears a reasonable relationship to the value of the evidence or information to the Government.

41.14.00

ELECTRONIC FUNDS TRANSFER (EFT)

An EFT request and a copy of the documentation approving the transaction (CF-293, etc.) must be forwarded from the SAC to the AC (OI), attention Administrative Services Division (ASD), and will include the following:

- Accounting codes:
 - APC for requesting office.
 - OCC(s) to which funds should be charged.
- Bank information:
 - Name, address, and branch.
 - American Banking Association (ABA) or routing number (nine digits).
 - Bank point of contact name and telephone number.
 - Name of account holder and account number if the money is for deposit in an account *or*
 - Names, titles, and badge numbers of two USCS criminal investigators to whom the funds will be released.

The USCS field office requesting the EFT should contact the bank to verify receipt of the transfer. Direct any problems to the ASD.

The designated copy of the executed CF-293 must be returned to the ASD within 30 days of being signed by the informant and before the end of the fiscal year in which the funds were requested. If EFT monies are not paid within 30 days, the field office should notify the ASD.

41.15.00

FLASHROLLS

A *flashroll* is a substantial sum of money used only for display in gaining the confidence of criminal suspects in connection with the specific UC activity for which it was requested. (Funds used for money laundering and paying points for services are not flashrolls.) Flashrolls may not leave the *custody* (possession) and *control* (direct influence) of the Customs criminal investigator responsible for the funds. If the custody and control requirements cannot be met, a request for POE funds should be made instead.

The use of flashrolls by an informant or a non-USCS Federal LEO, must be approved by the Senior HQ Manager. In addition, informants and suspects will not have signature authority over flashrolls in bank accounts.

41.15.01

Approval for Flashrolls

In accordance with Delegation Order 92-17, Delegation of Authority for Approving Flashrolls, July 1, 1992, the following designated USCS officials may approve flashrolls in the amounts indicated below:

- Assistant Commissioners (OI) > \$10,000
- Special Agents in Charge \$10,000
- Resident Agents in Charge (with SAC concurrence) \$10,000
- Customs Attaches \$10,000

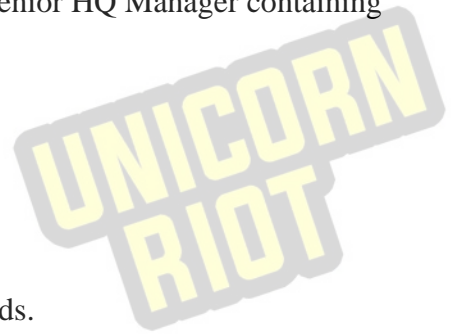
NOTE: *These approval authorities may not be re-delegated.*

41.15.02

Obtaining Flashrolls

SACs requesting flashrolls must forward a memorandum to the Senior HQ Manager containing the following:

- Amount.
- Purpose.
- Case Number.
- Investigation Summary.
- Approximate date the flashroll will be used.
- Name of the criminal investigators responsible for the funds.
- Description of how the criminal investigators will have control and custody of the funds.
- Names of officers who will flash the funds.
- Request for permission for an informant or other LEO to use the flashroll if necessary.
- Length of time the requesting SAC office will have possession of the funds.
- Name of the financial institution to which the funds should be electronically transferred including:
 - Address.
 - Telephone Number.
 - Point of Contact.
 - ABA Number.
 - USCS or Certified Account Number (if for deposit).
 - Names, titles, and badge numbers of at least two USCS criminal investigators who will receive the flashroll.
 - Requesting SAC office APC number.
 - Requesting SAC office ACT number.
 - Approximate date of flashroll's EFT to HQ.



**41.15.02
Obtaining Flashrolls**

Flashroll funds may be deposited in the following accounts:

- An account under the name US Government/ U.S. Customs
- A certified UC account.
- Overseas accounts -- *only with prior written approval from the AC (OI).*

NOTES: 1) *Undeposited funds must be stored securely.*
2) *If the requirement for a flashroll is part of a certified UC operation, proceeds may be used in lieu of HQ funding. The same approval levels apply.*

**41.15.03
Returning Flashrolls**

Funds should be returned within 72 hours after use, but no later than the date stated in the request unless an extension has been granted in writing by the Senior HQ Manager. The preferred method of returning funds is by EFT. The sending office must forward Treasury wiring instructions to the financial institution wiring the funds. The written request must be prepared on US Government stationery and must contain the following information:

Treasury Department Code: 02030004

Amount of EFT: _____

TREASURY DEPARTMENT Name: Treas NYC/ (ALC)

ALC (Agency Location Code): 20060800

Agency Name: **USCS**

Schedule Number: _____(from CDPR print out).

Accounting Strip: _____

P.O # _____

ACT: _____

ORG: _____

BFYS: _____

BUDPLAN : _____

OCC: _____

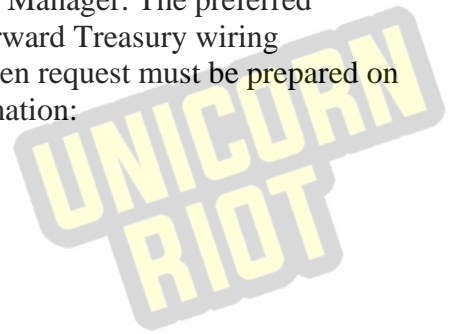
FUND: _____

PROGRAM: _____

PROJECT: _____

Provide a copy of the written request, deposit ticket, and any other original documentation provided by the bank to the following addresses:

US Customs Service
Accounting Services Division
Reports and Reconciliation Section



P.O. Box 68908
Indianapolis, IN 46268

and

US Customs Service
Office of Investigations
Financial Resource and Analysis Branch
1301 Constitution Avenue, NW, Room 2104
Washington, DC 20229

(FAX: 202-927-2188)

Although the preferred method of returning funds is by EFT, a certified check may be used. Obtain the certified check made payable to the U.S. Customs Service from the financial institution servicing your organization's EFTs. Send the check and a memorandum to the Accounting Services Division, Chief, Appropriations Account Branch. The memorandum must include the appropriate Accounting Strip information and the ACT number contained in the original request to obtain the funds. Also, include a copy of the wire transfer receipt from the bank.

Send a courtesy copy of the memorandum and pertinent documents regarding the return of funds to the Financial Resources and Analysis Branch, Administrative Services Division, HQ.

41.15.04 Lost Flashrolls

The loss of flashrolls will be absorbed by the requesting SAC office or by the criminal investigators responsible for the loss. Since there would have been no prior approval for the expenditure of funds, the normal Board of Survey requirements must be followed. The Board will review the circumstances of the loss and either find fault or release responsibility. The Board could find a criminal investigator negligent and personally accountable for the repayment of the funds. Because funds used as flashrolls are non-obligating advances from the SAC's Salaries and Expense (S&E) funds, the SAC office must request replacement of the lost flashroll either from the Treasury Forfeiture Fund or from appropriated funds.

SPECIAL AGENT HANDBOOK

CHAPTER 12

USCS OI SPECIAL AGENT HANDBOOK INVESTIGATIVE METHODS

August 1990

Official Use Only

INVESTIGATIVE METHODS

CHAPTER 12

01.00

GENERAL

Criminal convictions, either by plea or judgment, result from the possession or presentation of sufficient evidence to establish guilt. This same principal also applies to non-criminal investigations. The evidence is either verbal or physical in nature.

Some proven methods for obtaining evidence are presented in this chapter. These techniques, however, are not necessarily listed in order of precedence and you must determine the applicability, timing and sequence on a case-by-case basis. When conducting investigations you must also anticipate and prepare for any tactics that might be used by the defendant's attorney.

You should refer to the latest Law Course for Customs Officers and Customs Law Handbook for current legal guidance regarding your investigative strategy. Also remember that policies and procedures may vary by region and judicial district and therefore you should seek advice from Regional or District Counsel and/or the local U.S. Attorney when appropriate.

This chapter presents various investigative methods and techniques that may be used, however, you must use your imagination and resourcefulness to resolve investigative challenges.

02.00

VERBAL EVIDENCE COLLECTION

General: Much of the evidence collected in any investigation is verbal, be it from officers, witnesses, or suspects. Verbal evidence is obtained by interviewing or interrogating persons believed to have knowledge of facts concerning the violation. Accordingly, your success as a Criminal Investigator will depend in large part on your ability to elicit, develop, and document such verbal evidence. All such evidence must be preserved by either writing or tape recording, and all original notes and tapes, regardless of form, must be preserved for possible presentation in court. All statements should be reduced to either a hand written or typed form and presented to the witness/defendant for signature, preferably under oath.

Violations of Customs statutes involve complex federal laws, rules, and regulations. Prior to conducting any interview or interrogation you must be thoroughly familiar with all elements of these statutes, rules, and regulations, which may apply to the specific offense under investigation. Your knowledge of these laws will assist you in evaluating the relevancy of the information and identifying acts of omission or commission, which are violations.

02.02

PURPOSES OF INTERVIEWS AND INTEROGATIONS

An interview is the systematic questioning of a person who may have knowledge relevant to an investigation. An interrogation is the systematic questioning of a criminal suspect for the primary purpose of obtaining an admission of guilt. Interviews and interrogations can be used:

- To establish the facts you need to prove the violation;
- To obtain descriptions of witnesses and suspects;
- To corroborate or disprove previous information;
- To verify inferences you have drawn from other evidence;
- To secure physical evidence;
- To eliminate particular persons as suspects;
- To recover the fruits of the crime;
- To identify other suspects;
- To locate suspects;
- To obtain an admission of guilt.

Refer to the Special Agent Handbook Chapter 35, Interview Techniques for more information.

02.03

POLYGRAPH

The Customs Polygraph program was established to provide you with state-of-the art interview assistance. Most regions have at least one enforcement polygraph examiner to respond to your requests in any type of investigation. It is very important that you follow Customs Policy as outlined in chapter 36, as any deviation could mean your evidence would not be admissible. Polygraph requests can be made by telephone to any of the Customs examiners and/or the Polygraph Program Director in Headquarters. Approval for each examination will be by the Director, Special Investigations Division.

This technique should not be used as a substitute for sound investigative work. It is an excellent technique to use in verifying statements made by an informant or cooperating defendant as well as in plea bargaining arrangements. The polygraph examination is most effective after a thorough debriefing or interview by the investigating agent of the subject to be polygraphed.

Refer to the Special Agent Handbook, Chapter 36, Polygraph Program for more information.

Informants: Informants can be the backbone of any investigation and need to be developed in all areas of investigation. All contacts must be considered as potential informants.

Refer to the Special Agent Handbook Chapter 41, Purchase of Information/Evidence-Informants.

Interception of Communications: "Interception" refers to the acquisition of wire, oral, or electronic communications.

Other forms of "technical surveillance" including use of video recordings, dial number recorders, etc. are covered in Chapter 40, Technical Surveillance, of the Special Agent Handbook.

Undercover Operations: An excellent investigative technique you can use in the development of verbal evidence and should be used whenever possible. These operations usually combine the use of informants, undercover operatives, and technical surveillance.

Refer to the Special Agent Handbook, Chapter 44, Undercover Operations.

03.00

PHYSICAL EVIDENCE COLLECTION

General: Physical evidence is any object, marking or impression, no matter how small, which may assist in the reconstruction of a crime or which may lead to the identification of a violator or connect a violator with the victim or scene of a crime.

Physical evidence acquired during a criminal investigation must be collected properly and legally. Refer to the Special Agent Handbook, Chapter 39, Collection and Preservation of Evidence. The actual collection of physical evidence can be accomplished in a variety of ways including searches, summons and subpoena service, seizures and other techniques discussed in this subsection.

Searches are undoubtedly one of the most difficult subjects for a law enforcement officer. Statutes and rules cover only a fraction of the full scope of the legal aspects of conducting searches and court decisions are frequently confusing or even contradictory. Often important points have never been ruled on by the U.S. Supreme Court and you must look to the law of the various circuits or even districts for guidance. Substantial changes in the area of searches occur regularly and you must keep up with new developments. Solid knowledge of existing laws coupled with common sense is the best rule of thumb.

A search warrant is often the best method of gathering evidence. The use of a search warrant is not in itself a separate investigative technique but is a part of the total investigative process in the enforcement of criminals' laws. Obtaining and executing a search warrant is primarily performed in order to search for and seize various items of contraband and or evidence. Such seizures are made for the purpose of apprehending and prosecuting violators.

Search warrants are usually issued for the search of a premises, person or conveyance. It is incumbent upon you to know when a search warrant is required and the limits on the authority of the search warrant. Refer to the Special Agent Handbook, Chapter 42, Search and Seizure and to the Law Course for Customs Officers, Section 2, Search and Seizure.

19 USC 1595(a) provides for the issuance of a civil search warrant whenever probable cause exists to believe that any merchandise upon which duty has not been paid or which has been brought into the United States contrary to law, or any property subject to forfeiture is in a particular dwelling or other building or place. Additionally, a civil warrant may also issue for evidence of a fraudulent violation of Section 592 or of a violation of any other law enforced or administered by Customs.

The Customs civil search warrant might be used to seize merchandise located at an importer's premises where the importer, for whatever reason, has not paid duty. Or it might be used to seize an automobile located on private property which has been imported contrary to EPA regulations. Since the civil search warrant is different from a search warrant under Rule 41 of the Federal Rules of Criminal Procedure, officers should consult with Regional or District Counsel on its use. Refer to the Law Course for Customs Officers, Chapter 3, Border Search.

Other search types are alternatives to the warrant requirement and include consent, inventory, plain view doctrine, border, and exigent circumstance searches. These searches are discussed in detail in Special Agent Handbook Chapter 42, Searches and Seizures and in the Law Course For Customs Officers, Chapter 2 (Searches and Seizures) and Chapter 3 (Border Search).

03.03

ADMINISTRATIVE PROCEDURES

Administrative Procedures: There are a variety of administrative procedures which can compel the production of documents and the giving of testimony. These administrative commands are characterized as both subpoenas and summons and may be issued by an agency's own authority without a court order. However, judicial assistance may be necessary to enforce compliance. Judicial summons and subpoenas are a separate category described below. Customs officers have access to several different kinds of administrative procedure.

- Customs Summons, form CF-3115, are issued pursuant to 19 USC 1509, et seq. It is used in the enforcement of Customs laws. Refer to Law Course For Customs Officers, Chapter 7, Customs Fraud, and to the Special Agent Handbook, Chapter 8, and Fraud Investigations.
- A Customs Export Enforcement Subpoena, form CF-337, is issued pursuant to 50 U.S.C. 2411(a)(1) and 22 U.S.C. 2778(e). It is used in export control investigations. Refer to the Special Agent Handbook, Chapter 6, Strategic Investigations.
- A Bank Secrecy Act Summons, form TDF 90-22, is issued pursuant to 31 U.S.C. 5318, and is used in investigations relating to Bank Secrecy Act violations. Refer to the Special Agent Handbook, Chapter 6, Financial Investigations.
- A controlled substances smuggling subpoena may be issued pursuant to 21 U.S.C. 967 et seq. Under this authority, the Secretary of the Treasury is authorized to issue subpoenas for testimony and documents or other tangible evidence in investigations relating to violations of 18 U.S.C. 545 (smuggling: importations contrary to law) with respect to controlled substances. This subpoena authority is independent from that issued under the Controlled Substances Act pursuant to 21 U.S.C. 876 and should be clearly distinguished from that separate subpoena authority.
- Subpoenas may be issued under the Controlled Substances act pursuant to 21 U.S.C. 876 and using DEA form 79. This authority is the administrative authority routinely used by DEA and is separate from the Customs authority described above. Cross-designated Customs agents may find this additional authority useful in some situations.

03.04

COURT PROCEDURES FOR OBTAINING EVIDENCE

There are a variety of tools available from the courts to obtain the appearance of witnesses and/or the production of documents or other evidence. Included in this category are grand jury subpoenas. This type of process should be distinguished from the administrative procedures described above. Refer to the Law Course For Customs Officers, Chapter 1, Section 1.700 et seq.

Grand Jury: When information is gathered using this investigative tool you must remember that a secrecy rule attaches to matters occurring before the Grand Jury, which may preclude its use for other than criminal prosecution purposes. Refer to the Law Course For Customs Officers; Introduction and Customs Fraud sections.

Subpoena Duces Tecum: Once a defendant is indicted you can no longer use a Grand Jury subpoena to obtain investigative information; however, a subpoena duces tecum can be issued by the U.S. District Court requiring the production of additional evidence at trial.

Seizures: A meaningful interference with a possessory interest, generally requiring probable cause. Refer to the Law Course for Customs Officers, Chapter 2, Search and Seizure.

Seizures by Customs Officers: Property may be seized by Customs Officers in different ways for different reasons. For example, Customs detention in the border context do not require probable cause. Customs policy on storage/disposal of seized property is covered in the Special Agent Handbook, Chapter 42, Searches and Seizures.

When conducting an investigation you may use the tactics of seizing property or documents to gain further information on the instant case. Seized property and documents may have inherent investigative value or may be used as a bargaining tool to elicit cooperation or information from a violator or suspect.

Listed below are some of the enforcement activities you might use to seize property or documents.

- Border Searches or equivalent - Provided you have probable cause to seize. Generally, copying documents during a border search also requires probable cause or consent. Policy governing the review, copying, and seizing of documents is contained in the Law Course for Customs Officers, Page 3-69.
- Arrests
- Detector Dog Alerts
- Warrants, both Arrest and Search
- Customs summons (19 USC 1508), subpoena, and warrant (19 USC 1595a)
- Abandoned Property
- Adopted from another agency

Many programs currently used by the U.S. Customs Service result in the location and seizure of contraband prior to the delivery of the contraband to the intended receiver. The contraband seized under these programs arrives from foreign in the U.S. Mail, air cargo, vessel containers, trucks and other ways.

At other times crewmembers are arrested smuggling contraband off vessels, and couriers or "mules" are arrested at airports for smuggling contraband on their bodies or in their luggage. At land borders violators are arrested smuggling contraband by foot and by vehicles. And pilots are arrested flying contraband far beyond the nation's borders.

Whenever possible you should consider conducting a controlled delivery. Rather than merely making a seizure or arresting an insignificant violator with a seizure of contraband, the controlled delivery could lead to many arrests including high-level violators within an organization. It could lead to additional seizures of currency, automobiles, real estate and additional quantities of contraband. Also, the intelligence derived from controlled deliveries often results in spin-off investigations of other groups.

You should not make an arbitrary decision to employ a controlled delivery. Several legal and tactical questions have to be answered and often time is a crucial factor. A few examples of legal and tactical considerations are: will the courier cooperate, will a search warrant be needed, when to make the arrests, is manpower available, are adequate vehicles available, is special equipment needed, is there counter surveillance by the violator's co-conspirators, and has the seizure been compromised or can the seizure continue to be controlled.

03.06

CONTROLLED DELIVERIES

The controlled delivery is an excellent investigative method and has been used by the U.S. Customs Service on many occasions with great success. Some types of controlled deliveries are: cold convoys, participating informant deliveries, and cooperating defendant deliveries.

Refer to the Special Agent Handbook, Chapter 15, Controlled Deliveries.

03.07

TRASH RUNS

An excellent investigative technique is the trash run. Wary suspects who successfully avoid various other investigative methods will often throw away in their trash valuable evidence. Search warrants have been obtained for businesses and residences based on probable cause established by conducting trash runs. Remember, trash cannot be collected from the suspect's curtilage, as there is a reasonable expectation of privacy. Trash must be collected after it has been discarded or deposited for routine pick-up.

A clever idea by one investigator who had a violator living in a large apartment building was to give the building manager plastic bags for the tenants. The bags provided to the violator were different in color so the violator's trash was easily identifiable from the rest of the tenants' trash.

Additional alternative methods you may consider in conducting a trash run include: (1) Use of janitorial services (2) Pose as a trash collector (3) Solicit cooperation of trash collectors (4) Clandestine collection, and (5) Use your imagination to resolve unique situations in accordance with legal requirements.

When conducting trash runs, go through the trash as soon as possible for sanitary reasons. Use due caution in going through the trash as there could be razor blades, broken glass, or used hypodermic needles. Also, remember what you keep is evidence and should be treated accordingly.

Refer to the Law Course for Customs Officers, Search and Seizure section.

03.08

FACSIMILE / TELEX INTERCEPT

Facsimile machines are being used today by many businesses and individuals alike. Violators, too, are using them. Dishonest importers use the facsimile machines to communicate fraudulent schemes for importations, crooked exporters use the machines in their illegal exports of high technology and munitions type items, and money launderers use facsimile machines to communicate to narcotics dealers regarding currency movements and bank transactions. The list could go on and on. Violators, like businessmen, use facsimile machines because of the speed and because they are secure.

If you know your suspect has and is using a facsimile machine to conduct illegal acts, you should contact your Assistant U.S. Attorney to obtain an electronic interception order. This type of interception is covered under electronic communications in the Electronic Communications Privacy Act of 1986. Procedural restrictions on the interception of electronic communications are less than those for wire or oral communications. Any Assistant U.S. Attorney may approve an application for an interception order. An application may be made in connection with any federal felony, and there is no statutory exclusionary rule. Only constitutional violations will permit a court to exclude evidence gathered in violation of the statute. Even though Assistant U.S. Attorneys have the authority to approve such applications, some U.S. Attorney offices may impose more stringent requirements, such as those required for a wire or oral interception.

Refer to the Law Course for Customs Officers, Chapter 11, Electronic Surveillance.

03.09

QUESTIONED DOCUMENTS AND HANDWRITING ANALYSIS

Questioned Documents and Handwriting Examination: Handwriting can be evidence, which usually involves questioned documents. Evidence is generally derived from the documents themselves. A questioned document is a document whose genuineness is questioned, normally because of origin, authenticity, age or the circumstance under which the document was written. A holographic document is a document that is wholly in the handwriting of one person.

A standard document is a document recognized as proven, genuine or acknowledged that has been obtained from official records, personal letters, etc., and is known to be the product of a particular person or machine.

An exemplar is a document requested by you, which duplicates the text of a questioned document and is known to be the product of a particular person or machine.

Investigative Considerations:

- Questioned documents fall into two general classifications: genuine and fraudulent. It is often of greater importance to prove a document genuine than it is to prove it forged. A genuine document is often disputed because it imposes a liability on the maker.
- You must recognize the importance of utilizing the service of a document examiner in processing evidence in fraudulent document casework. Document examination is based on the improbability of any two writings being exactly alike in all characteristics such as style, speed, slant and spacing.
- Writing involves a mental process, regardless of the skill and habitual performance, as well as muscular coordination of the writer. There are other clues that the examiner or you can identify particular to a writer. The writer can often be identified by punctuation, spelling, grammar, syntax and style.
- Document examiners may be available through U.S. Customs Laboratories, other Treasury Department laboratories, other federal government laboratories, your local state agency crime laboratory, or the military crime laboratory system. Laboratory analysis can assist your substantive violation investigation by proving additional crimes of forgery and false statements.

Refer to the Customs Law Handbook for elements of proof for these offenses.

03.10

COMPUTE EVIDENCE

The Electronic Communications Privacy Act defines electronic storage in 18 USC 2510(17) as:

"Any temporary or intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof and the storage of such communication by an electronic communication service for purposes of backup protection of that communication."

Examples of electronic communications, which might be stored, are:

- electronic mail;
- computer transmissions;
- telex and fax transmissions;
- digitalized video transmissions;
- mailing/telephone lists;
- other business transactions.

A search warrant is required under Rule 41 of the Federal Rules of Criminal Procedure for government access, unless stored for more than 180 days, at which time access to the records would require less than a warrant.

For collection of evidence involving computer records, (electronic storage), refer to the Law Course for Customs Officers, Electronic Surveillance Section and the Special Agent Handbook Chapter 39, Collection and Preservation of Evidence.

04.00

OTHER METHODS OF EVIDENCE COLLECTION

In the Investigative Case Folder section, the following items are discussed:

- Case Folder Contents
- Case Folder Maintenance
- Case Folder Security
- Case Folder Retention

Physical Surveillance

Physical surveillance as an investigative method is used more than any other method or technique. The Customs Service has adopted a new physical surveillance method. The new method entails the use of coded maps, radio discipline and security, new foot surveillance techniques, the basic steps to cover before conducting a surveillance, and debriefing the surveillance team upon completion of the surveillance activity.

Refer to Special Agent Handbook, Chapter 31, Physical Surveillance.

Photographic Surveillance

The use of photography as an investigative tool is a technique that has been effectively used for many years and photography may be applied in many ways to significantly enhance your investigation. General uses of photography are to identify suspects, residences, suspect vehicles, seized properties, physical evidence, crime scenes etc. Photographs allow you to accurately capture the exact appearance of the subject matter and are far more useful than verbal descriptions. The old adage, "*a picture is worth a thousand words*" is very appropriate to criminal investigators.

In using photography equipment, general rules of search apply. You must recognize and honor a subject's fourth amendment rights and right of privacy. If you are using a camera with high-powered telephotographic lens and you are taking photos of a suspect in the living room of his residence where he cannot be seen from the street without the use of telephotographic lens then a judicial order may be needed. If there is any doubt in your mind regarding whether or not you are invading a suspect's expectation of privacy, you should contact the U.S. Attorney's Office or your Regional or District Counsel's office before conducting the photographic surveillance.

Video Surveillance

Video surveillance has increased dramatically in the last few years with excellent results. It certainly is an asset during trial.

When the Assistant U.S. Attorney shows the jury a film of the violator committing the crime or setting up the crime, it is difficult for the defendant to deny what is on film. Consensual video surveillance is used regularly during covert or sting operations. The important thing you should remember if you are conducting a consensual video surveillance is that the party consenting to the presence of the camera must be present at all times that the camera is operating, with or without audio. If sound is also being recorded you should follow authorization procedures in chapter 40 for consensual monitoring telephone and non-telephone.

A court authorization is not needed in video surveillance occurring in public places such as open fields, public streets, public parking lots, or places where the public has unrestricted access such as hallways in a building open to the public. You should remember though that installation must be lawful and non-trespassory. This public place concept must be strictly video, not video assisted by a sensitive microphone for intercepting aural communication. You are advised to consult with the U.S. Attorney's office or Regional/District Counsel to be certain your video surveillance is considered public. If you plan to use video surveillance where the violator has a reasonable expectation of privacy such as in his office, the video surveillance is equivalent to a search and requires judicial authorization.

Refer to Special Agent Handbook, Chapter 40, Technical Surveillance for policy guidelines.

Technical Surveillance

The Electronic Communications Privacy Act of 1986 was written to cover all forms of communications technology such as wire-tapping, electronic eavesdropping, tracking devices, and reading of electronic mail. All law enforcement activities which involve electronic surveillance fall into four categories: communication interception; stored communications and records access; mobile tracking devices; and pen register and trap and trace devices. As an investigator you should be familiar with the Electronic Communications Privacy Act of 1986.

Refer to the Special Agent Handbook, Chapter 40, Technical Surveillance, and the Law Course for Customs Officers, Chapter 11, Electronic Surveillance section.

04.02

MAIL COVERS

A mail cover is an investigative method by which a record is made of any data appearing on the outside of any class of mail matter in order to obtain information in the interest of (a) protecting national security, (b) locating a fugitive or (c) obtaining evidence of the commission or attempted commission of a crime. This data includes addressee, sender, return address, place and date of postmark, and class of mail.

Authorization for the Postal Service to conduct mail covers is contained in 39 CFR part 233.3. All mail cover requests must be approved by the Chief Postal Inspector or one of his designees, the five Regional Chief Inspectors.

Mail cover requests are limited to law enforcement agencies.

The use of mail covers is considered a valuable investigative method. Therefore, the U.S. Postal Service maintains rigid controls and supervision with respect to the use of this important investigative technique. This is done to assure that the technique is not used indiscriminately and not as the initial or sole investigative effort in an investigation. Mail covers do not provide any access to the content of mail matter. Mail covers do not provide Customs officers any additional access to the content of the mail. Generally, letter class mail (commonly referred to as first class mail) is given greatest protection. Access to such mail even by Customs officers at the border is restricted. Consequently, mail covers do not provide access to the contents and all applicable limitations will continue to apply.

See Chapter 42, Special Agent Handbook and the Law Course for Customs Officers, Chapter 3.

The following guidelines are being furnished to assist you in preparing a mail cover request in those appropriate instances when, during the course of an official criminal investigation, it becomes apparent that mail cover information would be an invaluable aid to the successful conclusion of the investigation. By following these guidelines, you can minimize unnecessary delays in obtaining mail covers by assuring that the required information is contained in the original mail cover request. The omission of pertinent facts delays the implementation of the mail cover, which could result in losing information valuable to the investigation. Mail covers cannot be implemented until all requirements are met, regardless of the perceived urgency of the request.

Due to the sensitive nature of this investigative procedure, all regulations must be stringently enforced. Each mail cover file retained at the Postal Service Regional Headquarters is subject to close scrutiny and as such must contain enough information to stand alone as full justification for the issuance of a mail cover.

Once a request is approved, mail cover information will be furnished to you on PS Form 2009; this document remains the property of the U.S. Postal Service and must be returned to the Regional Chief Inspector's office within 60 days after the mail cover period is terminated. No copying of this form is permitted.

The following are the requirements for a complete and correct mail cover request:

- Mail cover requests must be submitted on agency letterhead.
- Mail cover requests should be marked Restricted Information and addressed to one of the five Regional Postal Inspectors in Charge: San Bruno, CA; Chicago, IL; Bala Cynwyd, PA; Memphis, TN; or Newark, N.J.
- Each mail cover request must stipulate and specify the reasonable grounds, which demonstrate the necessity for the mail cover. Mail covers cannot be authorized for exploratory purposes. Requests will become a permanent part of the mail cover file, which must be made available through appropriate discovery procedures. Reasonable grounds could be based on information from a confidential informant, complaints from the public, previous investigative efforts, etc.
- Fully identify each individual or business to be covered, giving name, address and zip code. When a mail cover request is to include coverage on "All Other Names", justification for doing so must be included.

If you are aware of other names at that address that are not involved in the investigation, you must identify them so their mail is not covered. A statement must also be made if all mail received for delivery at the address is intended for the subject of the mail cover.

- Request only First Class mail is covered unless it is necessary that other classes of mail be included in the cover. If other mail is to be included, a statement must be made establishing the necessity for covering all mail intended for delivery at the address. The following is a brief description of various classes of mail:

FIRST CLASS - Includes letters, postal cards, and express mail, etc., mail sealed against postal inspection.

SECOND CLASS - Newspapers, periodicals, publications, catalogs, etc.

THIRD CLASS - Small parcels which weigh less than 16 ounces; mail not sealed against inspection, such as bulk rate items and circulars.

FOURTH CLASS - Parcels, mail not sealed against postal inspection.

- Indicate the desired cover period. Mail covers are usually authorized for 30 days with extensions of 30 days allowed three times, but they must be fully justified. Unless there are exceptional circumstances indicated, authorization for a mail cover will not be granted during the period from December 4th through December 25th due to the high volume of Christmas mail.
- State what crime is being investigated and cite the applicable section of the law, including the penalty for violating that law. Mail covers will not be authorized for investigations involving a crime that carries a penalty of incarceration for a period of less than one year (misdemeanors).
- No mail cover may include matter mailed between mail cover subjects and their known attorney(s). Give the name of any known attorney at law for the mail cover subject or make a statement that the subject's attorney, if any is not known. In fugitive cases, the name(s) of attorney(s) or a statement that the attorney(s) is not known must be furnished for both the fugitive and the person who is the subject of the mail cover, i.e., a relative or girlfriend.
- Include a statement as to whether the subject is or is not under indictment in connection with the matter under investigation. Except in fugitive cases, no mail cover shall be initiated or remain in force when the subject is under indictment for the matter in which the cover is requested. If the subject is indicted during the mail cover period for the matter under investigation, notify the Regional Chief Inspector to terminate the cover. In fugitive cases, the statement should be made that the mail cover subject(s) has/have been indicted or formally charged, an arrest warrant is outstanding in the appropriate name(s) and whereabouts are unknown at this time. The same information is required in fugitive cases on mail cover subject(s) where the fugitive is not the subject of the mail cover.
- The results of a mail cover will be documented daily on PS Form 2009. These forms will be forwarded to your attention at the completion of the mail cover, routinely. Please include the name and address of the individual that should receive these forms. If you need these forms daily, weekly, or bi-weekly, this fact should be made known at the time of your request.

If liaison has already been established with a local Postal Inspector, please provide the name of the Inspector. It should be noted in the last paragraph along with other special instructions.

PS FORMS 2009 ARE THE PROPERTY OF THE U.S. POSTAL SERVICE.

All PS Forms 2009 must be returned to the Regional Chief Postal Inspector within 60 days after the mail cover has terminated. Copying of these forms is not permitted. This information is not to be used as evidence in court and references to the use of mail covers in criminal or administrative actions should be avoided. You are responsible in assuring that the PS Forms 2009 are properly safeguarded, not reproduced, and returned as required. Special instructions could include return of Forms 2009 during cover period, or notification by local Postal Inspector if a specific piece of mail is received.

04.03

PROFILES

Profiles are an investigative technique utilizing characteristics in developing information to assist you in obtaining articulable facts which amount to "reasonable suspicion". Profiles may vary depending upon geographical area of the country and the mode of transportation being employed. The ability to use these profiles depends upon your ability to draw upon and apply your own experience or that of other Customs officers. Examples of some of the profiles being utilized by Custom officers are as follows:

Suggested Airport Investigation Profile:

- Early 20's to late 30's.
- No reservation.
- Little or no checked luggage.
- Passport indicates frequent travel to source countries or offshore banking countries (i.e., Panama, Colombia, Cayman Islands).
- Illogical travel routes.
- Possesses petroleum jelly, tape and other items used to conceal contraband.
- Weight of baggage abnormal.
- Traveling with one or more empty pieces of luggage.
- Unnecessary multiple ticketing for trip that could be accomplished with one ticket.
- Open return tickets.
- Short turnaround - return scheduled within a few days of departure
- Subjects traveling together but requesting seats in different sections of the aircraft.
- Subject purchases ticket with cash.
- Subject boards flight just prior to departure.

Travel Agency Profile:

- Customer purchases ticket with cash in small bills (\$10, 20, 50).
- Customer's ticket has open return (no scheduled flight).
- Customer's itinerary includes a source country for money laundering/narcotics.
- Customer purchases ticket on day or day prior to travel.
- Customer purchasing ticket is not a regular client of travel agency.
- Customer does not live in the area.
- Customer may request an unusual route or a route requiring a plane change.

Car Rental Agency Profile:

- Customer normally pays for rental vehicle with cash.
- Customer provides foreign or out-of-state identification.
- Identification may be from an area with high incidents of money laundering/narcotics activity such as Miami, Florida; Panama; Colombia.
- Customer reluctant in providing a residence address, instead of using a hotel or local address in area where transaction is occurring.
- Customer normally rents compact to mid-size vehicle.
- Customer may use credit card in another name or have another local contact sign rental agreement.
- Individual usually frequents low cost car rental agencies, i.e., Budget, Dollar, General.

Courier Service Profile:

- Destination or origin to/from a financial laundering source country.
- Vague description of contents.
- Personal drop off and pick up of package at courier office.
- Individual consistently using service for no apparent legitimate business.
- Individual sending package pays for services in cash.
- Individual sending package uses insufficient shipping address on courier bill.
- Size and weight of package is not consistent with described contents on package.

Hotel Profile:

- Provides out-of-state or foreign identification from a source narcotics/money laundering area.
- Pays for room in cash in advance of stay with small denomination currency
- Excessive room charges for in-room meals and/or services
- Telephone charges from room to areas associated with narcotics/money laundering activities.
- Excessive traffic to and from room.
- Reluctant in allowing hotel maids access to room for cleaning purposes.
- Occupants stay in room during cleaning by maid.

- Narcotics/currency laundering paraphernalia may be observed in room; i.e., scales, rubber bands, beepers, tape.
Excessive baggage in room for length of stay or number of guests; i.e., four suitcases for one person staying overnight.
- Individual registering reluctant to provide clerk with identification.
- Individual registering provides incomplete or illegible information on registration card.

Financial Institution Profile:

- Currency is in \$10, \$20, or \$50 denominations wrapped in rubber bands.
- Individual normally does not count currency prior to transfer of money to teller.
- Cashier's check is made payable to common first and last names (Gonzales, Lopez, Smith, Garcia).
- Name of purchaser appearing on cashier's check does not fit individual (oriental male identifying himself with a Latin last name).
- Purchaser is hesitant to provide identification during purchase of cashier's check (does not want 4789 form filed).
- Converts the cash from small denominations to large denominations.
- Converts the cash into cashier's checks/money orders for amounts less than \$10,000.
- Currency may be bundled in mixed (\$10, \$20, \$50) denominations.
- Currency deposit may be immediately converted into another negotiable instrument or wire-transferred.
- Purchaser usually does not possess an account at the institution.
Individual conducts similar transactions at multiple banks in the same area on the same day or consecutive days.
- Well dressed, usually with coat and tie.
- Has trouble with English language, therefore individual uses a written note passed to the teller with the names of the payee and remitter.

Potential Illegal Exports:

- The customer or purchasing agent is reluctant to provide end-use or end-user information.
- The performance of design characteristics is incompatible with consignee's line of business or the environment or level of technical development in the stated country of destination.
- The stated end use is incompatible with the product's capabilities.
- The stated end use is incompatible with the technical capability of the consignee or the destination country.
- The customer is willing to pay cash for a large value item.
- There is little or no business background information about the customer available.
- The customer appears unfamiliar with the product's performance characteristics or uses.
- The customer declines installation, training, or maintenance services that are normally accepted in similar situations.
- The delivery dates are vague, or the delivery locations are not consistent with normal practices for the commodity.
- Freight forwarders are listed as ultimate consignees.

- The shipping route would not normally be used for shipments to the stated final destination.
 - The intermediate or ultimate consignee is in a business that would not normally handle this type of transaction.
 - Packaging or repackaging requirements are unsuitable for the stated method of shipment or destination.
- Evasive responses are given to questions about any of the above or to whether the equipment is for domestic use, export, or reexport.

Remember, these profiles are to assist you in obtaining articulable facts which amount to "reasonable suspicion".

04.04

LINK ANALYSIS / CHARTING

There are numerous techniques used for the analysis and charting of physical evidence. The two methods most frequently used are link association and telephone toll charting. Link association charting can be described as the organization of bits and pieces of information to facilitate understanding of the evidence gathered which highlights further investigative requirements or identifies new leads. This analysis will identify relationships among individuals, companies, and/or organizations.

Development: Raw data gathered during an investigation must be collated into complex and detailed written reports. This raw data is frequently voluminous (e.g., bank records, broker files, manifest reports, etc.) which imposes the problem of putting the information together in an organized way to extract meaning from the assembled records. Link analysis is a technique designed to assist an agent with this task.

Link Analysis is a two-step process:

1. Develop a link diagram:

- Assemble raw data, files, reports, records, etc.
- Determine the focus of the diagram, i.e., person, businesses, organizations.
- Construct an association matrix entering the entities, which have been identified as the focus of your diagram. This matrix is in the form of a right triangle similar to an atlas mileage chart. All identifiers will be written on the hypotenuse with corresponding columns and rows filling the triangle. Alphabetically list the identities in ascending order. First list persons, followed by businesses or organizations, again alphabetically and in ascending order.
- Code the associations in the matrix. Use matrix symbols, which will identify the relationship between the entities, listed which shows confirmed or unconfirmed associations.

Common codes are: circles for unconfirmed relationships; filled in circles for confirmed relationships; a plus sign for a principal of a business; and a perpendicular line from a horizontal line indicates an unconfirmed principal of a business.

- Determine the total number of associations for each entity. This is useful in starting the diagram. Place the most active entity in the center of the diagram and build the association chart around this point. In determining the most active entity, include both confirmed and unconfirmed symbols identified on the matrix.
- Draw a preliminary diagram using symbols to identify the entities. These symbols can be anything you wish to use but the most common and universal symbols are circles for persons and squares or rectangles for businesses/organizations. These symbols then are connected with lines, solid for a confirmed association or a broken line for an unconfirmed association. The symbols must be large enough to enter the names of the person/business/organization that has been identified on the matrix. Don't worry about crossed lines at this point; just be certain to transfer ALL information from the matrix to the diagram.
- Clarify and replot the diagram. The preliminary diagram, if accurately transferred from the matrix, is a correct depiction of the associations. However, crossed lines tend to cause confusion and make interpretation more difficult. The final diagram should be as simple and clear as possible so your audience (RAC, SAC, AUSA, Grand Jury, trial jury) will better understand what you have identified on your association chart.

2. Hypothesis development which is described as a tentative explanation, a theory, that may need more information to confirm or deny what your diagram has identified from the known information at a given point (date and time) in the investigation. More than one hypothesis may be developed to explain the same set of data. Further data collection may be necessary to confirm or reject this hypothesis. This is the "hypothesis testing" which leads to your final product, a conclusion, a prediction, or an estimate, which must be logically supported by your investigation reports and physical evidence.

Link analysis and charting will usually be performed by an Intelligence Analyst but the availability of an Analyst is not always timely with the needs of an investigator. Thus, the basic knowledge of charting methods should be attained by field Agents. Examples of a matrix and linkage forms can be obtained from Regional Intelligence Branches.

04.05

TELEPHONE TOLL ANALYSIS AND CHARTING

The link analysis approach can be applied to the manual analysis of telephone tolls or pen register traffic. Minor modifications are required if the analysis is to go beyond a description of the network of telephone listing associations. Other areas of interest associated with telephone toll analysis are:

- who initiated the call;
- who received the call;
- the frequency of calls between two or more numbers.

Telephone toll analysis using computer software programs can assist in identifying many more areas of interest such as:

- date of call;
- time of call;

- length of call;
- third party calls;
- common calls;
- persons involved in the conversation (Title III information);
- criminal activities discussed (Title III information);
- other names of persons, businesses, vehicles, aircraft, bank accounts, etc. mentioned during the conversation (Title III information).

Manual Toll Analysis:

The first step in manual telephone toll analysis is the construction of a matrix. This matrix is slightly different from the link association matrix but has the same basic concept. For tolls, the matrix takes a square or rectangular shape, depending on the total number of subscribers and the total number of unique telephone numbers called.

The subscribers' telephone numbers are arranged in numerical order starting with the area code, prefix and suffix. These numbers are then listed down the left or vertical axis of the matrix in ascending order indicating the initiation of a call "FROM". The horizontal axis across the top of the matrix will indicate a call received "TO". The calls to individual numbers will be far more numerous than the number of known subscribers so your matrix will actually be in the shape of a rectangle rather than a square. These same subscriber numbers will also be listed across the horizontal axis prior to the individual telephone numbers identified from the tolls. This will show the association between the known subscribers without intermingling the other numbers. After listing the subscribers in both the vertical and horizontal axis, you now will list all of the numbers called by the subscribers, numerically, in ascending order left to right. A numerical listing is suggested when there are numerous telephone numbers that have been called and must be listed on the matrix. This will help you in locating the number called and the correct "cell", in which to show a call received from a specific subscriber, without having to scan the entire list. To locate this "cell", use the "triangulation" method which is the point where two lines would meet if you draw a line directly across, left to right, from the subscriber number, and directly down from the telephone number receiving a call. This is the same method used on road maps when you want to find the distance between two cities.

You now will transfer the information from the toll records to the matrix. Each call will be shown by marking a "tic" or "I" in the cell located by the triangulation method which identifies a call "from" a subscriber "to" a specific telephone number.

After all calls have been transferred from the toll records to the matrix, you will now be able to identify:

- the total number of calls made "FROM" each subscriber "TO" specific numbers;
- the total number of calls received by a specific telephone number "FROM" a subscriber; the total number of calls received by a specific telephone number "FROM" two or more subscribers.

As with link association charts, you should now identify the total number of calls "FROM" and "TO" which will identify:

- The most active participants in this organization. Not only is this beneficial in the start of your link diagram but it also identifies the most activity on a specific telephone if a pen register or Title I is being contemplated. All associations on a telephone toll link chart will be shown by solid (confirmed) lines. However, the diagram is modified slightly to identify two additional pieces of information:
- The direction of the call (incoming or outgoing). This is indicated by adding an arrow on the connecting line. The total number of calls (frequency) made between two telephone numbers. This is indicated by placing a small circle on the connecting line just before the arrow and inserting the total number of calls received by this number inside the circle.
- A preliminary diagram should be constructed and checked to be certain all information has been transferred from the matrix to the link chart. You then will replot the diagram, as in link association charting, to make your final chart as simple and clear as possible so the viewer can easily understand the associations you have identified in your telephone toll analysis.

The final step is to run the subscriber checks to identify, by name, the individual telephone numbers that have been found in the toll analysis. The subscriber name will then be transferred to your chart. You now have a link association chart but modified to show the direction of calls and the frequency of calls.

Telephone Analysis System (TELAN):

For information concerning the use of TELAN contact the Office of Data Systems, Law Enforcement Systems Division, Newington, Va.

The TECS II TELAN system is used to process telephone call information. The information is obtained from telephone billing statements, pen registers or phone lists, stored in active and history files, and processed for reporting. Requests for TELAN processing must be in the form of a memo from SAC, ASAC or equivalent. The memo should contain the following:

- name, phone number and mailing address of the case agent;
- 14 digit case number;
- type of court order used to obtain the records, "summons", or "grand jury subpoena". Special handling is required for documents obtained through a grand jury subpoena. Contact person for specific information about grand jury processing procedures can be obtained by calling the ODS office in Newington, Va.;
- time restrictions or due date:
URGENT-----needed immediately;
EXPEDITE-----as soon as possible;
DUE DATE-----by date;
- type of investigation:
ON-GOING-----future additions to case file are expected;
NOT ON-GOING---no future additions expected.
- Suspect identification, such as name, address or phone number, should not be included on the memo.

- Copies of toll bills, not the originals, should be attached with the memo and mailed to: Grand Jury documents--Contact ODS, LESD, Newington, VA. Documents should not be mailed until approval of the TECS II Data Center in Newington has been received. In this process the data center will advise you of the names of the individuals who will have access to the Grand Jury records so that you can include them on the 6(e) list with the U.S. Attorney's Office.
- Other TELAN documents:
U.S. Customs Service
Law Enforcement Data Center
P.O. Box 85145
San Diego, Ca., 92138
Attn: Data Entry Center

The reports will be produced and mailed at the TECS II Data Center in Springfield, VA.

Types of reports:

- Sequential listings by case number.
- Case records are listed in sequence by:
 - "to" number;
 - "from" number;
 - call date;
 - area code.
- Match listing of related cases. Cases related by phone numbers are identified and listed with the numbers. Grand Jury obtained toll records do not become part of any record matching database. All other records do and the user is provided a match list of other phone numbers in the data base that match his. Likewise, his/her records become part of this database for future matching purposes.

For information about processing phone lists or pen registers, or any TELAN questions, call: Special Operations Branch, Special Investigations Division in Headquarters.

The Special Operations Branch also has a toll analysis program designed to work on a PC to support pen register installations. For a copy of this program or more information call FTS 535-6539.

04.06

LETTERS OF ROGATORY

A Letter Rogatory is a formal written communication sent by a U.S. court in which an action is pending, to a court or judge of a foreign country, requesting that the testimony of a witness resident within the jurisdiction of the foreign court be formally taken under the foreign court's direction and transmitted to the U.S. court. These procedures are initiated by the local U.S. Attorney and proceeded with by the Department of Justice with the foreign court system. This

procedure should also be coordinated with the appropriate CA/SCR.

5.00

SOURCES OF INFORMATION

Any record, custodian of records, directory, publication, public official, or any other person or object which might be of assistance to an investigation.

Refer to the following chapters of the Special Agent Handbook for specific Customs and non-Customs sources unique to the major investigative disciplines:

- Chapter 2 - Interdiction Strategy
- Chapter 3 - Child Pornography Investigations
- Chapter 4 - Financial Investigations
- Chapter 6 - Strategic Investigations
- Chapter 7 - Smuggling Investigations
- Chapter 8 - Fraud Investigations

05.01

U.S CUSTOMS SERVICE

TECS II: The Treasury Enforcement Communications System (TECS) is a database system that is composed of enforcement/inspection/intelligence records and reports. TECS II users process, update, and maintain data in the system. Subject records, case data, source documentation, investigative reports, SASs, MOIRs, and many administrative tasks can all be completed using TECS II. The data can be used to meet operational requirements, enforcement research, subject identifications, and for statistical reports. TECS II has access to various other law enforcement databases, which ultimately assist Customs employees to track and identify, subject and source data. A working knowledge of the system and its structure will assist you in accessing transactions and performing the task at hand. Refer to the Special Agent Handbook, Chapter 57, TECS II Procedures.

ACS: The Automated Commercial System (ACS) is the comprehensive commodity system of the Customs Service. Anyone who moves or releases cargo, makes entries, files protests, incurs penalties, faces a seizure, pays or obtains refunds on duties, or conducts any other international business may be of record with ACS. Proper ACS queries and analysis can result in the linking and/or association of individuals, companies, and merchandise through name similarities, addresses, importing methods, etc. Refer to the Special Agent Handbook, Chapter 58, Automated Commercial Systems Procedures.

RID: The Regional Intelligence Division (RID), under the ARC(E), provides direction, guidance, and management to the Customs intelligence function at the Region and subordinate levels. The Division provides technical advice on all aspects of the Customs intelligence system and serves as a point of coordination and contact with the Office of Intelligence at Headquarters. The Division coordinates the collection, reporting, analysis, and dissemination of intelligence within the region and is responsible for providing direct and timely analytical support to inspectors, import specialists, and investigators. The Branch provides finished analytical reports to regional users as required. Further, the resources of the Branch support ongoing enforcement

operations and investigations in areas of interest. Inspection and Control: Inspection and Control (I&C) develops, implements, and manages programs for the inspection of persons; the examination and inspection of baggage and cargo arriving in the United States; control of vehicles, vessels, and aircraft arriving and departing; control of merchandise in Customs custody; military advisors; and export control activities.

The District I&C offices maintain vessel and private aircraft arrival/departure logs, baggage declarations, informal entries, and cargo discharge records. Some Districts have Manifest Review Units (MRU) and/or Document Analysis Units (DAU) that review manifest and/or entry documents and apply selectivity criteria and profile information to target shipments for further document review or intensive cargo examination for fraud or narcotics interdiction purposes. The Operational Analysis Staff (OAS) creates and maintains the ACS cargo selectivity database. Designated Intelligence Officers-Operations (DIO-O) inspectors and Contraband Enforcement Teams (CET) also function at many ports and are primarily concerned with narcotics interdiction.

The local Customs Inspectors have detailed knowledge of cargo and carrier activities, port functions, vehicle/pedestrian movements, and profiles of suspect activity.

Classification and Value: Import specialists classify, appraise, and determine the admissibility of imported merchandise. The Import Specialist reviews documents and laboratory reports, examines samples and business records, interviews importers, and maintains commodity files. The District Classification and Value/Entry Division also maintains custody of the formal and warehouse entries, in-bond documents, export declarations, entry bonds, broker and broker employee files, and collection and refund files. The District FP&F Officer processes all penalties and seizures and manages the national seized property contract.

Foreign Offices: The Office of Enforcement provides Customs Attaches (CA) and Senior Customs Representatives (SCR) in twenty overseas posts of duty. For information on the International Enforcement Branch, foreign travel, requests for overseas investigation, areas of responsibility, Mutual Legal Assistance Treaties, etc. refer to the Special Agent Handbook, Chapter 34.

International Enforcement Operations. Due to the variations from country to country, procedures for the following should be handled directly with the appropriate CA/SCR:

- Deposing foreign witnesses.
- Foreign search warrants.

Customs Library, Washington, D.C.: Established in 1975, the Library and Information Center is a research facility which offers a full range of information services to Customs Headquarters and the Regions, utilizing the new technologies with an optimum balance of cost, effectiveness, and compatibility with other information networking systems in support of the Customs mission. Some examples of their resources include:

- Dunn and Bradstreet reports - 14 million companies on-line.
- LEXIS - legal database including court cases and reports.

- NEXIS - general business news database, 16 newspapers, 49 journals, 14 wire services, and 54 newsletters.
- DIALOG - 300 plus databases of business journals, indexes, trade publications, etc.

You should contact the Library directly for research assistance and to determine additional support services, which they may provide.

Customs Issuance System (CIS): Used to communicate policies, procedures, instructions, and guidelines for internal management of the Customs Service. There are two basic components: The Policies and Procedures Manual (P&PM); and other series of issuances that complement the Manual.

The P&PM is divided into five parts that correspond to the major functional activities of the Customs Service.

- Management – I
- Staff – II
- Operations – III
- Enforcement – IV
- Administration – V

The P&PM issues permanent policies via:

- Policy statements;
- Customs Directives;
- Handbooks - e.g., Special Agent Handbook;
- Temporary Directives.



Other Issuances consist of:

- Legal Determinations;
- Copyright, Trademark, and Patents – recordation;
- Information Notices;
- Change documents.

The Key Word in Context (KWIC) Index and the Numerical Index are the primary reference guides for finding issuances on any subject in the CIS. In general, the indexes enable you to do four things related to the CIS issuances:

- Determine if an issuance exists on a particular subject;
- Determine where you can find it;
- Determine if you have all of the issuances; and
- Determine which issuances are obsolete.

The KWIC Index contains all of the permanent CIS issuances listed in alphabetical order by the key words of each issuance subject.

Customs Laboratories: The Customs Laboratory System consists of six laboratories and a research laboratory located in the United States, and one laboratory located in San Juan Puerto Rico. The U. S. labs are located in New York, Savannah, New Orleans, Los Angeles, San Francisco, and Chicago. The laboratories are under the direction of the Director, Office of Laboratories and Scientific Services in Washington, D. C. Each laboratory provides services to a specific geographic region. These services consist of analyzing imported merchandise, generally to assist in determining its proper tariff classification, and of providing other forms of technical support to Customs officers, including forensic analysis for criminal investigations.

All laboratories are capable of providing technical information or service in almost any area of concern. If a Customs laboratory cannot provide the requested service they generally have contact with other laboratories that can provide the required service. These contacts include other enforcement agency laboratories such as the FBI, DEA, state and local agency laboratories, private laboratories, and university laboratories.

If you require the services of a Customs laboratory in the course of your investigation you should initially contact the appropriate laboratory by telephone to discuss your specific needs.

Laboratory personnel will advise you of any special packaging or handling requirements for the materials you are submitting for analysis, as well as any unique procedures for processing such materials. Advise the lab director if laboratory personnel will be expected to testify in court. If testimony of an expert witness is needed, that may be a factor in determining which lab personnel will conduct the analysis.

Materials submitted to the laboratory will, in most cases be evidence and must be handled as such. A CF-6051 (Customs Receipt for Retained or Seized Property) must be submitted to the laboratory with the evidence in order to maintain the chain of custody. A laboratory label (CF-6479) should be affixed to the submitted material. Materials submitted to the laboratory using the U.S. Postal Service should be sent Registered Mail, Return Receipt requested. This will insure a signature paper trail of submitted materials.

When dealing with the analysis of controlled substances you will, in most instances be required to utilize Drug Enforcement Administration laboratories. Evidence submitted to DEA laboratories will be submitted in accordance with the policy of that agency. Refer to the Special Agent Handbook, Chapter 9, Drug Smuggling Investigations.

05.02

INTERPOL

The International Criminal Police Organization (INTERPOL) was created to foster mutual assistance between international law enforcement authorities. Its charter and mission has primarily been utilized as a police to police communications network between the current 150 member countries.

Each country has a National Central Bureau (NCB) at which requests for investigations are processed and disseminated to the appropriate country or to the appropriate police authority. Oversight responsibility for the U.S. NCB function currently rests with the Attorney General and the Assistant Secretary of the Treasury for Enforcement.

Establishment, operation and structure of the individual NCB is determined by the member country. The U.S. NCB has 14 criminal investigative agencies, with an investigative staff of 20, and over 60 persons in support roles. The U.S. Customs Service is represented by one Senior Special Agent and a Supervisory Special Agent in Washington D.C. and one Senior Customs Representative assigned to the INTERPOL Headquarters, Lyon, France. The INTERPOL function facilitates police matters that transcend international jurisdictions. The U.S. NCB coordinates and facilitates requests between foreign police organizations and law enforcement agencies in the U.S. for information regarding persons, vehicles and goods that bear on criminal matters within their respective jurisdictions. The U.S. NCB provides efficient police communications between the United States and member countries.

Customs Usage:

- Criminal history and character checks on persons/corporations.
- Surveillance of persons/things in foreign countries.
- Extradition/provisional arrest requests.
- Investigations in countries without Customs Attaches and when requested in conjunction with Customs Attaches.
- Telephone subscriber information.
- Exchanges of information between foreign and domestic police forces regarding persons/corporations.
- Vehicle registration and VIN number checks.
- Preparation and dissemination of International Wanted/Lookout Notices regarding persons and merchandise.
- Detention/seizure of merchandise in dispute.
- Data about the identity of persons (photographs, fingerprints, etc.).
- Tracing of missing persons, witnesses, accused parties or informants.
- Transmission of extracts from public registers, i.e.: court documents, land acquisitions, birth/death/marriage certificates, etc.
- Demands for assistance based on Mutual Assistance.
- Treaty/Agreements.

INTERPOL Communications Methods:

The U.S. NCB is equipped with radio, cable, telex, facsimile (272-8147); photofax (272-8148); TECS (TINT); NLETS (DCINTEROO); and telephone (272-8383). Communications can be virtually instantaneous to member countries and domestic law enforcement entities. The above listed telephone numbers are on the FTS system.

Requesting Investigative Assistance:

To contact the U.S. NCB, you may use telephone (ask for the Customs Rep.), TECS (Admin), NLETS, memorandum, or Report of Investigation. Include what information is desired and which countries you wish the NCB to contact. Provide as much identifying data on the subject/corporation as is possible. U.S. NCB personnel are sensitive to, and operate under, the restrictions of the Privacy Act, the Freedom of Information Act, the Financial Privacy Act, third

agency rules, etc. The U.S. Customs Service policy is that INTERPOL will be used as a complement to its Country Attaches and Representatives.

05.03

OTHER LAW ENFORCEMENT AGENCIES

The other law enforcement and government agencies in your area may be very useful sources of information. Listed below are some agencies that may have pertinent facts useful in your investigation. This list is not all-inclusive, and agency names and functions may vary from jurisdiction to jurisdiction. A little creative thought can go a long way in advancing your investigation with a minimum of work on your part. In addition to the official departmental records, state and local law enforcement officers often have information relevant to a Customs investigation. You should establish points of contact with task forces; strike teams, and correctional facilities operating in your area.

Local regulatory agencies also maintain files, which can provide useful information. Building plans maintained by the building inspector's office might help with raid planning. City licenses or permits, and/or tax records may lead to other suspects, and the fire and health departments may have hazardous materials information.

State regulatory agency records can include business names, taxation records, and may include some of the information on a statewide basis suggested under Local agencies.

Other federal agencies, both in and out of law enforcement, will have files and information, which may assist you in your investigation. There are hundreds of agencies, bureaus, boards, and commissions, so it pays to be creative and consider who in the federal government might regulate any facet of the operation you are investigating.

El Paso Intelligence Center (EPIC): EPIC maintains various extensive data systems including information on individuals, aircraft, vessels, Immigration, and general enforcement monitoring. FTS 570-6045 or (915) 534-6045.

Refer to the Special Agent Handbook, Chapter 22, Other Agency Cooperation.

05.04

PUBLIC RECORDS

Public records are generally records kept by local, county, state, or Federal government that are accessible to the public. When you review these records it may be advisable not to identify yourself to avoid untimely notification to the target that he is under investigation. They are useful in various investigations and are used in three ways:

- To establish leads locating witnesses and identifying property
- To corroborate or dispute the testimony of the subject or witness
- To establish or support a financial starting point in net worth investigations

City/County Records include Property Records, Deeds and Mortgages. Real estate records, which show the buying, and selling of real estate are usually called grantee/grantor records or

mortgagee/mortgagor records. The grantee or mortgagor is the buyer and the grantor or mortgagee is the seller or bank. These records are often maintained in county court houses. The transactions are recorded both chronologically and alphabetically in registers, and depending on the county, are maintained in hard copy, microfilm or fiche. The indices will be maintained by seller (grantor) and buyer (grantee).

Record Review Procedures:

- Go to the appropriate Clerk of Court's office.
- Select Grantee index book if attempting to determine if subject purchased property.
- Use Grantor book for property sales.
- When you locate subject's name in book, it will refer to the book number and page number.
- Locate warranty deed, mortgage or quitclaim deed in appropriate book.
- Deeds and mortgages can be copied or transcribed. After obtaining the name of Mortgage Company, a subpoena can be served to obtain financial statements and credit history.

Tax Assessors Records on property are:

Recorded by street address, taxpayer's name and a legal description of the property. Some counties include personal property records, i.e., aircraft, boats, vehicles, etc.

County Engineer's Office: Each county is mapped by county engineers. Every lot is marked on the plat maps. Information from these maps can be used for surveillance and for directions to the property when executing search warrants.

Building Inspector's Office: Generally each building permit must be obtained by filing an application together with copies of the plans. Plans can be used for pre-raid briefings, etc.

City/County Water Department Records: Records will indicate the subscriber to water services. Could be a source to identify bank used by the suspect. Records might reflect credit information or occupation.

Civil Actions (Civil Index) are generally maintained by Court Clerk's office in every county.

These records show:

- Judgments - A court order creating or affirming an obligation.
- Liens - The right to take and hold or sell property for a debtor as security for payment of debt.
- Divorce - Ex-spouses may make good sources of information or witnesses.
- Probate - Legal establishment of the validity of wills.
- Business Licenses: City or county business licenses may include background data.

County Registrar of Voters: These records contain the application completed by those persons who elect to register to vote. These applications generally show the registrant's full name, birth data, address, occupation, and parents' names.

State Corporation Commission

Domestic corporations must incorporate under the state laws and must file their articles of incorporation with the Secretary of State. They may also be required to file a financial statement with the State Franchise Tax Board or other state agency responsible for collecting business/sale taxes. The following information is available:

- Name of corporation;
- Corporate number
- Date of incorporation
- Names and addresses of the president and agent for service of process. Most states allow law firms to file corporate documents listing the firm as officers, until such time as the report and/or minutes are filed for the first annual meeting, at which time the identity of the true corporate structure is required. This system permits true ownership identities to be unknown through name checks; Names of corporate officers; Original articles of incorporation; Current status and standing of corporation.

Foreign corporations need only file an application for license with the Secretary of State attesting to the fact that they are chartered in another state and provide a name and address within the state where notice of legal action against that corporation can be served.

Some states, such as California, may have a Department of Corporations, which can supply information such as corporate permits, stock issuance, advertisements, and prospectus.

Most states will furnish the majority of information over the telephone.

05.05

BUSINESS RECORDS

Business Records: those journals, books of accounts and other records, which shows or details the investments of capital, labor and management in an undertaking for profit. (Black's Law Dictionary) Business records exception: an exception to the "hearsay exclusion rule" allows original, routine records (whether or not part of a "Business") to be used as evidence in a trial even though they are hearsay.

Business entry rule: exception to hearsay rule which allows introduction of entries made in usual course of business into evidence though person who made such entry is not in court. (Fed Rules Evidence, Rule 803(6); 28 USC 1732)

Types of Business Records:

Corporate Charter: A document issued by a State agency or authority granting a corporation legal existence and the right to function and conduct business as a corporation. (Public Record)

- Company Contracts: documents of unions or associations of persons for carrying on a commercial or industrial enterprise. (Subpoena or Warrant)
- State, County and City Business Licenses: documents issued by local agencies, granting a business or corporation authority to operate within the bounds of various local laws. (Public Record)
- Property Records, Deeds and Mortgages: such records show the buying and selling of real property, and are usually located at the county courthouse. (Public Record)
- Utility Records: Telephone tolls and non-published subscriber information. Published subscriber information.
- Electric, Gas and Water subscriber information.

05.06

CREDIT AND BANKING

When you obtain information from credit companies and banks there are two Federal laws that will affect your access to these records. These laws are as follows:

THE RIGHT TO FINANCIAL PRIVACY ACT

The Right to Financial Privacy Act in its simplest terms established procedures for the federal government's access to, and a financial institution's disclosure of the financial records of its customers. A financial institution can be a bank, savings and loan, credit company, and others. A record is described as an original, copy, or information known to have been derived from any record held by a financial institution pertaining to a customer's relationship. Customers do not include corporations or partnerships of six or more.

The Act also provides for notice to the customer and affords the customer the opportunity to challenge government access except in specific situations where a delay of customer notice is authorized. The Act also generally prohibits the government's transfer of records obtained under the Act to another government agency or department without meeting certain requirements and following certain procedures. Access to financial information may also be restricted or prohibited by state or other laws.

FAIR CREDIT REPORTING ACT (15 U.S.C. 1681-1681t)

The Fair Credit Reporting Act restricts the availability of information from consumer reporting agencies. A consumer reporting agency may furnish consumer reports only under three circumstances:

- In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a federal grand jury;
- In accordance with the written instructions of the consumer to whom it relates; and
- To the persons intending to use the information for specified business transactions (e.g. employment purposes, prior to credit transactions, license eligibility).

No other release, including to law enforcement agencies, is permitted. Section 1681f does allow a government agency to obtain certain identifying information (name, address, former address, place of employment, former places of employment) without restriction.

Violations of the Act may give rise to criminal penalties for obtaining information under false pretenses and for unauthorized disclosures by officers or employees of consumer reporting agencies, as well as civil damages.

You should do a complete review concerning the above listed laws for the legalities of obtaining documents and information from credit companies and banks.

Refer to the *Special Agent Handbook*, Chapter 4, Financial Investigations and to the Law Course For Customs Officers, Chapter 9, Currency.

Dunn & Bradstreet

Dunn & Bradstreet is a national credit service company that provides financial information/analysis on Foreign and U.S. companies. It provides a detailed spreadsheet presentation of a company's financial statements based on 14 Key Business Ratios, and includes a line-by-line comparison to its own industry for up to three years. It also provides background history on the company's principal officers, and an overall picture of the company's operation. The above report can be of great help to you, but remember, all the information provided to Dunn & Bradstreet is submitted by the individual company. Dunn & Bradstreet reports can be obtained from the Customs Library.

Credit Bureaus

There are many local and national credit bureaus. Some examples of these are: T.R.W., The Associated Credit Bureau, and the International Credit Association. These local credit bureaus will vary from state to state and you should become familiar with the one in your area. Information from credit bureaus can include all known addresses, employers, creditors, any bankruptcy filings, lawsuits, spouses, outstanding loan balances, and any creditor inquiries concerning an individual.

Department Stores

Various information can be obtained from department store records and should be used as an investigative tool. Information from department stores can include types and dates of purchases, the original credit application form, addresses, a list of other credit cards, spouses, employment, and current balances concerning an individual.

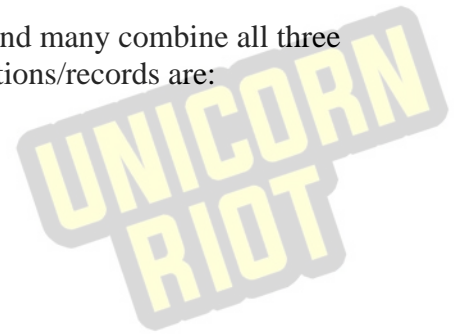
Banks

Bank records are perhaps the single most important financial source available to you as an investigator. In addition to their use as evidence to prove a criminal violation, they may provide leads on sources of funds, expenditures, and personal affairs. Banks are classified primarily by their major services and are listed as follows:

- Commercial Banks (offer businesses and individuals such services as checking accounts, loans, exchange instruments, etc.)
- Savings banks and savings and loan associations (handle savings accounts and mortgage loans)
- Trust companies (handle property for others under various types of fiduciary accommodations)

Banks are organized under either state or national banking laws and many combine all three services, as well as other financial services. The basic bank functions/records are:

- Receive deposits
- Pay checks and drafts
- Transfer funds
- Make loans
- Collect sundry financial instruments
- Hold and administer property for others



Remember, the Right To Financial Privacy Act will affect your ability to obtain documents and information from banks. Bank records can be a valuable investigative tool, but they must be obtained properly and legally.

Refer to the Special Agent Handbook, Chapter 4, Financial Investigations and Chapter 24, Methods of Tracing Funds.

06.00

CHAPTER CROSS REFERENCES

SPECIAL AGENT HANDBOOK CROSS REFERENCE CHAPTERS:

Due to the wide variety and scope of topics covered within this chapter and the numerous references to other Special Agent Handbook chapters it is not deemed useful or appropriate to cite all such chapter references on this page.

The reader is referred to current and future Special Agent Handbook chapters for additional information at the end of each topic discussion when appropriate.

SPECIAL AGENT HANDBOOK

CHAPTER 24

USCS OI SPECIAL AGENT HANDBOOK METHODS OF TRACING FUNDS

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METHODS OF TRACING FUNDS

CHAPTER 24

01.00

GENERAL INFORMATION

It is known that the large amounts of money generated by smuggling organizations, organized crime, and other illegal organizations will leave a trail of financial and business records. If this paper trail is followed, it can tell a complete story, revealing the identity of major violators, and provide the principal or corroborative evidence of a criminal offense. It also forms the basis for civil proceedings to seize and forfeit bank accounts or property purchased with the proceeds of or assets associated to illegal activities.

When tracing funds or proving income, it will be difficult to find concealed money or hidden assets. Organizations and individuals will try to disguise the money and make it appear to be legitimate. The methods of exchanging wealth take many complex forms. As an investigator you will be challenged to uncover their hidden assets. If assistance is needed in tracing these hidden assets, FINCEN, and special agents from other agencies with financial investigation jurisdiction, such as the Internal Revenue Service or auditors with Customs or other agencies can be a valuable resource.

This chapter presents various investigative methods and techniques for tracing funds. In addition, this chapter places more emphasis on how and where to obtain financial information and less emphasis on conducting a complex audit of an individual or business.

02.01

LEGAL CONSIDERATIONS

The principal goal in applying this chapter in investigations is to gather information that can be used in court, i.e., relevant and competent evidence. In many cases the disposition of assets will rest entirely on the admissibility of the evidence establishing the basis for forfeiture. Some of the methods outlined in this chapter can be tedious and require substantial amounts of time and patience. This is why basic legal principles relating to the acquisition, preservation, and use of evidence are critical. Failure to properly apply these principles in all investigative actions can cause your product to be of little or no value as admissible evidence. The first part of this section directs you to sources relevant to these principles.

Financial Privacy Act:

Tracing funds and conducting investigations in the financial arena requires that we often obtain records from financial institutions. Frequently these financial records have a statutory expectation of privacy created by the Right to Financial Privacy Act.

Failure to follow strict guidelines as prescribed by the Right to Financial Privacy Act can result in mandatory disciplinary proceedings. The balance of this section deals with familiarizing you with the Right to Financial Privacy Act as it relates to investigations conducted by Customs.

02.02

LAWS OF GENERAL EVIDENCE

Defining the classifications of evidence, being able to distinguish between them, and methods of collecting this evidence, will be found in:

- Chapter 4 - Financial Investigations
- Chapter 12 - Investigative Methods
- Chapter 35 - Interview Techniques
- Chapter 39 - Collection and Preservation of Evidence

Determining the admissibility of evidence by applying the various rules of relevancy, hearsay, etc., will be found in:

- Chapter 39 - Collection and Preservation of Evidence

02.03

FINANCIAL PRIVACY ACT

It is strongly suggested that you stay abreast of precedent setting legal decisions through review of the Enforcement Law Letter. Any legal questions should be referred to the appropriate Customs counsel and your U.S. Attorney's Office. Individuals in the United States are protected from unreasonable search and seizure by the Fourth Amendment to the Constitution. We are thus secure in knowing that our papers and effects in which we have a reasonable expectation of privacy are not subject to indiscriminate search or review by the government.

In the post-Watergate era, Congress became aware that financial records were routinely obtained by the government for investigatory purposes. Often the records were simply given to agents by the financial institutions, not allowing the individual any opportunity to object to the use of the records by the government. There was nothing to prevent agents from conducting broad fishing expeditions in the financial arena, or from having unabridged access to a person's financial records. This was true if a banker could be persuaded or coerced into parting with the financial records or if a banker offered them to help the agent.

In 1978 Congress enacted the Right of Financial Privacy Act, 12 U.S.C. 3401, et. seq. The Right of Financial Privacy Act creates a statutory procedure for access to financial records by the government and the release of the records by banks. It provides for civil penalties for violation of the Act.

The Right of Financial Privacy Act Simply Stated:

- Restricts federal government access to the financial records of customers maintained by financial institutions.

- Restricts a financial institutions disclosure of the financial records of its customers. Definitions (see 12 USC 3401 for complete definitions) financial institution is basically any bank, savings and loan, credit union, or consumer finance institution. Only institutions located in the U.S. or territory of the U.S. Government means any agency or department of the United States or any employee or agent thereof.
- Customer means any individual or partnership of five or fewer individuals who utilized or is utilizing any service of a financial institution.
- Records of corporations and of partnerships of six or more individuals are not protected by the Right of Financial Privacy Act.
- Financial record means an original of, a copy of, or simply information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution. Records protected by the Financial Privacy Act include, but are not limited to:
 - Any original or copy of almost anything an institution has pertaining to a customer.
 - Information given verbally by a bank employee to you which deals with a customer's relationship with the bank.
 - Information which you may glean from a computer screen while talking to bank employees who may be checking something for you in the computer.

Relevant Exceptions to the Right of Financial Privacy Act Requirements:

Grand Jury subpoenas - financial records obtained through the use of a grand jury subpoena are exempt from the notice provisions of the R.F.P.A. Most financial investigations in Customs begin as criminal investigations or at least have criminal implications. Grand Jury subpoenas are the primary method of obtaining financial records in these investigations.

This presents serious problems for the agent who wishes to proceed civilly with his case. The records must be destroyed or returned to the financial institution if an indictment is not issued, unless disclosure is otherwise authorized pursuant to Rule 6(e) FRCrP. No records or a description of those records may be maintained other than by the Grand Jury where an indictment has not been issued or otherwise authorized for use by Rule 6(e) of the Federal Rules of Criminal Procedure.

Records required by the government - records or information which is required to be filed with the government by either statute or a rule promulgated thereunder are not governed by the Right of Financial Privacy Act.

Currency Transaction Reports (CTR's) which are required to be filed by financial institutions pursuant to provisions of the Bank Secrecy Act, or the information contained therein, may be released to you without regard to other provisions of the Right of Financial Privacy Act. There is typically much useful information contained on a CTR.

CTR's are usually most easily obtained by coordinating your efforts with the institution's Bank Secrecy Act Officer.

All domestic financial institutions are required to have a designated Bank Secrecy Act Officer.

In the case where probable cause exists to believe that the records are seized, a search warrant might also be used.

Prescribed Methods of Obtaining Financial Records:

Customer Authorization - In this case the customer authorizes the financial institution to give the financial records to the government.

The authorization must be in writing, is revocable, and has time limitations spelled out in the Right of Financial Privacy Act.

An obvious problem with using this method of obtaining financial records is that the customer is put on notice that the government is looking into his account activity. CTR information may be obtained from IRS and FINCEN without going directly to the bank.

Administrative Subpoena and Summons - Customs may use the Civil Summons as authorized by 31 USC 5318. Use of the civil summons is only to be used in civil enforcement of the reporting requirements of Title 31. If you are working a case with both civil and criminal aspects, the civil summons should not be used as the method of obtaining financial records.

The Treasury Dept. is reviewing use of the civil summons. Customs requires their review prior to use of the Treasury Civil Summons. A one-page synopsis of the case is to be submitted to the Director, Smuggling Investigations Division through the Currency Investigations Branch.

Included in this synopsis must be the statement that civil process is the only anticipated action. This restriction is to protect the agent from utilizing this enforcement tool in an inappropriate situation, which could result in suppression of needed evidence.

Written Request - under this provision a government authority may request financial records from a financial institution pursuant to a formal written request.

The written request is only available to agencies, which do not have a civil summons authority under other statutes. Other than for civil enforcement of the CMIR reporting requirements, Customs has no summons authority for financial institution records. In limited circumstances, where probable cause exists to believe the records relate to prohibited importations, the Customs summons authorized by 19 USC 1509 may be available. Otherwise, the formal written request must be authorized. A drawback to this method, as with any other under the RFPA, is the requirement that the customer be notified of the request to the financial institution to provide his financial records to the government. The customer also has a period of time in which he can object to the release of his financial records and require a hearing before a judge. Judicial Subpoena - a Court may subpoena financial records when authorized by law.

If a case is already before a Court; in other words, an indictment has been issued, the Court may subpoena for the financial records.

Prior customer notice is required, but may be delayed by order of the Court.

Search Warrant - in this case a search warrant is utilized to secure the sought financial records from the financial institution.

As with any other criminal search warrant, probable cause must be established that a crime has been committed and that the financial records sought are evidence of that crime.

The execution of the search warrant at the financial institution is not an adversarial procedure. It is something, which is coordinated with the financial institution. The easiest way to get the financial records you want is to coordinate your activities with either the Bank Secrecy Act Compliance Officer at the financial institution or with their attorney. Tell them what records you are seeking with the search warrant. They can then compile the financial records sought and have them at the location to be searched when you come to execute the search warrant. Expect to be charged the prevailing rate for their time involved in searching for and copying the records.

The records sought with the search warrant can range from very limited information about the account to debit and credit items for a year's period of time. There is absolutely no limit as to the scope of the financial records, which you can seek, as long as there is probable cause to believe that such records exist and are evidence. An advantage to this method is that the financial institution will generally prioritize the gathering of the financial records you seek since it rarely if ever has had financial records obtained with a criminal search warrant. The biggest advantage to using the criminal search warrant for obtaining financial records is the fact that the records can be used either criminally or civilly without restriction.

Another advantage to the search warrant is that we can also seize account balances with the same instrument. Using the criminal search warrant, we can seize the balance of accounts by simply adding "and any existing balance found to exist in this account" to the items to be searched for on the search warrant if relevant and supported by P.C. We can thus eliminate the necessity of getting the civil side involved until after the seizure is made.

Executions of search warrants must also be coordinated with the Currency Investigations Branch in Headquarters. You are required to send a copy of the warrant and affidavit in order to receive their concurrence.

There is no prior customer notice required with this method. There is however a post notice of search warrant required. This must be sent to the customer within 90 days of the execution of the warrant. A copy of the warrant along with a statement of why the records were sought must be sent. A Court ordered delay of this notice might be obtained in rare circumstances. Specific language to be used in this notice, as well as the other above described notices, are in the statutes.

General Law Enforcement Inquiry

The notice requirements to the customer associated with the above described methods of obtaining financial records do not apply if the government is only seeking the name, address,

account number and type of account of a particular customer.

This limited information is still required to be obtained in accordance with one of the above five described procedures.

Provisions Relative to Suspicious Activity

If an employee of a financial institution becomes suspicious of the activity of a customer and believes that it is related to the violation of any law, the employee may release certain information to the government. This is a very important provision of the Right of Financial Privacy Act and is provided for in 12 U.S.C. 3403.

Notwithstanding any other provision of the Right of Financial Privacy Act or other statute, the financial institution can provide the government only with the name or other identifying information about the customer, the account and the nature of the suspicious activity. The financial institution has statutory immunity from any legal action by the customer for any disclosure pursuant to 12 USC 3403.

Dissemination of Financial Records

Financial records obtained pursuant to the provisions of the Right of Financial Privacy Act may be released to other law enforcement agencies if a written certification is completed. The certification must state that the transferred financial records are believed to be relevant to a legitimate law enforcement inquiry and within the jurisdiction of the receiving agency. This does not apply to non-Grand Jury members.

A copy of the certification is to be mailed to the customer whose records were transferred. A delay of this notification is also available from the Court.

Penalties for Violating the Financial Privacy Act

Obtaining or disclosing financial records not in accordance with the provisions of the Financial Privacy Act give rise to certain civil penalties, as follows:

- \$100 without regard to the volume of records.
- Any actual damages sustained by the customer.
- Punitive damages as awarded by the Court where the violation was found to be willful or intentional.
- Costs and fees in any successful action brought to enforce the provisions of the Financial Privacy Act.

03.01

METHODS OF TRACING FUNDS (GENERAL)

Income may be established by the direct or indirect method. These are the most commonly used methods in determining or proving income.

These methods can be used in your investigation to determine the potential of a given financial target. The following methods are primarily used by Special Agents of the Internal Revenue Service but can be of use to you in certain investigations. Remember, that each investigation you conduct is different and some of these approaches may or may not be applicable. The direct approach, or specific items method of proving income, relies upon specific transactions (sales, expenses, etc.) to determine income.

03.02

DIRECT APPROACH

The direct approach or specific items method of proving income relies upon specific transactions (sales, expenses, etc.) to determine income. Almost all individual and business entities determine income by specific items or specific transactions method. Most entities who are engaged in legitimate pursuits maintain books and records in which they record various transactions as they occur, and their computations of income are based upon the total of the transaction they engage in during the period. In financial investigations, income usually can be established with less difficulty by using the direct approach. The direct method relies upon having access to books and records of the person or business under investigation in order to prove income.

03.03

THE INDIRECT APPROACH

The indirect method relies upon circumstantial proof of income by the use of such methods as net worth, source and application of funds, and bank deposits. Although these methods are considered circumstantial proof of income, the courts have approved their use in determining income for civil and criminal cases on the theory that proof of unexplained funds or property in the hands of a subject may establish an understatement of income. Remember, before you begin searching for concealed income, you should already know a great deal about your subject through records checks, surveillance and other normal investigative techniques.

Net Worth Method

The net worth method is a frequently used indirect method of proving income from an unknown or illegal source. This method is used when the subject has accumulated items of value such as a home, car, boat, jewelry, etc. This method is presented in the familiar balance sheet format readily recognizable in the business world and presents a complete financial picture of a subject. It is based on the theory that increases or decreases in a person's net worth during a period, adjusted for living expenses; result in a determination of income.

Net worth is the difference between a person's assets and liabilities at a particular point in time. By comparing the subject's net worth at the beginning and end of a period, usually a calendar year, you can determine the subject's increase or decrease in net worth for the period. Adjustments are then made for living expenses to arrive at income. Income determined by this method includes receipts derived from all sources. Thus, by subtracting funds from known

sources (salary, wages, interest, dividends, etc.), you arrive at funds from unknown or illegal sources.

The courts have approved the use of the net worth method in numerous cases. Perhaps the leading case in this respect is *Holland v. United States* handed down in 1954 by the Supreme Court, along with three companion cases (*Smith v. United States*; *Friedberg v. United States*; and *United States v. Calderon*). These cases outlined the broad principles governing the trial and review of cases based upon the net worth method of proving income. With reference to the use of the net worth technique, the court stated that:

To protect the revenue from those who do not render true accounts, the Government must be free to use all legal evidence available to it in determining whether the story told by the taxpayer's books accurately reflect his financial history.

The net worth method is often used when several of the subject's assets/liabilities have changed during the period under investigation and one of the following conditions exist:

- The subject maintains no books and records.
- The subject's books/records are not available.
- The subject's books/records are inadequate.
- The subject withholds his or her books/records.

The formula for computing funds from unknown or illegal sources using the net worth method is:

- Assets (house, car, jewelry)
- Less: Liabilities (loans, bills, mortgage)
- Equals: Net Worth
- Less: Prior years net worth
- Equals: Net Worth Change
- Plus: Living expenses (money spent on utilities, entertainment, gas, oil,)
- Equals: Income
- Less: Funds from known sources (wages, interest, rents, etc.)
- Equals: Funds from unknown/illegal sources

An individual's assets, liabilities and living expenses can be determined from various sources. Many of these sources are listed in this chapter under Sources of Financial Information (ie. real estate records, credit card applications, loan applications, etc.).

Assets are usually valued at cost, and for net worth purposes will not appreciate or depreciate in value (ie. auto, boat, jewelry, etc.).

In preparing a net worth statement, the question may arise why items that do not change should be included in the net worth statement, particularly since these items have no bearing on the final result. It should be remembered that a net worth statement gives "a complete financial picture" of the subject. Therefore, the statement should be as complete as possible so that the subject will not have grounds to contest its credibility because items were omitted. Additionally, the correct

net worth statement may be the foundation for a future investigation of the subject and a complete statement would prove extremely valuable at that time.

The net worth method is used primarily in cases where you want to prove the income of that subject. The above imparts a basic understanding of the net worth method. For a complete review of the net worth method refer to the Internal Revenue Service Financial Investigative Techniques Course book or contact Special Agents from the Internal Revenue Service.

Source and Application of Funds Method

The source and application of funds method is an indirect method of determining known sources of funds and is often used by financial investigators because it is an easy method to understand and use.

The method is based on the theory that if expenditures for a given period exceed the subject's known sources of funds for that period, it may be inferred that the excess expenditures represent unknown or illegal income.

The source and application of funds method is a comparison of all known expenditures with all known receipts during a particular time period. When using this method, we determine where the subject's money came from (source) and what the subject did with the money (application). This method is known by various names, such as: the expenditures method, flow of funds method, and statement of applications of funds.

In theory, this method is closely related to, if not identical with, the net worth method. The similarity is indicated by the fact that the same items of accounts employed in the net worth method also are considered in the expenditures method. In the expenditures method, however, only the increases and decreases in assets and liabilities are considered along with living expenses. When the subject has assets and liabilities that remain unchanged during the period, they are not listed on the statement.

There are many cases in which the courts have approved the use of this method. The leading expenditures method case is *United States v. William R. Johnson*.

The formula for computing funds from unknown or illegal sources using the source and application of funds method is as follows:

Application of funds (expenditures)

- Less: Known sources of funds
- Equals: Funds from unknown or illegal sources

The source and application of funds method is more often used in cases where the subject's income is spent on lavish living and there is little, if any, net worth. Additionally, an expenditures statement can serve to verify the accuracy of another method of proving income and test-check the accuracy of known or reported income. It can also be used to compute cash on hand for the base year of a net worth computation when a cash-on-hand starting point is found

in a prior year. In the source and application of funds method, items to be considered in the computation are:

- Application (expenditures)
- Increase in cash on hand or bank accounts
- Increase in other assets (both personal and business)
- Decrease in liability balances
- Personal living expenses
- Known sources
- Decrease in cash on hand or bank accounts
- Sale or exchange of assets
- Salaries or business profits
- Tax refunds, interest, dividends, or insurance proceeds
- Loans, gifts, or inheritances received
- Unemployment or public assistance receipts
- Other known sources

Any excess of the application of funds over known sources of funds results in funds from unknown or illegal sources.

For a complete review of the source and application of funds method refer to the Internal Revenue Service Financial Investigative Techniques Coursebook or contact Special Agents from the Internal Revenue Service.

Bank Deposits Method

The bank deposits method is a means of proving unknown sources of funds by indirect or circumstantial evidence. Similar to other indirect methods of proof, the bank deposits method computes income by showing what happened to a subject's funds. The method is based on the theory that if a subject receives money, only two things can be done with the money: it can be deposited or it can be spent in the form of cash.

The bank deposits method is another means of proving unknown sources of funds by indirect or circumstantial evidence. By this method, income is proved through an analysis of bank deposits, canceled checks, and currency transactions of the subject. Adjustments for non-income items are made to arrive at income. There are numerous criminal cases in which the bank deposits method has been used to determine additional income.

Some of the cases are: *Gleckman v. United States*; *Stinnet v. United States*; *United States v. Venuto*; *Kirsch v. United States*; *Buttermore v. United States*; *Oliver v. United States*; and *Capone v. United States*.

A basic formula for the bank deposits method is:

Total deposits to all accounts:

- Less: Transfer and re-deposits
- Equals: Net deposits to all accounts

- Plus: Cash expenditures
- Equals: Total receipts from all sources
- Less: Funds from known sources
- Equals: Funds from unknown or illegal sources

The bank deposits method is recommended as a primary method of proof when most of the subject's income is deposited and the subject's books and records are:

- Unavailable
- Withheld;
- Incomplete
- Prepared with the bank deposits method

The use of the bank deposits method is not limited to the above circumstances. Even though the subject's books and records may appear complete and accurate, the method can still be used, and there is no requirement to disprove the accuracy of the books and records in order to do so. The use of the bank deposits method is not limited to the above circumstances. Even though the subject's books and records may appear complete and accurate, the method can still be used, and there is no requirement to disprove the accuracy of the books and records in order to do so.

For a complete review of the bank deposits method refer to the Internal Revenue Service Financial Investigations Techniques Coursebook or contact Special Agents From the Internal Revenue Service.

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04.00

FINANCIAL INTERVIEWING

Interviewing is a basic technique for all investigations. The purpose of this section is to point out some of the peculiarities of conducting a financial interview.

Refer to the Special Agent Handbook, Chapter 35, Interviewing.

The place of the interview can be more important:

- If the interviewee is neutral (a third party as a bank, broker, etc.), try to conduct the interview at his/her place of business. There is a greater likelihood of obtaining pertinent books and records if they are readily available.
- If the interviewee could be at risk of some loss (status or job) because of the relationship of the employer to the subject of the investigation, the interview should be conducted away from the place of business. It is sometimes advisable to contact the interviewee at their home, as it is not uncommon for them to have copies of the documents of suspicious transactions as some personal insurance.

Be sure to allow more than enough time for the interview. It is better to have too much time, than to be on the point of getting into an unexpected area only to have you or the interviewee end the interview due to prior commitments.

Always be prepared for the unexpected. The interviewee may have documents he/she has taken from the office. Plan for taking them as evidence, but be careful of suggesting that they acquire other documents.

If documents are copied or taken at your suggestion, they may be inadmissible in court. The person interviewed may also tell you of other, unsuspected violations or violators. Be ready to accept this information, even if unrelated to your original case. Always consider the person you are interviewing as a potential informant in other matters, as well as source in affidavit for search warrant in instant or other matters.

It may be useful to consult with regulatory audit prior to the interview, to insure that you use proper accounting terminology. You may even decide to ask an auditor to accompany you at the interview, to assist and insure that nothing useful is overlooked.

05.01

SOURCES OF FINANCIAL INFORMATION

The primary purpose of this subsection is to identify those sources of information most beneficial to you during a financial investigation.

Three areas of information will be covered:

- The types of records and/or documents available to you during a financial investigation.
- The appropriate source to obtain specific information.
- The appropriate person(s) who can furnish specific information.

This listing is not intended to be all-inclusive but will give you the major sources of information that should produce financial records important to your investigation.

05.02

DOMESTIC BANK RECORDS

Domestic Bank records are perhaps the single most important financial source available to you as an investigator. In addition to their use as evidence in proving a criminal violation, they may provide leads on sources of funds and expenditures. Banks are classified primarily by their major services:

- Commercial banks offer businesses and individuals such services as checking accounts, loans, exchange instruments, etc.
- Savings banks and savings and loan associations handle savings accounts and mortgage loans.
- Trust companies handle property for others under various types of fiduciary accommodations.

Retention of Records

The provisions of Titles I and II of Public Law 91-508, Financial Recordkeeping and Currency and Foreign Transactions Act, make it mandatory that financial institutions retain records of customers' transactions.

U.S. Treasury Regulations implementing Public Law 91-508, provide, in part, that an original, microfilm, or other copy or reproduction of most demand deposits (checking account) and savings account records must be retained for 5 years. The records must include:

- Signature cards, statements, ledger cards, or other records disclosing all transactions; that is, deposits and withdrawals.
- Copies of customers' checks, bank drafts, money orders, and cashier's checks drawn on the bank or issued and payable by it.
- In addition, banks must retain for a 2-year period all records necessary to; 1) reconstruct a customer's checking account. The records must include copies of customer's deposit tickets. 2) Trace and supply a description of a check deposited to a customers checking account.

All of the above requirements apply only to checks written, or deposits made in excess of \$100. It should be noted that most banks find it cheaper to microfilm all pertinent records, including the checks and deposits in amounts less than \$100, rather than sort their records into two categories. Therefore, if a particular transaction is less than \$100 and appears to be of particular interest, there is a strong likelihood that the necessary records to identify the transaction are available.

The Regulations provide that banks maintain their records in a manner so they can be made available, upon request, within

05.03

TYPES OF BANK RECORDS

Signature Card

Evidence of a contract between the customer and the bank.

Identifies banking connections, the date and amount of the initial deposit which, if traced through the bank records, may disclose a source of income and the official who opened the account. The official may be significant for identification if the depositor used an alias when opening the account. A "reasonable period of time."

A correspondence file or credit file may be attached showing investigation of the banking references or credit agencies given by the new customer when the account was opened. Determine if the bank has a "central file" which will list all the bank's departments with which a customer has had dealings. This can eliminate contacting each department within a bank for records. Always request information to both active and closed accounts.

Negotiated checks

Canceled checks written by a subject or received from others provide the investigator with much more than amounts, payees, and endorsee.

"Cashed" checks are of particular interest since all banks use a series of codes or symbols, which they usually imprint, on the front of a check to show that it has been cashed. The specific codes used in your particular area can be obtained locally.

Tracing checks is an important tool for an investigator when tracing funds. It provides information such as what banks and geographic areas an individual has accounts or dealings with, and also provides a paper trail of expenditures. Tracing checks is facilitated by the use of bank identification symbols.

All checks printed for banking institutions contain an "ABA transit number". These numbers represent an identification code developed by the American Bankers Association. The ABA transit number allows for the routing of a check back to the bank of origin. In the process of routing, a trail is left which enables the tracing of each specific item. On a check, the ABA number is found to the right of the "date" line and appears as a mathematical fraction, ###-### over a 3 digit number (68-424/514). If the first numbers are 1 through 49, it identifies a specific city. Numbers 50 through 99 identifies a specific state. The second group of numbers identifies a specific bank within a city or state.

Using the example above, 68-424 identifies the State of Virginia (68) and 424 identifies the Arlington Trust Co., Arlington, Virginia. The number on the bottom of the ABA number is the Federal Reserve Routing code and is broken down by each individual number. The first number(s), 1 through 12, identifies the Federal Reserve Districts. The second number if it is a "1" identifies the head office of the Federal Reserve District identified by the first number. Numbers 2 through 5 are branch offices of the Federal Reserve District identified by the first number. The third number if "0" signifies, "available for immediate credit", 1 through 5 signifies, "deferred credit" & designates the state in which the drawee bank is located". Numbers 6 through 9 signifies, "special collection arrangements".

Again using the example above, 68-424 / 514, number 5 is the 5th Federal Reserve District, 1 is the head office in Richmond, Virginia, 4 signifies deferred credit and the State of Virginia. Thus, the ABA number 68-424 / 514 would identify:

- 68 = State of Virginia
- 424 = Arlington Trust Co., Arlington, VA.
- 5 = 5th Federal Reserve District
- 1 = Head office in Richmond, VA.
- 4 = Deferred Credit & the State of Va.

Federal Reserve Districts, Head Office, in numerical order:

- 1 = Boston
- 2 = New York

- 3 = Philadelphia
- 4 = Cleveland
- 5 = Richmond
- 6 = Atlanta
- 7 = Chicago
- 8 = St. Louis
- 9 = Minneapolis
- 10 = Kansas City
- 11 = Dallas
- 12 = San Francisco

The following list identifies the city codes for numbers 1 to 49 and the state codes for numbers 50 to 99. The state codes are also broken up into 6 areas which will give you a quick reference for identifying the general geographical area the ABA number represents.

- Prefix numbers 50 to 58 are Eastern States.
- Prefix number 59 is Alaska, American Samoa, Guam, Hawaii, Puerto Rico and Virgin Islands.
- Prefix numbers 60 to 69 are Southeastern States.
- Prefix numbers 70 to 79 are Central States.
- Prefix numbers 80 to 88 are Southwestern States.
- Prefix numbers 90 to 99 are Western States.



Prefix Numbers of Cities in Numerical Order:

- 1. New York, N.Y.
- 2. Chicago, Il.
- 3. Philadelphia, Pa.
- 4. St. Louis, Mo.
- 5. Boston, Ma.
- 6. Cleveland, Oh.
- 7. Baltimore, Md.
- 8. Pittsburgh, Pa.
- 9. Detroit, Mi.
- 10. Buffalo, N.Y.
- 11. San Francisco, Ca.
- 12. Milwaukee, WI.
- 13. Cincinnati, Oh.
- 14. New Orleans, LA
- 15. Washington, D.C.
- 16. Los Angeles, CA
- 17. Minneapolis, Mn.
- 18. Kansas City, MO
- 19. Seattle, Wa.
- 20. Indianapolis, IN

- 21. Louisville, Ky.
- 22. St. Paul, MN.
- 23. Denver, Co.
- 24. Portland, OR.
- 25. Columbus, Oh.
- 26. Memphis, TN.
- 27. Omaha, Ne.
- 28. Spokane, WA.
- 29. Albany, N.Y.
- 30. San Antonio, Tx.
- 31. Salt Lake City, Ut.
- 32. Dallas, Tx.
- 33. Des Moines, Ia.
- 34. Tacoma, Wa
- 35. Houston, Tx.
- 36. St. Joseph, MO
- 37. Fort Worth, Tx.
- 38. Savannah, Ga.
- 39. Oklahoma City, Ok.
- 40. Wichita, Ka.
- 41. Sioux City, Ia.
- 42. Pueblo, Co.
- 43. Lincoln, Ne.



Prefix Numbers of Cities in Numerical Order (*continue*):

- 44. Topeka, Ka.
- 45. Dubuque, Ia.
- 46. Galveston, Tx.
- 47. Cedar Rapids, Ia.
- 48. Waco, Tx.
- 49. Muskogee, Ok.

Prefix Numbers of States in Numerical Order:

- 50. New York
- 51. Connecticut
- 52. Maine
- 53. Massachusetts
- 54. New Hampshire
- 55. New Jersey
- 56. Ohio
- 57. Rhode Island
- 58. Vermont
- 59. Pennsylvania
- 60. Alabama

- 61. Delaware
- 62. Florida
- 63. Georgia
- 64. Maryland
- 65. North Carolina
- 66. South Carolina
- 67. Virginia
- 68. West Virginia
- 69. Illinois
- 70. Indiana
- 71. Iowa
- 72. Kentucky
- 73. Michigan
- 74. Minnesota
- 75. Nebraska
- 76. North Dakota
- 77. South Dakota
- 78. Wisconsin
- 79. Missouri
- 80. Arkansas
- 81. Colorado
- 82. Kansas
- 83. Louisiana
- 84. Mississippi



Prefix Numbers of States in Numerical Order (*continue*):

- 85. Oklahoma
- 86. Tennessee
- 87. Texas
- 88. Alaska
- 89. California
- 90. Arizona
- 91. Idaho
- 92. Montana
- 93. Nevada
- 94. New Mexico
- 95. Oregon
- 96. Utah
- 97. Washington
- 98. Wyoming
- 99. Territories

MICR (Magnetic Ink Character Recognition)

MICR was developed by the American Bankers Association as a machine language and as a standard in check design to which all banks must conform. Numeric information is printed in magnetic ink on the bottom of bank checks and other documents. This coding is electronically scanned by computers, which converts the magnetic ink notations into electronic impulses intelligible to a computer.

Have one of your own checks available to better understand the following description of the MICR numbers. MICR information is printed in groups called fields. On bank checks, the first field (from the left) is the Federal Reserve check routing code (4 digits). The next is the ABA transit number (4 digits). These two groups should correspond to the ABA number in the upper right corner of the check. The third group identifies the checking account number. The groups will be separated by some type of symbol although it appears to be one long number at first glance.

On the bottom right of the check is another field. The first group is a control number used for processing, and the second group identifies the amount of the check. The dollar amount of the check should always equal the encoded MICR amount. These two figures should always be compared to be sure the check was not altered in any way after it was returned from the bank.

Deposit tickets

The deposit ticket is the principal source document for crediting the customer's account. The information on a deposit slip segregates currency, coins and checks. The checks are listed separately and may or may not be identified by the ABA number or the maker of the check. Regardless of the detail contained on a deposit ticket, bank recordkeeping systems are such that items of deposit can be identified and traced to their source. The records, which enable this tracing, are retained for only 2 YEARS. The Bank Administration Office can be contacted to obtain information concerning recovery of deposit tickets.

Credit memorandums

These are telegraphic transfers. Based on customer instructions, funds may be transferred from one bank account to another by wire or telephone. Although the transfer shows as a deposit to the customer's account by means of a credit memo, the detailed records of transfers are usually kept in a special file.

If the subject of an investigation has accounts with banks in several cities, the possibility of obtaining funds by wire should be investigated. Other departments within a bank can credit the depositor's account for funds collected, such as the proceeds of loans, items held by the bank for collection, etc. Note that items held by the bank for collection are not always deposited to the customer's account but remitted directly to the customer. As mentioned above, check to see if the bank has a "central file" office, which will eliminate having to contact multiple departments within the bank to insure you have complete information and documentation of the subject's banking records.

Time deposits

Savings accounts are referred to as "time deposits" since they are not as readily available to the customer as deposits to a checking account. Funds in a savings account may be subject to a 30-day notice of withdrawal.

Certificates of deposit (CD'S) are funds left with a bank for a definite period of time, for example, 2 years, and draw a higher rate of interest than the ordinary savings account. When inquiring of a subject's bank records be sure to include the "time deposit" accounts with the regular checking and savings accounts.

Bank Ledgers and Bank Statements

Each bank has a bookkeeping department, which maintains customer accounts. The basic processes performed in the bookkeeping department are sorting checks to prepare them for posting; posting checks to customer's accounts; posting deposits and other credits; taking care of special items such as stop payments; and proving and balancing with general ledger totals for various types of accounts. The manner in which this work is performed depends on whether a manual or ADP system is used. Accordingly, different types of records are generated by the two systems. However, a customer's account can be reconstructed under either system.

Bank Ledger Cards - Manual System

Ledger cards are the basic records produced by any manual system. They show all dates, checks, deposits, and other transactions affecting customer's accounts. Ledger cards are the customers' monthly statements. The bank keeps the ledger cards and second or duplicate copies of the customers' statements. Some banks microfilm these records and also the checks returned to the depositors with the monthly statements.

Bank Statements - ADP System

In an automated system no historical ledger cards are produced. This is the fundamental difference from bookkeeping records produced under a manual system. However, in the ADP system, statements are produced periodically (generally monthly) for checking accounts. The bank has either microfilm or duplicates of all statements. There are two basic types of statements:

- Detailed statements similar to bank ledger cards, and the summary or "bobtail" statements.
- The detailed statements have the same information as the ledger cards, date, check amount, deposits and balance. The "bobtail" statements only give totals for deposits, checks, service charges, date and balance of the statement.
- With summary or "bobtail" statements, all the transactions making up the statements must be reconstructed.

Savings Account Statements

Under a manual system, most banks use ledger cards similar to checking accounts to maintain records of savings accounts. Some banks use a system in which statements are mailed to depositors at stated intervals.

In an ADP system the procedure for reconstructing a savings account is similar to that used for checking accounts.

In some instances copies of periodic statements are available to expedite the process. If not, the account must be reconstructed item-by-item.

Exchange Instruments

Exchange instruments are vehicles by which the bank transfers funds. They are cashier's checks, bank drafts, traveler's checks, bank money order, and certified checks.

- *Cashiers checks* - Checks issued by the bank, also called treasurer's checks when issued by a trust company, are frequently an excellent lead to other bank accounts, stock, real property, or other assets. Because they can be held indefinitely, subjects sometimes purchase cashier's checks instead of keeping large amounts of currency. In reconstructing a subject's transactions with cashier's checks, be sure that ALL checks are accounted for because subjects sometimes exchange previously purchased checks for new ones.
- *Bank drafts* - Checks drawn by the issuing bank on its account with another bank. Often this account is in the area where the purchaser desires to make a payment. Bank drafts may also be used when a subject does not want to carry a large amount of cash.
- *Traveler's checks* - Checks issued in predetermined amounts by the American Express Company and several large United States banks. Local banks purchase them from issuing companies or U.S. banks and then sell them to the public. Two signatures are required, one when purchased and the other when cashed. All accounting for and tracing of traveler's checks is done by serial numbers. Usually the issuing company keeps records of traveler's checks issued by them to the selling bank. The local bank that sold the checks may keep a copy of the sales order from which the serial numbers can be obtained. If the numbers are not available, the issuing bank may be able to supply the information if they know the date the checks were purchased. The canceled checks may be obtained from the American Express Company or other issuing banks. A subject may purchase large amounts of traveler's checks from one bank and deposit them in another to avoid arousing suspicion by having the deposit ticket reflect a large amount of check deposits rather than cash.
- *Money orders* - Similar to cashier's checks, but are usually for small amounts. Like cashier's checks, money orders may be used by subjects who do not want to use cash or use a regular checking account, or do not have a checking account but still wish to have evidence of payment to someone.
- *Certified checks* - A customer's check on which "certified" is written across the front of the check(s) by the bank. This certification is a guarantee that the bank will pay the check(s). Certified checks are liabilities of the bank, and when paid, are kept by the bank. These checks are immediately charged against the customer's account by means of

debit memorandums. Customers get copies of the debit memorandums with their bank statements. Some banks permit customers to obtain the original checks by surrendering the debit memorandums.

Information about bank exchange items is maintained by means of a register record, which may be a separate register for each type or one register with separate columns for each kind of exchange item. Banks often use multicopy forms to issue these instruments. When the item is paid, it is transferred from the outstanding file to the paid file.

Issuing exchange instruments under an ADP system is not very different from a manual process, but under ADP all reference to the instrument must be made by check number. A master file of outstanding exchange instruments is kept on punch cards or magnetic tape. When the instrument is presented for payment it is matched against the outstanding file and removed from the file. Printouts are made showing the exchange instrument number and amount. You must obtain the instrument number from either the bank's copy or the canceled document itself; and, to trace payment of the instrument, you must know the date it was paid. Bank exchange instruments are often purchased with currency. Therefore, they may be good sources of information about a subject's currency transactions.

05.04 LOANS

This function of a bank is often an important source of information regarding a subject. In keeping records of the loans, the collateral that secures them and the results of (bank) credit investigations, a bank has a wealth of information that can prove to be very important to an investigation of a subject's affairs.

When a bank makes a commercial loan to an individual it requires a detailed statement of the assets and liabilities of the borrower. The loan file also includes the results of credit inquiries, which shows paying habits, amounts of loans, and present unpaid balances.

Basic records maintained by a bank credit department are:

- The credit or loan file which contains the loan application, financial statement, and general economic history of the subject. In the liability ledger, loans to a customer are posted on one page to show the liability to the bank at both the present time and the past. These sheets contain information such as the loan date, note number, amount of the loan, interest rate, due date, and payments.
- The collateral register usually contains a complete description of the items pledged as securities for loans. Records of such collateral can provide valuable information about a subject's assets.
- ADP has been used to keep collateral cards and to process commercial loan records. However, the underlying loan records and financial statements are basically the same as those in a manual system. In tracing transactions on an automated system, you must know the loan account number because all processing is done by reference to this number. To trace items in a particular bank, inquire about the system used to process commercial loans. Because of detailed loan records in a bank, tracing loan transactions is easier than tracing transactions for checking and savings accounts.

Check Credit Loans

Check credit is another loan service banks are offering under various names, such as "Redi Credit" and "Instant Credit." Under a check credit plan, the bank agrees to extend credit to a customer up to a maximum amount.

The customer writes a check for any amount up to a maximum. If that amount is not in the checking account, the resulting overdraft is set up as a loan. The bank then bills the customer for the loan.

Another plan is a specialized checking account used only when checks are written up to a predetermined amount under a loan agreement; the outstanding balance is treated like an installment by the bank. Copies of loan agreements and statements for both plans can be obtained from the bank files.

Credit Cards

Most banks offering credit card plans are affiliated with a national credit card system. The charge plan records you need are the application for a card and the bank's copies of the monthly statements sent to the cardholder. In some banks, copies of the individual charges are also available. These monthly statements list the stores where the cardholder has made purchases and can furnish valuable leads to the spending habits of the subject.

The first four digits of the account number located in the upper left corner of the statement identify the name of the member bank. Other credit card companies have similar means of identifying member banks. The identities of the various member banks can be obtained on a local basis.

Safe deposit boxes

Private vault space rented to customers. Since State laws differ, the nature of the relationship varies. Banks keep no records of the contents of safe-deposit boxes and generally do not know what the boxes contain. The rental contract records identify the renters, the person(s) who have access to the boxes, their signatures, and the dates of the original agreements and later renewals, which may contain other identifying information. Some contracts contain the name of the initiating bank officer, which may be significant if it is necessary to identify the subject if an alias was used in renting the box.

Records showing access to the boxes vary from bank to bank. They contain the signatures of the person(s) entering the boxes and usually the dates and times of entry. The entry records are filed in box number order.

The frequency of entry and the times and dates of entries may be significant and may correspond to the times and dates of deposits or withdrawals from other accounts or to the purchases and sales of securities, property, etc.

05.05

OTHER SERVICES AND FUNCTIONS

Business Services

Among these services provided to businesses are collecting accounts receivable and handling accounts payable. Services vary bank to bank and range from only collection to complete preparation of all records.

If the subject is using such a service you will have to check with the individual bank on what services were provided and what records were retained.

Other business services performed by banks are: analyzing & reconciling corporate bank accounts; lock box banking, under which the bank acts as a collection agent; billing and collection services for utilities; health, welfare, and pension fund accounting; insurance brokerage accounting; retail store accounting, and retail store credit accounting. If any of these services have been used by the subject you will have to inquire at the individual bank as to what records were retained.

A bank service of particular interest is the bookkeeping service performed for doctors and dentists. The bank sends bills and keeps books for doctors and dentists and makes up monthly and annual financial statements. All these systems rely upon prompt, daily transmittal of information from the doctor's office. One system does this by setting up an electronic transmitter in the doctor's office, which is tied into regular telephone lines. The patient's ledger card, which always remains with the doctor, serves as input to the transmitter so that information received at the bank's service center is always obtained from original records.

After the bank receives the information, it provides the doctor with a journal showing receipts and billings by type of service.

At the end of each billing period, a detailed statement is prepared and mailed to each patient and a copy is sent to the doctor. The bank can also serve as a collection agent under this arrangement.

Collection Department

The collection department handles all noncash items, which vary greatly in kind and in collection methods. This latitude makes bank collection services most convenient for transactions requiring specialized handling. The principal kinds of collection items are:

- Drafts, bills of lading, warehouse receipts or other documents.
- Notes and acceptances.
- Real estate contracts or mortgages.
- Stock certificates.
- Bonds and coupons.

The bank's copy of the collection letter fully identifies the item collected and tells how to dispose of the proceeds. Not until an item has been collected is it credited to the customer's account.

The usefulness of collection records is illustrated in the case of an automobile dealer who used a bank's collection department to collect sales and then diverted the proceeds to another bank account in a different name in another city.

Because many collection service functions are not standardized, they are not easily adaptable to ADP. However, ADP is being used by some large banks to control and trace the flow of collection items. The basic collection documents have not changed and ADP does not affect tracing and investigating them. Payments to an individual from this department may be made by check but frequently are made by interdepartmental credits.

Trust Department

It is important to know the nature of activities in the trust department. Past cases have disclosed that unreported income has come to individuals through trust departments from such sources as oil royalties, and income from a variety of trusts. A checking account may show deposits or advances of credit of the proceeds of some trust department activity. Farmers, oil well drillers, and various entrepreneurs have been known to give notes, securing them with trust instruments on future income, and authorizing direct payment to banks for the notes. Although the money obtained on the notes was used and properly charged to expenses, the income payments were never credited on the books of the individuals who earned them. Trust services of banks come under three main headings:

- Settling estates - The trust department frequently is appointed by a court or named in a will to perform this service.
- Trusts & Guardianships - A trust exists when one person holds legal title to property and another person is entitled to its benefits.
- Agency Services - The bank acts as an agent for a person or corporation in one of the following capacities:
 - Safekeeping
 - Custodian
 - Managing
 - Escrow
 - Transfer Agent
 - Registrar
 - Depositary
 - Paying agent or dividend disbursing agent

Trust departments keep complete and accurate records of their service and are therefore a valuable source of information about any individual who receives funds from that department. Essential records and reports can be obtained from the trust officer who supervises the account. Because of a bank's fiduciary responsibility, these files give an extensive history of the trust and the transactions affecting it.

On-us Transactions

Funds sent to a financial institution where the recipient has no account are processed into an internal bank "control" account. The funds may be sent by wire transfer and are delivered to the

recipient in the form of a cashiers check. Some banks may retain retrieval information on a computer-based system for 30 days.

Internal Bank Security

In order to comply with the statutory criminal reporting requirements financial institutions have developed a variety of manual and computer based analytical procedures to detect potential violations. Some examples include:

- Review of all cash deposits/withdrawals over \$10,000.
- Maintain and review logs of cashier checks, money orders, and travelers checks purchased for cash in the \$3,000 to \$10,000 range.
- Internal security referrals regarding suspicious customer activity.
- Demand deposit account activity reports.
- Incoming and outgoing wire transfer logs.

Inter-branch comparison/analysis of the foregoing items.

Contact the security department of the financial institution for investigative assistance.

Electronic Funds Transfer

Any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. It includes point-of-sale transfers, direct deposits or withdrawals of funds, automated teller machine transfers, and transfers initiated by telephone.

The systems used to transfer funds (money) electronically includes Fedwire, Bankwire, automated clearing houses, and other automated systems.

Automated Clearing Houses (ACH)

An ACH is the central computer based clearing and settlement facility operated by the Federal Reserve Bank, or a private sector organization, established for the exchange of electronic transactions among the participating institutions. There are 42 ACH's representing 17,000 financial institutions which in 1986 handled less than two percent of the 48 billion checks processed that year. Five entities participate in this electronic payment system including the originator (individual customer or company), the originating depository financial institution, the ACH, the receiving depository financial institution, and the receiver, which may be a natural person or an organization. The services provided by the ACH include direct deposit, pre-authorized bill payment; customer initiated entries, corporate transfers, and machine transfer entries including point of sale and shared network transactions.

05.06

INTERNATIONAL

The Edge Act (Foreign Banking) (12 USC 601)

Any national banking association possessing a capital and surplus of \$1,000,000 or more may file application with the Board of Governors of the Federal Reserve System for permission to

exercise, upon such conditions and under such regulations as may be prescribed by the said board, the following powers: FIRST, to establish branches in foreign countries or dependencies or insular possession of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

(12 USC 611): Corporations to be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions as provided by sections 611-631 of this title and to act when required by the Secretary of the Treasury as fiscal agents of the United States, may be formed by any number of natural persons, not less in any case than five: Provided, that nothing in said sections shall be construed to deny the right of the Secretary of the Treasury to use any corporation organized under said sections as depositaries in Panama and the Panama Canal Zone, or other insular possessions and dependencies of the United States.

(12 USC 611a): The congress hereby declares that it is the purpose of this subchapter to provide for the establishment of international banking and financial corporations operating under Federal supervision with powers sufficiently broad to enable them to compete effectively with similar foreign-owned institutions in the United States and abroad; to afford to the United States exporter and importer in particular, and to United States commerce, industry and Agriculture in general, at all times a means of financing international trade, especially United States exports; to foster the participation by regional and smaller banks throughout the United States in the provisions of international banking and financing services to all segments of United States agriculture, commerce, and industry, and in particular small business and farming concerns;

to stimulate competition in the provision of international banking and financing services throughout the United States; and in conjunction with each of the preceding purposes to facilitate and stimulate the export of United States goods, wares, merchandise, commodities, and service to achieve a sound United States international trade position.

Clearing House Interbank Payment System (CHIPS)

The Clearing House Interbank Payment System is operated by the New York Clearing House Association, and managed by its staff under policy established by the New York City banks, which comprise the owners of the clearing house. "Settling participants" are those banks, which participate directly in the settlement at the close of each business day, which is managed by the clearing house and effected through accounts at the Federal Reserve Bank of New York. The 12 banks which are members of the New York Clearing House are settling participants, as are several other banks including, as of 1982, Bank of America, Continental Illinois, Fidelity International, Philadelphia National Bank and First Interstate International. More than 80 participants in CHIPS use the facilities to make payments, but each must settle through a settling participant. Every day CHIPS processes about 70,000 transactions averaging almost \$3 million each. When it began CHIPS was used primarily for Eurodollar transactions, but now is being used more heavily for domestic transactions. CHIPS is on the "Same Day Settlement" to reduce participants' risk relating to paying out the funds before receiving them, by reducing the period

during which the risk exists from overnight, (which included the business day in Europe) to within a single day.

Society of Worldwide Interbank Financial Telecommunications (SWIFT)

The Society of Worldwide Interbank Financial Telecommunications was organized as a not-for-profit cooperative by banks in Europe and North America. The objective was to provide for the creation and operation of the means necessary for the transmission and routing of international financial messages among the members. SWIFT'S Board of 25 members includes two from the United States, more than 110 United States Banks are members. SWIFT is a message system for funds transfer, but does not offer settlement. The United States is the largest originator of traffic on SWIFT, followed by Germany, United Kingdom, and Italy.

Foreign Bank Secrecy Acts

Many nations and areas of the world have a legal climate that is optimal for the laundering of "dirty" money. Places such as the Cayman Islands, the Bahamas, the Netherlands Antilles, Panama, Liechtenstein and Switzerland have been used to hide currency and assets because of those nations' strict bank secrecy laws. These laws generally prohibit banks from disclosing any information about their customers' bank accounts. Because failure to comply with foreign bank secrecy laws may subject the bank and bank personnel to criminal liability abroad, United States investigators have had great difficulty in obtaining access to foreign bank accounts by subpoena or other means. To a great extent, these laws have made it difficult to learn about the actual operation of "money launderers" in these foreign financial institutions. What is known has been primarily learned by persons infiltrating the organizations that are using these havens.

While it is unlikely that all operations are conducted in the same way, many utilize the same basic techniques. As a rule, cash is moved to a foreign bank secrecy jurisdiction by several methods: physical transportation, wire transfer, cashier's check or through attorneys' or accountants' accounts. This cash is "laundered" and then either returned to the United States or sent elsewhere to purchase assets.

Illustration of a haven money laundering process.

1. Illegally obtained cash may be:
 - a. taken from the United States to a foreign haven in an airplane without the filing of a CMIR (potential 31 USC 5316 violation), and then deposited in a bank in that haven; or
 - b. deposited into a bank account in the United States without filing a CTR (potential 31 USC 5313 violation) and then transferred by wire or mailed in the form of a cashier's check to a foreign bank located in a tax haven (potential 18 USC 1341 and 1343 violations); or

- c. deposited into a fictitious person's bank account in the United States causing a false CTR to be filed (potential 18 USC 1001) and then transferred either by wire or mail (potential 18 USC 1341 and 1343 violations); or
- d. given to an attorney or an accountant as a cash transfer without a CTR being filed by the person who is acting as a financial institution (potential 31 USC 5313 and 26 USC 5060 I violations), then deposited into the trust account of the attorney or accountant and then transferred either by wire or mail (potential 18 USC 1341 and 1343 violation) or taken by airplane abroad (potential 31 USC 5316 violation).

Once the "dirty" cash is out of the United States it may be deposited into various foreign bank accounts in fictitious corporate or individual names. Once this haven account has been established, the money may be transferred to a bank account in another foreign country where the transaction will be shielded further by these foreign bank secrecy acts. Finally, the money, whether maintained in the first haven or a second haven account will either:

- a. be physically transported back into the United States and declared on a CIMR in the name of the false entity involved (potential 18 USC 1001 violation), or
- b. be disguised as the proceeds of a loan granted to a United States citizen or corporation (who will be the real owner of the dirty money) and wired back or sent back by cashier's check through the mail to the United States recipient (potential 18 USC 1341 and 1343 violations), or
- c. be transformed into a finder's fee made payable from a fictitious foreign corporation to a person in the United States (again, the real owner) for "services" and wired or mailed to him (potential 18 USC 1341 and 1343 violation).

Certain countries, such as Switzerland and Panama, will cooperate when the United States can identify Swiss or Panamanian held bank accounts and other assets as the proceeds of illegal activity, such as narcotic trafficking (but usually not for tax evasion). Most laundering, however, is done in countries that absolutely will not assist the United States by means of mutual assistance treaties, executive agreements or letters rogatory.

Title II of the Bank Secrecy Act

The Foreign Financial Transaction Reporting Requirements.

Reports on exporting and importing monetary instruments are required of any person or agent or bailee of such person who transported monetary instruments in excess of \$10,000 into or out of the United States or who received such instruments in the United States from abroad to report the transaction (31 USC 5314, 31 USC 5315, 31 USC 5316). Reports on foreign financial agency transactions are required of United States citizens and residents as well as any person doing business in the United States to report any transactions or relations that they had with foreign financial institutions (31 USC 5314).

Foreign Bank Account (FBA) System.

The FBA system will provide investigative information on each United States person who has a financial interest in or signature or other authority over a bank account, securities or other financial accounts in a foreign country. Such persons are required to file Treasury Form 90-22.1 on an annual basis.

International Department of a Bank.

This department serves its customers in dealing with persons in foreign countries. Be alert to the possibility that the subject of the investigation may have used the services of this department. Both domestic and foreign letters of credit are usually issued in this department. Most banks keep records consisting of copies of the bank exchange used, correspondence files, and registers for letters of credit and bank exchanges. International banking is a specialized field. Therefore, the many banks in the country depend on the few that can afford the expense of a specialized department and properly trained personnel to run it. According to the American Banker's Association, about 100 banks conduct practically all the International Banking Business of the country. Other banks transfer credits of funds to or from these larger banks with letter of instructions for paying or receiving foreign funds for their customers.

The Office of Foreign Assets Control (FAC).

Many traditional Customs investigations pertaining to illegal imports and/or exports also involve violations of sanctions administered by FAC and do not require any additional investigation for establishment of FAC charges. If violations entail violations of the Bank Secrecy Act or other currency related violations, the USCS Headquarters oversight responsibility would lie with the Smuggling Investigations Division. Inbound FAC violations are overseen by Fraud Investigations (OCFE).

If there are related currency violations, Fraud and Smuggling would share oversight. The CFEC is responsible for monthly reporting to FAC on all open investigations that necessitates the continued involvement of this office. Refer to the Special Agent Handbook, Chapter 6, Trade Embargoes and Economic Sanctions.

05.07

SECURITIES AND COMMODITIES

Securities deals with the buying and selling of stocks and bonds; commodities involves the buying and selling of grain, livestock, etc. Both markets operate under similar structures although the terminologies may differ somewhat.

Securities

There are two principal ways securities are held; in the name of the account holder, and in street name. In the first instance, the securities owned simply reflect the name of the customer who maintains the account. When securities are held in the street name they are registered in the name of the broker. This occurs when securities have been bought on margin or when a cash

customer wishes the security to be held by the broker, rather than in his or her own name. There are many different types of securities that are traded, but there are two methods of dealing in securities. Through an organized securities exchange such as the New York Stock Exchange (NYSE) or the American Stock Exchange (AMEX) or exchanged in an over-the-counter market. In Securities, there are three persons (titles) that can be of great importance to you:

- Broker: A broker can be an important source of information to you during the investigation of financial violations. The source documents relating to securities account activity available from a broker are:
 - Customer account cards (brokers personal)
 - Applications for account
 - Signature cards and margin agreements
 - Securities receipts
 - Cash receipts
 - Confirmation slips
 - Securities delivered receipts
 - Canceled checks
 - Form 1087 (IRS Dividend & Distribution form)
 - Monthly account statements

- Transfer agent: A transfer agent keeps a record of the name and address of each stockholder and the number of shares owned, and insures that certificates presented for transfer are properly canceled and that new certificates are issued in the name of the transferee.

The following information can be obtained from a transfer agent:

- Stockholder identification
- Stockholder position
- Stock certificate numbers
- Number of shares represented by certificates
- Dates certificates were issued or surrendered
- Evidence of returned certificates
- Names of transferee and transferors
- Documents available are:
 - Stockholder ledger cards
 - Stock certificate(s)
- Dividend disbursing agent: Most large corporations distribute their dividends through agents known as dividend disbursing agents which is generally a bank and can furnish the following information:
 - Stockholder identification
 - Stockholder position
 - Amount of dividends
 - Form of dividends
 - Dates paid
 - Evidence of payments
- Documents available are:
 - Canceled checks

- Forms 1099 (IRS Forms)

Names and addresses of institutions providing these services can be found in securities publications such as:

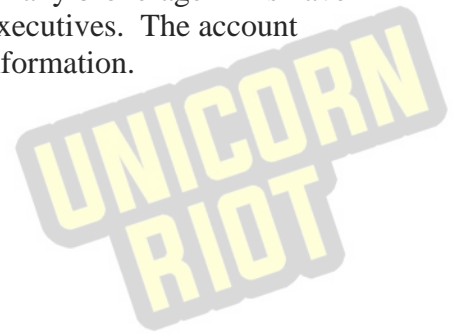
- Financial Stock Guide Service. This is the most comprehensive service. It includes name changes, mergers, dissolutions, etc., from 1927 to the present. It also includes information about Canadian corporations.
- Moody's Investors Service, Inc.
- Local or main offices of subject corporations.

Commodities

Where the stock market is involved with the buying and selling of shares (units) in corporations, the commodities market is involved generally with buying and selling commonly accepted quantities (units) of marketable materials. In the commodities market, the basic instrument of exchange is called a futures contract. Futures contracts are bought and sold on commodities exchanges which are similar to stock exchanges. Two major commodity exchanges are the Chicago Board of Trade and the Chicago Mercantile Exchange. Many brokerage firms have specialists who deal with commodities who are called Account Executives. The account executive at the brokerage firm is the most important source of information.

The principal documents available are:

- Customer agreement form
- New account information form
- Cash receipts
- Order confirmation
- Trade confirmations
- Canceled checks
- Monthly statements of account
- Annual summary of trades



05.08

FEDERAL REGULATORY AGENCIES

Securities & Exchange Commission (SEC)

Records of corporate registrants of securities offered for public sale, which usually shows:

- A description of the registrant's properties and business.
- A description of the significant provisions of the security to be offered for sale and its relationship to the registrant's other capital securities.
- Information as to the management of the registrant.
- Certified financial statements of the registrants.
- Securities and Exchange Commission News Digest (a daily publication giving a brief summary of financial proposals filed and the actions taken by the SEC)

Bulletin (issued quarterly and contains information of official actions with respect to the preceding month). It also contains a supplement, which lists the names of individuals reported as being wanted on charges of violations of the law in connection with securities transactions. It is available upon request at any of the SEC regional or branch offices in the following cities:

- Atlanta, GA
- Miami, FL
- Boston, MA
- New York, NY
- Chicago, IL
- Philadelphia, PA
- Cleveland, OH
- Salt Lake City, UT
- Denver, CO
- San Francisco, CA
- Detroit, MI
- Seattle, WA
- Fort Worth, TX
- St. Louis, MO
- Los Angeles, CA
- Washington, D.C.

Securities Violations Files (Securities Violations Section maintains comprehensive files on individuals and firms who have been reported to the Commission as having violated Federal or State securities laws. The information pertains to official actions taken against such persons, including denials, refusals, suspensions, and revocations of registrations; injunctions, fraud orders, stop order, cease and desist orders; and arrests, indictments, convictions, sentences, and other official actions.) Information in these files, with respect to any particular individual or firm, is available upon request from the Director, Division of Trading and Exchanges, Securities and Exchange Commission, Washington, D.C. 20225.

Securities and Exchange commission Official Summary (lists the changes in beneficial ownership by officers, directors, and principal stockholders of securities listed and registered on a national securities exchange, or securities relating to public utility companies and certain closed-end investment companies)

05.09

U.S. CUSTOMS SERVICE

The Automated Currency Reader/Comparator (ACR/C)

The ACR/C is a powerful tracking tool for monitoring movement of currency, both nationally and internationally. Customs currently has seven of these machines, and one is supposed to be in each region and one at Headquarters. The ACR/C counts and reads currency, while storing the information by denomination, serial number and series year. The ACR/C can accomplish these

functions automatically, at high speed (4-5 bills per second), with an error rate of less than one percent. The ACR/C can accept data from actual currency, a disk or keyboard; storing up to 50,000 notes per disk. As it provides a reliable means to track currency movement, it will obviate the need to "mark" currency. One of the most powerful capabilities of the ACR/C system is the ability to access a central database or currency databases located at other Federal Agencies to determine if seized currency has been involved in prior criminal activities. This capability is incorporated into each ACR/C system with computer algorithms and an internal modem and requires only common telephone lines for communication to any other ACR/C system or compatible computer in the world such as those located at the Financial Crimes Enforcement Network (FINCEN).

Financial Database (FDB) using TECS II

Using TECS II SQ Module allows you to query financial information on a person or a business. There are four methods that can be used to query financial records in the SQ Module.

- SQTf--FINANCIAL QUERY MAIN MENU - This query allows you to obtain financial information on a: BUSINESS or a PERSON from the following databases:
 - Currency and Monetary Instrument Reports (CMIRQY)
 - Currency Transaction Reports (CTRQY)
 - Foreign Bank Accounts (FBAQY)
 - Casino Reports (CSNQY)
 - Person subject query (SQ11)

The Financial Database can be queried from this screen and gives you the option of more than one type of financial record query or ALL financial databases. Type an "X" in the box(es) or in ALL for the financial database(s) to be queried. This will provide a hit list (if there are records found) identifying the "type" of record retrieved, listing suspect, non-suspect, CTR, CMIR, etc. To view any record type "V" next to the record number and press "ENTER".

Business subject query (SQ16)

Same format as with a person query with the exception of the use of a "wild card" character (?). The "?" can be used if the exact spelling of the business is not known or if there may be "INC., CO. etc." after the name. Use of the wild card will retrieve all documents with the first part of the name and/or any trailing words after the name; e.g. BROAD? --Any company beginning with BROAD will be retrieved along with INC., CO. etc., BROADWAY STORE, INC., BROADWAY HARDWARE, BROADMORE SUPPLY CO., etc. A "hit list" will be shown (if records are found) and "view" the records as with the person query.

Query Form 8300 (SQ83)

This is a new query (1990) available for financial information that is required to be filed by businesses doing large cash transactions. For more detailed information on the financial forms discussed above, refer to the Special Agent Handbook, Chapter 4, Financial Investigations.

Financial Crimes Enforcement Network (FINCEN)

Capabilities of FINCEN will include the following:

A centralized database that will allow agencies (local, state and Federal) to determine if funds seized during a money laundering investigation came from a drug "buy". This screening for drug "buy" money could also be accomplished through the cooperation of the banking industry, by analyzing currency being deposited into an account suspected of being used for money laundering purposes.

Another way to identify drug "buy" currency will be through a random screening of U.S. dollars coming back into the United States through Federal Reserve Banks.

The government will be able to gain better intelligence on particular organizations that are smuggling currency out of the country, rather than placing it in the domestic financial system as part of the laundering process.

Federal Reserve

Function and Records Produced

Refer to the Special Agent Handbook, Chapter 4, Financial Investigations.

Currency Tracking

Paper currency contains a seal showing the Federal Reserve Bank (FRB) city where the bill was originally issued. The FRB can trace paper currency to the first bank consignee if you have the serial numbers. Office of the Comptroller of the Currency (OCC) The OCC examines national banks to determine their financial condition and to determine whether the banks are in compliance with all applicable laws, rules, and regulations:

- Examinations Conducted
- Adequacy and stability of capital
- Quality of assets, primarily loans
- Adequacy, competency, and integrity of management and ownership
- Quality and level of earnings
- Quality and level of liquidity
- Records/Reports Produced
- Examination reports
- Working papers
- Examiner interview
- National Bank Surveillance System Information
- Information on foreign banks and on fraudulent offshore shell banks

Obtaining Records

Contact with the Director, Enforcement and Compliance Division, OCC, in Washington, D.C. should be made through established contacts of the Smuggling Investigations Division; Currency Branch. The same applies to requests from FDIC, FALBB, Federal Reserve, SEC, NCUA, and

etc.

Federal Deposit Insurance Corporation (FDIC)

The FDIC supervises, regulates, and examines all member banks of the Federal Reserve System (FRS), insured state-chartered banks that are not members of FRS, and insured state-licensed branches of foreign banks.

Examinations Conducted:

- Into the safety and soundness of bank operations.
- For compliance with Treasury's Currency Reporting Regulations.
- For bank compliance with consumer protection and civil rights laws.
- Of bank trust departments and electronic data processing operations.
- Special investigations.

Investigations in connection with bank applications to obtain insurance, establish branches or merge, or otherwise affect structure or ownership.

Records/Reports Produced:

- Reports of examination.
- Examiners' work papers.
- Correspondence files.
- Applications and change in control notices.
- Reports of income and condition and uniform bank performance reports.

Obtaining Records:

Each of the eight regional offices has a designated contact person for law enforcement inquiries. Some information is public and some requires a subpoena to obtain.

Federal Home Loan Bank Board (FHLBB)

The FHLBB supervises the Federal Home Loan Bank System and the Federal Savings and Loan Insurance Corporation (FSLIC) and regulates federally chartered savings and loan associations. It also regulates and supervises FSLIC insured state chartered savings and loan associations.

Examinations Conducted:

- Compliance with insurance regulations
- New charters, branches, and mergers
- Compliance with all applicable laws, rules, and regulations
- Records/Reports Produced:
 - Examination reports
 - Financial income and condition data reports
 - Investigatory files
 - Examiner interview

Obtaining Records:

Information can be obtained through the Director, Office of Enforcement, FHLBB, Washington, D.C. either through a written request or subpoena depending upon the information requested.

National Credit Union Administration (NCUA)

The NCUA has supervisory authority over federally chartered credit unions and state chartered federally insured credit unions.

Examinations Conducted:

- Adequacy and stability of capital.
- Quality of assets, primarily loan portfolio.
- Adequacy, competency and integrity of officers, directors, and management.
- Quality and level of earnings.
- Quality and level of liquidity.
- Records/Reports Produced:
 - Examination reports
 - Working papers
 - Interview of examiners

Obtaining records:

Any access to NCUA records is handled by the Assistant General Counsel, Litigation and Liquidations, Washington, D.C.

05.10

CREDIT REPORTING AGENCIES

The Fair Credit reporting Act of 1971 restricts the availability of information from credit reporting agencies to governmental investigative agencies. Credit reports may only be furnished to governmental investigative agencies under the following circumstances:

- In response to the order of a court having the jurisdiction to issue such an order.
- Upon written request of the consumer
- To a person who has a legitimate business need for the information in regard to a business transaction involving the consumer, including but not limited to credit, insurance, and employment purposes.
- The identifying information which is available under the act is limited to a consumer's name, address, former addresses, places of employment, and former places of employment.
- If identifying information is needed for investigative purposes the following credit reporting agencies can be checked:
 - Dun and Bradstreet, Inc.
 - Local credit rating and collection agencies
 - Local office of National Association of Retail Credit Men
- Insurance applicants:
 - American Service Bureau
 - Hooper Holmes Agency
 - Retail Credit company
 - Addresses
 - Telephone numbers
- Mortgage Loans:

- Loan exchange (clearing house for loan information)
- Retailers' Commercial Agency (performs credit investigations for credit cards, banking, and mortgages)
- Manufacturers:
 - The "Census File of Manufacturers" contains a census of manufacturing plants in the United States
- Marketing services:
 - Dun and Bradstreet, Inc.
 - Market Service Bureau
 - Middle Market Director (business guide of firms with a net worth between \$500,000 and \$1,000,000)
 - Million dollar directory (business guide of firms with a net worth of \$1,000,000 or more)
 - Metal Working Directory (marketing director of metal working plants in the United States)
 - Vendor Account Services (used by retail stores in processing accounts payable, buying, and merchandise control)
- Transportation:
 - TRING (furnishes statistics on the trucking industry)
 - Motor Carrier Directory (lists motor carriers with revenues totaling \$50,000 or more) International:
 - International Credit Reports (a division of Dun and Bradstreet which furnishes credit reports on overseas credit)
 - International Market Guides (Middle and South America only)
 - Continental Europe (lists European businesses in 39 countries)
 - Guide to Key British Enterprises (lists prominent firms throughout the United Kingdom)
 - Synopsis of Dun – Mexico
 - Synopsis of Dun – Brazil
 - Reference book – Argentina
 - International Mercantile Claims Division
 - Specialized commercial credit organizations

In addition to the above credit reporting agencies, there are specialized commercial credit organizations:

- United Beverage Bureau
- National Fuel Credit Association
- Jewelers Board of Trade
- Lumbermen's Credit Association
- Produce Reporter Company
- Packer Produce Mercantile Agency
- Paper and Allied Trade Mercantile Agency
- Lyon Furniture Mercantile Agency
- American Monument Association

05.11

TRACKING REAL ESTATE TRANSACTIONS

Real estate transactions are public records and are accessible by any citizen. For more information refer to the Special Agent Handbook, Chapter 12, Public Records.

06.01

SOURCES OF ACCOUNTING ASSISTANCE

This section will not focus on accounting principles, but will concentrate on where to obtain assistance with accounting records. (For basic accounting techniques refer to the Enforcement Manual, Chapter 8, Fraud Investigations.)

The tracing of funds during an investigation may lead to the accounting records of a particular business, as violators frequently launder their illegal profits by acquiring a legitimate business.

Acquiring a legitimate business serves at least three purposes for violators:

1. they can point to the business as the source of their income;
2. they can process illegal money through financial institutions as proceeds of the business; and
3. they can purchase real estate and other assets in the name of the business, effectively concealing the true ownership of such real estate or other assets. Remember that under statute, an individual subjected to financial records checks is notified by the institution that an inquiry was made.

06.02

REGULATORY AUDIT

In each region there is a Regulatory Audit Division staffed with accountants having responsibilities that include conducting audits on various entities. If you require assistance with accounting records, you can obtain the assistance of Regulatory Audit personnel by submitting a request through the appropriate Regional Commissioner. Consult with Regional Counsel and the Regulatory Audit staff prior to pre-seizure activities. Regulatory auditors have been prohibited from entering financial institutions to conduct any type of investigatory review of financial records, and have been utilized in post seizure analysis capacities only in some areas.

06.03

INTERNAL REVENUE SERVICES

In many investigations involving the tracing of funds there is a chance the violators are evading income tax in addition to the Customs violations. The Internal Revenue Service, Criminal Investigations Division (CID) is composed of special agents who are responsible for investigating IRS violations. Frequently the investigations can be conducted jointly.

06.04

CERTIFIED PUBLIC ACCOUNTS

Keep in mind that many businesses employ outside accountants to audit the books and verify the accuracy of a company's financial statements. These outside accountants are generally certified public accountants (C.P.A.s) who are licensed and regulated by each state. You could possibly find what you are looking for by interviewing the C.P.A. and examining his or her work papers. Consult with Regional Counsel regarding potential client privilege regulations.

06.05

COMPUTER ACCOUNTING RECORDS

Today many businesses keep their accounting records on computers. You should make every effort to have a computer expert with you whenever you endeavor to access a suspect's computer data banks. Keep in mind when you execute a search warrant on a firm that has the accounting records on floppy disks or a hard drive that these records can be erased in a matter of seconds. If this should happen an expert could retrieve such records provided nothing has been entered over the information that has been erased.

Another thing to remember is, if the records are on a hard drive, which you plan to take with you, be very careful as even a slight bump can result in erased information. Another example of when an expert will be needed is when the data is coded; an expert may be able to break the code. These consultants also make expert witnesses at trial.

06.06

EXAMINING RECORDS

Even though you may have little or no accounting background, there are some things you will find helpful. You will rarely reconstruct a set of records. You may be working with books and records or possibly fragments of books and records. From these you will attempt to tie the financial transactions to various kinds of criminal activity.

In examining these records keep three words in mind - analyze, scrutinize, and compare. They are key terms in dissecting and tracing financial transactions. You have been trained to look below the surface. Investigating books and records requires the same kind of approach that you apply when investigating any kind of criminal activity. Look for the unusual; are there transactions that appear to be out of the ordinary. The following are some examples of suspected fraudulent business transactions:

- Maintaining two sets of books and records.
- Destruction of books and records.
- Large or frequent currency transactions.
- Payments to fictitious companies or persons.
- False documents.
- Purchases or sale of under or over-valued assets.
- Large company loans to employees or other persons.
- Frequent cashing of checks received.
- Frequent use of cashier's checks.

- Personal expenses paid with corporate funds.
- Payees names on checks left blank and inserted at a later date.
- An individual negotiating checks made payable to a corporation.
- Second or third-party endorsements on corporate checks.
- Excessive use of exchange checks or clearing accounts.

07.00

QUESTIONED DOCUMENTS

Documents which are of suspect origin, authenticity, age, authorship, etc. may be encountered during a fund tracing investigation. For information on this subject refer to the Special Agent Handbook, Chapter 12, Investigative Methods.

**UNICORN
RIOT**

Special Agent's Field Manual

Chapter 21: Fraud Investigations

- 21.1 General
- 21.2 Types of Fraud
- 21.3 Applicable Sections of Law
- 21.4 Origin of Investigations
- 21.5 The Investigation
- 21.6 Reports
- 21.7 Guidelines for Participating in Fraudulent Marriages

References:

INA: 212(a)(6)(C), 237(a)(1)(A), (G), 237(a)(3), 274C (8 U.S.C. 1324c).

Regulations: 8 CFR 270.

21.1 General.

(a) Introduction. Unlike other investigations which concern themselves with one individual who commits a specific violation of the immigration and naturalization laws, fraud investigations may run the gamut from an alien who single-handedly devises and executes his or her own scheme to circumvent these laws to large scale conspiracies formed for the purpose of defrauding the INS and other U.S. government agencies or departments. Increasingly, investigations of parties involved in immigration fraud develop into investigations involving other criminal activity.

One major area of fraud activity is that of unscrupulous persons who assist in the preparation and submission of visa petitions, applications, and other documentation to the Service and to U.S. Consuls. They are persons who generally earn their livelihood by preying on people who want to immigrate to the U.S. or who desire to aid in the immigration of friends and relatives. In furtherance of their objectives, these individuals frequently resort to fraud, misrepresentation and other irregularities in the preparation of petitions, applications and documents, and may often be guilty of suborning witnesses to commit perjury.

Vigorous investigation and prosecution of fraud is vital to maintaining the integrity of the immigration system. Appropriate Service action and timely criminal prosecution of the persons involved in fraudulent immigration practices serves as a strong deterrent against similar violations. It is your duty, therefore, to expose fraudulent activity before it becomes widespread, and to quickly bring offenders to justice through sound investigations which result in successful prosecutions. Prompt and effective investigative action will also serve to improve Service relations with U.S. Attorneys, the courts, other governmental agencies, and the general public. Whenever possible, publicize successful prosecution of fraud cases. Experience has shown that publicity in local and foreign language news has been beneficial as a deterrent and in presenting a favorable Service image to the public.

Timeliness is as critical a factor in administrative proceedings as in criminal proceedings.

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Action on a visa petition cannot be withheld indefinitely on the basis of suspicion. [See 8 CFR 103.2(b)(18).] The longer the Service waits before taking adverse action in a case, the more complicated such action becomes. For example, denial of a visa petition is simpler than revoking a petition after it has been approved. Once adjustment of status is approved on a conditional basis, terminating that status is complex, and once conditional status is removed, adverse action is even more involved.

In a rescission investigation under section 246 of the Act, where the five-year limit has nearly tolled and a *prima facie* case has been developed, a decision must be reached as to whether immediate service of the notice to rescind is necessary. If this course is taken, expedite any further investigation of the matter must be expedited. If you develop significant new evidence, forward an amended notice to rescind.

Also note that delays in commencement of adverse action afford the subject additional time to accrue equities, including application for immigration benefits for family members and possibly even naturalization.

(b) Definition. Fraud has been defined as the making of false representations concerning a material fact, made with knowledge of their falsity and with intent to deceive the other party. Fraud may also involve the making of a statement or representation that reasonably would have the effect of discouraging an avenue of inquiry into the true facts.

Applying this definition to matters before the Service, it may be said that when a person or persons willfully and deliberately distort(s) or omits material facts in an effort to circumvent the immigration and nationality laws, immigration fraud has been committed.

(c) Fraud/Anti-Smuggling Investigations Interface. Fraud investigations are conducted to determine whether grounds exist for criminal prosecution and/or removal of an alien who is suspected of attempting to perpetrate, or perpetrating, a fraud in seeking to enter, remain in, or obtain an immigration benefit in the U.S. Fraud investigations are also conducted to identify and criminally prosecute other persons suspected of assisting the alien in such fraud.

Smuggling investigations are conducted to identify, apprehend, criminally prosecute, and/or deport smugglers, transporters, and harborers of aliens who have assisted the aliens to enter the U.S. by any means other than fraudulent documents.

These two types of investigations are not mutually exclusive. While organized rings which transport persons from overseas, bring them into the U.S. by evading inspection, and thereafter provide them with counterfeit documents generally fall within the purview of anti-smuggling operations [see chapter 27], other rings which assist the aliens in obtaining nonimmigrant visas through fraud and thereafter harbor them at places of employment, such as restaurants, clearly violate both fraud and smuggling criminal statutes. Report investigations of operations of this latter type, through channels, to HQ Investigations.

21.2 Types of Fraud.

(a) Marriage Fraud and Other Relationship Fraud. Marriage fraud is a common and

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widespread vehicle employed by aliens who seek to acquire permanent resident status by marriage to a citizen or resident alien. It is often accomplished by collusion with a U.S. citizen or lawful resident alien who is willing to enter a "sham" marriage with the alien for money. The alien is often from a country where immigrant visas are heavily oversubscribed. As current immigration laws favor the unification of families, the spouse of a U.S. citizen, who is exempt numerical limitations, and the spouse of a legal permanent resident alien, who is accorded a high preference in the allocation of available visa numbers, both benefit.

The alien who participates in a fraud marriage may have entered the U.S. in a nonimmigrant category or without inspection, and will thereafter arrange, either alone or through a third party, to go through a marriage ceremony with a U.S. citizen or legal resident alien, whose principal function is to file a visa petition on behalf of the alien. Both parties marry with the prior understanding that there will be no cohabitation and that after the alien's immigration status is adjusted, the marriage will be dissolved. Frequently the third party will arrange to send the citizen or resident alien abroad for the express purpose of marrying an alien so the alien may enter the U.S. as an immediate relative, special immigrant, or preference immigrant. Upon obtaining permanent resident status, the alien will generally take the legal steps to dissolve the marriage. Some sophisticated schemes, however, provide that the marriage to the U.S. citizen will not be legally terminated until the alien has acquired the additional benefit of naturalization through section 319(a) or 319(b) of the Act.

Note that fraudulent marriages are frequently employed by persons seeking to enter the U.S. to engage in prostitution or other organized criminal activity.

Establishing fraudulent intent on the part of the alien is critical and often difficult. This is particularly important because in many instances, the U.S. citizen or the legal permanent resident alien spouse is not party to the fraud and has been duped.

Somewhat less common are frauds involving relationships other than marriage, such as parent-child or brothers and sisters of U.S. citizens. These are perpetrated through fraudulent or delayed birth records, fraudulent marriage records, fraudulent or counterfeit household registries, and/or through the creation of saleable "slots" fabricated when immigrant visa applications are made, or subsequent to the immigration of the principal.

In another type of relationship fraud, a beneficiary who is married may claim to be unmarried in order to gain a higher immigration preference. Similarly, a fraudulent or altered birth certificate may be used when a dependent is close to "ageing-out" of dependent status.

Recent amendments to the INA to provide relief for battered spouses have opened yet another avenue for fraud. A fraudulent marriage can readily be covered up by a battery claim. Such a claim would hamper the ability of the Service to do a traditional marriage fraud investigation to uncover a paper marriage.

(b) Employment-Based Visa Fraud. In this type of fraud the alien petitions for himself/herself or is petitioned for by an individual business firm in the U.S. Generally, these petitions allege that the alien's services are needed because of high educational level, technical training, specialized experience, or exceptional ability which will be

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substantially beneficial prospectively to the national economy, cultural interests, or welfare of the U.S.

Some petitions require individual labor certifications issued by the Department of Labor. These labor certifications indicate that there are insufficient permanent resident alien or U.S. citizen workers to fill these specified positions. In some of these cases, contact with the business firm or prospective employer, and the preparation of the necessary visa petitions and supporting documentation, is made with the aid and assistance of an unscrupulous attorney, travel agent, notary public, or other interested party, who charges a substantial fee for services. In other cases, statements on Forms G-28 to the contrary, the third parties do not represent the petitioners, and the statements made on the petition and/or on the job offer for alien employment were made without the petitioner's knowledge.

Investigations have also disclosed that in many cases, the documents submitted in support of employment-based petitions are fraudulent and that the beneficiary's experience and qualifications are either falsified, nonexistent or totally unknown to the petitioner. Frequently, an investigation will disclose that the petition and supporting documentation contain false and fictitious statements as to the nature of the petitioner's business as well as the alleged urgent need for the alien's services. The type of duties the alien is to perform for the petitioner may also be grossly exaggerated and the wages proposed to be paid are often misrepresented. In many cases, the beneficiaries of employment-based petitions are found never to have reported to the petitioner for employment.

Another, somewhat complex, area of employment-based fraud involves cases filed pursuant to section 203(b)(1)(C) of the Act, which makes visas available, without an individual labor certification, to certain managers and executives of multi-national companies. In this type of fraud, a "shell company" is established overseas for the sole purpose of "transferring" one or more "key executives" to a branch office or subsidiary company in the U.S. Successful investigation of this type of case requires a knowledge of corporate law and may involve an auxiliary investigation to determine the authenticity of the overseas parent company. Various commercial publications and databases which show corporate relationships among various companies, subsidiaries, and affiliates are also useful in conducting this type of investigation.

(c) Investor Fraud. The 1990 amendments to the INA created a new category of immigrant visa, the "employment creation" category described in section 203(b)(5) of the Act. This visa category provides visas, on a conditional basis, to persons who invest a substantial amount of money in a U.S. business, thereby creating job opportunities for American citizens and residents. The category has proven to be fraud-prone. Claims of investments made, jobs created and even the existence of actual businesses have been fabricated.

(d) Asylum fraud. Many aliens try to take advantage of the generous protections and benefits (particularly employment authorization) available to asylum applicants and asylees under our asylum laws. A fraudulent asylum application is often filed for the purpose of obtaining employment authorization, rather than with the expectation of actually being granted asylum. Often unscrupulous attorneys and arrangers prepare "boilerplate" asylum applications. Because of the backlogs in asylum processing, such

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applications often result in long-term employment authorization. In addition, the applicant frequently gains enough time to develop other equities. Investigations of this type of fraud typically involve large numbers of applicants, all with identical or very similar claims.

(e) False USC Claims. False claims to U.S. citizenship involving the use of fraudulent or counterfeit birth or baptismal certificates, delayed or improperly registered birth certificates, or false claims to birth in areas adjudged to have been part of the U.S. for specified periods of time. The counterfeiting or alteration of U.S. passports or, more commonly, the acquisition of U.S. passports through fraudulent documentation are also forms of this type of fraud.

(f) False Affidavits. False letters of employment, and/or invitation, and/or affidavits of support submitted to U.S. consuls in connection with the filing of visa applications are a common type of fraud. The new, enforceable affidavit of support may affect fraud of this nature, but at this time the Service has had insufficient experience to identify the possibilities.

(g) Temporary Worker Fraud. Nonimmigrant visa fraud is perpetrated by petitioners who seek to import an alien for a temporary period because of the alien's alleged "distinguished merit and ability" (e.g., as an entertainer or model), or to perform other temporary services or labor, and who thereafter earn commissions from the alien's services as a result of "farming out" the alien to another independent enterprise in the U.S. H-2A and H-2B fraud generally involves misrepresentation of actual wages, work hours, and other working conditions. Investigation of this type of fraud often involves labor law violations as well as INA violations.

(h) Student Visa Fraud. Counterfeit or, more commonly, fraudulently-issued Forms I-20 (Certificates of Eligibility) may be submitted by aliens seeking to enter or remain in the U.S. as students. Note that in a significant percentage of these cases, school officials and/or recruiters are the principal perpetrators of the irregularities and fraud.

(i) False Documents. Use of counterfeit, altered, or fraudulently-obtained foreign passports and/or the nonimmigrant visas contained therein is a common type of fraud. Other U.S. and foreign documents, including vital statistics records, are frequently used to gain immigration benefits or employment authorization.

Counterfeit, altered, or fraudulently obtained Service documents, such as Forms I-551, I-765 or I-94, are often used as evidence of alien registration. Fraudulent use of Forms I-90 and I-131 by impostors to acquire genuine resident alien cards, parole documents or reentry permits is becoming more common.

Because document vendors are responsible for such a large segment of immigration fraud of every description, investigation and prosecution of such cases is a high agency priority. Smuggling cases, relative and employment-based petition fraud, investor fraud, false claims to U.S. citizenship and asylum fraud, among others, are frequently rooted in fraudulent documents.

21.3 Applicable Sections of Law.

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(a) General. The Service has two weapons which may be effectively employed to combat immigration fraud:

- criminal penalties
- administrative penalties such as removal and various fines

Several times in recent years Congress has increased the range and severity of both criminal and civil penalties. In addition, the law enforcement authority of special agents and other immigration officers has been enhanced to improve the Service's effectiveness in enforcing the immigration laws. Despite these enhancements, however, the job of the Service in detecting and deterring fraud continues to grow. It is essential that you become thoroughly familiar with the elements of the various criminal offenses and applicable administrative penalty provisions in order to develop each investigation with sufficient admissible evidence to prove a criminal violation beyond a reasonable doubt, to establish inadmissibility or deportability, or to impose other administrative penalties.

Although fraud investigation is often challenging and time-consuming, it is critical to the integrity of our immigration laws. It is extremely difficult, but also important, to balance this case work with other immigration enforcement priorities such as removal of criminal aliens and worksite enforcement operations.

(b) Criminal Charges. See Appendix 15-1 for a Table of Commonly Used Criminal Charges and Possible Penalties.

8 U.S.C. 1325(c) provides that any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than \$250,000, or both.

8 U.S.C. 1325(d) provides that any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with title 18, or both.

18 U.S.C. 911 provides that whoever falsely and willfully represents himself to be a citizen of the U.S. shall be fined under this title or imprisoned not more than 3 years, or both. It is important to note that the false representation of citizenship must be made for a fraudulent purpose. False claim to birth in the U.S. alone is insufficient to sustain conviction under this section since a person may be born in the U.S. and remain therein for life and yet not be a citizen (*Smiley v. U.S.*, C.A. Cal. 1950, 181 F. 2d. 505).

Title 18, U.S.C. 1001 makes it a felony punishable by a fine or up to 5 years imprisonment, or both, for a person who in any matter within the jurisdiction of any department or agency of the U.S. knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or documents knowing the same to contain any false, fictitious or fraudulent statement or entry. This is an important section of law permitting prosecution of a person who makes a false statement to the Service concerning a matter within its jurisdiction, or files or causes to be filed false writings or documents.

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Frequently, this charge may be coupled in an indictment with a charge under 18 U.S.C. 2, which defines a principal to an offense as a person who commits an offense against the U.S., or aids, abets, counsels, commands, induces or procures its commission or who willfully causes an act to be done, which if directly performed would be an offense against the U.S.

Where a conspiracy between two or more persons is alleged, the purpose of the conspiracy is to commit an offense or to defraud the U.S. or any agency thereof, and one or more of such persons do any act to effect the object of the conspiracy, the indictment will contain a charge under 18 U.S.C. 371.

18 U.S.C. 1015 is a broad and important section relating to false statements and fraud in naturalization, citizenship, and registry of alien matters. It has been used successfully in prosecuting notaries falsely notarizing documents used in support of nonimmigrant visas. A violation of this section only occurs when the false statement made on a paper required by the immigration laws is actually used for a purpose required by these laws. (See *U.S. v. Bithoney*, C.A. N.Y. 1973, 472 F.d. 16. Cert. denied, 93 S. Ct. 2771, 412 U.S. 938, 37 L.Ed. d. 397)

18 U.S.C. 1422 provides that whoever knowingly demands, charges, solicits, collects, or receives, or agrees to charge, solicit, collect, or receive any other or additional fees or moneys in proceedings relating to naturalization or citizenship or the registry of aliens beyond the fees and moneys authorized by law, shall be fined or imprisoned not more than 5 years, or both. This section of law has proved valuable where unscrupulous third parties, frequently travel agents, notaries public posing as attorneys, corrupt Service employees, or persons with "contacts" within the Service, receive moneys from aliens for preparing documents ostensibly to be submitted to the Service in order to obtain permanent residence. No applications or petitions (or, as in one case, fingerprint charts and Forms G-325) are, in fact, filed with the Service or with American consuls abroad, generally avoiding violations of either 18 U.S.C. 1001 or 1546. The third parties retain the moneys, temporize with the duped aliens, or go into hiding.

Successful use of this statute relies, in part, upon the court accepting the Service's definition of when a proceeding commences. This definition, set out in 8 CFR 1.1(g), includes as part of the proceedings "preliminary steps taken by any private person or corporation preliminary to the filing of the application or petition by which any proceeding under the jurisdiction of the Service or the Board is initiated."

Violations of section 1422 may be accompanied by violations of 18 U.S.C. 912 (impersonation of a federal officer).

18 U.S.C. 1425 provides that whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or citizenship; or whether for himself or another person not entitles thereto knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of naturalization or citizenship, documentary or otherwise, or duplicates or copies any of the foregoing shall be fined and imprisoned for 25 years (if the offense was committed to facilitate an act of

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international terrorism); 20 years (if the offense was committed to facilitate a drug trafficking crime); or 10 years (in the case of a first or second such offense if the offense was not committed to facilitate an act of terrorism or drug trafficking).

Despite its title, 18 U.S.C. 1426 does not relate solely to naturalization and citizenship. It encompasses counterfeiting of an alien registration receipt card, i.e., a "paper authorized by law relating to the registry of aliens" within the meaning of this section. (See *U.S. v. Castillo-Felix*, C.A. Ariz. 1976, 539 F. 2d. 9).

18 U.S.C. 1546 is a vital section which provides for substantial terms of imprisonment and fines for whoever "knowingly forges, counterfeits, alters or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives...any such document, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained". This section also contains provisions prohibiting false statements in immigration applications; the unauthorized possession or sale of blank immigration documents, plates or paper designed for printing immigration documents; and impersonation in relation to immigration matters.

Bear in mind that in seeking to make a case against a defendant where false or fraudulent statements in an application, affidavit or other document required by the immigration laws and regulations are involved, it is advantageous to develop the investigation within the scope of 18 U.S.C. 1546 rather than section 1001. This is preferable because a conviction under 18 U.S.C. 1546 renders an alien removable under the Act, without the need to establish fraud, materiality, or that the crime involves moral turpitude. It is also important to note that 18 U.S.C. 1546 may be used as a predicate for a charge of money laundering under 18 U.S.C. 1956 or 1957.

Generally, offenses arising under the laws over which the Service has investigative jurisdiction may not be prosecuted unless an indictment is returned or an information is filed within five years from the date of the commission of the offense.

(c) Administrative Charges. Section 212(a)(6)(C)(i) of the INA is the specific ground of inadmissibility relating to immigration fraud. If the alien succeeds in effecting entry through fraud, or was inadmissible at the time of entry as a result of fraud, he/she would be deportable under section 237(a)(1)(A) of the Act. Section 212(a)(6)(C)(ii) renders inadmissible a person who seeks entry by falsely claiming U.S. citizenship. In addition, marriage fraud (if the marriage terminates within two years of immigration or it otherwise appears to the Service that fraud was intended) may result in a finding of deportability under section 237(a)(1)(G). Section 237(a)(3)(B)(iii) renders deportable an alien convicted of visa or immigration fraud pursuant to 18 U.S.C. 1546.

Marriage and the dissolution of marriages through divorce or annulment are complex subjects, especially in terms of the immigration benefits which can be lost or accrued. The numerous published Service decisions, interim decisions, and court decisions which qualify the INA in regard to marital relationships are tied to individual states' laws and/or the laws and customs of foreign nations. In examining a marital relationship for fraud,

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you must therefore be aware of any material technical faults in the relationship which may be independent of, or allied to, the fraud being investigated. You must be conversant not only with the applicable decisions, but also with pertinent portions of your state's domestic relations laws and the marriage and divorce requirements and customs of certain foreign countries. For example, an agent scrutinizing a Dominican divorce and remarriage should first familiarize him/herself with the pertinent decisions relating to Dominican divorces and their timely registry. Likewise, an agent inquiring into West African marriages should be cognizant of relating decisions on customary marriages.

Similarly, the impact of an annulment upon an alien's status as an immigrant must often be measured against state laws. For example, in some states all annulments judicially void the marriage *ab initio*, while in other states only annulments granted on certain grounds serve to void the relationship from its inception. You must carefully evaluate these factors, for example, in approaching a "child bride" case involving subsequent annulment of the concealed marriage.

Section 274C of the Act provides penalties for document fraud and persons convicted of section 274C violations may be deportable under section 237(a)(3)(C). Note, however, that the Service is currently reviewing plans for implementing its authority under this Section.

21.4 Origin of Investigations.

(a) General. Investigation is generally undertaken as the result of information received directly by the Investigations branch or upon receipt of an allegation or information from another operating branch or Service office, which indicates that a fraud has been perpetrated. Because many frauds are detected during the inspection process or in the course of the adjudication of visa petitions and applications, close cooperation must be maintained with the Adjudications branch of the Service. Allegations of fraud may also arise from complaints received from other governmental agencies and the public. Carefully scrutinize even those complaints which are non-specific or which otherwise do not themselves appear to justify investigation. Important results may follow from information which at first appears to be of little or no value. Often a simple investigation may develop into a complex case encompassing numerous persons involved in a large-scale fraud scheme.

(b) Fraud Facilitators. Fraud facilitators are unscrupulous attorneys, immigration consultants, travel agents, notaries public or other persons who are, or who are believed to be, engaged in large-scale fraud operations involving the preparation and submission of visa petitions and other applications for immigrant visas, nonimmigrant visas and/or DOL certifications.

Because immigration fraud is widespread and resources are inadequate to investigate every individual case, the Service targets organizations and facilitators as a cost-effective way to combat a broad spectrum of immigration fraud. Organizations or facilitators may be responsible for dozens or even hundreds of individual fraud cases. By uncovering and prosecuting the organizations and facilitators, the volume of fraud can be more effectively contained.

While it is not possible to set forth all circumstances which may give rise to suspicion of

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fraud by a facilitator, Adjudications officers have been instructed to carefully examine the facts if:

- the party was previously involved in a fraud, misrepresentation or similar irregularity;
- the supporting documents in cases in which the party is interested are almost invariably prepared according to a fixed pattern;
- the aliens in whom the party is interested are usually from the same general locality abroad; complaints of overcharging have been made against him/her;
- the party is reputed to be involved in unethical practices; or
- the person is an attorney, immigration consultant, or notary public whose name frequently appears on numerous similar applications and petitions.

If, upon completion of the interview or interviews, no basis exists for suspecting fraud or misrepresentation, adjudicating officers have been instructed to adjudicate the application and refer the application or copy of the petition and any relating file to the Investigations branch by memorandum for information in connection with investigations of other cases involving the same facilitator.

(c) Data Mining. With the rapid growth of automated systems within INS at both district offices and service centers, possibilities for conducting sweeps of databases, searching for suspect individuals, organizations or patterns within a large group of applications and petitions, have grown rapidly. Several Service automated systems such as CLAIMS, RAPS and the ADIT-trailer within CIS are valuable resources for detecting large scale fraud. Each of these systems has search and report capabilities useful for fraud detection purposes. Several local offices have devised local programs to achieve similar results. Resources and expertise for large scale data mining may also be made available through HQINV.

21.5 The Investigation.

(a) Marriage or Relationship Fraud. The following are some suggested steps to take in investigating marriage or relationship fraud:

- (1) Obtain and carefully analyze all files or alpha material relating to the petitioner, beneficiary and any other persons believed to be connected to the investigation.
- (2) Ascertain the nature of the fraud involved. Is it an immediate relative, special immigrant or preference visa fraud? Is it a case of concealed identity or the use of a fraudulent document? If suspected, check indices maintained at EPIC [see chapter 5]. Does it involve a single fraudulent scheme or does it indicate a fraud operation perpetrated by a number of persons over a period of time? Review all suspect files and make note of any common denominators such as the notary public, witnesses whose names appear on marriage records, addresses, etc. If there are recurrent common denominators, the fraud probably involves multiple subjects.
- (3) If you ascertain that single or multiple subjects are involved in fraudulent

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activities, duplicate all pertinent applications, photographs and documents for field use. Reduce all other information to investigator's notes.

(4) If you determine that a fraudulent marriage scheme or a relationship fraud is involved, usually the most important person to interview is the alien's spouse or petitioner. If you do not find the spouse residing at any of the addresses indicated in Service records, use the investigative techniques outlined in chapter 24 to locate the spouse.

In most cases, you should gather as much background information as possible before confronting either the petitioner or the alien beneficiary. A good source of information which may provide leverage is the local welfare department. Frequently, petitioners involved in marriage fraud are U.S. citizens with dependent children who are receiving welfare assistance. These petitioners often fail to notify the welfare department of changes in their marital status because it may affect the amount of assistance they receive. Other good sources of information are the petitioner's parents, children (adolescent or older), roommates, common law spouses, etc.

(5) After locating the petitioner, take a sworn statement covering:

- Spouse's name, address, date and place of birth and citizenship.
- Prior marriages by either spouse and, if terminated, when and where this occurred.
- Date and place of the present marriage, witnesses who were present, and whether it is still in effect or has been terminated; if the latter, the date and place of such termination, and whether it was by annulment, by divorce, or by spouse's death.
- Reason for the marriage. Was it entered into solely to afford the alien the opportunity to adjust his or her immigration status? Was it merely for the convenience of the alien, with the prior understanding that it would be dissolved following his/her adjustment of status?
- Period of time they knew each other prior to the marriage. How did they meet? Was there a period of courtship? If so, for how long?
- Discrepancies in age and ethnic background. Is there a language barrier between them?
- Any payment of money for entering into the marriage. Was any other consideration promised which prompted the marriage? For example, a promise to pay petitioner's rent for several months, or an expense-paid "vacation" to the alien's country at the time the marriage took place and the petition was filed at the American consulate.
- Consummation of the marriage.
- Residence together as husband and wife and, if so, at what address(es)?

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- Other persons who may have knowledge of the facts of the marital relationship.
- Possible arrangements of the marriage by or through an intermediary, and the name and address of any such intermediary. Possible arrangements of similar marriages by the same intermediary and, if any developed, the name, nationality, and addresses of the other persons for whom marriages were arranged.

As soon as possible, attempt to corroborate the truth or falsity of the spouse's statements in the form of sworn statements from other persons having knowledge of the marriage. Bear in mind that an alien who has obtained permanent residence will invariably try to keep that status by contradicting any adverse statements made by the spouse. Consequently, the corroboration of the spouse's statements is vital to the case. Note the willingness, or unwillingness, of all government witnesses to confront the interested parties and undergo cross-examination in the record made of their interview.

Trial attorneys frequently experience difficulty in sustaining a marriage fraud charge in a removal proceeding where the evidence is the unsupported statement of one spouse against the other.

Should the investigation uncover the fact that an intermediary was employed and he/she was active in similar marriage cases, undertake prompt investigation to develop all available evidence leading toward prosecution of the intermediary and other responsible parties. In developing evidence to sustain prosecution against the intermediary, thoroughly investigate each case in which the alien is found to be involved in accordance with the above or similar techniques. Place particular emphasis on ascertaining the willful knowledge of the intermediary in arranging similar marriages for convenience, and showing that the objective was the unlawful circumvention of the immigration laws by perversion of the truth.

You must be extremely careful when conducting a marriage fraud investigation when a U.S. Attorney is actively considering criminal prosecution. AUSAs sometimes discourage formal statements because they must be released to defendants and their attorneys during pre-trial disclosure hearings. Before taking any formal statements from potential targets or witnesses in a criminal investigation, you must obtain concurrence from the U.S. Attorney's office.

(b) Labor Certification Fraud - Third Party Involvement. Following is an example of an investigation of a broad-scale fraud involving employment based visa petitions:

Information is received that the owner and personnel of a travel agency have been involved in the preparation and submission of fraudulent preference visa petitions, based on suspicion arising from the submission of a preference visa petition on behalf of one alien. In coordination with the Adjudications branch, the investigation may proceed with the following steps:

- Identify the agency, its ownership and personnel. You may ascertain this in part by scrutinizing the petition and the supporting documents.

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- Note the name of the person(s) who signed the petition on behalf of the petitioning business and/or any supporting documentation, and who appears as the translator of the foreign language documents.
- Search all relevant databases and records to identify and locate other petitions in which the travel agency personnel appear to have been involved, and examine them for common characteristics.
- As far as practicable, prior to initiating the investigation on the suspect case, carefully review other cases forwarded by the Adjudications branch in which the personnel of this travel agency are involved.
- Discreet inquiry and surveillance of the premises occupied by the travel agency may further disclose the identities of any other individuals associated with this particular travel agency, such as attorneys or notaries.
- Coordinate the inquiry with both DOL and state department of labor offices having jurisdiction over the geographical area. They can sometimes provide valuable background information on petitioners. The DOL retains a copy of all labor certifications issued to petitioners. Ascertain whether the same travel agencies or personnel are involved in multiple fraudulent applications for labor certification.
- Obtain all Service files relating to the personnel of the travel agency as many of these persons may be either resident aliens or naturalized citizens.
- Obtain photographs of these individuals from the respective files, and/or from the agency in your state that oversees the issuance of driver's licenses. Note that when displaying a photograph of a potential target of a criminal investigation to witnesses, you must use at least six different photographs of persons of similar age and physical characteristics to insure credible identification.

If you cannot locate relating Service file(s), pursue the possibility the persons involved have applied for U.S. passports to travel abroad. This is an excellent source for biographical information and photographs.

When conducting this type of investigation, bear in mind that the investigation is directed not only towards ascertaining whether a single petition is bona fide, but towards establishing whether grounds exist for prosecution of the agency's personnel. When you have collected a sufficient number of petitions for examination for patterns of fraud, catalog the information appearing therein to show the specific modus operandi in each case. Look for similarity of language employed in the supporting statement(s) on the petitions or in supporting documentation; the number and types of petitions filed by a particular petitioner; the locality from which the various beneficiaries originate; and whether the beneficiaries are in the U.S.

In those cases where it is indicated that the beneficiaries are in the U.S., search the applications for extension of temporary stay. It may develop that these aliens were admitted as visitors, that a number of applications for extension were submitted on their behalf, that these applications for extensions were prepared by the same suspect party, and that the statements on these documents materially conflict with the statements

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made on the documents submitted in support of labor certification.

Make copies of each preference petition together with all documentation submitted in connection with the petition, such as supporting statements on the petitioner's stationery, documentation relating to the beneficiary's qualifications and, if the beneficiary is in the U.S., any applications for extensions of temporary stay and the aliens' Forms 1-94, if available. You will then be in a position to continue the investigation with specific objectives in mind.

The first person to interview should be the one believed most likely to admit to the fraud and provide a definite link with the suspect third party. This may be either the petitioner or the beneficiary. If the petitioners all appear to be unrelated U.S. citizens, contact with them first is usually more fruitful. If, however, the petitioner(s) are themselves suspect, initial contact with the alien beneficiaries (whom the petitioners may be exploiting) may prove more productive. If the case has been accepted for prosecution, do not take formal statements unless the AUSA handling the case authorizes it.

If you interview the petitioner first, show him/her the copies of the petition and ask whether or not he/she executed the petition. If the petitioner did not, or signed only a partially completed document, ascertain the identity and location of the person who completed the form. Experience has shown that many suspect petitions have been executed or completed by someone other than the petitioner. Ask the petitioner if his/her signature appears on the petition.

Review the description of the duties that the beneficiary alien will be required to perform with the petitioner. Show the petitioner a copy of any supporting documentation and discuss the claims made therein.

If you develop any material irregularities or misrepresentations, promptly prepare a memorandum of the interview which sets forth in detail the circumstances under which he/she was induced to petition for the alien beneficiary, and what followed.

Next, scrutinize documents and sources reasonably expected to contain or reveal an impartial record of the beneficiary's past employment, or which pertain to the proposed employment. These may include, but are not limited to, copies of individual and corporate tax records; copies of permits or licenses needed by either the petitioner or the beneficiary to engage in the specified occupation, such as licenses issued by state alcohol beverage control authorities; payroll and personnel records, especially in relation to wages paid or to be paid to the beneficiary relative to the DOL's prevailing rate for that occupation, in relation to the wages being paid to other U.S. citizen workers in the same position, and in relation to the volume of business being handled by the petitioning entity. Other unrelated personnel employed by the petitioner may provide valuable information as to the beneficiary's actual relationship to the petitioner, actual duties he/she performs, and actual wages.

If the alien is in the U.S., you should generally interview him/her next and prepare a memorandum of interview as to his/her knowledge of the facts in the case. In addition to biographical data, closely question the alien concerning the manner in which he or she became aware of the existence of the travel agency, to whom the alien spoke at the travel agency, and in whose presence these conversations took place.

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Also interview any relatives, friends, or other interested parties and prepare memoranda of interviews concerning their knowledge of the facts concerning the particular petition. Obtain information as to their knowledge of the part played by the personnel of the travel agency, starting with the initial interview of the alien at the travel agency; the fee agreed upon; the counseling of the alien by the travel agent to obtain employment and whether the travel agent participated in having the employer agree to signing the papers; the knowledge of the travel agent that the alien was employed in the U.S. prior to submitting an application for extension of temporary stay; the preparation of the petition and other papers by the travel agent; and the submission of the petition and supporting documents by the agent to the Service. Show a photo-spread of the travel agency personnel to the witnesses for identification.

In summary, the objective of the investigation in each suspect petition is to determine the facts and, if indicated, obtain corroborative evidence from a number of independent sources as to the involvement of the travel agency personnel in the making and/or causing of false statements filed with the Service.

Although the foregoing refers to the personnel of a travel agency as the principals or instigators, attorneys and/or immigration consultants are often the prime movers behind this type of fraud. The original complaint may concern an attorney, or other sources may show an attorney to be a suspect third party. In such cases, follow similar procedures with regard to the attorney and any notary public, interpreter, and other parties associated with the attorney.

The development of several of these petitions along the lines indicated should result in a prima facie case being established for prosecution. The subjects may then be charged with conspiring to commit offenses against the U.S.; making and causing to be made false statements in a matter within the jurisdiction of the Service; and making and causing to be made false certifications in petitions required by laws relating to immigration. Note that even if the third parties did not sign any petitions or applications, they may nonetheless be chargeable as principals who aided and abetted under 18 U.S.C. 2.

(c) Investment Frauds.

(1) EB-5 Program. As a part of the 1990 amendments to the INA, Congress created an "employment creation" visa category, adding a new section 203(b)(5) to the Act. The requirements for the program and filing requirements may be found in 8 CF R 204.6. The number of EB-5 investor visas approved each year is small and the Service's experience in dealing with these cases is limited. However, it is apparent that fraud does exist in many of these cases.

Investment frauds are often extremely complex and concealed by voluminous supporting documentation, with only financial transactions or information favorable to the application being offered in evidence. You should be prepared to request and/or subpoena bank records and tax records relating to the company and to the individual to track the actual flow of the full required amount of invested money to assure that the money was not deposited one day, and withdrawn or diverted to other parties the next.

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Because investments under the EB-5 program frequently involve limited partnerships and other pooled investment structures, it is often valuable to identify other aliens who allegedly invested in the same business and to compare their petitions. Unrelated employees of the company, disgruntled neighbors and competitors, the previous U. S. citizen owners of the property, real estate agents, disinterested attorneys, bank officers, the Better Business Bureau, the local department of consumer affairs, and the local police may provide pertinent information about the operation of the business and the claimed investment.

Physically evaluate the business itself through an on-site investigation to determine the veracity of the statements made on the Form I-526 and in the supporting documents; e.g., to determine if the business exists as represented and the volume of business claimed is being transacted, if it appears that the funds represented as invested in the business were actually invested, and if U.S. citizens and/or legal permanent resident aliens are employed.

(2) Nonimmigrant/Treaty Investors. Treaty investor status is defined in section 101(a)(15)(E)(ii) of the Act and described in OI 214.2(e). Such status differs significantly from immigrant investor status in that the investor need only prove his/her investment has been significant (rationale set forth in *Matter of Lee*, I.D. #2348). There is no specific amount which must be invested nor is there any specific job creation requirement.

(d) Counterfeit Document Vendors and Rings. Successful prosecutions of counterfeit document vendors and runners have resulted from the careful development and debriefing of informants, followed by planned purchases by informants and/or undercover operations which are monitored electronically. Properly gathered evidence of this nature is difficult to refute, and experience has shown that principals frequently plead guilty upon discovery of the evidence gathered against them.

As many counterfeit immigration documents are not designed to survive the scrutiny of INS officers, but have rather been vended to aid in acquiring illegal employment, investigations of these rings frequently disclose large batches of counterfeit or compromised Social Security cards. Liaison with the SSA [see chapter 6.18] on the local level may therefore prove fruitful in identifying arrangers who provide counterfeit document packages to illegal aliens. Employing task forces to target specific suspects or rings and following through on recent, viable intelligence often lead to successful resolution.

You may apply the same techniques, with minor variations, in investigating the other types of immigration fraud previously described. To do so, you must be familiar with the special techniques set out in chapter 12. Thereafter it becomes a matter of judgment (after a detailed study of the material accumulated and crystallizing the objective of the investigation) to determine:

- whom to interrogate or interview;
- the appropriate questions to ask;

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- the probable degree of willingness of each person to be questioned, and to subsequently testify in criminal and/or administrative proceedings;
- the probable degree of each person's credibility and reliability;
- the type of interrogation techniques to employ; and
- how to test truthfulness by corroborative testimony and evidence.

21.6 Reports.

(a) Report of Investigation. The type of report to submit will depend largely upon the nature of the fraud under investigation and the facts you uncover. The formatting and preparation of reports to be used in criminal or administrative proceedings are discussed in chapter 12. In a possible criminal case, to be of value to the U.S. Attorney in determining whether the defendant shall be prosecuted and to be of assistance to him/her during the trial, it is important that the completed report (in summary form) contain all the elements described in chapter 15.

(b) Liaison with Adjudications. In Adjudications-related fraud cases, Investigations will coordinate their report findings with the local Adjudications branch and service center, if appropriate, to ensure that related or similar cases receive proper scrutiny.

(c) Forensic and Intelligence Reporting. In appropriate cases, notify the Service's Fraudulent Document Laboratory (FDL) or Fraudulent Document Center at EPIC of developments. Include photographs of fraudulent documents and other identifying information, if available, with the information furnished. If transmitting original documents required as evidence to the FDL for analysis, follow procedures discussed in chapter 5.1 for preservation of the chain of custody. Also promptly report, through channels, new fraud trends or widespread fraud activities to the Assistant Commissioner for Intelligence, (HQINT).

(d) Other Service Offices. In cases where a scheme of criminal activity may extend to adjoining districts, the district directors should exchange relevant information and coordinate investigative actions, if necessary. Also, similar action should be taken with respect to those border ports of entry which the district director concludes could benefit by this information.

(e) State Department. When an investigation uncovers fraudulent use or procurement of a U.S. passport, furnish the DOS Passport Office all available information including copies of documents used to obtain the passport and, once it is no longer required as evidence, the passport itself. Defer instituting criminal prosecution for passport violations or the deportation of the subjects pending receipt of the views of the State Department.

(f) U.S. Postal Service. Do not overlook the interest of Postal Inspections in immigration fraud. In any case where it is known or believed that postal facilities have been utilized to further a fraud scheme, particularly by attorneys, immigration consultants, notaries, etc., coordinate with the local Postal Inspector in Charge for consideration of possible investigation and prosecution for violations of 18 USC 1341, 1342 and 1343.

21.7 Guidelines for Participating in Fraudulent Marriages.

From time to time, undercover operations may involve detection of marriage fraud rings. A Service officer may, in order to collect sufficient evidence for prosecution, wish to personally participate in a fraudulent marriage or may wish to direct that a Service informant do so. In most cases, an undercover scenario can be developed that avoids having the Service officer or informant enter into a legally binding marriage. If it is proposed, however, that a Service officer or informant engage in a legally binding marriage, approval must first be obtained through HQ Investigations from the Department of Justice Undercover Operations Review Committee [see chapter 44].



Chapter 53 Victim-Witness Assistance

- 53.1 General
- 53.2 Identification of Victims
- 53.3 Description of Services
- 53.4 Protection from Harassment/Intimidation
- 53.5 Other Responsibilities
- 53.6 Guidelines for Special Victim Populations
- 53.7 Child Abuse Reporting
- 53.8 Victim Privacy
- 53.9 Post-Conviction Services (Victim-Witness Notification Program)
- 53.10 Coordination
- 53.11 Training
- 53.12 Files/Forms
- 53.13 Reporting Requirements

References:

Statutes: Victim and Witness Protection Act of 1982, Pub. L. 97-291; Victims of Crime Act of 1984, Pub. L. 98-473; Crime Control Act of 1990, Pub. L. 101-649; Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (Title IV of Pub. L. 103-322 includes the Violence Against Women Act); Mandatory Victims Restitution Act of 1996, Pub. L. 104-132; Violence Against Women Act, Pub. L. 103-322; IIRIRA, Pub. L. 104-208 (§ 384); Victim Rights Clarification Act of 1997, Pub. L. 105-6; Victims of Trafficking and Violence Protection Act of 2000 Pub. L. 106-386.

Regulations: 8 CFR 103 et al. New classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status; 28 CFR 1100 Protection and Assistance for Victims of Trafficking.

Other: *Attorney General Guidelines for Victim and Witness Assistance (2000 edition)*; *Federal Rules of Criminal Procedures 32*; Executive Associate Commissioner Michael A. Pearson Memoranda "Victims of Trafficking and Violence Protection Act (VTVPA) Policy Memorandum #1 – Continued Presence" August 20, 2001 and "Victims of Trafficking and Violence Protection Act (VTVPA) Policy Memorandum #2 – T and U Visas" September 7, 2001; Verification of Immigration-Related Elements for Certification for Benefits under the Victims of Trafficking and Violence Protection Act of 2000, April 10, 2001.

Intranet Website: <http://onlineplus.ins/graphics/shared/lawenfor/interiorenf/antitraf.htm>

Appendix 53.1 contains all definitions found in this chapter.

53.1 General.

Between 1982 and 2000, Congress enacted a series of laws designed to protect and enhance the necessary role of crime victims and witnesses in the federal criminal justice process and to inform them of their rights and available services. Congress recognized that without the cooperation of victims and witnesses, the criminal justice system would cease to function. Yet, those very individuals who we needed were often ignored by the

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system or simply used as “evidence” to identify and punish offenders. Congress found that victims suffered additional hardships as a result of contact with the criminal justice system.

The first of the victim’s statutes, the Victim and Witness Protection Act of 1982 (18 U.S.C, 1512, Historical and Statutory Notes) instructed the Attorney General to develop and implement guidelines for the Department of Justice (DOJ). In 1983, DOJ promulgated the first *Attorney General Guidelines for Victim and Witness Assistance (AG Guidelines)*. The *AG Guidelines* combine both legislative requirements and DOJ policy and have been revised periodically to incorporate new legislative provisions.

The Victims Rights and Restitution Act (VRRRA) of 1990 (42 U.S.C. 10606-10607) imposes a duty on all Federal departments and agencies engaged in detecting, investigating, or prosecuting crimes, and incarcerating those convicted, to see that victims are afforded specific rights and services. A crime victim has the following rights under 42 U.S.C. 10606(b):

- To be treated with fairness and with respect for the victim’s dignity and privacy.
- To be reasonably protected from the accused offender.
- To be notified of court proceedings.
- To be present at all public court proceedings related to the offense, unless the court determines that the testimony by the victim would be materially affected if the victim heard other testimony at trial.
- To confer with the attorney for the Government in the case.
- To receive restitution.
- To be informed about the conviction, sentencing, imprisonment, and release of the offender.

Section 10607 of the VRRRA requires the designation of individuals in each federal agency to identify victims and perform victim services at each stage of a criminal case. More recent legislative provisions established mandatory restitution for some crime victims, provided requirements for the mandatory reporting of suspected child abuse, required law enforcement agencies to pay for forensic sexual assault examinations, provided special considerations for child victims and witnesses, and provided for protection and assistance to victims of trafficking.

As federal law enforcement officers, special agents and deportation officers have specific, statutorily mandated obligations to identify victims of crime and provide them with certain notices, referrals, and assistance [42 U.S.C. 10607(b)(1)]. In addition, when ICE is the custodial agency of criminal aliens, ICE will provide notice to specific victims of any release of the criminal alien.

ICE employees will ensure that victims and witnesses of crime are advised of their rights under law, that they have their dignity and privacy respected, and that they will be

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treated fairly and equitably. The agency will minimize, in accordance with applicable law, the physical, psychological, and financial hardships suffered by victims of crime, and make all reasonable efforts to foster cooperation by victims and witnesses in the criminal justice process.

Every SAC is designated as a “responsible official” to carry out the Attorney General’s guidelines for providing this information and assistance. The responsible officials designate specific collateral duty Victim-Witness Coordinators (VWC) to carry out victim-witness services in local offices and detention facilities.

The VWCs in local offices:

- ensure that systems are in place at the local level to provide information on available benefits and services to victims and witnesses of crime, and provide assistance in obtaining those benefits and services;
- assist victims and witnesses to obtain appropriate services;
- obtain and distribute adequate numbers of the AG Guidelines, program brochures, appropriate forms, and training materials;
- ensure that data is maintained on the number of victims and witnesses provided services and assistance;
- provide mandated training to local staff;
- establish (or obtain) and maintain a directory of local programs and services available to assist victims and witnesses of crime;
- maintain a current Victim-Witness Coordinator’s Resource Manual;
- serve as a liaison to other Federal agency victim assistance programs and to victim service agencies; and
- act as an expert on issues relating to victims and witnesses.

The VWCs from Detention and Removal:

- manage the Victim-Witness Notification Program (VWNP) for the local office or facility;
- provide appropriate notifications to victims and witnesses that are registered in the ICE VWNP;
- ensure that aliens who are victimized when in ICE custody are provided notice of the sentence and release of the offending alien; and
- maintain contact lists for state corrections-based victim notification programs.

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53.2 Identification of Victims.

(a) Case Initiation.

At the earliest opportunity after the detection of a crime, and continuing throughout the investigation and prosecution of the case, the officer shall make reasonable and diligent efforts to identify the victims of a crime [42 U.S.C. 10607(b)(1)].

- (1) The officer shall provide the victim with a printed brochure that lists victims' rights and the local service providers (see Appendix 53-2). The brochure briefly describes the rights and available services, and lists the names and phone numbers of key officials and the VWAP Coordinator. This shall be given to victims as soon as they are identified. If the victim does not speak English, the brochure will be read to the victim in a language that he or she understands.
- (2) Victims of trafficking shall be provided with the DOJ trafficking brochure (see Appendix 53-3). If the victim does not speak English, the brochure will be read to the victim in a language that he or she understands.

(b) Victim-Witness Information Form.

As soon as a victim is identified, the officer will:

- (1) annotate information about each victim and witness on a Victim-Witness Information Form (for suggested format see Appendix 53-4).
- (2) include the original of the Victim-Witness Information Form in the investigative case file. Stamp the form with a FOIA Exempt annotation.
- (3) forward a copy of all Victim-Witness Information Forms to the local VWC.
- (4) include a copy of each Victim-Witness Information Form in case presentation packages presented to a U.S. Attorney's Office when cases are referred for prosecution. Stamp the form with a FOIA Exempt annotation.

53.3 Description of Services.

(a) Information, Notice, and Referral.

- (1) At the earliest opportunity after detection of a crime, the officer (in collaboration with the VWAP Coordinator) shall make reasonable and diligent efforts to inform crime victims concerning:
 - (A) their right to receive, on request, the services available under Federal Law [42 U.S.C. 10607(b)(2)].
 - (B) the name, title, business address and telephone number of the

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- local VWA P Coordinator to whom such request for services should be addressed [42 U.S.C. 10607(b)(3)].
- (C) the place where the victim may receive emergency medical and/or social services [42 U.S.C. 10607(c)(1)(A)].
- (D) compensation and/or restitution for which the victim may be entitled under this or any other applicable law; and the manner in which such relief may be obtained [42 U.S.C. 10607(c)(1)(B)].
- (E) the availability of public and private programs which provide counseling, treatment, and other support to the victim [42 U.S.C. 10607(c)(1)(C)].
- (F) general information about the criminal justice process, in particular:
- the role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them, and
 - the stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained [Pub. L. 97-291 § 6 (a)(1)(C) and (D)], See Historical and Statutory Notes, 18 U.S.C. 1512.
- (G) the right to make a statement about pretrial release in domestic violence cases. At the earliest opportunity after detection of a Federal domestic violence offense, the officer shall inform the victim that he or she has the right to make a statement regarding the danger posed by the defendant for the purposes of determining pretrial release of the defendant or conditions of such release.
- (H) the right to receive notice and payment for testing and counseling for sexually transmitted diseases from a sexual offense that poses a risk of transmission [42 U.S.C. 10607(c)(7)]. At the earliest opportunity after detection of such a crime, the officer and/or the VWAP Coordinator shall make reasonable and diligent efforts to inform the crime victim in a sex offense case of his/her right to have the Attorney General provide the payment of the cost of up to two anonymous and confidential tests of the victim for sexually transmitted diseases and the cost of a counseling session by a medically trained professional regarding the accuracy of such test(s) and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault.
- (I) information about the status of the investigation of the crime, to the extent that it is appropriate and will not interfere with the

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investigation [42 U.S.C. 10607(c)(3)(A)].

- (J) information about the arrest of a suspected offender [42 U.S.C. 10607(c)(3)(B)].
- (2) Prosecutorial Declinations. The officer or VWC will notify the victim of prosecutorial declinations.
- (3) Record of Services. The officer or VWC will indicate the referral services provided on the Victim-Witness Information Form.

53.4 Protection from Harassment/Intimidation.

The responsible agency official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or on behalf of the suspected offender [42 U.S.C. 10607(c)(2)]. Information on the prohibition against intimidation and harassment and the remedies therefore should routinely be made available to victims and witnesses. Various temporary protective measures can be discussed with the victims and witnesses including, but not limited to, restraining orders, relocation, or requesting the judge to revoke the defendant's bond. Exercise care when discussing particular actions that can be taken or any protection that can be afforded. The victim or witness should not be left with the impression that ICE or any other agency can or will guarantee the protection of a victim or witness.

53.5 Other Responsibilities.

(a) The officer should take appropriate action to ensure that any property of a victim that is being held for evidentiary purposes is maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(b) If the victim or witness desires formal protection in the DOJ Witness Security Program, the local VWC or case agent should contact the U.S. Attorney's Office or HQ OI so that appropriate actions can be taken. The responsible agency official shall make the necessary and appropriate arrangements to enable victims and witnesses to receive reasonable protection against threat, harm, and intimidation from a suspected offender consistent with the provisions of 18 U.S.C. 3521-3528.

(c) Upon the request of a victim or witness, the responsible official may:

- notify the employer of the role of the victim or witness in the investigation if the victim or witness' cooperation in the investigation of the crime causes his/her absence from work. Note that this service assumes that the victim or witness has the proper work authorization.
- notify creditors of the role of the victim or witness in the investigation if the victim or witness experiences problems with his/her creditors as a result of his/her cooperation in the investigation of the crime.

53.6 Guidelines for Special Victim Populations.

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There are Federal statutory provisions for services for specific victim populations. Legacy INS has published victim-specific regulations required by statute, and ICE will continue to do so. (See “New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status,” 67 FR 4784 (Jan. 31, 2002); 8 CFR 214.11; 28 CFR 1100, Protection and Assistance for Victims of Trafficking). This section provides general guidance only.

(a) Victims of Sexual Assault.

- (1) ICE shall pay for the cost of a forensic medical examination, either directly or by reimbursement of payment by the victim, when an ICE officer determines the examination is necessary or useful for evidentiary purposes.
- (2) ICE shall pay for the cost of up to two anonymous and confidential tests of a victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as a result of the assault (42 U.S.C. 14011). If the case has been turned over to the U.S. Attorney’s Office, that office may assume this responsibility. The victim may also obtain an order in District Court to require the defendant to be tested.

(b) Victims of Child Abuse.

Children may be victims of Federal crimes including physical abuse, sexual abuse, exploitation, pornography and trafficking, and children are afforded special rights in the federal criminal justice process (18 U.S.C. 3509). Children also witness a broad range of Federal crimes. All basic crime victim rights apply to child victims. In addition, the following general guidelines apply:

- (1) Referral for medical exam. The first investigator responding to a report of child abuse shall refer the child for an emergency medical exam, if applicable.
- (2) Forensic interviews. Whenever possible, interviews of children should be conducted by personnel properly trained in techniques designed to elicit truthful information from children while minimizing additional trauma to the child. Multi-disciplinary teams should be utilized whenever possible.
- (3) Privacy protections for child victims and witnesses. Keep all documents that disclose the name or any other information concerning a child victim or witness in a secure place and disclose them only to persons who by reason of their participation in the criminal justice process have a need to know the information (18 U.S.C. 3509).
- (4) Sanctions for violating the disclosure rules. A knowing or intentional violation of the privacy protections accorded to children (18 U.S.C. 3509)

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is criminal contempt punishable by not more than one year's imprisonment, or fine, or both (18 U.S.C. 403).

(c) Victims of Trafficking.

The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) provides for various additional protections and assistance for victims of trafficking in persons, as well as two non-immigrant status classifications for trafficking victims. See <http://onlineplus.ins/graphics/shared/lawenfor/interiorenf/antitraf.htm>. The VTVPA also requires training for legacy INS agents on identifying victims of severe forms of trafficking and providing for their protection.

Anyone who has been identified as a victim of a severe form of trafficking in persons:

- is eligible for certain benefits and services without regard to immigration status.
- is eligible for other benefits to the same extent as an alien admitted to the U.S. as a refugee.
- should not be detained in facilities inappropriate to his/her status as a crime victim.
- shall have access to information and translation services.
- may be permitted continued presence in the U.S. if he/she is a potential witness and is effectuating a prosecution.
- may be eligible for T non-immigrant status.

Other victims of trafficking may be eligible for U non-immigrant status if they have been helpful, are being helpful, or are likely to be helpful to state, federal, or local law enforcement authorities in the investigation or prosecution of a trafficking crime.

Responsible officials at the local level will be responsible for following all specific ICE guidance on assisting victims of trafficking.

(d) ICE Employees Who Are Victims of Crime. Responsible officials should ensure that ICE employees who are victims of crime have access to the Employee Assistance Program (EAP) and to VWCs.

53.7 Child Abuse Reporting.

All Federal law enforcement personnel must report suspected child abuse and are considered "mandated reporters" under state and Federal law.

Any officer working on Federal land or in a Federally operated or contracted facility, who has knowledge or a reasonable suspicion that a child has been or is going to be abused, must immediately notify the local child protective services agency or a law enforcement agency (42 U.S.C. 13031). ICE expects all agents to report suspected child abuse if

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they, during the performance of their official duties, encounter a child whom they suspect may have been abused.

Where no agency is otherwise available, the Attorney General has designated the FBI to receive and investigate reports (28 CFR 81, AG Order No. 1833-93).

The report of suspected abuse should be made by a method best suited to giving immediate notice, usually verbally, in person or by telephone. Reporters should document their report in the same manner that they document other important work related actions.

Reports are presumed to have been made in good faith and reporters are immune from civil and criminal liability arising from the report unless they act in bad faith.

Compliance with this law is a responsibility placed upon each officer individually and not on ICE as an agency. A person who fails to make a timely report of suspected child abuse (as described above) is guilty of a Class B misdemeanor (18 U.S.C. 2258).

53.8 Victim Privacy.

To the extent allowed by law, ICE employees engaged in the investigation of crime and the removal of offenders from the U.S. should respect a victim's privacy, especially vulnerable victims such as victims of sex offenses, domestic violence, child victims, the elderly, and trafficking victims. In addition, there are particular statutory restrictions for violation of privacy protections for victims of child abuse and battered immigrant spouses. Although most domestic violence cases are investigated and prosecuted at the state and local level, ICE employees may encounter battered immigrant spouses in the performance of their official duties. There are specific prohibitions against disclosure of information about these victims.

(a) Child Victims. A knowing or intentional violation of the privacy protection accorded children in 18 U.S.C. 3509 is criminal contempt punishable by not more than one year's imprisonment, or fine, or both (18 U.S.C. 403). This does not prohibit disclosure of a child's name to the defendant, the attorney for the defendant, and others including anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

(b) Battered Immigrant Spouses.

- (1) Statutory Prohibition. Section 384(a)(2) of IIRIRA provides that in no case may any agency employee "permit use by or disclosure to anyone of any information which relates to an alien who is the beneficiary of an application for relief" under the VAWA provisions which relate to battered spouses and children who:
 - self-petitions for immigrant status under sections 204(a)(1)(A)(iii) or (iv) or 204(a)(1)(B)(ii) or (iii) of the Act; or
 - petitions for removal of conditions upon residency pursuant to section 216(c)(4)(C); or

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- seeks suspension of deportation.

This prohibition extends to any information relating to the battered spouse or child, which could include verification of status or other routine information.

(2) Exceptions. Exceptions to the prohibition are provided for:

- disclosure to a DOJ employee for legitimate Departmental purposes;
- disclosure to law enforcement officials for legitimate law enforcement purposes, at the discretion of ICE;
- disclosure for purposes of judicial review in a manner that protects the confidentiality of the information; and
- disclosure in such a manner as census information may be disclosed by the Secretary of Commerce under 13 U.S.C. 8.

(3) Waivers. The statute provides that an adult can execute a waiver to allow disclosure of information pertaining to him/herself, but does not provide for any waiver to allow disclosure of information pertaining to a child. Benefit granting agencies seeking verification for benefit eligibility purposes will obtain such waivers and submit them with their verification requests.

(4) Limitations on Use of Information Provided by Abusive Family Member. ICE officers may not make an "adverse determination of admissibility or deportability of an alien..." using information furnished solely by:

- a spouse or parent who has battered the alien or subjected the alien to extreme cruelty;
- a member of the spouse's or parent's family, residing in the same household as the alien, who has battered the alien or subjected the alien to extreme cruelty, with the spouse's acquiescence;
- a spouse or parent who has battered the alien's child or subjected the child to extreme cruelty (and the alien has not participated in the abuse); or
- a member of the spouse's or parent's family, residing in the same household as the alien, who has battered the alien's child or subjected the alien's child to extreme cruelty, with the acquiescence of the alien's spouse or parent (and the alien has not participated in the abuse).

Accordingly, under these circumstances, if any ICE employee receives

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information adverse to an alien from the alien's spouse or parent, or from relatives of that spouse or parent, the employee must obtain independent corroborative information from an unrelated person before taking any action based on that information.

52.9 Post-Conviction Services (Victim-Witness Notification Program).

(a) Background.

The Federal Bureau of Prisons (BOP) and all states have victim notification programs for correctional institutions. These programs provide victims with general information regarding the correctional process, including information about work release, furlough, probation, parole, and the inmate's eligibility for each. The corrections-based victim notification programs provide victims with the release dates for offenders for any release from custody.

- (1) The BOP Notification Program. A Federal victim or witness who wants to be notified of a specific inmate's release from a BOP correctional institution may be enrolled in the BOP notification program. Victims are usually notified 60 calendar days prior to direct release from the institution. If an inmate has an ICE detainer, HQ notifies the victims that the inmate is being released into ICE custody and advises that the victim may wish to register with the ICE notification program. The Victim-Witness Notification Program brochure, which includes the victim registration form, will be included in the letter to the victim. (See Appendix 53-5).
- (2) State Notification Programs. All state correctional agencies have laws that mandate or authorize victim notification and related services in the post-sentencing phase of criminal cases. The process of making the notifications varies from state to state. In most instances, victims of crimes prosecuted at the state level register to be included in a corrections-based notification program. Most release information is provided by mail; however, some states have automated notification systems that telephone the victims. State notifications are sent 15-60 days prior to the release of an inmate. Almost all states inform victims that the correctional facility is releasing inmates into ICE custody. Many states provide a copy of the ICE victim notification program brochure to victims.
- (3) ICE. ICE is required to provide notice of certain events to "inmate" victims [42 U.S.C. 10607(c)(3)(g) and (c)(5)]. These notice events include information about any temporary release or death of the offender. The ICE Victim-Witness Notification Program (VWNP) will allow districts and ICE custodial facilities to provide these notices. However, ICE custodial facilities should take into consideration the security of both the offender inmate and the victim inmate when making these notifications. If there are serious security risks, consider the timing of these notices, even if the notification takes place after the release.

(b) Procedures for Victim Notification of INS Release.

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ICE obtains custody of removable aliens from both state and Federal correctional agencies. The Victim-Witness Notification Program (VWNP) has responsibilities to victims in three separate circumstances:

- when ICE obtains custody of an alien inmate from the BOP on a detainer to remove him/her from the U.S.;
- when ICE obtains custody of an alien inmate from a state correctional institution to remove him/her from the U.S.; and
- when an alien is victimized while in ICE custody.

The VWNP will be centrally operated and the master files will be maintained at HQ. The HQ/VWC will identify ways to inform applicable victims of the availability of the VWNP. Victims and witnesses can then elect whether they want to participate in the ICE notification program.

- (1) Procedures with BOP. Sixty days prior to their release to ICE custody, the BOP Office of Correctional Programs will provide the HQ/VWC with a list of alien inmates whose files indicate victim-witness notifications. The BOP will provide this list every two weeks, or more often as appropriate.

- (A) Responsibilities of the HQ/VWC.

- (i) Send the victim or witness a letter and copy of the Victim-Witness Notification Program brochure inviting him/her to participate in the ICE VWNP.
- (ii) After receipt of a written request for ICE notification from a victim or witness, the HQ/VWC will send the victim or witness a letter verifying receipt of the request letter.
- (iii) Establish a file containing the alien's name and A-number, and the name, address, and telephone number of victims and witnesses requesting notification.
- (iv) Enter the data into the Victim Notification Tracking System.
- (v) Transmit the request and copy of the letter to the appropriate district or facility D&R/VWC.
- (vi) Place the fax/e-mail receipt in the HQ VWNP file as an indication that the local office received the notification information.

- (B) Responsibilities of the Facility or District D&R/VWC.

- (i) Open all e-mail and fax transmittals from HQ/VWC every

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24 hours on regular workdays. Back-up personnel must perform this duty if the D&R/ VWC is unavailable.

- (ii) Annotate the jacket of the alien's file with the VWNP rubber stamp (provided to local offices and facilities). This marker serves as an indicator to all D&R personnel that a criminal alien should not be released from INS custody until a D&R/VWC has made the applicable notifications.
 - (iii) Set up a secure file using the alien's name and A-number. Include the copy of the victim's request for notification. Do not keep the request in the offender's A-file.
 - (iv) Establish a system to guarantee that notifications are made in a timely manner.
 - (v) Upon transfer of an alien to another facility or jurisdiction, e-mail or fax the victim's information and the fact that he/she is in the VWNP to the designated D&R/VWC in the gaining office or facility. Keep a record of the receipt of the e-mail and fax and place in the file. The gaining D&R/VWC must then assume responsibility for victim and witness notifications.
 - (vi) It is suggested that either the I-385 Alien Booking Record or another appropriate standardized tracking form at each facility be stamped with a VW indicator as a back-up system to ensure notifications are accomplished. HQ will provide the pre-inked stamp.
 - (vii) Notify the victims and witnesses by telephone prior to releasing the alien on bond or removal to another country. If notification is not possible prior to release (due to judicial decisions, etc.), the D&R/VWC will notify victims as soon as information is available.
 - (viii) Document the date, time, and method of notification in the file established for the victim notification.
 - (ix) Advise HQ/VWC of notifications.
- (2) Release to INS from State Correctional Agencies. The HQ/VWC will establish procedures with all 50 states to provide copies of the VWNP brochure to victims and witnesses registered in the various state correctional-based notification programs. After receipt of a written request for notification from a victim or witness registered in a state notification program, the HQ/VWC will complete all actions noted in (b)(1)(A) of this section. The local office D&R/VWC will follow the steps listed in (b)(1)(B) of this section.

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- (3) Other Requests for Notification. D&R/VW Cs may respond to direct requests from victims for notification by sending them the Victim Notification brochure. Victims may then register by sending the request to HQ. If the local office or facility D&R/VW C determines that there may be an immediate threat, they may make immediate notifications or set up a temporary file until written documentation arrives from the HQ/VWC.

53.10 Coordination.

(a) Coordination. It is essential that responsible officials or their designees promote coordination and interagency teamwork among agencies to provide victims and witnesses the services mandated under Federal law. At each stage of the criminal justice system, the transition of victim assistance responsibility from one component to another must include information sharing. In some cases, this may occur prior to turning over responsibility. In this way, gaps in notification and other services are eliminated and crime victims receive uniform rather than fragmented treatment, starting from the initial investigation and continuing throughout their entire involvement with the Federal criminal justice system.

(b) Cases under investigation. ICE has responsibility for assisting victims as long as they have cases pending and under investigation. Victim-Witness Coordinators in U.S. Attorneys' offices are responsible for working with victims and witnesses when ICE turns the case over to the U.S. Attorney's Office for prosecution. When you include the Victim Information Form when presenting a case to the U. S. Attorney, the prosecutor-based Victim-Witness Coordinator becomes aware of the names and addresses of the victims and witnesses and can continue to provide services to those victims and witnesses. ICE remains responsible for victims and witnesses in unsolved and pending cases. ICE also continues to be responsible for the reasonable protection of victims and witnesses.

(c) Coordination with state and local programs. ICE should also coordinate victim-witness service efforts with state and local law enforcement officials (if appropriate) and with various victim assistance and crime victim compensation providers.

53.11 Training.

(a) ICE Employees. All ICE employees who have responsibilities for investigating crimes and all employees who have removal responsibilities for alien criminal offenders placed into ICE custody after serving sentences in BOP or state correctional facilities will receive training on ICE policy and procedures within 60 days of assuming those responsibilities.

(b) Responsibility for Training. Local office VWCs or others deemed appropriate by SACs will provide the training. Training sessions will be at least one hour in duration. Additional training will be provided within a reasonable time (usually 60 days) after any change in victim-witness legislation or in ICE policy.

(c) Trafficking Victims. Case agents will be trained in identifying victims of severe forms of trafficking and providing for the protection of such victims.

53.12 Files/Forms.

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To ensure that appropriate security is afforded communications relating to individuals in the VWAP or VWNP, caption all such communications with the individual's true name, followed by the words "Victim-Witness - FOIA Exempt." HQ will supply VWAP and VWNP rubber stamps to mark individual communications.

53.13 Reporting Requirements.

(a) Statutory Requirements. The Director of the Office for Victims of Crime (OVC), DOJ, has the statutory responsibility [42 U.S.C. 10603 (c)(3)(A)] for monitoring compliance with the *AG Guidelines*. All DOJ responsible officials report annually to the Attorney General, through the OVC Director, on the status of their compliance efforts using the Best Efforts Report.

(b) The Best Efforts Report.

- (1) Local Responsibilities. Each local office and custodial facility will submit an annual Best Efforts Report.
- (2) Signatures. SACs will sign the Best Efforts Report.
- (3) Submission. Local office will submit Best Effort Reports to HQ by December 1 every year.

