

## **APPENDIX A: (U) THE ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC FBI OPERATIONS**

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Domestic Investigations and Operations Guide

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## **THE ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC FBI OPERATIONS**

## **PREAMBLE**

These Guidelines are issued under the authority of the Attorney General as provided in sections 509, 510, 533, and 534 of title 28, United States Code, and Executive Order 12333. They apply to domestic investigative activities of the Federal Bureau of Investigation (FBI) and other activities as provided herein.

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## INTRODUCTION

As the primary investigative agency of the federal government, the Federal Bureau of Investigation (FBI) has the authority and responsibility to investigate all violations of federal law that are not exclusively assigned to another federal agency. The FBI is further vested by law and by Presidential directives with the primary role in carrying out investigations within the United States of threats to the national security. This includes the lead domestic role in investigating international terrorist threats to the United States, and in conducting counterintelligence activities to meet foreign entities' espionage and intelligence efforts directed against the United States. The FBI is also vested with important functions in collecting foreign intelligence as a member agency of the U.S. Intelligence Community. The FBI accordingly plays crucial roles in the enforcement of federal law and the proper administration of justice in the United States, in the protection of the national security, and in obtaining information needed by the United States for the conduct of its foreign affairs. These roles reflect the wide range of the FBI's current responsibilities and obligations, which require the FBI to be both an agency that effectively detects, investigates, and prevents crimes, and an agency that effectively protects the national security and collects intelligence.

The general objective of these Guidelines is the full utilization of all authorities and investigative methods, consistent with the Constitution and laws of the United States, to protect the United States and its people from terrorism and other threats to the national security, to protect the United States and its people from victimization by all crimes in violation of federal law, and to further the foreign intelligence objectives of the United States. At the same time, it is axiomatic that the FBI must conduct its investigations and other activities in a lawful and reasonable manner that respects liberty and privacy and avoids unnecessary intrusions into the lives of law-abiding people. The purpose of these Guidelines, therefore, is to establish consistent policy in such matters. They will enable the FBI to perform its duties with effectiveness, certainty, and confidence, and will provide the American people with a firm assurance that the FBI is acting properly under the law.

The issuance of these Guidelines represents the culmination of the historical evolution of the FBI and the policies governing its domestic operations subsequent to the September 11, 2001, terrorist attacks on the United States. Reflecting decisions and directives of the President and the Attorney General, inquiries and enactments of Congress, and the conclusions of national commissions, it was recognized that the FBI's functions needed to be expanded and better integrated to meet contemporary realities:

[C]ontinuing coordination . . . is necessary to optimize the FBI's performance in both national security and criminal investigations . . . . [The] new reality requires first that the FBI and other agencies do a better job of gathering intelligence inside the United States, and second that we eliminate the remnants of the old "wall" between foreign intelligence and domestic law enforcement. Both tasks must be accomplished without sacrificing our domestic liberties and the rule of law, and both depend on building a very

different FBI from the one we had on September 10, 2001. (Report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction 466, 452 (2005).)

In line with these objectives, the FBI has reorganized and reoriented its programs and missions, and the guidelines issued by the Attorney General for FBI operations have been extensively revised over the past several years. Nevertheless, the principal directives of the Attorney General governing the FBI's conduct of criminal investigations, national security investigations, and foreign intelligence collection have persisted as separate documents involving different standards and procedures for comparable activities. These Guidelines effect a more complete integration and harmonization of standards, thereby providing the FBI and other affected Justice Department components with clearer, more consistent, and more accessible guidance for their activities, and making available to the public in a single document the basic body of rules for the FBI's domestic operations.

These Guidelines also incorporate effective oversight measures involving many Department of Justice and FBI components, which have been adopted to ensure that all FBI activities are conducted in a manner consistent with law and policy.

The broad operational areas addressed by these Guidelines are the FBI's conduct of investigative and intelligence gathering activities, including cooperation and coordination with other components and agencies in such activities, and the intelligence analysis and planning functions of the FBI.

**A. FBI RESPONSIBILITIES – FEDERAL CRIMES, THREATS TO THE NATIONAL SECURITY, FOREIGN INTELLIGENCE**

Part II of these Guidelines authorizes the FBI to carry out investigations to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence. The major subject areas of information gathering activities under these Guidelines – federal crimes, threats to the national security, and foreign intelligence – are not distinct, but rather overlap extensively. For example, an investigation relating to international terrorism will invariably crosscut these areas because international terrorism is included under these Guidelines' definition of "threat to the national security," because international terrorism subject to investigation within the United States usually involves criminal acts that violate federal law, and because information relating to international terrorism also falls within the definition of "foreign intelligence." Likewise, counterintelligence activities relating to espionage are likely to concern matters that constitute threats to the national security, that implicate violations or potential violations of federal espionage laws, and that involve information falling under the definition of "foreign intelligence."

While some distinctions in the requirements and procedures for investigations are necessary in different subject areas, the general design of these Guidelines is to take a uniform

approach wherever possible, thereby promoting certainty and consistency regarding the applicable standards and facilitating compliance with those standards. Hence, these Guidelines do not require that the FBI's information gathering activities be differentially labeled as "criminal investigations," "national security investigations," or "foreign intelligence collections," or that the categories of FBI personnel who carry out investigations be segregated from each other based on the subject areas in which they operate. Rather, all of the FBI's legal authorities are available for deployment in all cases to which they apply to protect the public from crimes and threats to the national security and to further the United States' foreign intelligence objectives. In many cases, a single investigation will be supportable as an exercise of a number of these authorities – i.e., as an investigation of a federal crime or crimes, as an investigation of a threat to the national security, and/or as a collection of foreign intelligence.

## **1. Federal Crimes**

The FBI has the authority to investigate all federal crimes that are not exclusively assigned to other agencies. In most ordinary criminal investigations, the immediate objectives include such matters as: determining whether a federal crime has occurred or is occurring, or if planning or preparation for such a crime is taking place; identifying, locating, and apprehending the perpetrators; and obtaining the evidence needed for prosecution. Hence, close cooperation and coordination with federal prosecutors in the United States Attorneys' Offices and the Justice Department litigating divisions are essential both to ensure that agents have the investigative tools and legal advice at their disposal for which prosecutorial assistance or approval is needed, and to ensure that investigations are conducted in a manner that will lead to successful prosecution. Provisions in many parts of these Guidelines establish procedures and requirements for such coordination.

## **2. Threats to the National Security**

The FBI's authority to investigate threats to the national security derives from the executive order concerning U.S. intelligence activities, from delegations of functions by the Attorney General, and from various statutory sources. See, e.g., E.O. 12333; 50 U.S.C. 401 et seq.; 50 U.S.C. 1801 et seq. These Guidelines (Part VII.S) specifically define threats to the national security to mean: international terrorism; espionage and other intelligence activities, sabotage, and assassination, conducted by, for, or on behalf of foreign powers, organizations, or persons; foreign computer intrusion; and other matters determined by the Attorney General, consistent with Executive Order 12333 or any successor order.

Activities within the definition of "threat to the national security" that are subject to investigation under these Guidelines commonly involve violations (or potential violations) of federal criminal laws. Hence, investigations of such threats may constitute an exercise both of the FBI's criminal investigation authority and of the FBI's authority to investigate threats to the national security. As with criminal investigations generally, detecting and solving the crimes, and eventually arresting and prosecuting the perpetrators, are likely to be among the objectives of



investigations relating to threats to the national security. But these investigations also often serve important purposes outside the ambit of normal criminal investigation and prosecution, by providing the basis for, and informing decisions concerning, other measures needed to protect the national security. These measures may include, for example: excluding or removing persons involved in terrorism or espionage from the United States; recruitment of double agents; freezing assets of organizations that engage in or support terrorism; securing targets of terrorism or espionage; providing threat information and warnings to other federal, state, local, and private agencies and entities; diplomatic or military actions; and actions by other intelligence agencies to counter international terrorism or other national security threats.

In line with this broad range of purposes, investigations of threats to the national security present special needs to coordinate with other Justice Department components, including particularly the Justice Department's National Security Division, and to share information and cooperate with other agencies with national security responsibilities, including other agencies of the U.S. Intelligence Community, the Department of Homeland Security, and relevant White House (including National Security Council and Homeland Security Council) agencies and entities. Various provisions in these Guidelines establish procedures and requirements to facilitate such coordination.

### **3. Foreign Intelligence**

As with the investigation of threats to the national security, the FBI's authority to collect foreign intelligence derives from a mixture of administrative and statutory sources. See, e.g., E.O. 12333; 50 U.S.C. 401 et seq.; 50 U.S.C. 1801 et seq.; 28 U.S.C. 532 note (incorporating P.L. 108-458 §§ 2001-2003). These Guidelines (Part VII.E) define foreign intelligence to mean "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons, or international terrorists."

The FBI's foreign intelligence collection activities have been expanded by legislative and administrative reforms subsequent to the September 11, 2001, terrorist attacks, reflecting the FBI's role as the primary collector of foreign intelligence within the United States, and the recognized imperative that the United States' foreign intelligence collection activities become more flexible, more proactive, and more efficient in order to protect the homeland and adequately inform the United States' crucial decisions in its dealings with the rest of the world:

The collection of information is the foundation of everything that the Intelligence Community does. While successful collection cannot ensure a good analytical product, the failure to collect information . . . turns analysis into guesswork. And as our review demonstrates, the Intelligence Community's human and technical intelligence collection agencies have collected far too little information on many of the issues we care about most. (Report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction 351 (2005).)

These Guidelines accordingly provide standards and procedures for the FBI's foreign intelligence collection activities that meet current needs and realities and optimize the FBI's ability to discharge its foreign intelligence collection functions.

The authority to collect foreign intelligence extends the sphere of the FBI's information gathering activities beyond federal crimes and threats to the national security, and permits the FBI to seek information regarding a broader range of matters relating to foreign powers, organizations, or persons that may be of interest to the conduct of the United States' foreign affairs. The FBI's role is central to the effective collection of foreign intelligence within the United States because the authorized domestic activities of other intelligence agencies are more constrained than those of the FBI under applicable statutes and Executive Order 12333. In collecting foreign intelligence, the FBI will generally be guided by nationally-determined intelligence requirements, including the National Intelligence Priorities Framework and the National HUMINT Collection Directives, or any successor directives issued under the authority of the Director of National Intelligence (DNI). As provided in Part VII.F of these Guidelines, foreign intelligence requirements may also be established by the President or Intelligence Community officials designated by the President, and by the Attorney General, the Deputy Attorney General, or an official designated by the Attorney General.

The general guidance of the FBI's foreign intelligence collection activities by DNI-authorized requirements does not, however, limit the FBI's authority to conduct investigations supportable on the basis of its other authorities – to investigate federal crimes and threats to the national security – in areas in which the information sought also falls under the definition of foreign intelligence. The FBI conducts investigations of federal crimes and threats to the national security based on priorities and strategic objectives set by the Department of Justice and the FBI, independent of DNI-established foreign intelligence collection requirements.

Since the authority to collect foreign intelligence enables the FBI to obtain information pertinent to the United States' conduct of its foreign affairs, even if that information is not related to criminal activity or threats to the national security, the information so gathered may concern lawful activities. The FBI should accordingly operate openly and consensually with U.S. persons to the extent practicable when collecting foreign intelligence that does not concern criminal activities or threats to the national security.

## **B. THE FBI AS AN INTELLIGENCE AGENCY**

The FBI is an intelligence agency as well as a law enforcement agency. Its basic functions accordingly extend beyond limited investigations of discrete matters, and include broader analytic and planning functions. The FBI's responsibilities in this area derive from various administrative and statutory sources. See, e.g., E.O. 12333; 28 U.S.C. 532 note (incorporating P.L. 108-458 §§ 2001-2003) and 534 note (incorporating P.L. 109-162 § 1107). Enhancement of the FBI's intelligence analysis capabilities and functions has consistently been recognized as a key priority in the legislative and administrative reform efforts following the

September 11, 2001, terrorist attacks:

[Counterterrorism] strategy should . . . encompass specific efforts to . . . enhance the depth and quality of domestic intelligence collection and analysis . . . [T]he FBI should strengthen and improve its domestic [intelligence] capability as fully and expeditiously as possible by immediately instituting measures to . . . significantly improve strategic analytical capabilities . . . (Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, S. Rep. No. 351 & H.R. Rep. No. 792, 107th Cong., 2d Sess. 4-7 (2002) (errata print).)

A “smart” government would *integrate* all sources of information to see the enemy as a whole. Integrated all-source analysis should also inform and shape strategies to collect more intelligence. . . . The importance of integrated, all-source analysis cannot be overstated. Without it, it is not possible to “connect the dots.” (Final Report of the National Commission on Terrorist Attacks Upon the United States 401, 408 (2004).)

Part IV of these Guidelines accordingly authorizes the FBI to engage in intelligence analysis and planning, drawing on all lawful sources of information. The functions authorized under that Part include: (i) development of overviews and analyses concerning threats to and vulnerabilities of the United States and its interests, (ii) research and analysis to produce reports and assessments concerning matters relevant to investigative activities or other authorized FBI activities, and (iii) the operation of intelligence systems that facilitate and support investigations through the compilation and analysis of data and information on an ongoing basis.

### C. OVERSIGHT

The activities authorized by these Guidelines must be conducted in a manner consistent with all applicable laws, regulations, and policies, including those protecting privacy and civil liberties. The Justice Department’s National Security Division and the FBI’s Inspection Division, Office of General Counsel, and Office of Integrity and Compliance, along with other components, share the responsibility to ensure that the Department meets these goals with respect to national security and foreign intelligence matters. In particular, the National Security Division’s Oversight Section, in conjunction with the FBI’s Office of General Counsel, is responsible for conducting regular reviews of all aspects of FBI national security and foreign intelligence activities. These reviews, conducted at FBI field offices and headquarter units, broadly examine such activities for compliance with these Guidelines and other applicable requirements.

Various features of these Guidelines facilitate the National Security Division’s oversight functions. Relevant requirements and provisions include: (i) required notification by the FBI to the National Security Division concerning full investigations that involve foreign intelligence collection or investigation of United States persons in relation to threats of the national security, (ii) annual reports by the FBI to the National Security Division concerning the FBI’s foreign

intelligence collection program, including information on the scope and nature of foreign intelligence collection activities in each FBI field office, and (iii) access by the National Security Division to information obtained by the FBI through national security or foreign intelligence activities and general authority for the Assistant Attorney General for National Security to obtain reports from the FBI concerning these activities.

Pursuant to these Guidelines, other Attorney General guidelines, and institutional assignments of responsibility within the Justice Department, additional Department components – including the Criminal Division, the United States Attorneys' Offices, and the Office of Privacy and Civil Liberties – are involved in the common endeavor with the FBI of ensuring that the activities of all Department components are lawful, appropriate, and ethical as well as effective. Examples include the involvement of both FBI and prosecutorial personnel in the review of undercover operations involving sensitive circumstances, notice requirements for investigations involving sensitive investigative matters (as defined in Part VII.N of these Guidelines), and notice and oversight provisions for enterprise investigations, which may involve a broad examination of groups implicated in the gravest criminal and national security threats. These requirements and procedures help to ensure that the rule of law is respected in the Department's activities and that public confidence is maintained in these activities.

## **I. GENERAL AUTHORITIES AND PRINCIPLES**

### **A. SCOPE**

These Guidelines apply to investigative activities conducted by the FBI within the United States or outside the territories of all countries. They do not apply to investigative activities of the FBI in foreign countries, which are governed by the Attorney General's Guidelines for Extraterritorial FBI Operations.

### **B. GENERAL AUTHORITIES**

1. The FBI is authorized to conduct investigations to detect, obtain information about, and prevent and protect against federal crimes and threats to the national security and to collect foreign intelligence, as provided in Part II of these Guidelines.
2. The FBI is authorized to provide investigative assistance to other federal agencies, state, local, or tribal agencies, and foreign agencies as provided in Part III of these Guidelines.
3. The FBI is authorized to conduct intelligence analysis and planning as provided in Part IV of these Guidelines.
4. The FBI is authorized to retain and share information obtained pursuant to these Guidelines as provided in Part VI of these Guidelines.

### **C. USE OF AUTHORITIES AND METHODS**

#### **1. Protection of the United States and Its People**

The FBI shall fully utilize the authorities provided and the methods authorized by these Guidelines to protect the United States and its people from crimes in violation of federal law and threats to the national security, and to further the foreign intelligence objectives of the United States.

#### **2. Choice of Methods**

- a. The conduct of investigations and other activities authorized by these Guidelines may present choices between the use of different investigative methods that are each operationally sound and effective, but that are more or less intrusive, considering such factors as the effect on the privacy and civil liberties of individuals and potential damage to reputation. The least intrusive method feasible is to be used in such situations. It is recognized,

however, that the choice of methods is a matter of judgment. The FBI shall not hesitate to use any lawful method consistent with these Guidelines, even if intrusive, where the degree of intrusiveness is warranted in light of the seriousness of a criminal or national security threat or the strength of the information indicating its existence, or in light of the importance of foreign intelligence sought to the United States' interests. This point is to be particularly observed in investigations relating to terrorism.

- b. United States persons shall be dealt with openly and consensually to the extent practicable when collecting foreign intelligence that does not concern criminal activities or threats to the national security.

### **3. Respect for Legal Rights**

All activities under these Guidelines must have a valid purpose consistent with these Guidelines, and must be carried out in conformity with the Constitution and all applicable statutes, executive orders, Department of Justice regulations and policies, and Attorney General guidelines. These Guidelines do not authorize investigating or collecting or maintaining information on United States persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States. These Guidelines also do not authorize any conduct prohibited by the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies.

### **4. Undisclosed Participation in Organizations**

Undisclosed participation in organizations in activities under these Guidelines shall be conducted in accordance with FBI policy approved by the Attorney General.

### **5. Maintenance of Records under the Privacy Act**

The Privacy Act restricts the maintenance of records relating to certain activities of individuals who are United States persons, with exceptions for circumstances in which the collection of such information is pertinent to and within the scope of an authorized law enforcement activity or is otherwise authorized by statute. 5 U.S.C. 552a(e)(7). Activities authorized by these Guidelines are authorized law enforcement activities or activities for which there is otherwise statutory authority for purposes of the Privacy Act. These Guidelines, however, do not provide an exhaustive enumeration of authorized FBI law enforcement activities or FBI activities for which there is otherwise statutory authority, and no restriction is implied with respect to such activities carried out by the FBI pursuant to other

authorities. Further questions about the application of the Privacy Act to authorized activities of the FBI should be addressed to the FBI Office of the General Counsel, the FBI Privacy and Civil Liberties Unit, or the Department of Justice Office of Privacy and Civil Liberties.

## **D. NATURE AND APPLICATION OF THE GUIDELINES**

### **1. Repealers**

These Guidelines supersede the following guidelines, which are hereby repealed:

- a. The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (May 30, 2002) and all predecessor guidelines thereto.
- b. The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (October 31, 2003) and all predecessor guidelines thereto.
- c. The Attorney General's Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence (November 29, 2006).
- d. The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations (August 8, 1988).
- e. The Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest (April 5, 1976).

### **2. Status as Internal Guidance**

These Guidelines are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of the Department of Justice.

### **3. Departures from the Guidelines**

Departures from these Guidelines must be approved by the Director of the FBI, by the Deputy Director of the FBI, or by an Executive Assistant Director designated

by the Director. If a departure is necessary without such prior approval because of the immediacy or gravity of a threat to the safety of persons or property or to the national security, the Director, the Deputy Director, or a designated Executive Assistant Director shall be notified as soon thereafter as practicable. The FBI shall provide timely written notice of departures from these Guidelines to the Criminal Division and the National Security Division, and those divisions shall notify the Attorney General and the Deputy Attorney General. Notwithstanding this paragraph, all activities in all circumstances must be carried out in a manner consistent with the Constitution and laws of the United States.

**4. Other Activities Not Limited**

These Guidelines apply to FBI activities as provided herein and do not limit other authorized activities of the FBI, such as the FBI's responsibilities to conduct background checks and inquiries concerning applicants and employees under federal personnel security programs, the FBI's maintenance and operation of national criminal records systems and preparation of national crime statistics, and the forensic assistance and administration functions of the FBI Laboratory.



## **II. INVESTIGATIONS AND INTELLIGENCE GATHERING**

This Part of the Guidelines authorizes the FBI to conduct investigations to detect, obtain information about, and prevent and protect against federal crimes and threats to the national security and to collect foreign intelligence.

When an authorized purpose exists, the focus of activities authorized by this Part may be whatever the circumstances warrant. The subject of such an activity may be, for example, a particular crime or threatened crime; conduct constituting a threat to the national security; an individual, group, or organization that may be involved in criminal or national security-threatening conduct; or a topical matter of foreign intelligence interest.

Investigations may also be undertaken for protective purposes in relation to individuals, groups, or other entities that may be targeted for criminal victimization or acquisition, or for terrorist attack or other depredations by the enemies of the United States. For example, the participation of the FBI in special events management, in relation to public events or other activities whose character may make them attractive targets for terrorist attack, is an authorized exercise of the authorities conveyed by these Guidelines. Likewise, FBI counterintelligence activities directed to identifying and securing facilities, personnel, or information that may be targeted for infiltration, recruitment, or acquisition by foreign intelligence services are authorized exercises of the authorities conveyed by these Guidelines.

The identification and recruitment of human sources – who may be able to provide or obtain information relating to criminal activities, information relating to terrorism, espionage, or other threats to the national security, or information relating to matters of foreign intelligence interest – is also critical to the effectiveness of the FBI's law enforcement, national security, and intelligence programs, and activities undertaken for this purpose are authorized and encouraged.

The scope of authorized activities under this Part is not limited to "investigation" in a narrow sense, such as solving particular cases or obtaining evidence for use in particular criminal prosecutions. Rather, these activities also provide critical information needed for broader analytic and intelligence purposes to facilitate the solution and prevention of crime, protect the national security, and further foreign intelligence objectives. These purposes include use of the information in intelligence analysis and planning under Part IV, and dissemination of the information to other law enforcement, Intelligence Community, and White House agencies under Part VI. Information obtained at all stages of investigative activity is accordingly to be retained and disseminated for these purposes as provided in these Guidelines, or in FBI policy consistent with these Guidelines, regardless of whether it furthers investigative objectives in a narrower or more immediate sense.

In the course of activities under these Guidelines, the FBI may incidentally obtain information relating to matters outside of its areas of primary investigative responsibility. For example, information relating to violations of state or local law or foreign law may be

incidentally obtained in the course of investigating federal crimes or threats to the national security or in collecting foreign intelligence. These Guidelines do not bar the acquisition of such information in the course of authorized investigative activities, the retention of such information, or its dissemination as appropriate to the responsible authorities in other agencies or jurisdictions. Part VI of these Guidelines includes specific authorizations and requirements for sharing such information with relevant agencies and officials.

This Part authorizes different levels of information gathering activity, which afford the FBI flexibility, under appropriate standards and procedures, to adapt the methods utilized and the information sought to the nature of the matter under investigation and the character of the information supporting the need for investigation.

Assessments, authorized by Subpart A of this Part, require an authorized purpose but not any particular factual predication. For example, to carry out its central mission of preventing the commission of terrorist acts against the United States and its people, the FBI must proactively draw on available sources of information to identify terrorist threats and activities. It cannot be content to wait for leads to come in through the actions of others, but rather must be vigilant in detecting terrorist activities to the full extent permitted by law, with an eye towards early intervention and prevention of acts of terrorism before they occur. Likewise, in the exercise of its protective functions, the FBI is not constrained to wait until information is received indicating that a particular event, activity, or facility has drawn the attention of those who would threaten the national security. Rather, the FBI must take the initiative to secure and protect activities and entities whose character may make them attractive targets for terrorism or espionage. The proactive investigative authority conveyed in assessments is designed for, and may be utilized by, the FBI in the discharge of these responsibilities. For example, assessments may be conducted as part of the FBI's special events management activities.

More broadly, detecting and interrupting criminal activities at their early stages, and preventing crimes from occurring in the first place, is preferable to allowing criminal plots and activities to come to fruition. Hence, assessments may be undertaken proactively with such objectives as detecting criminal activities; obtaining information on individuals, groups, or organizations of possible investigative interest, either because they may be involved in criminal or national security-threatening activities or because they may be targeted for attack or victimization by such activities; and identifying and assessing individuals who may have value as human sources. For example, assessment activities may involve proactively surfing the Internet to find publicly accessible websites and services through which recruitment by terrorist organizations and promotion of terrorist crimes is openly taking place; through which child pornography is advertised and traded; through which efforts are made by sexual predators to lure children for purposes of sexual abuse; or through which fraudulent schemes are perpetrated against the public.

The methods authorized in assessments are generally those of relatively low intrusiveness, such as obtaining publicly available information, checking government records,

and requesting information from members of the public. These Guidelines do not impose supervisory approval requirements in assessments, given the types of techniques that are authorized at this stage (e.g., perusing the Internet for publicly available information). However, FBI policy will prescribe supervisory approval requirements for certain assessments, considering such matters as the purpose of the assessment and the methods being utilized.

Beyond the proactive information gathering functions described above, assessments may be used when allegations or other information concerning crimes or threats to the national security is received or obtained, and the matter can be checked out or resolved through the relatively non-intrusive methods authorized in assessments. The checking of investigative leads in this manner can avoid the need to proceed to more formal levels of investigative activity, if the results of an assessment indicate that further investigation is not warranted.

Subpart B of this Part authorizes a second level of investigative activity, predicated investigations. The purposes or objectives of predicated investigations are essentially the same as those of assessments, but predication as provided in these Guidelines is needed – generally, allegations, reports, facts or circumstances indicative of possible criminal or national security-threatening activity, or the potential for acquiring information responsive to foreign intelligence requirements – and supervisory approval must be obtained, to initiate predicated investigations. Corresponding to the stronger predication and approval requirements, all lawful methods may be used in predicated investigations. A classified directive provides further specification concerning circumstances supporting certain predicated investigations.

Predicated investigations that concern federal crimes or threats to the national security are subdivided into preliminary investigations and full investigations. Preliminary investigations may be initiated on the basis of any allegation or information indicative of possible criminal or national security-threatening activity, but more substantial factual predication is required for full investigations. While time limits are set for the completion of preliminary investigations, full investigations may be pursued without preset limits on their duration.

The final investigative category under this Part of the Guidelines is enterprise investigations, authorized by Subpart C, which permit a general examination of the structure, scope, and nature of certain groups and organizations. Enterprise investigations are a type of full investigations. Hence, they are subject to the purpose, approval, and predication requirements that apply to full investigations, and all lawful methods may be used in carrying them out. The distinctive characteristic of enterprise investigations is that they concern groups or organizations that may be involved in the most serious criminal or national security threats to the public – generally, patterns of racketeering activity, terrorism or other threats to the national security, or the commission of offenses characteristically involved in terrorism as described in 18 U.S.C. 2332b(g)(5)(B). A broad examination of the characteristics of groups satisfying these criteria is authorized in enterprise investigations, including any relationship of the group to a foreign power, its size and composition, its geographic dimensions and finances, its past acts and goals, and its capacity for harm.

## **A. ASSESSMENTS**

### **1. Purposes**

Assessments may be carried out to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence.

### **2. Approval**

The conduct of assessments is subject to any supervisory approval requirements prescribed by FBI policy.

### **3. Authorized Activities**

Activities that may be carried out for the purposes described in paragraph 1. in an assessment include:

- a. seeking information, proactively or in response to investigative leads, relating to:
  - i. activities constituting violations of federal criminal law or threats to the national security,
  - ii. the involvement or role of individuals, groups, or organizations in such activities; or
  - iii. matters of foreign intelligence interest responsive to foreign intelligence requirements;
- b. identifying and obtaining information about potential targets of or vulnerabilities to criminal activities in violation of federal law or threats to the national security;
- c. seeking information to identify potential human sources, assess the suitability, credibility, or value of individuals as human sources, validate human sources, or maintain the cover or credibility of human sources, who may be able to provide or obtain information relating to criminal activities in violation of federal law, threats to the national security, or matters of foreign intelligence interest; and
- d. obtaining information to inform or facilitate intelligence analysis and planning as described in Part IV of these Guidelines.

#### **4. Authorized Methods**

Only the following methods may be used in assessments:

- a. Obtain publicly available information.
- b. Access and examine FBI and other Department of Justice records, and obtain information from any FBI or other Department of Justice personnel.
- c. Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies.
- d. Use online services and resources (whether nonprofit or commercial).
- e. Use and recruit human sources in conformity with the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources.
- f. Interview or request information from members of the public and private entities.
- g. Accept information voluntarily provided by governmental or private entities.
- h. Engage in observation or surveillance not requiring a court order.
- i. Grand jury subpoenas for telephone or electronic mail subscriber information.

#### **B. PREDICATED INVESTIGATIONS**

##### **1. Purposes**

Predicated investigations may be carried out to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence.

##### **2. Approval**

The initiation of a predicated investigation requires supervisory approval at a level or levels specified by FBI policy. A predicated investigation based on paragraph 3.c. (relating to foreign intelligence) must be approved by a Special Agent in Charge or by an FBI Headquarters official as provided in such policy.

### **3. Circumstances Warranting Investigation**

A predicated investigation may be initiated on the basis of any of the following circumstances:

- a. An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity.
- b. An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the investigation may obtain information that would help to protect against such activity or threat.
- c. The investigation may obtain foreign intelligence that is responsive to a foreign intelligence requirement.

### **4. Preliminary and Full Investigations**

A predicated investigation relating to a federal crime or threat to the national security may be conducted as a preliminary investigation or a full investigation. A predicated investigation that is based solely on the authority to collect foreign intelligence may be conducted only as a full investigation.

#### **a. Preliminary investigations**

##### **i. Predication Required for Preliminary Investigations**

A preliminary investigation may be initiated on the basis of information or an allegation indicating the existence of a circumstance described in paragraph 3.a.-b.

##### **ii. Duration of Preliminary Investigations**

A preliminary investigation must be concluded within six months of its initiation, which may be extended by up to six months by the Special Agent in Charge. Extensions of preliminary investigations beyond a year must be approved by FBI Headquarters.

**iii. Methods Allowed in Preliminary Investigations**

All lawful methods may be used in a preliminary investigation except for methods within the scope of Part V.A.11.-.13. of these Guidelines.

**b. Full Investigations**

**i. Predication Required for Full Investigations**

A full investigation may be initiated if there is an articulable factual basis for the investigation that reasonably indicates that a circumstance described in paragraph 3.a.-b. exists or if a circumstance described in paragraph 3.c. exists.

**ii. Methods Allowed in Full Investigations**

All lawful methods may be used in a full investigation.

**5. Notice Requirements**

- a. An FBI field office shall notify FBI Headquarters and the United States Attorney or other appropriate Department of Justice official of the initiation by the field office of a predicated investigation involving a sensitive investigative matter. If the investigation is initiated by FBI Headquarters, FBI Headquarters shall notify the United States Attorney or other appropriate Department of Justice official of the initiation of such an investigation. If the investigation concerns a threat to the national security, an official of the National Security Division must be notified. The notice shall identify all sensitive investigative matters involved in the investigation.
- b. The FBI shall notify the National Security Division of:
  - i. the initiation of any full investigation of a United States person relating to a threat to the national security; and
  - ii. the initiation of any full investigation that is based on paragraph 3.c. (relating to foreign intelligence).
- c. The notifications under subparagraphs a. and b. shall be made as soon as practicable, but no later than 30 days after the initiation of an investigation.

- d. The FBI shall notify the Deputy Attorney General if FBI Headquarters disapproves a field office's initiation of a predicated investigation relating to a threat to the national security on the ground that the predication for the investigation is insufficient.

## **C. ENTERPRISE INVESTIGATIONS**

### **1. Definition**

A full investigation of a group or organization may be initiated as an enterprise investigation if there is an articulable factual basis for the investigation that reasonably indicates that the group or organization may have engaged or may be engaged in, or may have or may be engaged in planning or preparation or provision of support for:

- a. a pattern of racketeering activity as defined in 18 U.S.C. 1961(5);
- b. international terrorism or other threat to the national security;
- c. domestic terrorism as defined in 18 U.S.C. 2331(5) involving a violation of federal criminal law;
- d. furthering political or social goals wholly or in part through activities that involve force or violence and a violation of federal criminal law; or
- e. an offense described in 18 U.S.C. 2332b(g)(5)(B) or 18 U.S.C. 43.

### **2. Scope**

The information sought in an enterprise investigation may include a general examination of the structure, scope, and nature of the group or organization including: its relationship, if any, to a foreign power; the identity and relationship of its members, employees, or other persons who may be acting in furtherance of its objectives; its finances and resources; its geographical dimensions; and its past and future activities and goals.

### **3. Notice and Reporting Requirements**

- a. The responsible Department of Justice component for the purpose of notification and reports in enterprise investigations is the National Security Division, except that, for the purpose of notifications and reports in an enterprise investigation relating to a pattern of racketeering activity that does not involve an offense or offenses described in 18 U.S.C. 2332b(g)(5)(B), the responsible Department of Justice component is the



**Organized Crime and Racketeering Section of the Criminal Division.**

- b. **An FBI field office shall notify FBI Headquarters of the initiation by the field office of an enterprise investigation.**
- c. **The FBI shall notify the National Security Division or the Organized Crime and Racketeering Section of the initiation of an enterprise investigation, whether by a field office or by FBI Headquarters, and the component so notified shall notify the Attorney General and the Deputy Attorney General. The FBI shall also notify any relevant United States Attorney's Office, except that any investigation within the scope of Part VI.D.1.d of these Guidelines (relating to counterintelligence investigations) is to be treated as provided in that provision. Notifications by the FBI under this subparagraph shall be provided as soon as practicable, but no later than 30 days after the initiation of the investigation.**
- d. **The Assistant Attorney General for National Security or the Chief of the Organized Crime and Racketeering Section, as appropriate, may at any time request the FBI to provide a report on the status of an enterprise investigation and the FBI will provide such reports as requested.**

### **III. ASSISTANCE TO OTHER AGENCIES**

The FBI is authorized to provide investigative assistance to other federal, state, local, or tribal, or foreign agencies as provided in this Part.

The investigative assistance authorized by this Part is often concerned with the same objectives as those identified in Part II of these Guidelines – investigating federal crimes and threats to the national security, and collecting foreign intelligence. In some cases, however, investigative assistance to other agencies is legally authorized for purposes other than those identified in Part II, such as assistance in certain contexts to state or local agencies in the investigation of crimes under state or local law, see 28 U.S.C. 540, 540A, 540B, and assistance to foreign agencies in the investigation of foreign law violations pursuant to international agreements. Investigative assistance for such legally authorized purposes is permitted under this Part, even if it is not for purposes identified as grounds for investigation under Part II.

The authorities provided by this Part are cumulative to Part II and do not limit the FBI's investigative activities under Part II. For example, Subpart B.2 in this Part authorizes investigative activities by the FBI in certain circumstances to inform decisions by the President concerning the deployment of troops to deal with civil disorders, and Subpart B.3 authorizes investigative activities to facilitate demonstrations and related public health and safety measures. The requirements and limitations in these provisions for conducting investigations for the specified purposes do not limit the FBI's authority under Part II to investigate federal crimes or threats to the national security that occur in the context of or in connection with civil disorders or demonstrations.

#### **A. THE INTELLIGENCE COMMUNITY**

The FBI may provide investigative assistance (including operational support) to authorized intelligence activities of other Intelligence Community agencies.

#### **B. FEDERAL AGENCIES GENERALLY**

##### **1. In General**

The FBI may provide assistance to any federal agency in the investigation of federal crimes or threats to the national security or in the collection of foreign intelligence, and investigative assistance to any federal agency for any other purpose that may be legally authorized, including investigative assistance to the Secret Service in support of its protective responsibilities.

##### **2. The President in Relation to Civil Disorders**

a. At the direction of the Attorney General, the Deputy Attorney General, or

the Assistant Attorney General for the Criminal Division, the FBI shall collect information relating to actual or threatened civil disorders to assist the President in determining (pursuant to the authority of the President under 10 U.S.C. 331-33) whether use of the armed forces or militia is required and how a decision to commit troops should be implemented. The information sought shall concern such matters as:

- i. The size of the actual or threatened disorder, both in number of people involved or affected and in geographic area.
  - ii. The potential for violence.
  - iii. The potential for expansion of the disorder in light of community conditions and underlying causes of the disorder.
  - iv. The relationship of the actual or threatened disorder to the enforcement of federal law or court orders and the likelihood that state or local authorities will assist in enforcing those laws or orders.
  - v. The extent of state or local resources available to handle the disorder.
- b. Investigations under this paragraph will be authorized only for a period of 30 days, but the authorization may be renewed for subsequent 30 day periods.
- c. Notwithstanding Subpart E.2 of this Part, the methods that may be used in an investigation under this paragraph are those described in subparagraphs a.-d., subparagraph f. (other than pretext interviews or requests), or subparagraph g. of Part II.A.4 of these Guidelines. The Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division may also authorize the use of other methods described in Part II.A.4.

### **3. Public Health and Safety Authorities in Relation to Demonstrations**

- a. At the direction of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division, the FBI shall collect information relating to demonstration activities that are likely to require the federal government to take action to facilitate the activities and provide public health and safety measures with respect to those activities. The information sought in such an investigation shall be that needed to facilitate an adequate federal response to ensure public health and safety

and to protect the exercise of First Amendment rights, such as:

- i. The time, place, and type of activities planned.
  - ii. The number of persons expected to participate.
  - iii. The expected means and routes of travel for participants and expected time of arrival.
  - iv. Any plans for lodging or housing of participants in connection with the demonstration.
- b. Notwithstanding Subpart E.2 of this Part, the methods that may be used in an investigation under this paragraph are those described in subparagraphs a.-d., subparagraph f. (other than pretext interviews or requests), or subparagraph g. of Part II.A.4 of these Guidelines. The Attorney General, the Deputy Attorney General, or the Assistant Attorney General for the Criminal Division may also authorize the use of other methods described in Part II.A.4.

#### **C. STATE, LOCAL, OR TRIBAL AGENCIES**

The FBI may provide investigative assistance to state, local, or tribal agencies in the investigation of matters that may involve federal crimes or threats to the national security, or for such other purposes as may be legally authorized.

#### **D. FOREIGN AGENCIES**

1. At the request of foreign law enforcement, intelligence, or security agencies, the FBI may conduct investigations or provide assistance to investigations by such agencies, consistent with the interests of the United States (including national security interests) and with due consideration of the effect on any United States person. Investigations or assistance under this paragraph must be approved as provided by FBI policy. The FBI shall notify the National Security Division concerning investigation or assistance under this paragraph where: (i) FBI Headquarters approval for the activity is required pursuant to the approval policy adopted by the FBI for purposes of this paragraph, and (ii) the activity relates to a threat to the national security. Notification to the National Security Division shall be made as soon as practicable but no later than 30 days after the approval. Provisions regarding notification to or coordination with the Central Intelligence Agency by the FBI in memoranda of understanding or agreements with the Central Intelligence Agency may also apply to activities under this paragraph.
2. The FBI may not provide assistance to foreign law enforcement, intelligence, or

security officers conducting investigations within the United States unless such officers have provided prior notification to the Attorney General as required by 18 U.S.C. 951.

3. The FBI may conduct background inquiries concerning consenting individuals when requested by foreign government agencies.
4. The FBI may provide other material and technical assistance to foreign governments to the extent not otherwise prohibited by law.

#### **E. APPLICABLE STANDARDS AND PROCEDURES**

1. Authorized investigative assistance by the FBI to other agencies under this Part includes joint operations and activities with such agencies.
2. All lawful methods may be used in investigative assistance activities under this Part.
3. Where the methods used in investigative assistance activities under this Part go beyond the methods authorized in assessments under Part II.A.4 of these Guidelines, the following apply:
  - a. Supervisory approval must be obtained for the activity at a level or levels specified in FBI policy.
  - b. Notice must be provided concerning sensitive investigative matters in the manner described in Part II.B.5.
  - c. A database or records system must be maintained that permits, with respect to each such activity, the prompt retrieval of the status of the activity (open or closed), the dates of opening and closing, and the basis for the activity. This database or records system may be combined with the database or records system for predicated investigations required by Part VI.A.2.

#### **IV. INTELLIGENCE ANALYSIS AND PLANNING**

The FBI is authorized to engage in analysis and planning. The FBI's analytic activities enable the FBI to identify and understand trends, causes, and potential indicia of criminal activity and other threats to the United States that would not be apparent from the investigation of discrete matters alone. By means of intelligence analysis and strategic planning, the FBI can more effectively discover crimes, threats to the national security, and other matters of national intelligence interest and can provide the critical support needed for the effective discharge of its investigative responsibilities and other authorized activities. For example, analysis of threats in the context of special events management, concerning public events or activities that may be targeted for terrorist attack, is an authorized activity under this Part.

In carrying out its intelligence functions under this Part, the FBI is authorized to draw on all lawful sources of information, including but not limited to the results of investigative activities under these Guidelines. Investigative activities under these Guidelines and other legally authorized activities through which the FBI acquires information, data, or intelligence may properly be utilized, structured, and prioritized so as to support and effectuate the FBI's intelligence mission. The remainder of this Part provides further specification concerning activities and functions authorized as part of that mission.

##### **A. STRATEGIC INTELLIGENCE ANALYSIS**

The FBI is authorized to develop overviews and analyses of threats to and vulnerabilities of the United States and its interests in areas related to the FBI's responsibilities, including domestic and international criminal threats and activities; domestic and international activities, circumstances, and developments affecting the national security; and matters relevant to the conduct of the United States' foreign affairs. The overviews and analyses prepared under this Subpart may encompass present, emergent, and potential threats and vulnerabilities, their contexts and causes, and identification and analysis of means of responding to them.

##### **B. REPORTS AND ASSESSMENTS GENERALLY**

The FBI is authorized to conduct research, analyze information, and prepare reports and assessments concerning matters relevant to authorized FBI activities, such as reports and assessments concerning: types of criminals or criminal activities; organized crime groups; terrorism, espionage, or other threats to the national security; foreign intelligence matters; or the scope and nature of criminal activity in particular geographic areas or sectors of the economy.

##### **C. INTELLIGENCE SYSTEMS**

The FBI is authorized to operate intelligence, identification, tracking, and information

systems in support of authorized investigative activities, or for such other or additional purposes as may be legally authorized, such as intelligence and tracking systems relating to terrorists, gangs, or organized crime groups.

**V. AUTHORIZED METHODS**

**A. PARTICULAR METHODS**

All lawful investigative methods may be used in activities under these Guidelines as authorized by these Guidelines. Authorized methods include, but are not limited to, those identified in the following list. The methods identified in the list are in some instances subject to special restrictions or review or approval requirements as noted:

1. The methods described in Part II.A.4 of these Guidelines.
2. Mail covers.
3. Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers).
4. Consensual monitoring of communications, including consensual computer monitoring, subject to legal review by the Chief Division Counsel or the FBI Office of the General Counsel. Where a sensitive monitoring circumstance is involved, the monitoring must be approved by the Criminal Division or, if the investigation concerns a threat to the national security or foreign intelligence, by the National Security Division.
5. Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the Chief Division Counsel or the FBI Office of the General Counsel. (The methods described in this paragraph usually do not require court orders or warrants unless they involve physical trespass or non-consensual monitoring of communications, but legal review is necessary to ensure compliance with all applicable legal requirements.)
6. Polygraph examinations.
7. Undercover operations. In investigations relating to activities in violation of federal criminal law that do not concern threats to the national security or foreign intelligence, undercover operations must be carried out in conformity with the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. In investigations that are not subject to the preceding sentence because they concern threats to the national security or foreign intelligence, undercover operations involving religious or political organizations must be reviewed and approved by FBI Headquarters, with participation by the National Security Division in the review process.
8. Compulsory process as authorized by law, including grand jury subpoenas and



other subpoenas, National Security Letters (15 U.S.C. 1681u, 1681v; 18 U.S.C. 2709; 12 U.S.C. 3414(a)(5)(A); 50 U.S.C. 436), and Foreign Intelligence Surveillance Act orders for the production of tangible things (50 U.S.C. 1861-63).

9. Accessing stored wire and electronic communications and transactional records in conformity with chapter 121 of title 18, United States Code (18 U.S.C. 2701–2712).
10. Use of pen registers and trap and trace devices in conformity with chapter 206 of title 18, United States Code (18 U.S.C. 3121-3127), or the Foreign Intelligence Surveillance Act (50 U.S.C. 1841-1846).
11. Electronic surveillance in conformity with chapter 119 of title 18, United States Code (18 U.S.C. 2510-2522), the Foreign Intelligence Surveillance Act, or Executive Order 12333 § 2.5.
12. Physical searches, including mail openings, in conformity with Rule 41 of the Federal Rules of Criminal Procedure, the Foreign Intelligence Surveillance Act, or Executive Order 12333 § 2.5. A classified directive provides additional limitation on certain searches.
13. Acquisition of foreign intelligence information in conformity with title VII of the Foreign Intelligence Surveillance Act.

## **B. SPECIAL REQUIREMENTS**

Beyond the limitations noted in the list above relating to particular investigative methods, the following requirements are to be observed:

### **1. Contacts with Represented Persons**

Contact with represented persons may implicate legal restrictions and affect the admissibility of resulting evidence. Hence, if an individual is known to be represented by counsel in a particular matter, the FBI will follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to counsel. The Special Agent in Charge and the United States Attorney or their designees shall consult periodically on applicable law and Department procedure. Where issues arise concerning the consistency of contacts with represented persons with applicable attorney conduct rules, the United States Attorney's Office should consult with the Professional Responsibility Advisory Office.

## **2. Use of Classified Investigative Technologies**

Inappropriate use of classified investigative technologies may risk the compromise of such technologies. Hence, in an investigation relating to activities in violation of federal criminal law that does not concern a threat to the national security or foreign intelligence, the use of such technologies must be in conformity with the Procedures for the Use of Classified Investigative Technologies in Criminal Cases.

## **C. OTHERWISE ILLEGAL ACTIVITY**

1. Otherwise illegal activity by an FBI agent or employee in an undercover operation relating to activity in violation of federal criminal law that does not concern a threat to the national security or foreign intelligence must be approved in conformity with the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. Approval of otherwise illegal activity in conformity with those guidelines is sufficient and satisfies any approval requirement that would otherwise apply under these Guidelines.
2. Otherwise illegal activity by a human source must be approved in conformity with the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources.
3. Otherwise illegal activity by an FBI agent or employee that is not within the scope of paragraph 1. must be approved by a United States Attorney's Office or a Department of Justice Division, except that a Special Agent in Charge may authorize the following:
  - a. otherwise illegal activity that would not be a felony under federal, state, local, or tribal law;
  - b. consensual monitoring of communications, even if a crime under state, local, or tribal law;
  - c. the controlled purchase, receipt, delivery, or sale of drugs, stolen property, or other contraband;
  - d. the payment of bribes;
  - e. the making of false representations in concealment of personal identity or the true ownership of a proprietary; and
  - f. conducting a money laundering transaction or transactions involving an aggregate amount not exceeding \$1 million.

However, in an investigation relating to a threat to the national security or foreign intelligence collection, a Special Agent in Charge may not authorize an activity that may constitute a violation of export control laws or laws that concern the proliferation of weapons of mass destruction. In such an investigation, a Special Agent in Charge may authorize an activity that may otherwise violate prohibitions of material support to terrorism only in accordance with standards established by the Director of the FBI and agreed to by the Assistant Attorney General for National Security.

4. The following activities may not be authorized:
  - a. Acts of violence.
  - b. Activities whose authorization is prohibited by law, including unlawful investigative methods, such as illegal electronic surveillance or illegal searches.

Subparagraph a., however, does not limit the right of FBI agents or employees to engage in any lawful use of force, including the use of force in self-defense or defense of others or otherwise in the lawful discharge of their duties.

5. An agent or employee may engage in otherwise illegal activity that could be authorized under this Subpart without the authorization required by paragraph 3. if necessary to meet an immediate threat to the safety of persons or property or to the national security, or to prevent the compromise of an investigation or the loss of a significant investigative opportunity. In such a case, prior to engaging in the otherwise illegal activity, every effort should be made by the agent or employee to consult with the Special Agent in Charge, and by the Special Agent in Charge to consult with the United States Attorney's Office or appropriate Department of Justice Division where the authorization of that office or division would be required under paragraph 3., unless the circumstances preclude such consultation. Cases in which otherwise illegal activity occurs pursuant to this paragraph without the authorization required by paragraph 3. shall be reported as soon as possible to the Special Agent in Charge, and by the Special Agent in Charge to FBI Headquarters and to the United States Attorney's Office or appropriate Department of Justice Division.
6. In an investigation relating to a threat to the national security or foreign intelligence collection, the National Security Division is the approving component for otherwise illegal activity for which paragraph 3. requires approval beyond internal FBI approval. However, officials in other components may approve otherwise illegal activity in such investigations as authorized by the Assistant Attorney General for National Security.

## **VI. RETENTION AND SHARING OF INFORMATION**

### **A. RETENTION OF INFORMATION**

1. The FBI shall retain records relating to activities under these Guidelines in accordance with a records retention plan approved by the National Archives and Records Administration.
2. The FBI shall maintain a database or records system that permits, with respect to each predicated investigation, the prompt retrieval of the status of the investigation (open or closed), the dates of opening and closing, and the basis for the investigation.

### **B. INFORMATION SHARING GENERALLY**

#### **1. Permissive Sharing**

Consistent with law and with any applicable agreements or understandings with other agencies concerning the dissemination of information they have provided, the FBI may disseminate information obtained or produced through activities under these Guidelines:

- a. within the FBI and to other components of the Department of Justice;
- b. to other federal, state, local, or tribal agencies if related to their responsibilities and, in relation to other Intelligence Community agencies, the determination whether the information is related to the recipient's responsibilities may be left to the recipient;
- c. to congressional committees as authorized by the Department of Justice Office of Legislative Affairs;
- d. to foreign agencies if the information is related to their responsibilities and the dissemination is consistent with the interests of the United States (including national security interests) and the FBI has considered the effect such dissemination may reasonably be expected to have on any identifiable United States person;
- e. if the information is publicly available, does not identify United States persons, or is disseminated with the consent of the person whom it concerns;
- f. if the dissemination is necessary to protect the safety or security of persons or property, to protect against or prevent a crime or threat to the national

security, or to obtain information for the conduct of an authorized FBI investigation; or

- g. if dissemination of the information is otherwise permitted by the Privacy Act (5 U.S.C. 552a).

## **2. Required Sharing**

The FBI shall share and disseminate information as required by statutes, treaties, Executive Orders, Presidential directives, National Security Council directives, Homeland Security Council directives, and Attorney General-approved policies, memoranda of understanding, or agreements.

# **C. INFORMATION RELATING TO CRIMINAL MATTERS**

## **1. Coordination with Prosecutors**

In an investigation relating to possible criminal activity in violation of federal law, the agent conducting the investigation shall maintain periodic written or oral contact with the appropriate federal prosecutor, as circumstances warrant and as requested by the prosecutor. When, during such an investigation, a matter appears arguably to warrant prosecution, the agent shall present the relevant facts to the appropriate federal prosecutor. Information on investigations that have been closed shall be available on request to a United States Attorney or his or her designee or an appropriate Department of Justice official.

## **2. Criminal Matters Outside FBI Jurisdiction**

When credible information is received by an FBI field office concerning serious criminal activity not within the FBI's investigative jurisdiction, the field office shall promptly transmit the information or refer the complainant to a law enforcement agency having jurisdiction, except where disclosure would jeopardize an ongoing investigation, endanger the safety of an individual, disclose the identity of a human source, interfere with a human source's cooperation, or reveal legally privileged information. If full disclosure is not made for the reasons indicated, then, whenever feasible, the FBI field office shall make at least limited disclosure to a law enforcement agency or agencies having jurisdiction, and full disclosure shall be made as soon as the need for restricting disclosure is no longer present. Where full disclosure is not made to the appropriate law enforcement agencies within 180 days, the FBI field office shall promptly notify FBI Headquarters in writing of the facts and circumstances concerning the criminal activity. The FBI shall make periodic reports to the Deputy Attorney General on such nondisclosures and incomplete disclosures, in a form suitable to protect the identity of human sources.

### **3. Reporting of Criminal Activity**

- a. When it appears that an FBI agent or employee has engaged in criminal activity in the course of an investigation under these Guidelines, the FBI shall notify the United States Attorney's Office or an appropriate Department of Justice Division. When it appears that a human source has engaged in criminal activity in the course of an investigation under these Guidelines, the FBI shall proceed as provided in the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources. When information concerning possible criminal activity by any other person appears in the course of an investigation under these Guidelines, the FBI shall initiate an investigation of the criminal activity if warranted, and shall proceed as provided in paragraph 1. or 2.
- b. The reporting requirements under this paragraph relating to criminal activity by FBI agents or employees or human sources do not apply to otherwise illegal activity that is authorized in conformity with these Guidelines or other Attorney General guidelines or to minor traffic offenses.

## **D. INFORMATION RELATING TO NATIONAL SECURITY AND FOREIGN INTELLIGENCE MATTERS**

The general principle reflected in current laws and policies is that there is a responsibility to provide information as consistently and fully as possible to agencies with relevant responsibilities to protect the United States and its people from terrorism and other threats to the national security, except as limited by specific constraints on such sharing. The FBI's responsibilities in this area include carrying out the requirements of the Memorandum of Understanding Between the Intelligence Community, Federal Law Enforcement Agencies, and the Department of Homeland Security Concerning Information Sharing (March 4, 2003), or any successor memorandum of understanding or agreement. Specific requirements also exist for internal coordination and consultation with other Department of Justice components, and for provision of national security and foreign intelligence information to White House agencies, as provided in the ensuing paragraphs.

### **1. Department of Justice**

- a. The National Security Division shall have access to all information obtained by the FBI through activities relating to threats to the national security or foreign intelligence. The Director of the FBI and the Assistant Attorney General for National Security shall consult concerning these activities whenever requested by either of them, and the FBI shall provide such reports and information concerning these activities as the Assistant

Attorney General for National Security may request. In addition to any reports or information the Assistant Attorney General for National Security may specially request under this subparagraph, the FBI shall provide annual reports to the National Security Division concerning its foreign intelligence collection program, including information concerning the scope and nature of foreign intelligence collection activities in each FBI field office.

- b. The FBI shall keep the National Security Division apprised of all information obtained through activities under these Guidelines that is necessary to the ability of the United States to investigate or protect against threats to the national security, which shall include regular consultations between the FBI and the National Security Division to exchange advice and information relevant to addressing such threats through criminal prosecution or other means.
- c. Subject to subparagraphs d. and e., relevant United States Attorneys' Offices shall have access to and shall receive information from the FBI relating to threats to the national security, and may engage in consultations with the FBI relating to such threats, to the same extent as the National Security Division. The relevant United States Attorneys' Offices shall receive such access and information from the FBI field offices.
- d. In a counterintelligence investigation – i.e., an investigation relating to a matter described in Part VII.S.2 of these Guidelines – the FBI's provision of information to and consultation with a United States Attorney's Office are subject to authorization by the National Security Division. In consultation with the Executive Office for United States Attorneys and the FBI, the National Security Division shall establish policies setting forth circumstances in which the FBI will consult with the National Security Division prior to informing relevant United States Attorneys' Offices about such an investigation. The policies established by the National Security Division under this subparagraph shall (among other things) provide that:
  - i. the National Security Division will, within 30 days, authorize the FBI to share with the United States Attorneys' Offices information relating to certain espionage investigations, as defined by the policies, unless such information is withheld because of substantial national security considerations; and
  - ii. the FBI may consult freely with United States Attorneys' Offices concerning investigations within the scope of this subparagraph during an emergency, so long as the National Security Division is

notified of such consultation as soon as practical after the consultation.

- e. Information shared with a United States Attorney's Office pursuant to subparagraph c. or d. shall be disclosed only to the United States Attorney or any Assistant United States Attorneys designated by the United States Attorney as points of contact to receive such information. The United States Attorneys and designated Assistant United States Attorneys shall have appropriate security clearances and shall receive training in the handling of classified information and information derived from the Foreign Intelligence Surveillance Act, including training concerning the secure handling and storage of such information and training concerning requirements and limitations relating to the use, retention, and dissemination of such information.
- f. The disclosure and sharing of information by the FBI under this paragraph is subject to any limitations required in orders issued by the Foreign Intelligence Surveillance Court, controls imposed by the originators of sensitive material, and restrictions established by the Attorney General or the Deputy Attorney General in particular cases. The disclosure and sharing of information by the FBI under this paragraph that may disclose the identity of human sources is governed by the relevant provisions of the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources.

## **2. White House**

In order to carry out their responsibilities, the President, the Vice President, the Assistant to the President for National Security Affairs, the Assistant to the President for Homeland Security Affairs, the National Security Council and its staff, the Homeland Security Council and its staff, and other White House officials and offices require information from all federal agencies, including foreign intelligence, and information relating to international terrorism and other threats to the national security. The FBI accordingly may disseminate to the White House foreign intelligence and national security information obtained through activities under these Guidelines, subject to the following standards and procedures:

- a. Requests to the FBI for such information from the White House shall be made through the National Security Council staff or Homeland Security Council staff including, but not limited to, the National Security Council Legal and Intelligence Directorates and Office of Combating Terrorism, or through the President's Intelligence Advisory Board or the Counsel to the President.



- b. Compromising information concerning domestic officials or political organizations, or information concerning activities of United States persons intended to affect the political process in the United States, may be disseminated to the White House only with the approval of the Attorney General, based on a determination that such dissemination is needed for foreign intelligence purposes, for the purpose of protecting against international terrorism or other threats to the national security, or for the conduct of foreign affairs. However, such approval is not required for dissemination to the White House of information concerning efforts of foreign intelligence services to penetrate the White House, or concerning contacts by White House personnel with foreign intelligence service personnel.
- c. Examples of types of information that are suitable for dissemination to the White House on a routine basis include, but are not limited to:
  - i. information concerning international terrorism;
  - ii. information concerning activities of foreign intelligence services in the United States;
  - iii. information indicative of imminent hostilities involving any foreign power;
  - iv. information concerning potential cyber threats to the United States or its allies;
  - v. information indicative of policy positions adopted by foreign officials, governments, or powers, or their reactions to United States foreign policy initiatives;
  - vi. information relating to possible changes in leadership positions of foreign governments, parties, factions, or powers;
  - vii. information concerning foreign economic or foreign political matters that might have national security ramifications; and
  - viii. information set forth in regularly published national intelligence requirements.
- d. Communications by the FBI to the White House that relate to a national security matter and concern a litigation issue for a specific pending case must be made known to the Office of the Attorney General, the Office of

the Deputy Attorney General, or the Office of the Associate Attorney General. White House policy may specially limit or prescribe the White House personnel who may request information concerning such issues from the FBI.

- e. The limitations on dissemination of information by the FBI to the White House under these Guidelines do not apply to dissemination to the White House of information acquired in the course of an FBI investigation requested by the White House into the background of a potential employee or appointee, or responses to requests from the White House under Executive Order 10450.

### **3. Special Statutory Requirements**

- a. Dissemination of information acquired under the Foreign Intelligence Surveillance Act is, to the extent provided in that Act, subject to minimization procedures and other requirements specified in that Act.
- b. Information obtained through the use of National Security Letters under 15 U.S.C. 1681v may be disseminated in conformity with the general standards of this Part. Information obtained through the use of National Security Letters under other statutes may be disseminated in conformity with the general standards of this Part, subject to any applicable limitations in their governing statutory provisions: 12 U.S.C. 3414(a)(5)(B); 15 U.S.C. 1681u(f); 18 U.S.C. 2709(d); 50 U.S.C. 436(e).

**VII. DEFINITIONS**

- A. **CONSENSUAL MONITORING:** monitoring of communications for which a court order or warrant is not legally required because of the consent of a party to the communication.
- B. **EMPLOYEE:** an FBI employee or an employee of another agency working under the direction and control of the FBI.
- C. **FOR OR ON BEHALF OF A FOREIGN POWER:** the determination that activities are for or on behalf of a foreign power shall be based on consideration of the extent to which the foreign power is involved in:
  - 1. control or policy direction;
  - 2. financial or material support; or
  - 3. leadership, assignments, or discipline.
- D. **FOREIGN COMPUTER INTRUSION:** the use or attempted use of any cyber-activity or other means, by, for, or on behalf of a foreign power to scan, probe, or gain unauthorized access into one or more U.S.-based computers.
- E. **FOREIGN INTELLIGENCE:** information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons, or international terrorists.
- F. **FOREIGN INTELLIGENCE REQUIREMENTS:**
  - 1. national intelligence requirements issued pursuant to authorization by the Director of National Intelligence, including the National Intelligence Priorities Framework and the National HUMINT Collection Directives, or any successor directives thereto;
  - 2. requests to collect foreign intelligence by the President or by Intelligence Community officials designated by the President; and
  - 3. directions to collect foreign intelligence by the Attorney General, the Deputy Attorney General, or an official designated by the Attorney General.
- G. **FOREIGN POWER:**
  - 1. a foreign government or any component thereof, whether or not recognized by the United States;

2. a faction of a foreign nation or nations, not substantially composed of United States persons;
  3. an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;
  4. a group engaged in international terrorism or activities in preparation therefor;
  5. a foreign-based political organization, not substantially composed of United States persons; or
  6. an entity that is directed or controlled by a foreign government or governments.
- H. **HUMAN SOURCE:** a Confidential Human Source as defined in the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources.
- I. **INTELLIGENCE ACTIVITIES:** any activity conducted for intelligence purposes or to affect political or governmental processes by, for, or on behalf of a foreign power.
- J. **INTERNATIONAL TERRORISM:**
- Activities that:
1. involve violent acts or acts dangerous to human life that violate federal, state, local, or tribal criminal law or would violate such law if committed within the United States or a state, local, or tribal jurisdiction;
  2. appear to be intended:
    - i. to intimidate or coerce a civilian population;
    - ii. to influence the policy of a government by intimidation or coercion; or
    - iii. to affect the conduct of a government by assassination or kidnapping; and
  3. occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear to be intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.
- K. **PROPRIETARY:** a sole proprietorship, partnership, corporation, or other business entity operated on a commercial basis, which is owned, controlled, or operated wholly or in part on behalf of the FBI, and whose relationship with the FBI is concealed from third parties.

- L. **PUBLICLY AVAILABLE:** information that has been published or broadcast for public consumption, is available on request to the public, is accessible on-line or otherwise to the public, is available to the public by subscription or purchase, could be seen or heard by any casual observer, is made available at a meeting open to the public, or is obtained by visiting any place or attending any event that is open to the public.
- M. **RECORDS:** any records, databases, files, indices, information systems, or other retained information.
- N. **SENSITIVE INVESTIGATIVE MATTER:** an investigative matter involving the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), religious or political organization or individual prominent in such an organization, or news media, or any other matter which, in the judgment of the official authorizing an investigation, should be brought to the attention of FBI Headquarters and other Department of Justice officials.
- O. **SENSITIVE MONITORING CIRCUMSTANCE:**
1. investigation of a member of Congress, a federal judge, a member of the Executive Branch at Executive Level IV or above, or a person who has served in such capacity within the previous two years;
  2. investigation of the Governor, Lieutenant Governor, or Attorney General of any state or territory, or a judge or justice of the highest court of any state or territory, concerning an offense involving bribery, conflict of interest, or extortion related to the performance of official duties;
  3. a party to the communication is in the custody of the Bureau of Prisons or the United States Marshals Service or is being or has been afforded protection in the Witness Security Program; or
  4. the Attorney General, the Deputy Attorney General, or an Assistant Attorney General has requested that the FBI obtain prior approval for the use of consensual monitoring in a specific investigation.
- P. **SPECIAL AGENT IN CHARGE:** the Special Agent in Charge of an FBI field office (including an Acting Special Agent in Charge), except that the functions authorized for Special Agents in Charge by these Guidelines may also be exercised by the Assistant Director in Charge or by any Special Agent in Charge designated by the Assistant Director in Charge in an FBI field office headed by an Assistant Director, and by FBI Headquarters officials designated by the Director of the FBI.
- Q. **SPECIAL EVENTS MANAGEMENT:** planning and conduct of public events or activities whose character may make them attractive targets for terrorist attack.

- R. **STATE, LOCAL, OR TRIBAL:** any state or territory of the United States or political subdivision thereof, the District of Columbia, or Indian tribe.
- S. **THREAT TO THE NATIONAL SECURITY:**
1. international terrorism;
  2. espionage and other intelligence activities, sabotage, and assassination, conducted by, for, or on behalf of foreign powers, organizations, or persons;
  3. foreign computer intrusion; and
  4. other matters determined by the Attorney General, consistent with Executive Order 12333 or a successor order.
- T. **UNITED STATES:** when used in a geographic sense, means all areas under the territorial sovereignty of the United States.
- U. **UNITED STATES PERSON:**

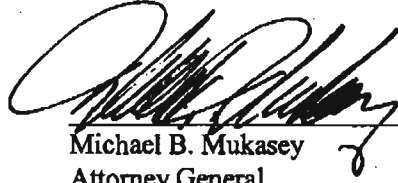
Any of the following, but not including any association or corporation that is a foreign power as defined in Subpart G.1.-.3.:

1. an individual who is a United States citizen or an alien lawfully admitted for permanent residence;
2. an unincorporated association substantially composed of individuals who are United States persons; or
3. a corporation incorporated in the United States.

In applying paragraph 2., if a group or organization in the United States that is affiliated with a foreign-based international organization operates directly under the control of the international organization and has no independent program or activities in the United States, the membership of the entire international organization shall be considered in determining whether it is substantially composed of United States persons. If, however, the U.S.-based group or organization has programs or activities separate from, or in addition to, those directed by the international organization, only its membership in the United States shall be considered in determining whether it is substantially composed of United States persons. A classified directive provides further guidance concerning the determination of United States person status.

- V. USE: when used with respect to human sources, means obtaining information from, tasking, or otherwise operating such sources.

Date: 7/29/08

  
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Michael B. Mukasey  
Attorney General

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## **APPENDIX B: (U) EXECUTIVE ORDER 12333**

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ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 08-31-2011 BY UC 60322 LP/PJ/SZ

EXECUTIVE ORDER  
12333  
- - - - -

UNITED STATES INTELLIGENCE ACTIVITIES  
DECEMBER 4, 1981  
(AS AMENDED BY EXECUTIVE ORDERS 13284 (2003), 13355 (2004)  
AND 13470 (2008))

PREAMBLE

Timely, accurate, and insightful information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence possible. For that purpose, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including the National Security Act of 1947, as amended, (Act) and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

*PART 1 Goals, Directions, Duties, and Responsibilities with  
Respect to United States Intelligence Efforts*

1.1 Goals. The United States intelligence effort shall provide the President, the National Security Council, and the Homeland Security Council with the necessary information on which to base decisions concerning the development and conduct of foreign, defense, and economic policies, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) All means, consistent with applicable Federal law and this order, and with full consideration of the rights of United States persons, shall be used to obtain reliable intelligence information to protect the United States and its

interests.

(b) The United States Government has a solemn obligation, and shall continue in the conduct of intelligence activities under this order, to protect fully the legal rights of all United States persons, including freedoms, civil liberties, and privacy rights guaranteed by Federal law.

(c) Intelligence collection under this order should be guided by the need for information to respond to intelligence priorities set by the President.

(d) Special emphasis should be given to detecting and countering:

- (1) Espionage and other threats and activities directed by foreign powers or their intelligence services against the United States and its interests;
- (2) Threats to the United States and its interests from terrorism; and
- (3) Threats to the United States and its interests from the development, possession, proliferation, or use of weapons of mass destruction.

(e) Special emphasis shall be given to the production of timely, accurate, and insightful reports, responsive to decisionmakers in the executive branch, that draw on all appropriate sources of information, including open source information, meet rigorous analytic standards, consider diverse analytic viewpoints, and accurately represent appropriate alternative views.

(f) State, local, and tribal governments are critical partners in securing and defending the United States from terrorism and other threats to the United States and its interests. Our national intelligence effort should take into account the responsibilities and requirements of State, local, and tribal governments and, as appropriate, private sector

entities, when undertaking the collection and dissemination of information and intelligence to protect the United States.

(g) All departments and agencies have a responsibility to prepare and to provide intelligence in a manner that allows the full and free exchange of information, consistent with applicable law and presidential guidance.

#### 1.2 *The National Security Council.*

(a) *Purpose.* The National Security Council (NSC) shall act as the highest ranking executive branch entity that provides support to the President for review of, guidance for, and direction to the conduct of all foreign intelligence, counterintelligence, and covert action, and attendant policies and programs.

(b) *Covert Action and Other Sensitive Intelligence Operations.* The NSC shall consider and submit to the President a policy recommendation, including all dissents, on each proposed covert action and conduct a periodic review of ongoing covert action activities, including an evaluation of the effectiveness and consistency with current national policy of such activities and consistency with applicable legal requirements. The NSC shall perform such other functions related to covert action as the President may direct, but shall not undertake the conduct of covert actions. The NSC shall also review proposals for other sensitive intelligence operations.

1.3 *Director of National Intelligence.* Subject to the authority, direction, and control of the President, the Director of National Intelligence (Director) shall serve as the head of the Intelligence Community, act as the principal adviser to the President, to the NSC, and to the Homeland Security Council for intelligence matters related to national security, and shall oversee and direct the implementation of the National Intelligence Program and execution of the National Intelligence

Program budget. The Director will lead a unified, coordinated, and effective intelligence effort. In addition, the Director shall, in carrying out the duties and responsibilities under this section, take into account the views of the heads of departments containing an element of the Intelligence Community and of the Director of the Central Intelligence Agency.

(a) Except as otherwise directed by the President or prohibited by law, the Director shall have access to all information and intelligence described in section 1.5(a) of this order. For the purpose of access to and sharing of information and intelligence, the Director:

(1) Is hereby assigned the function under section 3(5) of the Act, to determine that intelligence, regardless of the source from which derived and including information gathered within or outside the United States, pertains to more than one United States Government agency; and

(2) Shall develop guidelines for how information or intelligence is provided to or accessed by the Intelligence Community in accordance with section 1.5(a) of this order, and for how the information or intelligence may be used and shared by the Intelligence Community. All guidelines developed in accordance with this section shall be approved by the Attorney General and, where applicable, shall be consistent with guidelines issued pursuant to section 1016 of the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law 108-458) (IRTPA).

(b) In addition to fulfilling the obligations and responsibilities prescribed by the Act, the Director:

(1) Shall establish objectives, priorities, and guidance for the Intelligence Community to ensure timely and effective collection, processing, analysis, and dissemination of intelligence, of whatever nature and from whatever source

derived;

(2) May designate, in consultation with affected heads of departments or Intelligence Community elements, one or more Intelligence Community elements to develop and to maintain services of common concern on behalf of the Intelligence Community if the Director determines such services can be more efficiently or effectively accomplished in a consolidated manner;

(3) Shall oversee and provide advice to the President and the NSC with respect to all ongoing and proposed covert action programs;

(4) In regard to the establishment and conduct of intelligence arrangements and agreements with foreign governments and international organizations:

(A) May enter into intelligence and counterintelligence arrangements and agreements with foreign governments and international organizations;

(B) Shall formulate policies concerning intelligence and counterintelligence arrangements and agreements with foreign governments and international organizations; and

(C) Shall align and synchronize intelligence and counterintelligence foreign relationships among the elements of the Intelligence Community to further United States national security, policy, and intelligence objectives;

(5) Shall participate in the development of procedures approved by the Attorney General governing criminal drug intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;

(6) Shall establish common security and access standards for managing and handling intelligence systems, information, and products, with special emphasis on facilitating:

(A) The fullest and most prompt access to and dissemination of information and intelligence practicable, assigning the highest priority to detecting, preventing, preempting, and disrupting terrorist threats and activities against the United States, its interests, and allies; and

(B) The establishment of standards for an interoperable information sharing enterprise that facilitates the sharing of intelligence information among elements of the Intelligence Community;

(7) Shall ensure that appropriate departments and agencies have access to intelligence and receive the support needed to perform independent analysis;

(8) Shall protect, and ensure that programs are developed to protect, intelligence sources, methods, and activities from unauthorized disclosure;

(9) Shall, after consultation with the heads of affected departments and agencies, establish guidelines for Intelligence Community elements for:

(A) Classification and declassification of all intelligence and intelligence-related information classified under the authority of the Director or the authority of the head of a department or Intelligence Community element; and

(B) Access to and dissemination of all intelligence and intelligence-related information, both in its final form and in the form when initially gathered, to include intelligence originally classified by the head of a department or Intelligence Community element, except that access to and dissemination of information concerning United States persons shall be governed by procedures developed in accordance with Part 2 of this order;

(10) May, only with respect to Intelligence Community elements, and after consultation with the head of the

originating Intelligence Community element or the head of the originating department, declassify, or direct the declassification of, information or intelligence relating to intelligence sources, methods, and activities. The Director may only delegate this authority to the Principal Deputy Director of National Intelligence;

(11) May establish, operate, and direct one or more national intelligence centers to address intelligence priorities;

(12) May establish Functional Managers and Mission Managers, and designate officers or employees of the United States to serve in these positions.

(A) Functional Managers shall report to the Director concerning the execution of their duties as Functional Managers, and may be charged with developing and implementing strategic guidance, policies, and procedures for activities related to a specific intelligence discipline or set of intelligence activities; set training and tradecraft standards; and ensure coordination within and across intelligence disciplines and Intelligence Community elements and with related non-intelligence activities. Functional Managers may also advise the Director on: the management of resources; policies and procedures; collection capabilities and gaps; processing and dissemination of intelligence; technical architectures; and other issues or activities determined by the Director.

(i) The Director of the National Security Agency is designated the Functional Manager for signals intelligence;

(ii) The Director of the Central Intelligence Agency is designated the Functional Manager for human intelligence; and

(iii) The Director of the National



Geospatial-Intelligence Agency is designated the Functional Manager for geospatial intelligence.

(B) Mission Managers shall serve as principal substantive advisors on all or specified aspects of intelligence related to designated countries, regions, topics, or functional issues;

(13) Shall establish uniform criteria for the determination of relative priorities for the transmission of critical foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such communications;

(14) Shall have ultimate responsibility for production and dissemination of intelligence produced by the Intelligence Community and authority to levy analytic tasks on intelligence production organizations within the Intelligence Community, in consultation with the heads of the Intelligence Community elements concerned;

(15) May establish advisory groups for the purpose of obtaining advice from within the Intelligence Community to carry out the Director's responsibilities, to include Intelligence Community executive management committees composed of senior Intelligence Community leaders. Advisory groups shall consist of representatives from elements of the Intelligence Community, as designated by the Director, or other executive branch departments, agencies, and offices, as appropriate;

(16) Shall ensure the timely exploitation and dissemination of data gathered by national intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government elements, including military commands;

(17) Shall determine requirements and priorities

for, and manage and direct the tasking, collection, analysis, production, and dissemination of, national intelligence by elements of the Intelligence Community, including approving requirements for collection and analysis and resolving conflicts in collection requirements and in the tasking of national collection assets of Intelligence Community elements (except when otherwise directed by the President or when the Secretary of Defense exercises collection tasking authority under plans and arrangements approved by the Secretary of Defense and the Director);

(18) May provide advisory tasking concerning collection and analysis of information or intelligence relevant to national intelligence or national security to departments, agencies, and establishments of the United States Government that are not elements of the Intelligence Community; and shall establish

procedures, in consultation with affected heads of departments or agencies and subject to approval by the Attorney General, to implement this authority and to monitor or evaluate the responsiveness of United States Government departments, agencies, and other establishments;

(19) Shall fulfill the responsibilities in section 1.3(b)(17) and (18) of this order, consistent with applicable law and with full consideration of the rights of United States persons, whether information is to be collected inside or outside the United States;

(20) Shall ensure, through appropriate policies and procedures, the deconfliction, coordination, and integration of all intelligence activities conducted by an Intelligence Community element or funded by the National Intelligence Program. In accordance with these policies and procedures:

(A) The Director of the Federal Bureau of

Investigation shall coordinate the clandestine collection of foreign intelligence collected through human sources or through human-enabled means and counterintelligence activities inside the United States;

(B) The Director of the Central Intelligence Agency shall coordinate the clandestine collection of foreign intelligence collected through human sources or through human-enabled means and counterintelligence activities outside the United States;

(C) All policies and procedures for the coordination of counterintelligence activities and the clandestine collection of foreign intelligence inside the United States shall be subject to the approval of the Attorney General; and

(D) All policies and procedures developed under this section shall be coordinated with the heads of affected departments and Intelligence Community elements;

(21) Shall, with the concurrence of the heads of affected departments and agencies, establish joint procedures to deconflict, coordinate, and synchronize intelligence activities conducted by an Intelligence Community element or funded by the National Intelligence Program, with intelligence activities, activities that involve foreign intelligence and security services, or activities that involve the use of clandestine methods, conducted by other United States Government departments, agencies, and establishments;

(22) Shall, in coordination with the heads of departments containing elements of the Intelligence Community, develop procedures to govern major system acquisitions funded in whole or in majority part by the National Intelligence Program;

(23) Shall seek advice from the Secretary of State to ensure that the foreign policy implications of proposed

intelligence activities are considered, and shall ensure, through appropriate policies and procedures, that intelligence activities are conducted in a manner consistent with the responsibilities pursuant to law and presidential direction of Chiefs of United States Missions; and

(24) Shall facilitate the use of Intelligence Community products by the Congress in a secure manner.

(c) The Director's exercise of authorities in the Act and this order shall not abrogate the statutory or other responsibilities of the heads of departments of the United States Government or the Director of the Central Intelligence Agency. Directives issued and actions taken by the Director in the exercise of the Director's authorities and responsibilities to integrate, coordinate, and make the Intelligence Community more effective in providing intelligence related to national security shall be implemented by the elements of the Intelligence Community, provided that any department head whose department contains an element of the Intelligence Community and who believes that a directive or action of the Director violates the requirements of section 1018 of the IRTPA or this subsection shall bring the issue to the attention of the Director, the NSC, or the President for resolution in a manner that respects and does not abrogate the statutory responsibilities of the heads of the departments.

(d) Appointments to certain positions.

(1) The relevant department or bureau head shall provide recommendations and obtain the concurrence of the Director for the selection of: the Director of the National Security Agency, the Director of the National Reconnaissance Office, the Director of the National Geospatial-Intelligence Agency, the Under Secretary of Homeland Security for Intelligence and Analysis, the Assistant Secretary of State for

Intelligence and Research, the Director of the Office of Intelligence and Counterintelligence of the Department of Energy, the Assistant Secretary for Intelligence and Analysis of the Department of the Treasury, and the Executive Assistant Director for the National Security Branch of the Federal Bureau of Investigation. If the Director does not concur in the recommendation, the department head may not fill the vacancy or make the recommendation to the President, as the case may be. If the department head and the Director do not reach an agreement on the selection or recommendation, the Director and the department head concerned may advise the President directly of the Director's intention to withhold concurrence.

(2) The relevant department head shall consult with the Director before appointing an individual to fill a vacancy or recommending to the President an individual be nominated to fill a vacancy in any of the following positions: the Under Secretary of Defense for Intelligence; the Director of the Defense Intelligence Agency; uniformed heads of the intelligence elements of the Army, the Navy, the Air Force, and the Marine Corps above the rank of Major General or Rear Admiral; the Assistant Commandant of the Coast Guard for Intelligence; and the Assistant Attorney General for National Security.

(e) Removal from certain positions.

(1) Except for the Director of the Central Intelligence Agency, whose removal the Director may recommend to the President, the Director and the relevant department head shall consult on the removal, or recommendation to the President for removal, as the case may be, of: the Director of the National Security Agency, the Director of the National Geospatial-Intelligence Agency, the Director of the Defense Intelligence Agency, the Under Secretary of Homeland Security for Intelligence and Analysis, the Assistant Secretary of State

for Intelligence and Research, and the Assistant Secretary for Intelligence and Analysis of the Department of the Treasury. If the Director and the department head do not agree on removal, or recommendation for removal, either may make a recommendation to the President for the removal of the individual.

(2) The Director and the relevant department or bureau head shall consult on the removal of: the Executive Assistant Director for the National Security Branch of the Federal Bureau of Investigation, the Director of the Office of Intelligence and Counterintelligence of the Department of Energy, the Director of the National Reconnaissance Office, the Assistant Commandant of the Coast Guard for Intelligence, and the Under Secretary of Defense for Intelligence. With respect to an individual appointed by a department head, the department head may remove the individual upon the request of the Director; if the department head chooses not to remove the individual, either the Director or the department head may advise the President of the department head's intention to retain the individual. In the case of the Under Secretary of Defense for Intelligence, the Secretary of Defense may recommend to the President either the removal or the retention of the individual. For uniformed heads of the intelligence elements of the Army, the Navy, the Air Force, and the Marine Corps, the Director may make a recommendation for removal to the Secretary of Defense.

(3) Nothing in this subsection shall be construed to limit or otherwise affect the authority of the President to nominate, appoint, assign, or terminate the appointment or assignment of any individual, with or without a consultation, recommendation, or concurrence.

1.4 *The Intelligence Community.* Consistent with applicable Federal law and with the other provisions of this order, and

under the leadership of the Director, as specified in such law and this order, the Intelligence Community shall:

(a) Collect and provide information needed by the President and, in the performance of executive functions, the Vice President, the NSC, the Homeland Security Council, the Chairman of the Joint Chiefs of Staff, senior military commanders, and other executive branch officials and, as appropriate, the Congress of the United States;

(b) In accordance with priorities set by the President, collect information concerning, and conduct activities to protect against, international terrorism, proliferation of weapons of mass destruction, intelligence activities directed against the United States, international criminal drug activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;

(c) Analyze, produce, and disseminate intelligence;

(d) Conduct administrative, technical, and other support activities within the United States and abroad necessary for the performance of authorized activities, to include providing services of common concern for the Intelligence Community as designated by the Director in accordance with this order;

(e) Conduct research, development, and procurement of technical systems and devices relating to authorized functions and missions or the provision of services of common concern for the Intelligence Community;

(f) Protect the security of intelligence related activities, information, installations, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Intelligence Community elements as are necessary;

(g) Take into account State, local, and tribal governments' and, as appropriate, private sector entities' information needs relating to national and homeland security;

(h) Deconflict, coordinate, and integrate all intelligence activities and other information gathering in accordance with section 1.3(b)(20) of this order; and

(i) Perform such other functions and duties related to intelligence activities as the President may direct.

1.5 *Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.* The heads of all departments and agencies shall:

(a) Provide the Director access to all information and intelligence relevant to the national security or that otherwise is required for the performance of the Director's duties, to include administrative and other appropriate management information, except such information excluded by law, by the President, or by the Attorney General acting under this order at the direction of the President;

(b) Provide all programmatic and budgetary information necessary to support the Director in developing the National Intelligence Program;

(c) Coordinate development and implementation of intelligence systems and architectures and, as appropriate, operational systems and architectures of their departments, agencies, and other elements with the Director to respond to national intelligence requirements and all applicable information sharing and security guidelines, information privacy, and other legal requirements;

(d) Provide, to the maximum extent permitted by law, subject to the availability of appropriations and not inconsistent with the mission of the department or agency, such further support to the Director as the Director may request,



after consultation with the head of the department or agency, for the performance of the Director's functions;

(e) Respond to advisory tasking from the Director under section 1.3(b) (18) of this order to the greatest extent possible, in accordance with applicable policies established by the head of the responding department or agency;

(f) Ensure that all elements within the department or agency comply with the provisions of Part 2 of this order, regardless of Intelligence Community affiliation, when performing foreign intelligence and counterintelligence functions;

(g) Deconflict, coordinate, and integrate all intelligence activities in accordance with section 1.3(b) (20), and intelligence and other activities in accordance with section 1.3(b) (21) of this order;

(h) Inform the Attorney General, either directly or through the Federal Bureau of Investigation, and the Director of clandestine collection of foreign intelligence and counterintelligence activities inside the United States not coordinated with the Federal Bureau of Investigation;

(i) Pursuant to arrangements developed by the head of the department or agency and the Director of the Central Intelligence Agency and approved by the Director, inform the Director and the Director of the Central Intelligence Agency, either directly or through his designee serving outside the United States, as appropriate, of clandestine collection of foreign intelligence collected through human sources or through human-enabled means outside the United States that has not been coordinated with the Central Intelligence Agency; and

(j) Inform the Secretary of Defense, either directly or through his designee, as appropriate, of clandestine collection of foreign intelligence outside the United States in a region of

combat or contingency military operations designated by the Secretary of Defense, for purposes of this paragraph, after consultation with the Director of National Intelligence.

1.6 *Heads of Elements of the Intelligence Community.* The heads of elements of the Intelligence Community shall:

(a) Provide the Director access to all information and intelligence relevant to the national security or that otherwise is required for the performance of the Director's duties, to include administrative and other appropriate management information, except such information excluded by law, by the President, or by the Attorney General acting under this order at the direction of the President;

(b) Report to the Attorney General possible violations of Federal criminal laws by employees and of specified Federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department, agency, or establishment concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

(c) Report to the Intelligence Oversight Board, consistent with Executive Order 13462 of February 29, 2008, and provide copies of all such reports to the Director, concerning any intelligence activities of their elements that they have reason to believe may be unlawful or contrary to executive order or presidential directive;

(d) Protect intelligence and intelligence sources, methods, and activities from unauthorized disclosure in accordance with guidance from the Director;

(e) Facilitate, as appropriate, the sharing of information or intelligence, as directed by law or the President, to State, local, tribal, and private sector entities;

(f) Disseminate information or intelligence to foreign

governments and international organizations under intelligence or counterintelligence arrangements or agreements established in accordance with section 1.3(b)(4) of this order;

(g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of information or intelligence resulting from criminal drug intelligence activities abroad if they have intelligence responsibilities for foreign or domestic criminal drug production and trafficking; and

(h) Ensure that the inspectors general, general counsels, and agency officials responsible for privacy or civil liberties protection for their respective organizations have access to any information or intelligence necessary to perform their official duties.

1.7 *Intelligence Community Elements.* Each element of the Intelligence Community shall have the duties and responsibilities specified below, in addition to those specified by law or elsewhere in this order. Intelligence Community elements within executive departments shall serve the information and intelligence needs of their respective heads of departments and also shall operate as part of an integrated Intelligence Community, as provided in law or this order.

(a) THE CENTRAL INTELLIGENCE AGENCY. The Director of the Central Intelligence Agency shall:

(1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence;

(2) Conduct counterintelligence activities without assuming or performing any internal security functions within the United States;

(3) Conduct administrative and technical support activities within and outside the United States as necessary for

cover and proprietary arrangements;

(4) Conduct covert action activities approved by the President. No agency except the Central Intelligence Agency (or the Armed Forces of the United States in time of war declared by the Congress or during any period covered by a report from the President to the Congress consistent with the War Powers Resolution, Public Law 93-148) may conduct any covert action activity unless the President determines that another agency is more likely to achieve a particular objective;

(5) Conduct foreign intelligence liaison relationships with intelligence or security services of foreign governments or international organizations consistent with section 1.3(b)(4) of this order;

(6) Under the direction and guidance of the Director, and in accordance with section 1.3(b)(4) of this order, coordinate the implementation of intelligence and counterintelligence relationships between elements of the Intelligence Community and the intelligence or security services of foreign governments or international organizations; and

(7) Perform such other functions and duties related to intelligence as the Director may direct.

(b) THE DEFENSE INTELLIGENCE AGENCY. The Director of the Defense Intelligence Agency shall:

(1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence to support national and departmental missions;

(2) Collect, analyze, produce, or, through tasking and coordination, provide defense and defense-related intelligence for the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, combatant commanders, other Defense components, and non-Defense agencies;

- (3) Conduct counterintelligence activities;
- (4) Conduct administrative and technical support activities within and outside the United States as necessary for cover and proprietary arrangements;
- (5) Conduct foreign defense intelligence liaison relationships and defense intelligence exchange programs with foreign defense establishments, intelligence or security services of foreign governments, and international organizations in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order;
- (6) Manage and coordinate all matters related to the Defense Attaché system; and
- (7) Provide foreign intelligence and counterintelligence staff support as directed by the Secretary of Defense.

(c) THE NATIONAL SECURITY AGENCY. The Director of the National Security Agency shall:

- (1) Collect (including through clandestine means), process, analyze, produce, and disseminate signals intelligence information and data for foreign intelligence and counterintelligence purposes to support national and departmental missions;
- (2) Establish and operate an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense, after coordination with the Director;
- (3) Control signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the

direct support of military commanders;

(4) Conduct administrative and technical support activities within and outside the United States as necessary for cover arrangements;

(5) Provide signals intelligence support for national and departmental requirements and for the conduct of military operations;

(6) Act as the National Manager for National Security Systems as established in law and policy, and in this capacity be responsible to the Secretary of Defense and to the Director;

(7) Prescribe, consistent with section 102A(g) of the Act, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling, and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the National Security Agency, and exercise the necessary supervisory control to ensure compliance with the regulations; and

(8) Conduct foreign cryptologic liaison relationships in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(d) THE NATIONAL RECONNAISSANCE OFFICE. The Director of the National Reconnaissance Office shall:

(1) Be responsible for research and development, acquisition, launch, deployment, and operation of overhead systems and related data processing facilities to collect intelligence and information to support national and departmental missions and other United States Government needs; and

(2) Conduct foreign liaison relationships relating to the above missions, in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(e) THE NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY. The Director of the National Geospatial-Intelligence Agency shall:

(1) Collect, process, analyze, produce, and disseminate geospatial intelligence information and data for foreign intelligence and counterintelligence purposes to support national and departmental missions;

(2) Provide geospatial intelligence support for national and departmental requirements and for the conduct of military operations;

(3) Conduct administrative and technical support activities within and outside the United States as necessary for cover arrangements; and

(4) Conduct foreign geospatial intelligence liaison relationships, in accordance with sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(f) THE INTELLIGENCE AND COUNTERINTELLIGENCE ELEMENTS OF THE ARMY, NAVY, AIR FORCE, AND MARINE CORPS. The Commanders and heads of the intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps shall:

(1) Collect (including through clandestine means), produce, analyze, and disseminate defense and defense-related intelligence and counterintelligence to support departmental requirements, and, as appropriate, national requirements;

(2) Conduct counterintelligence activities;

(3) Monitor the development, procurement, and management of tactical intelligence systems and equipment and conduct related research, development, and test and evaluation activities; and

(4) Conduct military intelligence liaison relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations in accordance with

sections 1.3(b)(4), 1.7(a)(6), and 1.10(i) of this order.

(g) INTELLIGENCE ELEMENTS OF THE FEDERAL BUREAU OF INVESTIGATION. Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the intelligence elements of the Federal Bureau of Investigation shall:

- (1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence to support national and departmental missions, in accordance with procedural guidelines approved by the Attorney General, after consultation with the Director;
- (2) Conduct counterintelligence activities; and
- (3) Conduct foreign intelligence and counterintelligence liaison relationships with intelligence, security, and law enforcement services of foreign governments or international organizations in accordance with sections 1.3(b)(4) and 1.7(a)(6) of this order.

(h) THE INTELLIGENCE AND COUNTERINTELLIGENCE ELEMENTS OF THE COAST GUARD. The Commandant of the Coast Guard shall:

- (1) Collect (including through clandestine means), analyze, produce, and disseminate foreign intelligence and counterintelligence including defense and defense-related information and intelligence to support national and departmental missions;
- (2) Conduct counterintelligence activities;
- (3) Monitor the development, procurement, and management of tactical intelligence systems and equipment and conduct related research, development, and test and evaluation activities; and
- (4) Conduct foreign intelligence liaison relationships and intelligence exchange programs with foreign intelligence services, security services or international



organizations in accordance with sections 1.3(b)(4), 1.7(a)(6), and, when operating as part of the Department of Defense, 1.10(i) of this order.

(i) THE BUREAU OF INTELLIGENCE AND RESEARCH, DEPARTMENT OF STATE; THE OFFICE OF INTELLIGENCE AND ANALYSIS, DEPARTMENT OF THE TREASURY; THE OFFICE OF NATIONAL SECURITY INTELLIGENCE, DRUG ENFORCEMENT ADMINISTRATION; THE OFFICE OF INTELLIGENCE AND ANALYSIS, DEPARTMENT OF HOMELAND SECURITY; AND THE OFFICE OF INTELLIGENCE AND COUNTERINTELLIGENCE, DEPARTMENT OF ENERGY.

The heads of the Bureau of Intelligence and Research, Department of State; the Office of Intelligence and Analysis, Department of the Treasury; the Office of National Security Intelligence, Drug Enforcement Administration; the Office of Intelligence and Analysis, Department of Homeland Security; and the Office of Intelligence and Counterintelligence, Department of Energy shall:

(1) Collect (overtly or through publicly available sources), analyze, produce, and disseminate information, intelligence, and counterintelligence to support national and departmental missions; and

(2) Conduct and participate in analytic or information exchanges with foreign partners and international organizations in accordance with sections 1.3(b)(4) and 1.7(a)(6) of this order.

(j) THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. The Director shall collect (overtly or through publicly available sources), analyze, produce, and disseminate information, intelligence, and counterintelligence to support the missions of the Office of the Director of National Intelligence, including the National Counterterrorism Center, and to support other national missions.

1.8 *The Department of State.* In addition to the authorities

exercised by the Bureau of Intelligence and Research under sections 1.4 and 1.7(i) of this order, the Secretary of State shall:

- (a) Collect (overtly or through publicly available sources) information relevant to United States foreign policy and national security concerns;
- (b) Disseminate, to the maximum extent possible, reports received from United States diplomatic and consular posts;
- (c) Transmit reporting requirements and advisory taskings of the Intelligence Community to the Chiefs of United States Missions abroad; and
- (d) Support Chiefs of United States Missions in discharging their responsibilities pursuant to law and presidential direction.

1.9 *The Department of the Treasury.* In addition to the authorities exercised by the Office of Intelligence and Analysis of the Department of the Treasury under sections 1.4 and 1.7(i) of this order the Secretary of the Treasury shall collect (overtly or through publicly available sources) foreign financial information and, in consultation with the Department of State, foreign economic information.

1.10 *The Department of Defense.* The Secretary of Defense shall:

- (a) Collect (including through clandestine means), analyze, produce, and disseminate information and intelligence and be responsive to collection tasking and advisory tasking by the Director;
- (b) Collect (including through clandestine means), analyze, produce, and disseminate defense and defense-related intelligence and counterintelligence, as required for execution of the Secretary's responsibilities;
- (c) Conduct programs and missions necessary to fulfill

national, departmental, and tactical intelligence requirements;

(d) Conduct counterintelligence activities in support of Department of Defense components and coordinate counterintelligence activities in accordance with section 1.3(b) (20) and (21) of this order;

(e) Act, in coordination with the Director, as the executive agent of the United States Government for signals intelligence activities;

(f) Provide for the timely transmission of critical intelligence, as defined by the Director, within the United States Government;

(g) Carry out or contract for research, development, and procurement of technical systems and devices relating to authorized intelligence functions;

(h) Protect the security of Department of Defense installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Department of Defense as are necessary;

(i) Establish and maintain defense intelligence relationships and defense intelligence exchange programs with selected cooperative foreign defense establishments, intelligence or security services of foreign governments, and international organizations, and ensure that such relationships and programs are in accordance with sections 1.3(b) (4), 1.3(b) (21) and 1.7(a) (6) of this order;

(j) Conduct such administrative and technical support activities within and outside the United States as are necessary to provide for cover and proprietary arrangements, to perform the functions described in sections (a) through (i) above, and to support the Intelligence Community elements of the Department of

Defense; and

(k) Use the Intelligence Community elements within the Department of Defense identified in section 1.7(b) through (f) and, when the Coast Guard is operating as part of the Department of Defense,

(h) above to carry out the Secretary of Defense's responsibilities assigned in this section or other departments, agencies, or offices within the Department of Defense, as appropriate, to conduct the intelligence missions and responsibilities assigned to the Secretary of Defense.

1.11 *The Department of Homeland Security.* In addition to the authorities exercised by the Office of Intelligence and Analysis of the Department of Homeland Security under sections 1.4 and 1.7(i) of this order, the Secretary of Homeland Security shall conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President or the Vice President of the United States, the Executive Office of the President, and, as authorized by the Secretary of Homeland Security or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against use of such surveillance equipment, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of Homeland Security and the Attorney General.

1.12 *The Department of Energy.* In addition to the authorities exercised by the Office of Intelligence and Counterintelligence of the Department of Energy under sections 1.4 and 1.7(i) of this order, the Secretary of Energy shall:

(a) Provide expert scientific, technical, analytic, and research capabilities to other agencies within the Intelligence Community, as appropriate;

(b) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(c) Participate with the Department of State in overtly collecting information with respect to foreign energy matters.

1.13 *The Federal Bureau of Investigation.* In addition to the authorities exercised by the intelligence elements of the Federal Bureau of Investigation of the Department of Justice under sections 1.4 and 1.7(g) of this order and under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the Federal Bureau of Investigation shall provide technical assistance, within or outside the United States, to foreign intelligence and law enforcement services, consistent with section 1.3(b) (20) and (21) of this order, as may be necessary to support national or departmental missions.

**PART 2** *Conduct of Intelligence Activities*

2.1 *Need.* Timely, accurate, and insightful information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to informed decisionmaking in the areas of national security, national defense, and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative, and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

2.2 *Purpose.* This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities, the spread of weapons of mass destruction,

and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

2.3 *Collection of information.* Elements of the Intelligence Community are authorized to collect, retain, or disseminate information concerning United States persons only in accordance with procedures established by the head of the Intelligence Community element concerned or by the head of a department containing such element and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order, after consultation with the Director. Those procedures shall permit collection, retention, and dissemination of the following types of information:

(a) Information that is publicly available or collected with the consent of the person concerned;

(b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the Federal Bureau of Investigation (FBI) or, when significant foreign intelligence is sought, by other authorized elements of the Intelligence Community, provided that no foreign intelligence collection by such elements may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;

(c) Information obtained in the course of a lawful foreign

intelligence, counterintelligence, international drug or international terrorism investigation;

(d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims, or hostages of international terrorist organizations;

(e) Information needed to protect foreign intelligence or counterintelligence sources, methods, and activities from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other elements of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence element contractors or their present or former employees, or applicants for such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical, or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate Federal, state, local, or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, elements of the Intelligence Community may disseminate information to each appropriate element within the Intelligence Community for purposes of allowing the recipient element to determine whether the information is relevant to its responsibilities and can be retained by it, except that information derived from signals intelligence may only be disseminated or made available to Intelligence Community elements in accordance with procedures established by the

Director in coordination with the Secretary of Defense and approved by the Attorney General.

2.4 *Collection Techniques*. Elements of the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Elements of the Intelligence Community are not authorized to use such techniques as electronic surveillance, unconsented physical searches, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the Intelligence Community element concerned or the head of a department containing such element and approved by the Attorney General, after consultation with the Director. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

(a) The Central Intelligence Agency (CIA) to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

(b) Unconsented physical searches in the United States by elements of the Intelligence Community other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes; based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession;



(c) Physical surveillance of a United States person in the United States by elements of the Intelligence Community other than the FBI, except for:

(1) Physical surveillance of present or former employees, present or former intelligence element contractors or their present or former employees, or applicants for any such employment or contracting; and

(2) Physical surveillance of a military person employed by a non-intelligence element of a military service; and

(d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

2.5 *Attorney General Approval.* The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. The authority delegated pursuant to this paragraph, including the authority to approve the use of electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978, as amended, shall be exercised in accordance with that Act.

2.6 *Assistance to Law Enforcement and other Civil Authorities.* Elements of the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property, and facilities of any element of the Intelligence Community;

(b) Unless otherwise precluded by law or this Order,

participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the general counsel of the providing element or department; and

(d) Render any other assistance and cooperation to law enforcement or other civil authorities not precluded by applicable law.

2.7 *Contracting.* Elements of the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

2.8 *Consistency With Other Laws.* Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

2.9 *Undisclosed Participation in Organizations Within the United States.* No one acting on behalf of elements of the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any element of the Intelligence Community without disclosing such person's intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the Intelligence Community element concerned or the head of a department containing such element and approved by

the Attorney General, after consultation with the Director. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the Intelligence Community element head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

2.10 *Human Experimentation.* No element of the Intelligence Community shall sponsor, contract for, or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2.11 *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in or conspire to engage in assassination.

2.12 *Indirect Participation.* No element of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

2.13 *Limitation on Covert Action.* No covert action may be conducted which is intended to influence United States political processes, public opinion, policies, or media.

### **PART 3**     *General Provisions*

3.1 *Congressional Oversight.* The duties and responsibilities of the Director and the heads of other departments, agencies, elements, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall

be implemented in accordance with applicable law, including title V of the Act. The requirements of applicable law, including title V of the Act, shall apply to all covert action activities as defined in this Order.

*3.2 Implementation.* The President, supported by the NSC, and the Director shall issue such appropriate directives, procedures, and guidance as are necessary to implement this order. Heads of elements within the Intelligence Community shall issue appropriate procedures and supplementary directives consistent with this order. No procedures to implement Part 2 of this order shall be issued without the Attorney General's approval, after consultation with the Director. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an element in the Intelligence Community (or the head of the department containing such element) other than the FBI. In instances where the element head or department head and the Attorney General are unable to reach agreements on other than constitutional or other legal grounds, the Attorney General, the head of department concerned, or the Director shall refer the matter to the NSC.

*3.3 Procedures.* The activities herein authorized that require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order 12333. New procedures, as required by Executive Order 12333, as further amended, shall be established as expeditiously as possible. All new procedures promulgated pursuant to Executive Order 12333, as amended, shall be made available to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

*3.4 References and Transition.* References to "Senior Officials of the Intelligence Community" or "SOICs" in executive orders or

other Presidential guidance, shall be deemed references to the heads of elements in the Intelligence Community, unless the President otherwise directs; references in Intelligence Community or Intelligence Community element policies or guidance, shall be deemed to be references to the heads of elements of the Intelligence Community, unless the President or the Director otherwise directs.

3.5 *Definitions.* For the purposes of this Order, the following terms shall have these meanings:

(a) *Counterintelligence* means information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or their agents, or international terrorist organizations or activities.

(b) *Covert action* means an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include:

(1) Activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;

(2) Traditional diplomatic or military activities or routine support to such activities;

(3) Traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

(4) Activities to provide routine support to the overt activities (other than activities described in

paragraph (1), (2), or (3)) of other United States Government agencies abroad.

(c) *Electronic surveillance* means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

(d) *Employee* means a person employed by, assigned or detailed to, or acting for an element within the Intelligence Community.

(e) *Foreign intelligence* means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.

(f) *Intelligence* includes foreign intelligence and counterintelligence.

(g) *Intelligence activities* means all activities that elements of the Intelligence Community are authorized to conduct pursuant to this order.

(h) *Intelligence Community* and elements of the Intelligence Community refers to:

- (1) The Office of the Director of National Intelligence;
- (2) The Central Intelligence Agency;
- (3) The National Security Agency;
- (4) The Defense Intelligence Agency;
- (5) The National Geospatial-Intelligence Agency;
- (6) The National Reconnaissance Office;
- (7) The other offices within the Department

of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(8) The intelligence and counterintelligence elements of the Army, the Navy, the Air Force, and the Marine Corps;

(9) The intelligence elements of the Federal Bureau of Investigation;

(10) The Office of National Security Intelligence of the Drug Enforcement Administration;

(11) The Office of Intelligence and Counterintelligence of the Department of Energy;

(12) The Bureau of Intelligence and Research of the Department of State;

(13) The Office of Intelligence and Analysis of the Department of the Treasury;

(14) The Office of Intelligence and Analysis of the Department of Homeland Security;

(15) The intelligence and counterintelligence elements of the Coast Guard; and

(16) Such other elements of any department or agency as may be designated by the President, or designated jointly by the Director and the head of the department or agency concerned, as an element of the Intelligence Community.

(i) *National Intelligence and Intelligence Related to National Security* means all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that pertains, as determined consistent with any guidance issued by the President, or that is determined for the purpose of access to information by the Director in accordance with section 1.3(a)(1) of this order, to pertain to more than one United States Government agency; and that involves threats to the United States, its

people, property, or interests; the development, proliferation, or use of weapons of mass destruction; or any other matter bearing on United States national or homeland security.

(j) *The National Intelligence Program* means all programs, projects, and activities of the Intelligence Community, as well as any other programs of the Intelligence Community designated jointly by the Director and the head of a United States department or agency or by the President. Such term does not include programs, projects, or activities of the military departments to acquire intelligence solely for the planning and conduct of tactical military operations by United States Armed Forces.

(k) *United States person* means a United States citizen, an alien known by the intelligence element concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

3.6 *Revocation.* Executive Orders 13354 and 13355 of August 27, 2004, are revoked; and paragraphs 1.3(b) (9) and (10) of Part 1 supersede provisions within Executive Order 12958, as amended, to the extent such provisions in Executive Order 12958, as amended, are inconsistent with this Order.

3.7 *General Provisions.*

(a) Consistent with section 1.3(c) of this order, nothing in this order shall be construed to impair or otherwise affect:

- (1) Authority granted by law to a department or agency, or the head thereof; or
- (2) Functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.



(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

/s/ Ronald Reagan

THE WHITE HOUSE

December 4, 1981

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Domestic Investigations and Operations Guide

## **APPENDIX C: (U//FOUO) USE AND TARGETING OF A FEDERAL PRISONER HELD IN THE CUSTODY OF THE BOP OR USMS DURING AN FBI PREDICATED INVESTIGATION; INTERVIEW OF A FEDERAL PRISONER HELD IN THE CUSTODY OF THE BOP OR USMS DURING AN FBI ASSESSMENT OR PREDICATED INVESTIGATION**

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### **C.1 (U) OVERVIEW/SUMMARY**

**(U//FOUO) Use and Targeting a Federal Prisoner:** During an FBI Predicated Investigation, it may be necessary and appropriate to: 1) use a cooperating federal prisoner to gather and obtain evidence and intelligence; or 2) target a federal prisoner. This policy sets forth the approval process for the use of and targeting of a federal prisoner held in the custody of the Bureau of Prisons (BOP) or the United States Marshals Service (USMS).

**(U//FOUO) Interview a Federal Prisoner:** During an FBI Assessment or Predicated Investigation, it may be necessary and appropriate to interview a federal prisoner in the custody of the BOP or USMS. This policy sets forth the approval process for the interview of a federal prisoner held in the custody of the BOP or the USMS during an FBI Assessment or Predicated Investigation.

**(U//FOUO) Exclusions from this Policy:** This policy does not apply to:

- A) (U//FOUO) [REDACTED]
- B) (U//FOUO) [REDACTED]

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### **C.2 (U) LEGAL AUTHORITY**

(U) The FBI is authorized by the Department of Justice (DOJ) to use and target a federal prisoner for investigative purposes and interview a Federal Prisoner (DOJ Memorandum “Use and Targeting of Federal Prisoners in Investigations,” January 22, 2009).

### **C.3 (U) DEFINITIONS**

**(U) Federal Prisoner:** For purposes within this section, a federal prisoner is one who is held in the custody of either the BOP or the USMS pursuant to an order of a court in connection with a criminal matter, regardless of where the person is housed.

**(U) Use of a Federal Prisoner:** Use of a federal prisoner means to employ a federal prisoner during an investigation in such a manner that the prisoner will interact with others who are not members of law enforcement (e.g., the prisoner will engage in a consensually monitored telephone call with a target) or the prisoner will be taken out of the custody of BOP or USMS

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(e.g., the prisoner is removed from the prison to assist the FBI in locating a hide out) or law enforcement will interact covertly with the prisoner (e.g., an undercover agent engages with the prisoner in the visiting room of the prison).

**(U) Targeting a Federal Prisoner:** “Targeting” a federal prisoner means that the federal prisoner is the target of the investigation and that investigative activity will directly interact with either the prisoner or the federal facility (e.g., as part of a money laundering investigation targeting a prisoner, the FBI wishes to engage in a consensually monitored conversation with the prisoner).

**(U) Interview of a Federal Prisoner:** Interview of a federal prisoner means to interact with a federal prisoner, overtly representing oneself as an FBI employee, in order to gather information.

**C.3.1 (U) USE AND TARGETING A FEDERAL PRISONER**

(U//FOUO) An FBI employee may request the use of or the targeting of a federal prisoner in an FBI Predicated Investigation [REDACTED]

b7E

(U//FOUO) [REDACTED]

b7E

**C.3.2 (U) INTERVIEW A FEDERAL PRISONER**

(U//FOUO) An FBI employee may request to interview a federal prisoner in an FBI Assessment or Predicated Investigation [REDACTED]

b7E

**C.4 (U) APPROVAL REQUIREMENTS**

**C.4.1 (U) APPROVAL - USE AND TARGETING A FEDERAL PRISONER**

(U//FOUO) [REDACTED]

b7E

(U//FOUO) [REDACTED]

b7E

[REDACTED] The process is as follows:

A) (U//FOUO) The FBI employee must:

1) (U//FOUO) [REDACTED]

b7E

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2) (U//FOUO) [REDACTED] b7E

3) (U//FOUO) [REDACTED] b7E

4) (U//FOUO) [REDACTED] b7E

5) (U//FOUO) [REDACTED] b7E  
and

6) (U//FOUO) [REDACTED] b7E

B) (U//FOUO) [REDACTED] b7E

1) (U//FOUO) [REDACTED] b7E

2) (U//FOUO) [REDACTED] b7E

3) (U//FOUO) [REDACTED] b7E  
and

4) (U//FOUO) [REDACTED] b7E

(U//FOUO) [REDACTED] b7E

(U//FOUO) [REDACTED] b7E

(U//FOUO) Note: The DOJ Memorandum governing the Use and Targeting of Federal Prisoners is labeled "Sensitive Investigative Matter." This is not a SIM as defined in DIOG Section 10. [REDACTED] b7E

**C.4.2 (U) APPROVAL - INTERVIEW A FEDERAL PRISONER**

(U//FOUO) The FBI employee must:

A) (U//FOUO) [REDACTED] b7E

B) (U//FOUO) [REDACTED] b7E

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C) (U//FOUO)

b7E

**C.5 (U) EXEMPTIONS TO DOJ APPROVAL REQUIREMENT**

(U//FOUO)

b7E

A) (U//FOUO)

b7E

B) (U//FOUO)

b7E

1) (U//FOUO)

b7E

b7E

2) (U//FOUO)

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3) (U//FOUO)

or

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4) (U//FOUO)

C) (U//FOUO)

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and

D) (U//FOUO)

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(U) Note:

b7E

(U//FOUO)

b7E

A) (U//FOUO)

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B) (U//FOUO)

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C) (U//FOUO)

or

b7E

D) (U//FOUO)

b7E

**C.6 (U) EXTENSION REQUESTS**

(U//FOUO) Agents may request extensions of the authority to use or target a prisoner in an FBI investigation

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b7E

A) (U//FOUO)

b7E

B) (U//FOUO)

C) (U//FOUO)

b7E

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- D) (U//FOUO) [redacted] and  
E) (U//FOUO) [redacted]

b7E

b7E

**C.7 (U) TRANSPORTATION OF FEDERAL PRISONER**

(U//FOUO) If it is necessary to remove the federal prisoner from the detention facility in which he/she is housed as a part of the investigation, [redacted]

b7E

A) (U//FOUO) [redacted]

b7E

B) (U//FOUO) [redacted]

b7E

C) (U//FOUO) [redacted]

b7E

D) (U//FOUO) [redacted]

b7E

E) (U//FOUO) [redacted]

b7E

F) (U//FOUO) [redacted]

b7E

G) (U//FOUO) [redacted]

b7E

H) (U//FOUO) [redacted]

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**APPENDIX D: (U) DEPARTMENT OF JUSTICE  
MEMORANDUM ON COMMUNICATIONS WITH THE WHITE  
HOUSE AND CONGRESS, DATED MAY 11, 2009**

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Office of the Attorney General  
Washington, D. C. 20530

May 11, 2009

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS  
ALL UNITED STATES ATTORNEYS

FROM:

 THE ATTORNEY GENERAL

SUBJECT:

Communications with the White House and Congress

The rule of law depends upon the evenhanded administration of justice. The legal judgments of the Department of Justice must be impartial and insulated from political influence. It is imperative that the Department's investigatory and prosecutorial powers be exercised free from partisan consideration. It is a fundamental duty of every employee of the Department to ensure that these principles are upheld in all of the Department's legal endeavors.

In order to promote the rule of law, therefore, this memorandum sets out guidelines to govern all communications between representatives of the Department, on the one hand, and representatives of the White House and Congress, on the other, and procedures intended to implement those guidelines. (The "White House," for the purposes of this Memorandum, means all components within the Executive Office of the President.) These guidelines have been developed in consultation with, and have the full support of, the Counsel to the President.

I. Pending or Contemplated Criminal or Civil Investigations and Cases

The Assistant Attorneys General, the United States Attorneys, and the heads of the investigative agencies in the Department have the primary responsibility to initiate and supervise investigations and cases. These officials, like their superiors and their subordinates, must be insulated from influences that should not affect decisions in particular criminal or civil cases. As the Supreme Court said long ago with respect to United States Attorneys, so it is true of all those who exercise the Department's investigatory and prosecutorial powers: they are representatives "not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935).

a. In order to ensure the President's ability to perform his constitutional obligation to "take care that the laws be faithfully executed," the Justice Department will advise the White House concerning pending or contemplated criminal or civil investigations or cases when—but only when—it is important for the performance of the President's duties and appropriate from a law enforcement perspective.

b. Initial communications between the Department and the White House concerning pending or contemplated criminal investigations or cases will involve only the Attorney General or the Deputy Attorney General, from the side of the Department, and the Counsel to the President, the Principal Deputy Counsel to the President, the President or the Vice President, from the side of the White House. If the communications concern a pending or contemplated civil investigation or case, the Associate Attorney General may also be involved. If continuing contact between the Department and the White House on a particular matter is required, the officials who participated in the initial communication may designate subordinates from each side to carry on such contact. The designating officials must monitor subsequent contacts, and the designated subordinates must keep their superiors regularly informed of any such contacts. Communications about Justice Department personnel in reference to their handling of specific criminal or civil investigations or cases are expressly included within the requirements of this paragraph. This policy does not, however, prevent officials in the communications, public affairs, or press offices of the White House and the Department of Justice from communicating with each other to coordinate efforts.

c. In order to ensure that Congress may carry out its legitimate investigatory and oversight functions, the Department will respond as appropriate to inquiries from Congressional Committees consistent with policies, laws, regulations, or professional ethical obligations that may require confidentiality and consistent with the need to avoid publicity that may undermine a particular investigation or litigation. Outside the context of Congressional hearings or investigations, all inquiries from individual Senators and Members of Congress or their staffs concerning particular contemplated or pending criminal investigations or cases should be directed to the Attorney General or the Deputy Attorney General. In the case of particular civil investigations or cases, inquiries may also be directed to the Associate Attorney General.

d. These procedures are not intended to interfere with the normal communications between the Department and its client departments and agencies (including agencies within the Executive Office of the President when they are the Department's clients) and any meetings or communications necessary to the proper conduct of an investigation or litigation.

## 2. National Security Matters

It is critically important to have frequent and expeditious communications relating to national security matters, including counter-terrorism and counter-espionage issues. Therefore communications from (or to) the Deputy Counsel to the President for National Security Affairs, the staff of the National Security Council and the staff of the Homeland Security Council that relate to a national security matter are not subject to the limitations set out above. However, this exception for national security matters does not extend to pending adversary cases in litigation that may have national security implications. Communications related to such cases are subject to the guidelines for pending cases described above.

3. White House Requests for Legal Advice

All requests from the White House for formal legal opinions shall come from the President, the Counsel to the President, or one of the Deputy Counsels to the President, and shall be directed to the Attorney General and the Assistant Attorney General for the Office of Legal Counsel. The Assistant Attorney General for the Office of Legal Counsel shall report to the Attorney General and the Deputy Attorney General any communications that, in his or her view, constitute improper attempts to influence the Office of Legal Counsel's legal judgment.

4. Communications Involving the Solicitor General's Office

Matters in which the Solicitor General's Office is involved often raise questions about which contact with the Office of the Counsel to the President is appropriate. Accordingly, the Attorney General and Deputy Attorney General may establish distinctive arrangements with the Office of the Counsel to govern such contacts.

5. Presidential Pardon Matters

The Office of the Pardon Attorney may communicate directly with the Counsel to the President and the Deputy Counsels to the President, concerning pardon matters. The Counsel to the President and the Deputy Counsels to the President may designate subordinates to carry on contact with the Office of the Pardon Attorney after the initial contact is made.

6. Personnel Decisions Concerning Positions in the Civil Service

All personnel decisions regarding career positions in the Department must be made without regard to the applicant's or occupant's partisan affiliation. Thus, while the Department regularly receives communications from the White House and from Senators, Members of Congress, and their staffs concerning political appointments, such communications regarding positions in the career service are not proper when they concern a job applicant's or a job holder's partisan affiliation. Efforts to influence personnel decisions concerning career positions on partisan grounds should be reported to the Deputy Attorney General.

7. Other Communications Not Relating to Pending Investigations or Criminal or Civil Cases

All communications between the Department and the White House or Congress that are limited to policy, legislation, budgeting, political appointments, public affairs, intergovernmental relations, or administrative matters that do not relate to a particular contemplated or pending investigation or case may be handled directly by the parties concerned. Such communications should take place with the knowledge of the Department's lead contact regarding the subject

Memorandum for Head of Department Components

Page 4

All United States Attorneys

Subject: Communications with the White House and Congress

under discussion. In the case of communications with Congress, the Office of the Deputy Attorney General and Office of the Assistant Attorney General for Legislative Affairs should be kept informed of all communications concerning legislation and the Office of the Associate Attorney General should be kept informed about important policy communications in its areas of responsibility.

As Attorney General Benjamin Civiletti noted in issuing a similar memorandum during the Carter Administration, these guidelines and procedures are not intended to wall off the Department from legitimate communication. We welcome criticism and advice. What these procedures are intended to do is route communications to the proper officials so they can be adequately reviewed and considered, free from either the reality or the appearance of improper influence.

Decisions to initiate investigations and enforcement actions are frequently discretionary. That discretion must be exercised to the extent humanly possible without regard to partisanship or the social, political, or interest group position of either the individuals involved in the particular cases or those who may seek to intervene against them or on their behalf.

This memorandum supersedes the memorandum issued by Attorney General Mukasey on December 19, 2007, titled *Communications with the White House*.

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**APPENDIX E: (U//FOUO) ATTORNEY GENERAL  
MEMORANDUM – REVISED POLICY ON THE USE OR  
DISCLOSURE OF FISA INFORMATION, DATED JANUARY 10,  
2008**

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**U.S. Department of Justice**

**National Security Division**

Office of the Assistant Attorney General

Washington, D.C. 20530

January 10, 2008

TO: All United States Attorneys  
All National Security Division Attorneys  
All Anti-Terrorism Coordinators

CC: Assistant Attorney General, Criminal Division  
Assistant Attorney General, Civil Division  
Director, Federal Bureau of Investigation

FROM: Kenneth L. Wainstein *KLW*  
Assistant Attorney General for National Security

SUBJECT: Revised FISA Use Policy as Approved by the Attorney General

We are pleased to provide the Department of Justice's revised policy on the use or disclosure of information obtained or derived from collections under the Foreign Intelligence Surveillance Act of 1978 (FISA), as approved by the Attorney General today. Also attached is a form for use with respect to notifications that are required under Section I of the revised policy.

This revised policy includes significant changes from current practice that will streamline the process for using FISA information in certain basic investigative processes, while still ensuring that important intelligence and law enforcement interests are protected.

You will note that the revised policy authorizes the use or disclosure of FISA information, under the specific circumstances described in the policy, with notification to NSD and after consultation with the FBI (or other Intelligence Community agencies) for the following investigative processes:



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As described in the revised policy, the Department continues to require prior authorization from the Assistant Attorney General for National Security (AAG/NSD) for the use or disclosure of FISA information in order to file criminal charges or in post-charge criminal proceedings, as well as in connection with certain investigative processes (*e.g.*, criminal search warrants under Rule 41 of the Federal Rules of Criminal Procedure). The revised policy also requires the prior authorization of the AAG/NSD or his designee for the use or disclosure of FISA information in non-criminal proceedings.

The revised policy was drafted by a Justice Department working group that included representatives from the Attorney General's Advisory Committee of United States Attorneys (AGAC), National Security Division (NSD), Federal Bureau of Investigation (FBI), and Office of Legal Policy (OLP). The working group also consulted with the Office of the Director of National Intelligence (ODNI) in the course of the development of this policy.

The revised policy requires that it be reviewed one year from its effective date and requires NSD to issue guidance on what constitutes information "derived from" FISA collections by March 31, 2008.

As noted in the policy, prosecutors are encouraged to contact the National Security Division at any time in order to obtain guidance regarding this policy and to expedite resolution of any issues.

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**U.S. Department of Justice**

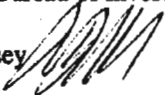
Office of the Attorney General

Washington, D.C. 20530

January 10, 2008

**TO:** All Federal Prosecutors

**CC:** Assistant Attorney General, National Security Division  
Assistant Attorney General, Criminal Division  
Assistant Attorney General, Civil Division  
Director, Federal Bureau of Investigation

**FROM:** Michael B. Mukasey   
Attorney General

**SUBJECT:** Revised Policy on the Use or Disclosure of FISA Information

As a general matter, it is the policy of the Department of Justice to use all lawful processes in the investigation and prosecution of cases involving terrorism, intelligence, and national security, and to undertake all efforts necessary to protect the American people from the threat posed by foreign powers and their agents, while also exercising due regard for the protection of intelligence sources, methods, and collections, and the privacy and civil liberties of United States persons.

There are important purposes to be served by consultation and coordination with respect to the use or disclosure of FISA information<sup>1</sup> in investigations, criminal prosecutions, and other proceedings. First, because FISA information is almost always classified, the use or disclosure of such information will normally require declassification by the originating agency in accordance with the originating agency's policies and procedures. Second, the use of such information could directly or indirectly compromise intelligence sources, methods, or collections, or disclose the existence or nature of or otherwise compromise an investigation. Third, FISA requires the Government to notify the court and an "aggrieved person" of its intent

<sup>1</sup> The term "FISA information," as used in this policy, means any information acquired, obtained, or derived from collection authorized pursuant to FISA. Whether specific information qualifies as "derived from" FISA collection may be a fact-bound question that depends, at least in part, on the attenuation of the information to be used from the original FISA acquired or obtained information and whether the information was also obtained from an independent source, as well as other factors. Where such a question arises, the application of this policy should be discussed among the USAO, FBI, and NSD, and if consensus is not reached, a determination will be made by the Assistant Attorney General for National Security. Separate guidance regarding what constitutes information "derived from" FISA collection will be issued by the National Security Division no later than March 31, 2008.

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to use or disclose any FISA information before it is used against such person in a broad range of proceedings. Fourth, the Government is required to ensure that complete and accurate filings are made with the Foreign Intelligence Surveillance Court (FISC), and that the Government complies with all of FISA's statutory requirements. Fifth, it is important to ensure that litigation risks, if any, are properly assessed. Finally, in certain cases, it may be appropriate to make disclosures to a United States District Court regarding classified facts before legal process is obtained.

Given these purposes, it is essential that coordination take place in connection with the use or disclosure of FISA information. Such coordination should be streamlined in order to promote efficient, nimble, and useful investigative activities. The risk of compromising the purposes described above varies depending on the stage of the investigation, criminal prosecution, or other proceeding. As a general matter, [REDACTED] b7E

[REDACTED]  
[REDACTED] federal prosecutors should consider alternative approaches for taking action.

Prosecutors are encouraged to contact the National Security Division at any time in order to obtain guidance regarding this policy and to expedite resolution of any issues.

The following policy is therefore adopted and supersedes any existing Attorney General policies with respect to the use and disclosure of FISA information to the extent that they are inconsistent with this policy:

- (a) the Assistant Attorney General for National Security may act as the Attorney General, as provided for under FISA, *see* 50 U.S.C. § 1801(g), for the purpose of authorizing the use or disclosure of FISA information pursuant to this policy;<sup>2</sup> and
- (b) federal prosecutors and all others who may seek to use or disclose FISA information in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, in coordination with NSD and FBI, are authorized to do so pursuant to the terms of this policy, shall coordinate with NSD [REDACTED] b7E  
[REDACTED] and shall comply with the following procedures in matters that involve the use or disclosure of FISA information:<sup>3</sup>

<sup>2</sup> Such authorization may also be provided by the Attorney General, Acting Attorney General, and the Deputy Attorney General. *See* 50 U.S.C. § 1801(g).

<sup>3</sup> Nothing in this policy is intended to supersede or replace existing policies for prosecutors regarding notification, consultation, and approval for certain investigative and prosecutive steps, including consultation with other districts where related matters may be under investigation. For example, the United States Attorneys' Manual sets forth when a prosecutor must obtain prior approval for various court actions in national security prosecutions. *See, e.g.,* United States Attorneys' Manual (USAM) §§ 9-2.131 ("Matters Assumed by Criminal Division or Higher

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I. Use or Disclosure of FISA Information Requiring Consultation with FBI or other Intelligence Community Agencies and Notification to NSD

- A. Certain investigative processes present only moderate risks. As a result, where FISA information is used or disclosed in connection with the processes described below, consultation with FBI (or other Intelligence Community agencies, as appropriate)<sup>4</sup> and notice to NSD is required: b7E

1.
2.
3.
4.

- B. Where FISA information is used or disclosed in connection with the processes described above, the following notification process shall be followed:

1.

Authority"); 9-2.136 ("Investigative and Prosecutive Policy for International Terrorism Matters"); 9-2.155 ("Sensitive Matters"); 9-2.400 ("Prior Approvals Chart").

<sup>4</sup> For the purposes of this document, the term "Intelligence Community agencies" refers to the appropriate agencies within the Intelligence Community, including the Office of the Director of National Intelligence. Consultation with Intelligence Community agencies other than the FBI is typically appropriate when the sources, methods, or collections involve Intelligence Community agencies other than the FBI. Prosecutors are encouraged to contact the National Security Division, as needed, to assist with the consultation process with the FBI or other Intelligence Community agencies.

<sup>5</sup> Some courts require a significant measure of information with respect to  b7E  
 To the extent that applications in such districts require the disclosure of additional FISA information beyond the disclosure of   
 advance authorization as provided for in Section II of this policy is required prior to such applications being made to the court.

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2. As provided on the attached draft [redacted] the federal prosecutor must indicate that he or she has [redacted]

[redacted]

3. [redacted]  
above—to ensure that NSD complies with potential obligations to notify the Foreign Intelligence Surveillance Court.

- C. Where consultations with the FBI (or other Intelligence Community agencies, as appropriate) demonstrate that [redacted]

[redacted]

further consultation that includes NSD (working with Intelligence Community agencies, as appropriate) shall take place prior to the use of such processes.

1. [redacted]

- D. This section does not permit the use or disclosure of FISA information obtained [redacted]

[redacted] Federal prosecutors must seek specific, separate use authority from the Assistant Attorney General for National Security prior to initiating any criminal proceedings.

II. Use or Disclosure of FISA Information Requiring the Advance Authorization of the Assistant Attorney General for National Security

- A. The advance authorization of the Assistant Attorney General for National Security is required where FISA information is [redacted]

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[redacted]

b7E

[redacted]

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1. *Investigative Processes Requiring Advance Authorization*

- a. [REDACTED] As a result, authorization of the Assistant Attorney General for National Security is required before FISA information is used or disclosed in connection with the processes described below:

b7E

- i. [REDACTED]
- ii. [REDACTED] Title 18, Chapter 119, United States Code;
- iii. [REDACTED] Title 18, Chapter 121, United States Code;
- iv. [REDACTED] Rule 41 of the Federal Rules of Criminal Procedure;
- v. [REDACTED] 18 U.S.C. § 3144;
- vi. [REDACTED]
- vii. [REDACTED]

2. *Criminal Indictments and Post-Indictment Proceedings*

- a. The use or disclosure of FISA information [REDACTED] As a result, the advance authorization of the Assistant Attorney General for National Security is required before such use or disclosure.

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- b. This advance authorization requirement applies to [REDACTED]

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3. Among the factors that will be considered with respect to granting use authority are: [REDACTED] b7E

[REDACTED]

4. Because the process of obtaining advance authorization will require NSD to coordinate with Intelligence Community agencies, federal prosecutors should seek such advance authorization at the earliest juncture possible. In addition, because the use of such information will normally require

[REDACTED]

- a. Prosecutors are encouraged to contact NSD at any time in order to obtain guidance regarding this policy and to expedite resolution of any issues.
- b. Where advance authorization involving [REDACTED] [REDACTED] NSD shall provide notice of such request to ODNI.

**III. Use or Disclosure of FISA Information In Non-Criminal Proceedings**





- A. [REDACTED] b7E  
[REDACTED] Therefore, authorization of the Assistant Attorney General for National Security or his designee is required before such use or disclosure.

1. [REDACTED]

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2. Among the factors that will be considered with respect to granting use authority are   

  3. Because the process of obtaining advance authorization will require NSD to coordinate with Intelligence Community agencies, the attorney for the government should seek such advance authorization at the earliest juncture possible. In addition, because the use of such information will normally require   

    - a. Prosecutors are encouraged to contact NSD at any time in order to obtain guidance regarding this policy and to expedite resolution of any issues.
    - b. Where advance authorization involving particularly sensitive sources, methods, or collections is requested, NSD shall provide notice of such request to ODNI.
- This policy shall be reviewed one year from its effective date to evaluate its effectiveness.

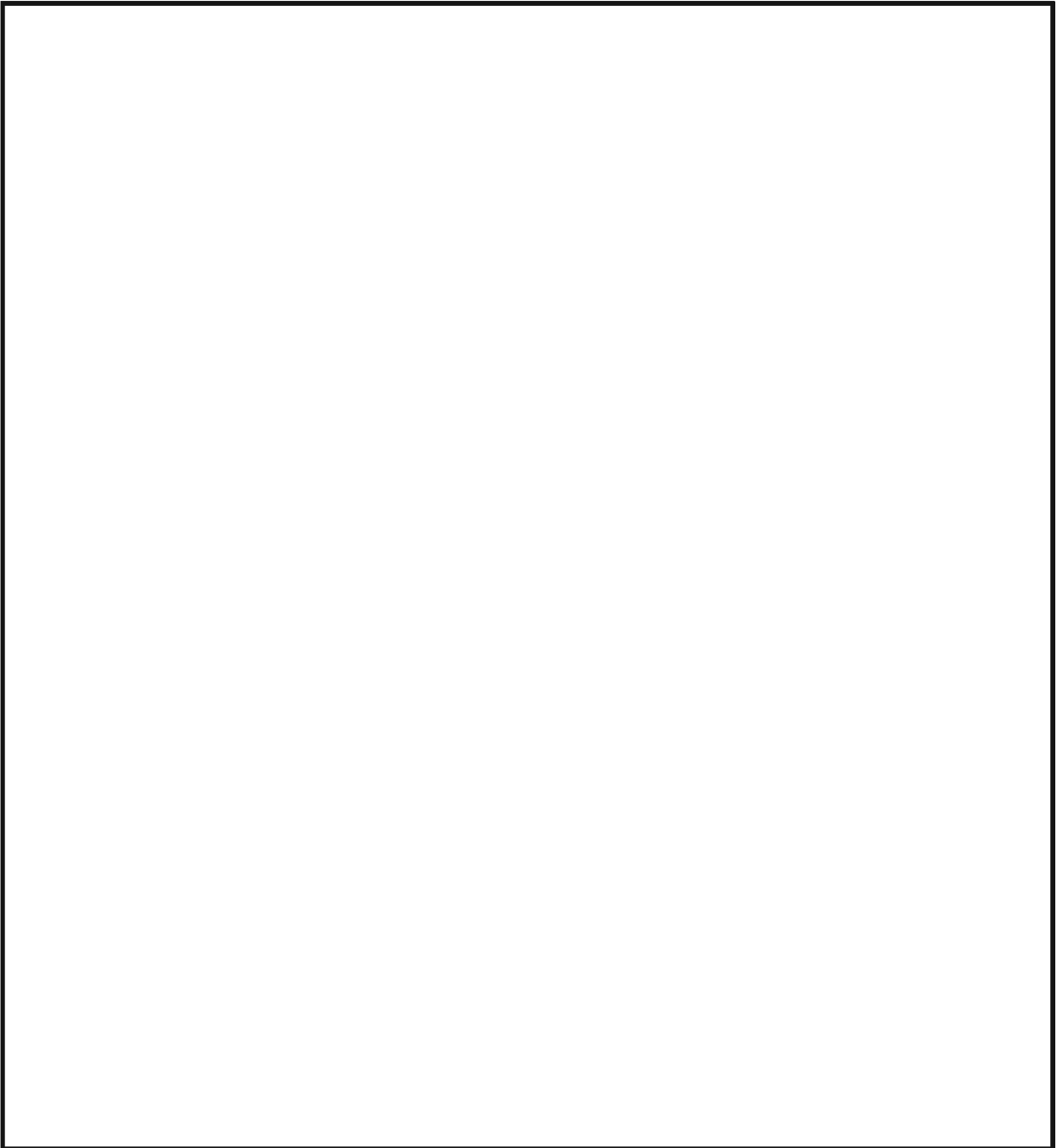
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**NOTIFICATION OF USE OR DISCLOSURE OF FISA INFORMATION FORM**



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**Classification:**

## **APPENDIX F: (U) USE OF FORCE POLICY**

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### **F.1 (U) USE OF LESS-THAN-LETHAL DEVICES**

(U) Deputy Attorney General's Memorandum on Use of Less-than-Lethal Devices dated 4/21/2011.

### **F.2 (U) USE OF DEADLY FORCE**

(U) Deadly Force Policy, dated 7/1/2004.

### **F.3 (U) TRAINING**

A) (U) Deadly Force Policy Training Material, dated 7/29/2004.

B) (U) Instructional Outline and Use of Force Scenarios.

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## **F.1 (U) USE OF LESS-THAN-LETHAL DEVICES**

(U) Deputy Attorney General's Memorandum on Use of Less-than-Lethal Devices dated 4/21/2011.



Office of the Deputy Attorney General

The Deputy Attorney General

Washington, DC 20530

May 16, 2011

MEMORANDUM FOR

Robert S. Mueller III  
Director  
Federal Bureau of Investigation

Michele M. Leonhart  
Administrator  
Drug Enforcement Administration

Kenneth E. Melson  
Acting Director  
Bureau of Alcohol, Tobacco, Firearms and Explosives

Stacia A. Hylton  
Director  
United States Marshals Service

Thomas R. Kane  
Acting Director  
Federal Bureau of Prisons

FROM:

James M. Cole *JMC*  
Deputy Attorney General

SUBJECT:

Policy on the Use of Less-Than-Lethal Devices

Attached is the Department's Policy on the Use of Less-Than-Lethal Devices, approved by the Attorney General on April 21, 2011. Please ensure that the policy is distributed to every affected employee within your component.

Attachment

**DEPARTMENT OF JUSTICE POLICY STATEMENT**  
**ON THE USE OF LESS-THAN-LETHAL DEVICES**

- I. Department of Justice (DOJ) law enforcement officers (officers) are authorized to use less-than-lethal devices only as consistent with this policy statement.
- II. Pursuant to this policy statement, less-than-lethal devices:
  - A. Are synonymous with "less lethal," "non-lethal," "non-deadly," and other terms referring to devices used in situations covered by this policy statement; and
  - B. Include, but are not limited to:
    1. Impact Devices (e.g., batons, bean bag projectiles, baton launcher, rubber projectiles, stingballs);
    2. Chemical Agents (e.g., tear gas, pepper spray, pepperballs); and
    3. Conducted Energy Devices (e.g., electronic immobilization, control, and restraint devices).
- III. DOJ officers are authorized to use less-than-lethal devices only in those situations where reasonable force, based on the totality of the circumstances at the time of the incident, is necessary to effectuate an arrest, obtain lawful compliance from a subject, or protect any person from physical harm. Use of less-than-lethal devices must cease when it is no longer necessary to achieve the law enforcement objective.
- IV. DOJ officers are authorized to use only those less-than-lethal devices authorized by their component and that they are trained to use, absent exigent circumstances.
- V. DOJ officers are not authorized to use less-than-lethal devices if voice commands or physical control achieve the law enforcement objective. DOJ officers are prohibited from using less-than-lethal devices to punish, harass, or abuse any person.
- VI. Less-than-lethal devices are used with a reasonable expectation that death or serious bodily injury will not

-1-

result. They are, however, recognized as having the potential to cause death or serious bodily injury, and DOJ officers may use less-than-lethal devices as deadly weapons only when authorized under the DOJ Policy Statement on the Use of Deadly Force.

- VII. DOJ officers must make necessary medical assistance available to subjects of less-than-lethal device use as soon as practicable.
- VIII. DOJ components must establish rules and procedures implementing this policy statement. Each component will ensure that state/local officers participating in joint task force operations are aware of and adhere to the policy and its limits on DOJ officers.
- IX. DOJ components must establish training programs and procedures for using less-than-lethal devices that are consistent with this policy statement and federal law.
- X. DOJ components must individually establish procedures for documenting, reporting, reviewing, and investigating (as warranted), all incidents involving the use of less-than-lethal devices.
- XI. This policy statement is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

## **F.2 (U) USE OF DEADLY FORCE**

(U) Deadly Force Policy, dated 7/1/2004.

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DATE 09-01-2011 BY UC 60322 LP/PJ/SZ



## POLICY STATEMENT USE OF DEADLY FORCE

### GENERAL PRINCIPLES

1. Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.
  - A. Deadly force may not be used solely to prevent the escape of a fleeing suspect.
  - B. Firearms may not be fired solely to disable moving vehicles.
  - C. If feasible and if to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.
  - D. Warning shots are not permitted outside of the prison context.
  - E. Officers will be trained in alternative methods and tactics for handling resisting subjects which must be used when the use of deadly force is not authorized by this policy.

### CUSTODIAL SITUATIONS

- II. Unless force other than deadly force appears to be sufficient, deadly force may be used to prevent the escape of a prisoner committed to the custody of the Attorney General or the Bureau of Prisons
  - A. if the prisoner is effecting his or her escape in a manner that poses an imminent danger to the safety of the officer or another person; or
  - B. if the prisoner is escaping from a secure facility or is escaping while in transit to or from a secure facility.
- III. If the subject is in a non-secure facility deadly force may be used only when the subject poses an imminent danger of death or serious physical injury to the officer or another person.

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- IV. If the subject is in transit to or from a non-secure facility and is not accompanied by a person who is in transit to or from a secure facility, deadly force may be used only when the subject poses an imminent danger of death or serious physical injury to the officer or to another person.
- V. After an escape from a facility or vehicle and its immediate environs has been effected, officers attempting to apprehend the escaped prisoner may use deadly force only when the escaped prisoner poses an imminent danger of death or serious physical injury to the officer or another person.
- VI. Deadly force may be used to maintain or restore control of a prison or correctional facility when the officer reasonably believes that the intended Subject of the deadly force is participating in a disturbance in a manner that threatens the safety of the officer or another person.
- VII. In the prison context, warning shots may be fired within or in the immediate environs of a secure facility if there is no apparent danger to innocent persons: (A) If reasonably necessary to deter or prevent the subject from escaping from a secure facility or (B) if reasonably necessary to deter or prevent the subject's use of deadly force or force likely to cause serious physical injury.

#### APPLICATION OF THE POLICY

VIII. This Policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

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### **F.3 (U) TRAINING**

A) (U) Deadly Force Policy Training Material, dated 7/29/2004.

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DATE 09-01-2011 BY UC 60322 LP/PJ/SZ

(Rev. 01-31-2003)

## FEDERAL BUREAU OF INVESTIGATION

**Precedence:** ROUTINE

**Date:** 07/29/2004

**To:** All Divisions

**Attn:** AD  
ADIC  
SAC  
CDC  
PFI  
FBIHQ, Manuals Desk  
FBIHQ, Manuals Desk

**From:** General Counsel  
Legal Instruction Unit  
**Contact:** [REDACTED]

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**Approved By:** Caproni Valerie E  
[REDACTED]

**Drafted By:** [REDACTED]

**Case ID #:** 66F-HQ-1312253  
66F-HQ-C1384970  
66F-HQ-C1384970

**Title:** REVISIONS TO THE DEPARTMENT OF  
JUSTICE DEADLY FORCE POLICY -  
DISSEMINATION OF TRAINING MATERIALS

**Synopsis:** This Electronic Communication (EC) provides recipients with training materials incorporating the revisions approved on July 1, 2004 to the Department of Justice (DOJ) Deadly Force Policy.

**Reference:** 66F-HQ-1312253 Serial 8

**Enclosure(s):** One copy of an instructional outline and one copy of use of force scenarios provided to all recipients for training purposes.

**Details:** As discussed in the referenced EC, dated 7/7/2004, on July 1, 2004, the Attorney General approved a revised Policy Statement on the use of Deadly Force. In order to assist Field Offices in providing training and guidance on the practical application of the Deadly Force Policy in light of the revised language, the Legal Instruction Unit (LIU), Office of the General Counsel, revised training materials used with the prior Policy Statement to reflect the changes approved by the Attorney General.

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DATE 09-01-2011 BY UC 60322 LP/PJ/SZ

To: All Divisions From: General Counsel  
Re: 66F-HQ-1312253, 07/29/2004

The training materials consist of an Instructional Outline and a set of 13 factual scenarios with a discussion of the use of force within the scenario and whether its use violates the policy. This material is similar to what was used for instructional purposes since 12/1/1995. The revised material reflects what was noted in the EC, that the revised policy does not expand or contract the current justification for the use of deadly force. Nonetheless, revisions to the training materials were necessary in order to describe the application of deadly force consistent with the new more succinct policy statement.

The revisions to the training materials primarily relate to the elimination of the "safe alternative" language as a function of the "necessity" for use of deadly force and elimination of language addressing [REDACTED] b7E

[REDACTED] For a more detailed discussion of the nature of the revised Policy Statement and the basis for these revisions, refer to the referenced EC.

To: All Divisions From: General Counsel  
Re: 66F-HQ-1312253, 07/29/2004

**LEAD(s) :**

**Set Lead 1: (Action)**

**ALL RECEIVING OFFICES**

It is requested that this communication be distributed to all appropriate personnel.

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**DEADLY FORCE POLICY  
TRAINING MATERIAL - 7/29/2004**

**DEPARTMENT OF JUSTICE DEADLY FORCE POLICY<sup>1</sup>**

**Law enforcement officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.**

- A. Deadly force may not be used solely to prevent the escape of a fleeing suspect.**
- B. Firearms may not be fired solely to disable moving vehicles.**
- C. If feasible and to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the use of deadly force.**
- D. Warning shots are not permitted<sup>2</sup>**
- E. Officers will be trained in alternative methods and tactics for handling resisting subjects which must be used when the use of deadly force is not authorized by this policy.**

**This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.**

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<sup>1</sup>Department of Justice Policy Statement Use of Deadly Force (07/01/2004) in pertinent part (Language relating to Custodial Situations has been intentionally omitted pursuant to FBI policy. See, 66F-HQ-1312253, EC from the Director's Office to All Divisions, titled "REVISIONS TO THE DEPARTMENT OF JUSTICE DEADLY FORCE POLICY", dated 07/07/2004).

<sup>2</sup>Not included in the above description is the policy relating to the use of deadly force to prevent the escape of a prisoner committed to the custody of the Attorney General or the Bureau of Prisons. Because Agents will seldom find themselves in a position to apply the custodial aspect of the policy, the FBI will adhere to the policy decision set forth in the Airtel from the Director to All Field Offices, titled "Deadly Force Policy Matters," dated 1/5/95, which states "A policy decision has been made that except in cases of prison unrest which would principally involve HRT and/or SWAT, FBI Agents should adhere to the policy and training principles governing the use of deadly force in non-custodial situations.

### **F.3 (U) TRAINING**

#### **B) (U) Instructional Outline and Use of Force Scenarios.**

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07/29/2004

## INSTRUCTIONAL OUTLINE

### I. INTRODUCTION

The following general principles shall guide the interpretation and application of this policy:

- A. This policy shall not be construed to require Agents to assume unreasonable risks to themselves.
- B. The reasonableness of an Agent's decision to use deadly force must be viewed from the perspective of the Agent on the scene without the benefit of 20/20 hindsight.
- C. Allowance must be made for the fact that Agents are often forced to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving.

### II. DEFINITIONS

- A. "DEADLY FORCE": Is force that is reasonably likely to cause death or serious physical injury.
- B. "REASONABLE BELIEF": Is synonymous with "Probable Cause". It is determined by a totality of the facts and circumstances known to Agents at the time, and the logical inferences that may be drawn from them.
- C. "NECESSARY": The necessity to use deadly force based on the existence of a reasonable belief that the person against whom such force is used poses an imminent danger of death or serious physical injury to the Agent or other persons.
- D. "IMMINENT DANGER": "Imminent" does not mean "immediate" or "instantaneous", but that an action is pending. Thus, a subject may pose an imminent danger even if he is not at that very moment pointing a weapon at the Agent. For example, imminent danger may exist if Agents have probable cause to believe any of the following:

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1. The subject possess a weapon, or is attempting to gain access to a weapon, under circumstances indicating an intention to use it against the Agents or others; or,
2. The subject is armed and running to gain the tactical advantage of cover; or,
3. A subject with the capability of inflicting death or serious physical injury--or otherwise incapacitating agents--without a deadly weapon, is demonstrating an intention to do so; or,
4. The subject is attempting to escape from the vicinity of a violent confrontation in which the suspect inflicted or attempted the infliction of death or serious physical injury.

### III APPLICATION OF DEADLY FORCE

In assessing the necessity to use deadly force, the following practical considerations are relevant to its proper application:

#### A. Inherent Limitation on Abilities to Assess the Threat and Respond.

1. Limited Time (Action v. Reaction) - there will always be an interval of time between a subject's action and an Agent's ability to perceive that action, to assess its nature, and to formulate and initiate an appropriate response. The inherent disadvantage posed by the action/reaction factor places a significant constraint on the time frame within which Agents must perceive, assess and react to a threat.
2. Limited Means (Wound Ballistics) - When the decision is made to use deadly force, Agents have *no guaranteed means of instantaneously stopping the threat*. The human body can sustain grievous - even ultimately fatal - injury and continue to function for a period of time (from several seconds to several minutes) depending on the location, number, and severity of the wounds. The lack of a reliable means of instantaneously stopping the threat, may extend the time that imminent danger can persist. This factor further constrains the time frame within which Agents must respond to a perceived threat.

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#### B. Achieving Intended Purpose.

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If the subject does not surrender, the only reliable means of achieving that goal is to cause physiological incapacitation of the subject(s) as quickly as possible. Attempts to do anything else - such as shooting to cause minor injury - are unrealistic and can risk exposing Agents or others to continued danger of death or serious physical injury.

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C. Consideration of Risk to Other Parties.

Even when deadly force is permissible, Agents should assess whether its use creates a danger to third parties that outweighs the likely benefits of its use.

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**SCENARIO #1:**

**DISSCUSSION:**

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**SCENARIO #2:**

**DISCUSSION:**

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**SCENARIO #3:**

**DISCUSSION:**

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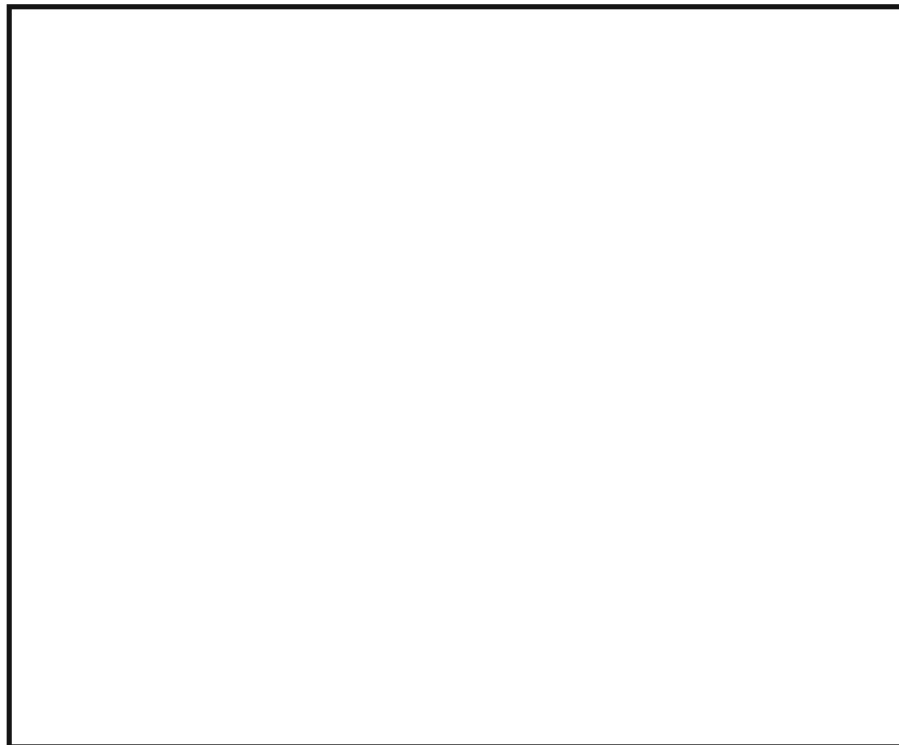
**SCENARIO #4:**

A small rectangular box with a black border, used for redaction.A large rectangular box with a black border, used for redaction.

**DISCUSSION:**

A small rectangular box with a black border, used for redaction.

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A large rectangular box with a black border, used for redaction.

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**SCENARIO #5:**

**DISCUSSION:**

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**SCENARIO #6:**

**DISCUSSION:**

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**SCENARIO #7**

**DISCUSSION:**

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**SCENARIO #8:**

**DISCUSSION:**

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**SCENARIO #9:**

**DISCUSSION:**

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**SCENARIO #10:**

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**DISCUSSION:**

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**SCENARIO #11:**

**DISCUSSION:**

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**SCENARIO #12:**

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**DISCUSSION:**

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**SCENARIO #13:**

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**DISCUSSION:**

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**SCENARIO #14:**

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**DISCUSSION:**

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**APPENDIX G: (U) CLASSIFIED PROVISIONS**

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(U) See the separate classified DIOG Appendix G.

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October 6, 2011

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REASON: 1.4 (C, D)  
DECLASSIFY ON: 10-03-2036



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WHERE SHOWN OTHERWISE

# DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE

**CLASSIFIED APPENDIX G**

**FEDERAL BUREAU OF INVESTIGATION  
OCTOBER 15, 2011**

This is a privileged document that cannot be released in whole or in part to persons or agencies outside the Federal Bureau of Investigation, nor can it be republished in whole or in part in any written form not containing this statement, including general use pamphlets, without the approval of the Director of the Federal Bureau of Investigation.

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Domestic Investigations and Operations Guide

## APPENDIX G: (U) CLASSIFIED PROVISIONS

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(U) This Part supplements the unclassified provisions of the AGG-Dom and DIOG.

### (U) Table of Contents

(U)	G.1	(U) Limitation on Certain Searches .....	G-2
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	G.13	(U) Other Investigative Resources .....	G-19

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~~Derived from: Multiple Sources  
Declassify on: December 1, 2033~~

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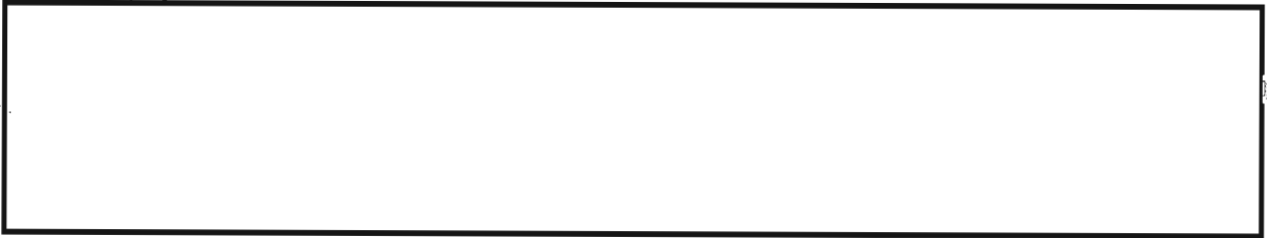
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**G.1 (U) LIMITATION ON CERTAIN SEARCHES**

***G.1.1 (U) CLASSIFIED AGG-DOM PROVISION***

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***G.1.2 (U) DIOG CLASSIFIED PROVISION***

(U) Refer to the Domestic Investigations and Operations Guide (DIOG) Section 18.7.1 for procedures to obtain a FISA search warrant.

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**G.2 (U) CIRCUMSTANCES WARRANTING A PRELIMINARY OR FULL INVESTIGATION**

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**G.2.1 (U) CLASSIFIED AGG-DOM PROVISION**

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**G.2.2 (U) DIOG CLASSIFIED PROVISION**

(U) The provisions of DIOG Sections 6 (Preliminary Investigations) or 7 (Full Investigations) with regard to the purpose, approval and notification requirements apply fully to investigations predicated under this provision.



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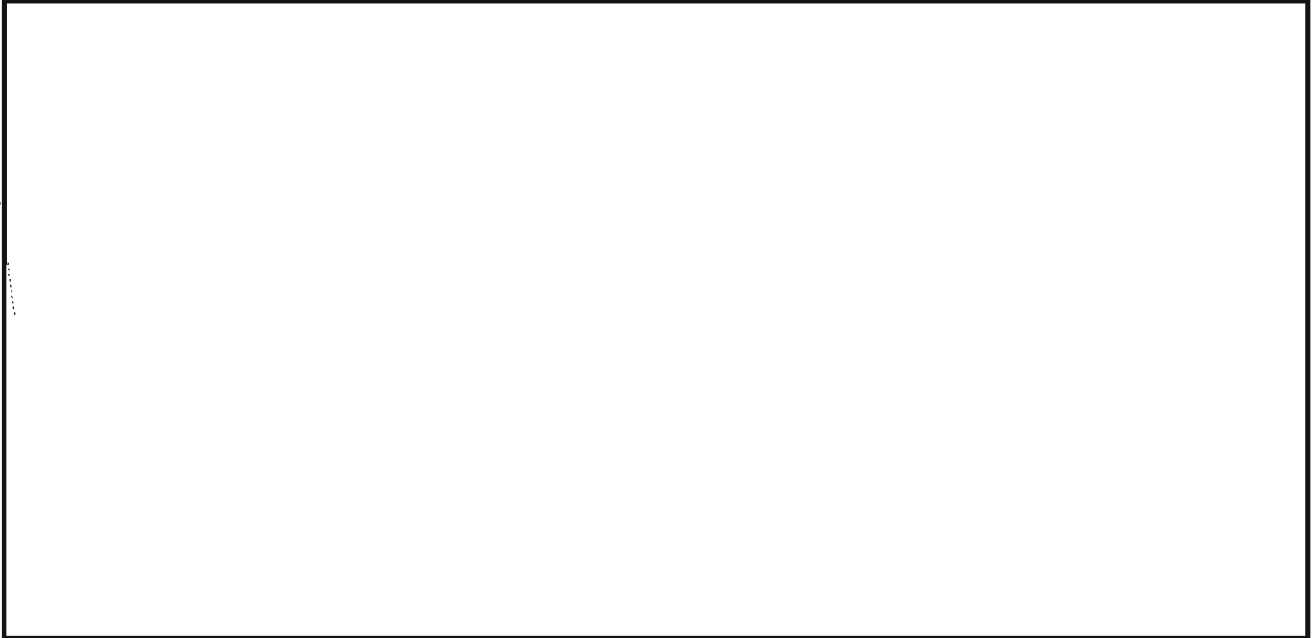
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**G.3 (U) DETERMINATION OF UNITED STATES PERSON (USPER) STATUS**

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***G.3.1 (U) CLASSIFIED AGG-DOM PROVISION***

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**G.4 ~~(S//NF)~~ ATTORNEY GENERAL THREAT COUNTRY LIST**

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**G.4.1 (U) CLASSIFIED AGG-DOM PROVISION**

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**G.4.2 (U) DIOG CLASSIFIED PROVISION**

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**G.5 (U) ASSISTANCE TO AND/OR FROM FOREIGN AGENCIES IN THE UNITED STATES**

***G.5.1 (U) DIOG CLASSIFIED PROVISION***

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**G.6 (U) CONSENSUAL MONITORING**

***G.6.1 (U) DIOG CLASSIFIED PROVISION***

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## Domestic Investigations and Operations Guide

### G.7 (U) SENSITIVE INVESTIGATIVE MATTERS (SIM)

#### G.7.1 (U) DIOG CLASSIFIED PROVISION



##### G.7.1.1 (U//FOUO) MEMBER OF THE NEWS MEDIA OR A NEWS ORGANIZATION

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(U//FOUO) DIOG Section 10.1.2.2.5 defines a member of the news media or a news organization as a SIM. It further defines a member of the news media or a news organization as:

(U//FOUO) "News media" includes persons and organizations that gather, report or publish news, whether through traditional means (e.g., newspapers, radio, magazines, news service) or the on-line or wireless equivalent. A "member of the media" is a person who gathers, reports, or publishes news through the news media.

(U//FOUO) The term "News Media" also includes an entity organized and operated for the purpose of gathering, reporting or publishing news. The definition does not, however, include a person or entity who posts information or opinion on the Internet in blogs, chat rooms or social networking sites, such as YouTube, Facebook, or MySpace, unless that person or entity falls within the definition of a member of the media or a news organization under the other provisions within this section (e.g., a national news reporter who posts on his/her personal blog).

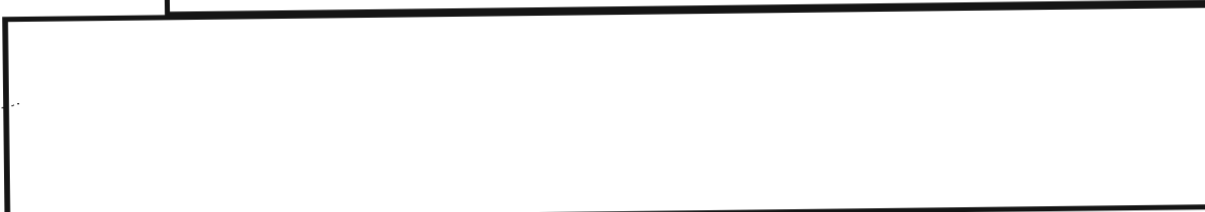
(U//FOUO) Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of newspapers or periodicals that make their products available to the public at large in print form or through an Internet distribution. A freelance journalist may be considered to work for a news organization if the journalist has a contract with the news entity or has a history of publishing content. Publishing a newsletter or operating a website does not by itself qualify an individual as a member of the news media. Businesses, law firms, and trade associations offer newsletters or have websites; these are not considered news media. As the term is used in the DIOG, "news media" is not intended to include persons and entities that simply make information available. Instead, it is intended to apply to a person or entity that gathers information of potential interest to a segment of the general public, uses editorial skills to turn raw materials into a distinct work, and distributes that work to an audience, as a journalism professional. If there is doubt about whether a particular person or entity should be considered part of the "news media," the doubt should be resolved in favor of considering the person or entity to be the "news media."

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##### G.7.1.1.1



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**G.7.1.2 (U) ACADEMIC NEXUS**

(U//FOUO) DIOG Section 10.1.2.2.6 states:

*(U//FOUO) Academic Nexus—As a matter of FBI policy, an investigative activity having an "academic nexus" is a SIM if:*

*(i) (U//FOUO) the investigative activity involves matters related to the responsibilities of an administrator or faculty member employed by any college or university that is located inside the United States, provided the matter under Assessment/investigation is related to the individual's position at the institution; or*

*(ii) (U//FOUO) the matter involves any student association recognized and approved by a college or university at which the student association at issue is located, and the college or university is located inside the United States.*

*(U//FOUO) The sensitivity related to an academic institution arises from the American tradition of "academic freedom" (i.e., an atmosphere in which students and faculty are free to express unorthodox ideas and views and to challenge conventional thought without fear of repercussion). Academic freedom does not mean, however, that academic institutions are off limits to FBI investigators in pursuit of information or individuals of legitimate investigative interest.*

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**G.7.1.2.1**

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**G.8 (U) DATA ANALYSIS**

**G.8.1 (U) DIOG CLASSIFIED PROVISION**

~~(S//NF)~~ Data analysis conducted by the FBIHQ Counterintelligence Division, [REDACTED]

[REDACTED] must be coordinated with the FBIHQ Office of the General Counsel, Privacy and Civil Liberties Unit and the National Security Law Branch regarding the proper documentation and disposition of such analysis.

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**G.9 (U) NOTICE REQUIREMENTS FOR THE DOJ NATIONAL SECURITY DIVISION (NSD)****G.9.1 (U) DIOG CLASSIFIED PROVISION**

- (U) A) ~~(S)~~ **Sensitive Investigative Matter:** For a national security investigation or “assistance to other agencies” involving a sensitive investigative matter that is classified “Secret,” the appropriate FBIHQ section must send electronic notice to DOJ NSD at [REDACTED] For a national security investigation or “assistance to other agencies” involving a sensitive investigative matter that is classified “Top Secret,” the appropriate FBIHQ section must send electronic notice to DOJ NSD at [REDACTED] Notices to DOJ NSD must contain only the Letterhead Memorandum (LHM); the electronic communication (EC) should not be sent to DOJ NSD. b7E
- (U) B) ~~(S)~~ **National Security Full Investigation of a United States Person (USPER):** For a Full Investigation of a USPER relating to a threat to the national security (this reporting requirement does not apply to full positive foreign intelligence investigations) that is classified “Secret,” the appropriate FBIHQ section must send electronic notice to DOJ NSD at [REDACTED] For a Full Investigation of a USPER relating to a threat to the national security that is classified “Top Secret,” the appropriate FBIHQ section must send electronic notice to DOJ NSD at [REDACTED] Notices to DOJ NSD must only contain the LHM; the EC should not be sent to DOJ NSD. b7E
- (U) C) ~~(S)~~ **Assistance to a Foreign Agency:** When FBIHQ approval is required to provide assistance to a foreign agency in a matter involving a threat to the national security, notice must be provided to DOJ NSD. For a foreign assistance matter that is classified “Secret,” the appropriate FBIHQ division approving the investigative method must send electronic notice to DOJ NSD at [REDACTED] For a foreign assistance matter that is classified “Top Secret,” the appropriate FBIHQ division approving the investigative method must send electronic notice to DOJ NSD at [REDACTED] Notices to DOJ NSD must only contain the LHM; the EC should not be sent to DOJ NSD. b7E



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**G.10 (U)**

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**G.10.1 (U) DIOG CLASSIFIED PROVISION**

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(U) Note:

- see Appendix G.10.1.3.A below) conducted under DIOG Section 5.

**G.10.1.1 (U) DEFINITION**

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G.10.1.5 (U) DISPUTE RESOLUTION

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G.11 (U)

**G.11.1 (U) *DIOG CLASSIFIED PROVISION***

(U) ~~(S)~~ Procedures for conducting a (USIC) Agencies:

**G.11.1.1 ~~(S)~~ CENTRAL INTELLIGENCE AGENCY HEADQUARTERS (CIAHQ)**

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**G.11.1.2 ~~(S)~~ NATIONAL SECURITY AGENCY HEADQUARTERS (NSAHQ)**

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**G.12 (U) NATIONAL SECURITY LETTERS FOR TELEPHONE TOLL RECORDS OF MEMBERS OF THE NEWS MEDIA OR NEWS ORGANIZATIONS**

~~(S)~~(NF) **Members of news media or news organizations:** An investigation of members of the news media or news organizations is a sensitive investigative matter (SIM). See DIOG Section 10 and Appendix G-7 for Sensitive Investigative Matters. A member of the news media or a news organization is defined in DIOG Section 10.1.2.2.5 and Appendix G.7.1.1 [redacted]

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(U) Department of Justice policy with regard to the issuance of subpoenas for telephone toll records of members of the news media is found at 28 C.F.R. § 50.10. The regulation concerns only grand jury subpoenas, not National Security Letters (NSLs) or administrative subpoenas. (The regulation requires Attorney General approval prior to the issuance of a grand jury subpoena for telephone toll records of a member of the news media, and when such a subpoena is issued, notice must be given to the news media member either before or soon after such records are obtained.) The following approval requirements and specific procedures apply for the issuance of an NSL for telephone toll records of members of the news media or news organizations.

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(U//FOUO) **Approval requirements:** In addition to the approval requirements for NSLs set out in DIOG Section 18.6.6.1.3, [redacted]

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A) (U//FOUO) [redacted]

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B) (U//FOUO) [redacted]

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(S) C) (U//FOUO) [redacted]

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D) ~~(S)~~(NF) If the NSL is seeking telephone toll records of an individual who is a member of the news media or news organization [redacted]

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[redacted] there are no additional approval requirements other than those set out in DIOG Section 18.6.6.1.3 [redacted]

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[Redacted]  
[Redacted]

(U) **Specific Procedures:** The procedures for creating an NSL [Redacted]

[Redacted]  
[Redacted] are the same as set out in DIOG Section 18.6.6.1.5. [Redacted]

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[Redacted]

(U) [Redacted]  
[Redacted]  
[Redacted]

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(U) [Redacted]  
[Redacted]  
[Redacted]

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(U)

### G.13 (U) OTHER INVESTIGATIVE RESOURCES

#### G.13.1 (U) DIOG CLASSIFIED PROVISION

##### G.13.1.1 (U//FOUO) SENSITIVE TECHNICAL EQUIPMENT

(S) ~~(S)~~ **Definition:** The term "Sensitive Technical Equipment" (STE) includes [redacted] b7E

[redacted] STE is a) any technology [redacted] b1

(S) [redacted] b) technology that has been jointly developed with or developed by another U.S. Government agency such that the FBI is not the sole owner and on which originator controls have been placed. The Assistant Director of the OTD after consultation with the relevant operational division is authorized to determine whether particular equipment is (or is not) STE.

(U//FOUO) **Authorized Investigative Activity:** The use of STE [redacted] b7E [redacted] may be authorized in Predicated Investigations as set forth in the [redacted]

(U//FOUO) Any use of STE [redacted] [redacted] Refer to the Extraterritorial Guidelines (see DIOG Section 13), appropriate [redacted] and [redacted] for additional information. b7E



## APPENDIX H: (U) PRE-TITLE III ELECTRONIC SURVEILLANCE (ELSUR) SEARCH POLICY

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### H.1 (U) SCOPE

(U) 18 U.S.C. § 2518(1)(e) requires that each application for an order to intercept wire, oral, or electronic communications (hereinafter "Title III") contain a statement describing all previous applications for Title III surveillance of the same persons, facilities, or places named in the current application. The below policy is designed to conform with this statutory requirement, clarify any past confusion, and address the effects on the previous search policy resulting from the recent elimination of the requirement for an agency Action Memorandum by the Office of Enforcement Operations (OEO). This policy supersedes the March 5, 2003 Director's Memorandum to All Special Agents in Charge Re: Pre-Title III Electronic Surveillance (ELSUR) Search Policy, and the April 14, 2008, All Field Offices EC from RMD, Case ID# 321B-HQ-C1186218.

### H.2 (U) REVISED POLICY

#### H.2.1 (U) COMPLIANCE WITH THE PREVIOUS APPLICATION PROVISION

(U) 18 U.S.C. § 2518(1)(e) requires that each application for an order to intercept wire, oral, or electronic communications (hereinafter "Title III") contain a statement describing all previous applications for Title III surveillance of the same persons, facilities, or places named in the current application. Although a failure to comply with § 2518(1)(e) will not always result in suppression of evidence, deliberate noncompliance likely will.

(U) To comply with this requirement, FBI search policy requires that a "search," i.e., an automated indices search, of the FBI's ELSUR Records System (ERS) be conducted prior to filing a Title III affidavit and application with the court. To assist field offices in conducting appropriate searches, the following guidelines are provided.

##### H.2.1.1 (U) WHEN TO SEARCH

- A) (U) ELSUR SEARCHES: ELSUR searches for both sensitive and nonsensitive Title IIIs, including applications not requiring the approval of the Department of Justice (DOJ), Office of Enforcement Operations (OEO), such as for a digital display pager, must be conducted not more than 45 calendar days prior to the date the application and affidavit are filed with the court.
- B) (U) SPIN-OFFS: A "Spin-off" is a new application to begin surveillance at additional facilities arising from an existing investigation in which one or more Title IIIs have already been authorized. A spin off is considered to be an "original" request, even though some or all of the named persons are also named in the prior Title IIIs. As with any new Title III, a search of the persons, facilities, and/or places specified in the "spin-off" application must be conducted not more than 45 calendar days prior to the date the application and affidavit are filed with the court.
  - 1) (U) Any of the persons, facilities, and/or places named in the "spin-off" application and affidavit which have been the subject of a previous search conducted not more than 45

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calendar days prior to the date the application and affidavit are filed with the court need not be searched again. However, a copy of the EC documenting the results of the previous search must be serialized in the investigative file to which the “spin-off” relates and in the corresponding ELSUR Administrative Subfile.

- C) (U) **EXTENSIONS:** When an extension is sought, newly identified persons, facilities, and/or places must be searched not more than 45 calendar days prior to the date the application and affidavit are filed with the court.
- 1) (U) If an individual named by a partial name, nickname, street name, and/or code name is subsequently identified by at least a first initial and a last name, a search must be conducted for the now-identified individual prior to seeking an extension naming that person.
  - 2) (U) The same persons, facilities, and/or places previously searched that are named in an extension application and affidavit need not be searched again unless the original intercept has continued beyond 120 calendar days. When a Title III intercept extends beyond 120 calendar days from the date of the original order, an additional search of the persons, facilities, and/or places named in the request for extension must be conducted.

**H.2.1.2 (U) HOW TO SEARCH**

(U) The ERS must be searched for previously submitted Title III applications to intercept communications involving any of the persons, facilities, and/or places specified in the current Title III application.

- A) (U) **PRIOR APPLICATIONS:** Searches are required only for previously submitted applications. There is no obligation to search for prior interceptions. The ELSUR search will provide records of the persons, facilities, and/or places named in prior applications filed by the FBI and other federal law enforcement agencies named in the request. Any prior applications identified must be set forth in the affidavit in support of the new application.
- B) (U) **PRIOR INTERCEPTIONS:** If information regarding earlier interceptions is desired, an Agent may request a search of “all records” for any or all of the persons, facilities, and/or places named in the search request. A search for “all records” will include prior FBI intercepts occurring over Title III and consensual monitoring in criminal matters. This information may be relevant to the “necessity” portion of the affidavit, if an agent has reason to believe there were numerous previous interceptions.

**H.2.1.2.1 (U) PERSONS**

(U) List the true names or best known names of individuals for whom there is probable cause to believe that: (1) they are involved in the specified criminal activity, or (2) their criminal communications are expected to be intercepted over the target facility or within the target premises.<sup>1</sup> When the involvement of a particular individual in the offense is not clear, Agents should err on the side of caution and name that individual in the affidavit.

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<sup>1</sup> (U) All individuals listed in the application and affidavit as being involved in the specified criminal activity should be searched in ERS, not just those individuals who are expected to be intercepted. Further, the ELSUR Operations Technician is required to index into ERS all names listed in the application, which would include individuals who are involved in the specified criminal activity, regardless of whether they are expected to be

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- A) (U) A minimum of a first initial and last name is required for an ERS search. Biographical data such as date of birth, FBI Number, and/or Social Security Account Number, if known, must be included. Do not include partial names, nicknames, street names, and/or code names. Include aliases only if the true name is unknown or if the alias meets ELSUR search requirements. For example, if the alias is a full name alias, it should be included (i.e., John Smith a/k/a "William Johnson" or William Smith a/k/a "Liam Smith").
- B) (U) Persons not fully identified by a first initial and a last name who are specific targets of the interception should be named "John Doe," "Jane Doe," or "FNU LNU" and so listed as a "Person" whose communications are expected to be intercepted over the target facility. Such names (John Doe, Jane Doe, FNU LNU) need not be the subject of an ELSUR search. If such an individual is later identified, the Agent must so advise the ELSUR Operations Technician (EOT) to allow the "John Doe," "Jane Doe," or "FNU LNU" ELSUR record to be appropriately modified for retrieval in subsequent ELSUR searches.
- C) (U) A search of the ERS must be conducted for the subscriber or service provider of the target facility only if the subscriber or service provider is believed to be involved in the specified criminal offense(s).
- D) (U) Any additional persons, facilities, and/or persons mentioned in the affidavit, but not also specified in the application as a person, facility, and/or place for which authorization to intercept is being sought, need not be searched or listed in the FD-940 (Pre-Title III ELSUR Search Request).

**H.2.1.2.2 (U) FACILITY**

(U) List available numeric and/or alphanumeric values directly associated with the device, equipment, or instrument over or from which the subjects are communicating (e.g., a telephone, pager, computer, etc.). Such values may include, but are not limited to, the telephone number of a land line phone, cell phone, or pager, Personal Identification Number, Cap Code, Electronic Serial Number (ESN), International Mobile Subscriber Identity (IMSI) Number, International Mobile Equipment Identifier (IMEI) Number, and/or Internet account information (including but not limited to screen name, online identity, ICQ number, and/or IP address).

- A) (U) Names of businesses, organizations, or agencies must be searched only if there is probable cause to believe the business, organization, or agency is culpable in the specified criminal offense(s).
- B) (U) Searches need not be conducted for telephone numbers or other facilities subscribed to, leased, or owned by the FBI for use in the investigation for which the ELSUR is being sought.

**H.2.1.2.3 (U) PLACES**

(U) List: (1) each address of a targeted landline phone or computer terminal which will be subject to the Title III order, and/or (2)

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intercepted over the target facility or within the target premises. These names are to be indexed as Principal records.

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Do not include addresses of subscribers or proprietors of mobile installations such as cell phones, pagers, vehicles, boats or planes, etc.

(U) Persons, facilities, and/or places added to the affidavit subsequent to the Chief Division Counsel's (CDC) review, or the review of any other reviewing or approving official, must be searched prior to submitting the affidavit to the court. The responsible AUSA should be asked whether additions have been made to the affidavit without the FBI's knowledge.

**H.2.1.3 (U) WHERE TO SEARCH**

(U) A search of the FBI's ERS must be conducted for each item named in the search request. A search of the Drug Enforcement Administration (DEA) and Immigration and Customs Enforcement (ICE) ERS is required for all Title 21 predicate offenses. As a matter of policy, a DEA and ICE ELSUR search is automatically conducted by FBIHQ for all  and  investigative classifications, and any other application involving a Title 21 offense.

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A) (U) The ERS of any other federal, state, or local law enforcement agency that is actively participating in a joint investigation (as opposed to mere task force participation) or as to which there is reason to believe may have previously sought to intercept wire, oral, or electronic communications involving any of the persons, facilities, and/or places specified in the instant application, should be searched. Where a search of state and/or local law enforcement ELSUR records is requested, the request should include a point of contact from the outside agency, if known.

B) (U) If there is reason to believe that any of the persons, facilities, and/or places specified in the current application have been the target of Title III electronic surveillance by another federal agency, that agency must be requested to conduct an ELSUR search of its records.

**H.2.1.4 (U) HOW TO INITIATE A SEARCH REQUEST**

(U) Form FD-940 (Pre-Title III ELSUR Search Request) is used for requesting pre-Title III ELSUR searches of the ERS of the FBI and any other federal, state, or local law enforcement agency. Each search request should state whether it is for:

A) (U) An initial search, first filing;

B) (U) An initial search of newly named persons, facilities, and/or places for an extension;

C) (U) An initial search of newly named persons, facilities, and/or places for a "spin-off" wiretap;  
or

D) (U) A 120-calendar day search (recheck) for a continuing wiretap.

(U) The form is designed to assist personnel requesting a search by guiding them through the process. Use of the form will ensure search requirements are met.

(U) If an emergency situation exists, as defined by 18 U.S.C. § 2518(7), an ELSUR search may be requested telephonically to the field office EOT.

#### H.2.1.4.1 (U) SEARCH PROCEDURE

(U) Documentation confirming the conduct of all pre-Title III ELSUR searches must be uploaded and filed in the investigative file or the corresponding ELSUR Administrative (ELA) Subfile.

- 1) (U) If there was a previous application, include all relevant information concerning such application in the affidavit in support of the current application. Identify the persons, facilities, and/or places named, the method(s) of interception sought, the date the order was granted or denied, the court that issued or denied the order, the name of the authorizing or denying judge, the judicial district in which the application was filed, and the relevance, if any, of the previous application to the current investigation.
- 2) (U) Sample proposed affidavit language when previous applications have been filed:  
"John Doe was named in a previous application for an order authorizing the interception of wire and electronic communications. The order was signed on (date), by U.S. District Judge (name), of the District of (State), authorizing the interceptions for a period of thirty (30) days. An extension of the order was signed by Judge (name) on (date), authorizing the continued interception for an additional 30-day period." (Include relevance, if any, of the previous applications to the current investigation).

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**H.2.1.6 (U) DOCUMENTATION**

- A) (U) Agents must provide a copy of the following to the field offices's ELSUR Operations Technician (EOT):
- 1) (U) signed application, order and supporting affidavit;
  - 2) (U) completed CDC Checklist (FD-926);
  - 3) (U) EC signed by the appropriate approving official (SAC or designee or appropriate HQ official) documenting approval to seek court authorization for the Title III application; and
  - 4) (U) DOJ Memorandum directed to the AUSA entitled "Authorization for Interception Order Application."
- B) (U) The EOT and the ELSUR supervisor are responsible for confirming that ELSUR searches were properly conducted as set forth in the final applications submitted to the court. Because this review is not conducted until after the application and order have been submitted to the court, the SA and SSA are responsible for verifying that all required ELSUR searches have been conducted prior to submission of the application and affidavit to the court. The EOT is responsible for forwarding a copy of each final application, the SAC or HQ approving EC, and the DOJ Memorandum via Title III Cover Sheet to the Policy and Compliance Unit (PACU) of the Records Management Division (RMD) immediately upon the entry of Principal and Proprietary Interest Records into the ERS.
- C) (U) Macro EC Form FD-940 (Pre Title III ELSUR Search Request) must be used when requesting a search of any federal, state, or local law enforcement agency's ELSUR Records System (ERS), including the FBI's. When an Agent requests a search of a state or local law enforcement agency's records, the macro will produce an "auxiliary" letter simultaneously. The auxiliary letter will include only that information necessary to conduct the local search and should be disseminated by the field office to the respective state or local agency.
- D) (U) All requests for ELSUR searches must be uploaded and filed in the corresponding ELSUR Administrative (ELA) Subfile and submitted with adequate time for the EOT to conduct the search and document the results. It is the responsibility of the affiant and the affiant's supervisor to ensure that all ELSUR checks have been properly completed prior to submission of the application and affidavit to the court.

## **APPENDIX I: (U) ACCESSING STUDENT RECORDS MAINTAINED BY AN EDUCATIONAL INSTITUTION (“BUCKLEY AMENDMENT”)**

### **I.1 (U) SUMMARY**

(U) The Family Educational Rights and Privacy Act (FERPA) of 1974 (20 U.S.C. § 1232g, as amended by Public Law 107-56 (USA Patriot Act)), commonly referred to as the “Buckley Amendment,” restricts the ability of educational agencies or institutions (collectively “schools”) to release educational records or personally identifiable information contained in such records without the consent of the student or the student’s parent.

(U) FERPA defines “education records” as those records, files, documents and other materials which:

- A) (U) contain information directly related to a student; and
- B) (U) are maintained by an educational agency or institution or by a person acting for such agency or institution. (20 U.S.C. § 1232g(a)(4)(A)(i)).

(U//FOUO) If operationally feasible, FBI employees should request the consent of the student or parent, as appropriate, in order to obtain covered records. During an Assessment, the FBI may ask school officials to provide certain information without the consent of the student or parent (see Section 18.5.6); during a Predicated Investigation, the FBI may compel production of education records, as set forth below.

### **I.2 (U//FOUO) ACCESSING STUDENT INFORMATION OR RECORDS DURING AN ASSESSMENT**

(U//FOUO) During an Assessment, FBI employees may seek **voluntary disclosure** of certain student records and information about students from schools without the consent of the student or parent.

#### **I.2.1 (U) DIRECTORY INFORMATION**

(U//FOUO) “Directory information” is information contained in an education record of a student “that would not generally be considered harmful or an invasion of privacy.” (34 C.F.R. § 99.3) Specifically, “directory information” includes, but is not limited to: the student’s name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate, full-time or part-time), participation in officially recognized activities or sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended. A school may disclose “directory information” from its records without prior consent if: (1) it has a directory information policy to disclose such information and (2) it has provided its students notice of the policy and the opportunity to opt out of having “directory information” disclosed. (See 34 C.F.R. § 99.37)

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(U//FOUO) The scope of information that can be released as directory information may be narrowed by the school. For instance, if a college chooses not to categorize students' names and addresses as directory information, it must not voluntarily disclose such information to the FBI (*Krauss v. Nassau Community College*, 469 N.Y.S. 2d 553 (N.Y. Sup. 1983)). Schools are also required to afford students (or parents, if the student is under 18) the opportunity to prohibit the release of directory information without their prior consent (or a court order). *Note*: the Buckley Amendment *permits* schools to release directory information (absent an objection from the student); it does *not require* them to do so. Directory information may be sought orally or in writing.

### **1.2.2 (U) OBSERVATIONS**

(U//FOUO) FERPA governs the release of educational records. It does not govern the release of information gathered by a school official, based on his or her own observations. Accordingly, notwithstanding Buckley, a school official may disclose activity or behavior observed by the official.

### **1.2.3 (U) LAW ENFORCEMENT UNIT RECORDS**

(U//FOUO) Under FERPA, schools may disclose information from "law enforcement unit records" without the consent of the parent or student. This exemption is limited to records that a law enforcement unit of a school creates and maintains for a law enforcement purpose. "Law enforcement record" is narrowly defined as a record that is: (i) created by the law enforcement unit; (ii) created for a law enforcement purpose; and (iii) maintained by the law enforcement unit. (34 C.F.R. § 99.8(b)) If another component of the school discloses a student education record to the school's law enforcement unit, that record is not a "law enforcement unit record" because it was not *created* by the law enforcement unit. Thus, a law enforcement unit cannot disclose, without student consent, information obtained from education records created by other component of the school, even if the record has been shared with the law enforcement unit.

### **1.2.4 (U) HEALTH OR SAFETY EMERGENCY**

(U//FOUO) FERPA does not restrict the disclosure of educational records in connection with a health or safety emergency. The regulations provide that schools may disclose information from an education record "to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals" and that the exception is to be "strictly construed." As is the case with other emergency disclosure provisions (see 18 U.S.C. § 2702), it is up to the school to determine in the first instance whether disclosure is necessary to protect the health or safety of the student or another individual. If it makes that determination, it is permitted to disclose educational records voluntarily and without the consent of the student or parent.

### **1.2.5 (U) NON-STUDENTS**

(U//FOUO) FERPA governs records of "students." A "student" is defined as a person on whom a school maintains educational records or personally identifiable information but does not include someone who has not attended that school. Files retained on rejected applicants may be provided without prior permission or notification. (*Tarka v. Franklin*, 891 F.2d 102 (5<sup>th</sup> Cir. 1989))



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**I.3 (U//FOUO) ACCESSING STUDENT INFORMATION OR RECORDS IN PREDICATED INVESTIGATIONS**

(U//FOUO) In addition to seeking voluntary production of records that can be voluntarily produced (see I.2 above), in a Predicated Investigation, FBI employees may **compel production** of education records without notice to the student or the student's parents as follows:

**I.3.1 (U) FEDERAL GRAND JURY SUBPOENA**

(U//FOUO) Schools shall disclose education records in response to a federal grand jury subpoena. In addition, the court may order the institution not to disclose to anyone the existence or contents of the subpoena or the institution's response. If the court so orders, then neither the prior notification requirements of 34 C.F.R. § 99.31(a)(9) nor the recordation requirements at 34 C.F.R. § 99.32 would apply (see DIOG Section 18.6.5).

**I.3.2 (U) ADMINISTRATIVE SUBPOENAS**

(U//FOUO) Schools may disclose education records in response to an administrative subpoena. Administrative subpoenas may be issued in narcotics investigations (see DIOG Section 18.6.4.3.2.1), sexual exploitation or abuse of children investigations (see DIOG Section 18.6.4.3.2.2), and health care fraud investigations (see DIOG Section 18.6.4.3.2.3). As with federal grand jury subpoenas, the issuing agency may, for good cause shown, direct the school not to disclose the existence or contents of the subpoena or the institution's response. If the subpoena includes a nondisclosure directive, the school is permitted to request a copy of the good cause determination.

**I.3.3 (U) FISA ORDER FOR BUSINESS RECORDS**

(U//FOUO) See DIOG Section 18.6.7.

**I.3.4 (U) EX PARTE ORDERS**

(U//FOUO) The USA Patriot Act amended FERPA to permit schools to disclose personally identifiable information from the student's education records to the Attorney General or his designee without the consent or knowledge of the student or parent in response to an *ex parte* order issued in connection with a terrorism investigation. Such disclosures are also exempt from the Buckley Act requirements that disclosure of information from a student's records be documented in the student's file.

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## APPENDIX J: (U) INVESTIGATIVE FILE MANAGEMENT AND INDEXING

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### J.1 (U) INVESTIGATIVE FILE MANAGEMENT

#### J.1.1 (U) OFFICE OF ORIGIN (OO)

(U//FOUO) Generally, the Office of Origin (OO) is determined by:

- A) (U//FOUO) The residence, location or destination of the subject of the investigation;
- B) (U//FOUO) The office in which a complaint is first received;
- C) (U//FOUO) The office designated by FBIHQ as OO in any investigation;
- D) (U//FOUO) The office in which the Foreign Police Cooperation investigation is opened (163 classification);
- E) (U//FOUO) The office in which the Domestic Police Cooperation investigation is opened (343 classification);
- F) (U//FOUO) The office in which the recovery of the vehicle occurred in an Interstate Transportation of Stolen Motor Vehicles (ITSMV) investigations;
- G) (U//FOUO) The office in which the contempt of court occurred;
- H) (U//FOUO) The office in which there is a violation of an order, judgment, or decree issued from any judicial district in an FBI civil Racketeer Influenced and Corrupt Organizations (RICO) investigation;
- I) (U//FOUO) The office in which the subject was convicted in investigations involving parole, probation, and mandatory release violators;
- J) (U//FOUO) The office in which the escape occurred, in Escaped Federal Prisoner and escaped deserter investigations;
- K) (U//FOUO) The New York Field Office in courier investigations;
- L) (U//FOUO) FBIHQ in all applicant, Background Investigation - Pardon Attorney's Office (73 classification) investigations;
- M) (U//FOUO) FBIHQ in OPM security referral (140A and 140C classification) investigations;
- N) (U//FOUO) FBIHQ, Counterterrorism Division (CTD), Counterterrorism Watch Unit in all Counterterrorism Major Cases (900 classification);
- O) (U//FOUO) FBIHQ, Critical Incident Response Group (CIRG) in all National Center for the Analysis of Violent Crime (NCAVC) cases (252A through 252E classifications); and
- P) (U//FOUO) FBIHQ, Office of Professional Responsibility (OPR) in OPR investigations (263 classification).

(U//FOUO) When special circumstances exist, however, the origin may be assumed by the field office which has the most compelling interest. Uncertainties and disagreements must be resolved by the appropriate FBIHQ operational division.

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**J.1.2 (U) INVESTIGATIVE LEADS AND LEAD OFFICE (LO)**

(U//FOUO) Leads are sent by EC, or successor document (hereafter referred to as EC), to offices and assigned to individuals/organizations in order to aid investigations. When the OO sets a lead to another office, that office is considered a Lead Office (LO).

(U//FOUO) There are only two types of investigative leads: "Action Required" and "Information Only."

**J.1.2.1 (U) ACTION REQUIRED LEAD**

(U//FOUO) An action required lead must be used if the sending office requires the receiving LO to take some type of investigative action.

(U//FOUO) An action required lead may only be set by EC out of an open investigative file, including an:

- A) (U) Assessment file, including a zero sub-assessment file;
- B) (U) Predicated Investigation file;
- C) (U) pending inactive investigation file; or
- D) (U) unaddressed work file.

(U//FOUO) An action required lead cannot be set out of a closed investigative file, a zero (0) or double zero (00) file.

(U//FOUO) An action required lead must be assigned, and it must be covered before the underlying investigation has been completed/closed.

**J.1.2.2 (U) INFORMATION ONLY LEAD**

(U//FOUO) An information only lead must be used when no specific action is required or necessary from the receiving LO.

(U//FOUO) An information only lead may be set by EC out of an opened or closed investigative file, including a:

- A) (U) zero (0) file;
- B) (U) double zero (00) file;
- C) (U) Assessment file, including a zero sub-assessment file;
- D) (U) Predicated Investigation file;
- E) (U) pending inactive investigation file; or
- F) (U) unaddressed work file.

(U//FOUO) An information only lead does not have to be assigned in order to be covered, and they can be covered while they are in the "Set" status.

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**J.1.3 (U) OFFICE OF ORIGIN'S SUPERVISION OF CASES**

(U//FOUO) The OO is responsible for proper supervision of Assessments and investigations in its own territory and being conducted in a LO. The FBI employee, usually an FBI Special Agent, to whom an investigation is assigned, is often referred to as the "Case Agent." An FBI employee is personally responsible for ensuring all logical investigation is initiated without undue delay, whether the employee is assigned in the OO or in an LO; this includes setting forth [REDACTED] [REDACTED] leads as appropriate for other offices or other FBI employees in his/her own office. The OO Case Agent has overall responsibility for supervision of the investigation. When an LO has a delayed or delinquent investigation, it is the responsibility of the OO Case Agent to notify the LO (orally or in writing by email or EC, depending on the urgency of the situation) of its delinquency.

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**J.1.4 (U) INVESTIGATION AND OTHER FILES**

(U//FOUO) There are several types of non-investigative files used in the FBI, including zero files, double zero files, administrative files, and control files. Additionally, there are several types of investigative files used in the FBI, including [REDACTED] Preliminary Investigation files, Full Investigation files, Full Enterprise Investigation files, positive foreign intelligence Full Investigation files, and unaddressed work files. FBI files may be opened, closed, or placed in pending inactive status as specified below. Note that in each of these files, all communications related to previous communication must note the existing communication's ACS, or successor case management system, and Universal Index serial numbers in the reference fields.

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(U//FOUO) Certain records may be restricted based on the classification of the records, e.g., on the sensitivity of the investigation. See the Corporate Policy Directive 243D, dated October 13, 2009.

(U//FOUO) The types of files are:

**J.1.4.1 (U) [REDACTED]**

(U//FOUO) [REDACTED]

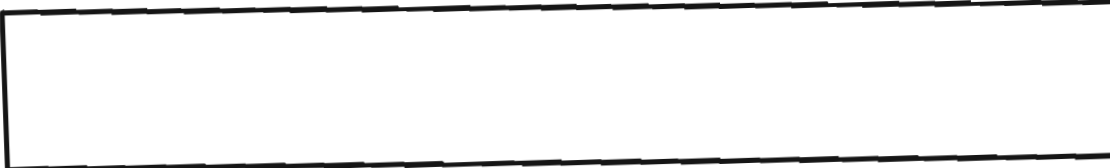
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**J.1.4.2 (U) DOUBLE ZERO "OO" FILES**

(U//FOUO) Double Zero files may be opened in all file classifications. Double Zero files may contain documentation, such as instructions, policy, statutes, and decisions applicable to the classification, that do not require investigation. The documents contained within a double zero file must be serialized. [REDACTED] [REDACTED] [REDACTED]

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**J.1.4.3 (U) ADMINISTRATIVE "A" FILES**

(U//FOUO) Administrative files may be used only for administrative purposes; they may not be used for investigative purposes. Administrative files may be used for documenting non-investigative matters, such as training matters (1 classification), administrative matters (319 classification), personnel files (67 classification), etc. **Note: Investigative activity may not be documented in an administrative file.** Administrative files are designated with the letter "A" before the case number, e.g., 319X-HQ-A12345.

(U//FOUO) Administrative (non-investigative) Leads may be assigned out of administrative files. When referring to the file number of an administrative file in communications, the file number must include the letter "A" as part of the case number to indicate the file is an administrative file.

**J.1.4.4 (U) CONTROL "C" FILES**

(U//FOUO) Control files are separate files established for the purpose of administering investigative programs. Control files are opened at the discretion of the individual responsible the investigative program. Control files may be opened in all classifications.

(U//FOUO) Like administrative files, control files may be used only for administrative purposes. Control files may be used for documenting program management communications, policy pronouncements, technical or expert assistance to another law enforcement or intelligence agency, or other administrative/managerial functions. Administrative/managerial functions could include liaison contacts, training exercises, training received/provided, etc. **Note: Investigative activity may not be documented in a control file.** Administrative (non-investigative) leads can be assigned out of control files.

(U//FOUO) Control files are designated with the letter "C" before the case number, e.g., 29B-NF-C4456. When referring to the file number of a control file in communications, the file number must include the letter "C" as part of the case number to indicate the file is a control file.

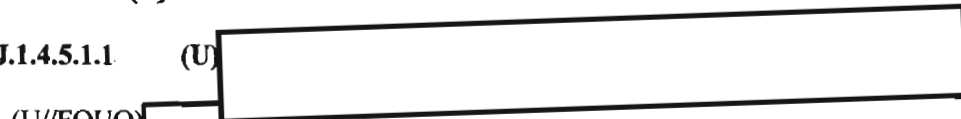
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**J.1.4.5 (U) INVESTIGATIVE FILES**

**J.1.4.5.1 (U) ASSESSMENT FILES**

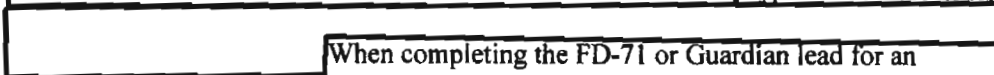
**J.1.4.5.1.1 (U)**

(U//FOUO)



Type 1 & 2 Assessments

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When completing the FD-71 or Guardian lead for an

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Assessment involving a sensitive investigative matter, [REDACTED]

(U//FOUO) [REDACTED] can be set when using a [REDACTED]

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(U//FOUO) Guardian may be used only for documenting those Assessments described in DIOG Section 5.6.3.1 regarding [REDACTED]

[REDACTED] The FD-71 or EC must be used to [REDACTED]

[REDACTED] Both Guardian and the FD-71 provide the ability to set action leads.

**J.1.4.5.1.2 (U) INVESTIGATIVE CLASSIFICATION ASSESSMENT FILES (FOR TYPE 3, 4 AND 6 ASSESSMENTS) AND POTENTIAL CHS FILES (FOR TYPE 5 ASSESSMENTS)**

(U//FOUO) See DIOG Section 5 for the appropriate investigative file classification to be used when opening a Type 3, 4, 5, or 6 Assessment file.

(U//FOUO) Because these Assessments require prior supervisory approval, the file must begin with an opening EC (DIOG Section 5.6.3.2 through 5.6.3.5 type Assessments as discussed above).

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**J.1.4.5.2 (U) PRELIMINARY AND FULL INVESTIGATION (PREDICATED) FILES**

(U//FOUO) A Preliminary Investigation, Full Investigation, Full Enterprise Investigation, and Full Positive Foreign Intelligence Investigation must be initiated as discussed in DIOG Sections 6, 7, 8, and 9, respectively. Investigative information related to these investigations must be placed in the investigative file, spun-off, or referred to another agency as authorized.

**J.1.4.5.3 (U) PENDING/INACTIVE FULL INVESTIGATION FILES**

(U//FOUO) A Full Investigation may be placed in a pending-inactive status when all investigation has been completed and only prosecutive action or other disposition remains to be determined and reported, e.g., locating a fugitive outside the United States. [REDACTED]

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[REDACTED] A pending-inactive Full Investigation may be assigned to investigative personnel or a squad/unit.

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**J.1.4.5.4 (U) UNADDRESSED WORK FILES**

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(U//FOUO)



(U//FOUO)



(U//FOUO) The FD-71 provides a mechanism to assign an Assessment to an Unaddressed Work file. In the FD-71, the Supervisor must select a reason for assigning the matter to the Unaddressed Work file and choose the appropriate classification. Upon uploading the FD-71, a new Unaddressed Work file will be opened. Guardian (FD-71a) does not have an “Unaddressed Work” option because Guardian leads cannot be placed in an Unaddressed Work status.

**J.1.4.5.5 (U) SPIN OFF INVESTIGATION FILES**

(U//FOUO) A spin-off investigation originates from an existing investigation. The spin-off investigation must have all the elements required to establish it as a separate investigation within the appropriate investigative classification.



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**J.2 (U) INDEXING - THE ROLE OF INDEXING IN THE MANAGEMENT OF FBI INFORMATION**

(U//FOUO) The text of FBI-generated documents must be uploaded into the Electronic Case File (ECF) component of the ACS system to be searchable, retrievable, and sharable through automated means. A full text search of the ACS system's ECF identifies only information that is available electronically and does not search for information that may be contained in the FBI's paper records. Because some records are not uploaded into ACS, all records must also be indexed. Even if a document is uploaded into ACS it must be indexed. While the full text of uploaded documents can be electronically searched, many records checks are performed using the Universal Index (UNI), a sub-component of ACS, rather than a text search of ECF.

(U//FOUO) The purpose of indexing is to record individual's names; non-individual's names, such as corporations; and property which are relevant to FBI investigations so that this information can be retrieved, if necessary. The most common use of UNI is to respond to executive branch agencies' request name searches as part of their investigations to determine suitability for employment, trustworthiness for access to classified information and eligibility for certain government benefits. If employees do not properly index names and places that arise in FBI investigations, the FBI could provide erroneous information to other federal agencies. Further advice about how to index and what should be indexed can be found on the RMD webpage.

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**APPENDIX K: (U) MAJOR CASES**

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(U) (Note: The policy for Major Cases was not completed by the time of the DIOG publication. It will be linked in the DIOG once approved.)

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## **APPENDIX L: (U) ON-LINE INVESTIGATIONS**

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(U) (Note: The policy for On-Line Investigations was not completed by the time of the DIOG publication. It will be linked in the DIOG once approved.)

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**APPENDIX M: (U) THE FAIR CREDIT REPORTING ACT (FCRA)**

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(U) (Note: The policy for The Fair Credit Reporting Act was not completed by the time of the DIOG publication. It will be linked in the DIOG once approved.)

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**APPENDIX N: (U) TAX RETURN INFORMATION**

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(U) (Note: The policy for Tax Return Information was not completed by the time of the DIOG publication. It will be linked in the DIOG once approved.)

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**APPENDIX O: (U) RIGHT TO FINANCIAL PRIVACY ACT (RFPA)**

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(U) (Note: The policy for the Right to Financial Privacy Act was not completed by the time of the DIOG publication. It will be linked in the DIOG once approved.)

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**APPENDIX P: (U) ACRONYMS**

A/EAD	Associate Executive Assistant Director
ACS	Automated Case Support
AD	Assistant Director
ADD	Associate Deputy Director
ADIC	Assistant Director-in-Charge
AFID	Alias False Identification
AG	Attorney General
AGG	Attorney General Guidelines
AGG-CHS	Attorney General Guidelines Regarding the Use of FBI Confidential Human Sources
AGG-Dom	Attorney General's Guidelines for Domestic FBI Operations
AGG-UCO	The Attorney General's Guidelines on FBI Undercover Operations
AOR	Area of Responsibility
ARS	Assessment Review Standards
ASAC	Assistant Special Agent in Charge
ASC	Assistant Section Chief
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
AUSA	Assistant United States Attorney
CALEA	Communications Assistance for Law Enforcement Act
CCRSB	Criminal Cyber Response and Services Branch

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CD	Counterintelligence Division
CDC	Chief Division Counsel
C.F.R.	Code of Federal Regulations
CHS	Confidential Human Source
CHSPG	Confidential Human Source Policy Implementation Guide
CIA	Central Intelligence Agency
CID	Criminal Investigative Division
CMS	Collection Management Section
CPO	Corporate Policy Office
CUORC	Criminal Undercover Operations Review Committee
CyD	Cyber Division
DAD	Deputy Assistant Director
DD	Deputy Director
DEA	Drug Enforcement Administration
DGC	Deputy General Counsel
DI	Directorate of Intelligence
DLAT	Deputy Legal Attache
DNI	Director of National Intelligence
DOD	Department of Defense
DOJ	Department of Justice
DOJ OEO	Office of Enforcement Operations, DOJ

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DOS	Department of State
DPO	Division Policy Officer
EAD	Executive Assistant Director
EC	Electronic Communication
ECF	Electronic Case File
ECPA	Electronic Communication Privacy Act
ECS	Electronic Communication Service
EI	Enterprise Investigation
ELSUR	Electronic Surveillance
EO	Executive Order
EOT	ELSUR Operations Technician
ERS	ELSUR Records System
ESN	Electronic Serial Number
ESU	DOJ OEO, Electronic Surveillance Unit
ETR	Electronic Technical Request
FBIHQ	FBI Headquarters
FGJ	Federal Grand Jury
FGUSO	Field Guide for Undercover and Sensitive Operations
FICP	Foreign Intelligence Collection Program
FIG	Field Intelligence Group

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FISA	Foreign Intelligence Surveillance Act
FISC	Foreign Intelligence Surveillance Court
FRCP	Federal Rules of Criminal Procedure
GC	General Counsel
HIPAA	Health Insurance Portability and Accountability Act
HSC	Homeland Security Council
ICE	Department of Homeland Security Immigration and Customs Enforcement
ICM	Investigative Case Management
IINI	Innocent Images National Initiative
ILB	Investigative Law Branch
ILU	Investigative Law Unit
IOB	Intelligence Oversight Board
IOD	International Operations Division
IP Address	Internet Protocol Address
IPG	Intelligence Policy Implementation Guide
ISP	Internet Service Provider
ITSMV	Interstate Transportation of Stolen Motor Vehicles
JDA	Juvenile Delinquency Act
JTTF	Joint Terrorism Task Force

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LEGAT	Legal Attaché
LHM	Letterhead Memorandum
LO	Lead Office
MAR	Monthly Administrative Report
MLAT	Mutual Legal Assistance Treaties
MOU/MOA	Memorandum of Understanding/Agreement
MSIN	Mobile Station Identification Number
MST	Mobile Surveillance Team
MST-A	Mobile Surveillance Team—Armed
NARA	National Archives and Records Administration
NCMEC	National Center for Missing and Exploited Children
NISS	National Information Sharing Strategy
NSB	National Security Branch
NSC	National Security Council
NSD	National Security Division, DOJ
NSL	National Security Letter
NSLB	National Security Law Branch
NSSE	National Special Security Events
NSUCOPG	National Security Undercover Operations Policy Implementation Guide
OCA	Office of Congressional Affairs
OCRS	Organized Crime and Racketeering Section, DOJ

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OGC	Office of the General Counsel
OIA	Otherwise Illegal Activity
OIC	Office of Integrity and Compliance
OIO	Office of Operations, DOJ
OLC	Office of Legal Counsel, DOJ
OO	Office of Origin
OPA	Office of Public Affairs
OTD	Operational Technology Division
PBDM	Pattern Based Data Mining
PCHS	Potential CHS
PCLU	Privacy and Civil Liberties Unit
PCTDD	Post Cut-through Dialed Digits
PFI	Positive Foreign Intelligence
PG	Policy Implementation Guide
PI	Preliminary Investigation
PIA	Privacy Impact Assessment
PIAB	President's Intelligence Advisory Board
PSA	Performance Summary Assessments
PTA	Privacy Threshold Analysis
RA	Resident Agency

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RF	Radio Frequency
RFPA	Right to Financial Privacy Act
RICO	Racketeer Influenced and Corrupt Organizations
RIG	Regional Intelligence Group
RMD	Records Management Division
SA	Special Agent
SAC	Special Agent-in-Charge
SC	Section Chief
SIA	Supervisory Intelligence Analyst
SIM	Sensitive Investigative Matter
SORC	Sensitive Operations Review Committee
SSA	Supervisory Special Agent
SSRA	Supervisory Senior Resident Agent
TFM	Task Force Member
TFO	Task Force Officer
TFP	Task Force Participant
TMD	Technical Management Database
TTA	Technically Trained Agent
UC	Unit Chief
UCE	Undercover Employee
UCFN	Universal Case File Number

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UCO	Undercover Operation
UCRC	Undercover Review Committee
UDP	Undisclosed Participation
UNI	Universal Index
USA	United States Attorney
USAO	United States Attorney's Office
U.S.C.	United States Code
USG	United States Government
USIC	United States Intelligence Community
USIC	United States Intelligence Community
USIC	United States Intelligence Community
USPER	United States Person, United States Persons, US PER, USPERs, US Person, US Persons, U.S. Person, U.S. Persons
USPS	United States Postal Service
USSS	United States Secret Service
VICAP	Violent Criminal Apprehension Program
VS	Victim Services
WITT	Wireless Intercept Tracking Technology
WMD	Weapons of Mass Destruction
WMDD	Weapons of Mass Destruction Directorate

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## APPENDIX Q: (U) DEFINITIONS

**(U//FOUO) Academic Nexus SIM:** [REDACTED]

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**(U) Aggrieved Person:** [REDACTED]

**(U//FOUO) Assessments:** The AGG-Dom authorizes as an investigative activity called an "Assessment" which requires an authorized purpose and articulated objective(s). The DIOG defines five types of Assessments that may be carried out to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence. Although "no particular factual predication" is required, the basis of an assessment cannot be arbitrary or groundless speculation, nor can an Assessment be based solely on the exercise of First Amendment protected activities or on the race, ethnicity, national origin or religion of the subject, or a combination of only those factors.

**(U//FOUO) Closed Circuit Television (CCTV):** a fixed-location video camera that is typically concealed from view or that is placed on or operated by a consenting party.

**(U) Consensual Monitoring:** Monitoring of communications for which a court order or warrant is not legally required because of the consent of a party to the communication.

**(U) Electronic Communication Service:** Any service that provides to users thereof the ability to send or receive wire or electronic communications. For example, telephone companies and electronic mail companies generally act as providers of electronic communication services.

**(U) Electronic Communications System:** Any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.

**(U) Electronic Storage:** Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof, or any storage of such communication by an electronic communication service for purposes of backup protection of such communication. In short, "electronic storage" refers only to temporary storage, made in the course of transmission, by a provider of an electronic communication service.

**(U//FOUO) Electronic Tracking Device:** [REDACTED]

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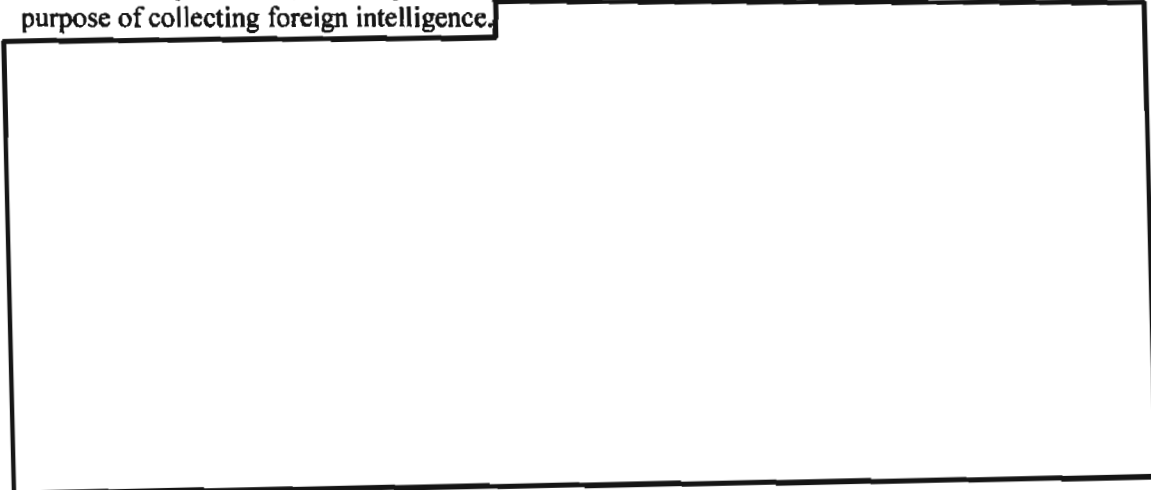
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**(U//FOUO) Employee:** For purposes of the AGG-Dom and DIOG, an “FBI employee” includes, but not limited to, an operational/administrative professional support person, intelligence analyst, special agent, task force officer (TFO), task force member (TFM), task force participant (TFP), detailee, and FBI contractor. An FBI employee is bound by the AGG-Dom and DIOG. The FBI employee definition excludes a confidential human source (CHS).

**(U//FOUO) Enterprise:** The term “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

**(U//FOUO) Enterprise Investigation:** An Enterprise Investigation (EI) examines the structure, scope, and nature of the group or organization including: its relationship, if any, to a foreign power; the identity and relationship of its members, employees, or other persons who may be acting in furtherance of its objectives; its finances and resources; its geographical dimensions; its past and future activities and goals; and its capacity for harm. (AGG-Dom, Part II.C.2)

**(U//FOUO) Enterprise Investigations** are a type of Full Investigation and are subject to the same requirements that apply to full investigations described in Section 7. Enterprise Investigations focus on groups or organizations that may be involved in the most serious criminal or national security threats to the public, as described in Section 8. Enterprise Investigations cannot be conducted as preliminary investigations or assessments, nor may they be conducted for the sole purpose of collecting foreign intelligence.



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**(U//FOUO) Extraterritorial Guidelines:** The guidelines for conducting investigative activities outside of the United States are currently contained in: (i) *The Attorney General's Guidelines for Extraterritorial FBI Operations and Criminal Investigations*; (ii) *The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection*; and (iii) *The Attorney General Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions* (collectively, the Extraterritorial Guidelines); (iv) *The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations* (August 8, 1988); and (v) the *Memorandum of Understanding*

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*Concerning Overseas and Domestic Activities of the Central Intelligence Agency and the Federal Bureau of Investigation (2005).*

**(U//FOUO) FISA:** The Foreign Intelligence Surveillance Act of 1978, as amended. The law establishes a process for obtaining judicial approval of electronic surveillance, physical searches, pen register and trap and trace devices, and access to certain business records for the purpose of collecting foreign intelligence.

**(U) For or On Behalf of a Foreign Power:** The determination that activities are for or on behalf of a foreign power shall be based on consideration of the extent to which the foreign power is involved in control or policy direction; financial or material support; or leadership, assignments, or discipline.

**(U) Foreign Computer Intrusion:** The use or attempted use of any cyber-activity or other means, by, for, or on behalf of a foreign power to scan, probe, or gain unauthorized access into one or more United States-based computers.

**(U) Foreign Intelligence:** Information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons, or international terrorists.

**(U) Foreign Intelligence Requirements:**

- A) (U//FOUO) National intelligence requirements issued pursuant to authorization by the Director of National Intelligence, including the National Intelligence Priorities Framework and the National HUMINT Collection Directives, or any successor directives thereto;
- B) (U//FOUO) Requests to collect foreign intelligence by the President or by Intelligence Community officials designated by the President; and
- C) (U//FOUO) Directions to collect foreign intelligence by the Attorney General, the Deputy Attorney General, or an official designated by the Attorney General.

**(U) Foreign Power:** A foreign government or any component thereof, whether or not recognized by the United States; a faction of a foreign nation or nations, not substantially composed of United States persons (USPERs); an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments; a group engaged in international terrorism or activities in preparation therefore; a foreign-based political organization, not substantially composed of USPERs; or an entity that is directed or controlled by a foreign government or governments.

**(U) Full Investigation:** A Full Investigation may be opened if there is an “articulable factual basis” for the investigation that reasonably indicates one of the following circumstances exists:

(U) An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity;

- A) (U) An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the

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investigation may obtain information that would help to protect against such activity or threat;  
or

B) (U) The investigation may obtain foreign intelligence that is responsive to a PFI requirement, as defined in DIOG Section 7.4.3.

(U) All lawful investigative methods may be used in a Full Investigation.

(U) A Full Investigation of a group or organization may be opened as an Enterprise Investigation if there is an articulable factual basis for the investigation that reasonably indicates the group or organization may have engaged, or may be engaged in, or may have or may be engaged in planning or preparation or provision of support for:

A) (U) Racketeering Activity:

1) (U) A pattern of racketeering activity as defined in 18 U.S.C. § 1961(5);

B) (U) International Terrorism:

1) (U) International terrorism, as defined in the AGG-Dom, Part VII.J, or other threat to the national security;

C) (U) Domestic Terrorism:

1) (U) Domestic terrorism as defined in 18 U.S.C. § 2331(5) involving a violation of federal criminal law;

2) (U) Furthering political or social goals wholly or in part through activities that involve force or violence and a violation of federal criminal law; or

3) (U) An offense described in 18 U.S.C. § 2332b(g)(5)(B) or 18 U.S.C. § 43.

**(U) Human Source:** A Confidential Human Source as defined in the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources.

**(U) Intelligence Activities:** Any activity conducted for intelligence purposes or to affect political or governmental processes by, for, or on behalf of a foreign power.

**(U) International Terrorism:** Activities that involve violent acts or acts dangerous to human life that violate federal, state, local, or tribal criminal law or would violate such law if committed within the United States or a state, local, or tribal jurisdiction; appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by assassination or kidnapping; and occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear to be intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

**(U//FOUO) National Security Letters:** an administrative demand for documents or records that can be made by the FBI during a predicated investigation relevant to a threat to national security. The standard for issuing an NSL, except under 15 U.S.C. § 1681v, is relevance to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person (USPER) is not predicated solely on activities protected by the First Amendment of the Constitution of the United States.



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[REDACTED]

**(U//FOUO) Operational Division or Operational Unit:** “Operational” division or operational unit as used in the DIOG means the FBIHQ division or unit responsible for management and program oversight of the file classification for the substantive investigative matter (i.e., Assessment or predicated investigation). Previously referred to as the FBIHQ “substantive” division or substantive unit.

**(U//FOUO) Pen Register Device:** Records or decodes dialing, routing addressing or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided that such information must not include the contents of any communication.

**(U//FOUO) Physical Surveillance (Not Requiring a Court Order):** The deliberate observation by an FBI employee of persons, places, or events, on either a limited or continuous basis, in areas where there is no reasonable expectation of privacy. Note: DIOG Section 18.5.8 makes a distinction between “casual observation” and physical surveillance, and specifies factors to be considered when determining whether a particular plan of action constitutes casual observation or physical surveillance. (See DIOG Section 18.5.8)

**(U) Preliminary Investigation:** A Preliminary Investigation is a type of predicated investigation authorized under the AGG-Dom that may be opened (predicated) on the basis of any “allegation or information” indicative of possible criminal activity or threats to the national security. Preliminary Investigations may be opened to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security.

[REDACTED]

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**(U) Proprietary:** A sole proprietorship, partnership, corporation, or other business entity operated on a commercial basis, which is owned, controlled, or operated wholly or in part on behalf of the FBI, and whose relationship with the FBI is concealed from third parties.

**(U) Provider of Electronic Communication Services:** Any service that provides the user thereof the ability to send or receive wire or electronic communications.

**(U) Publicly Available:** Information that has been published or broadcast for public consumption, is available on request to the public, is accessible on-line or otherwise to the public, is available to the public by subscription or purchase, could be seen or heard by any casual observer, is made available at a meeting open to the public, or is obtained by visiting any place or attending any event that is open to the public.

**(U) Records:** Any records, databases, files, indices, information systems, or other retained information.

**(U) Relevance:** Information is relevant if it tends to make a fact of consequence more or less probable.

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**(U//FOUO) Remote Computing Services:**

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**(U//FOUO) Sensitive Investigative Matter:** An investigative matter involving a domestic public official, domestic political candidate, religious or domestic political organization or individual prominent in such an organization, or news media, or an investigative matter having academic nexus, or any other matter which, in the judgment of the official authorizing an investigation, should be brought to the attention of FBIHQ and other DOJ officials.

**(U) Sensitive Monitoring Circumstance:** Investigation of a member of Congress, a federal judge, a member of the Executive Branch at Executive Level IV or above, or a person who has served in such capacity within the previous two years; (Note: Executive Levels I through IV are defined in 5 U.S.C. §§ 5312-5315.)

- A) (U) Investigation of the Governor, Lieutenant Governor, or Attorney General of any state or territory, or a judge or justice of the highest court of any state or territory, concerning an offense involving bribery, conflict of interest, or extortion related to the performance of official duties;
- B) (U) A party to the communication is in the custody of the Bureau of Prisons or the United States Marshals Service or is being or has been afforded protection in the Witness Security Program; or
- C) (U) The Attorney General, the Deputy Attorney General, or an Assistant Attorney General has requested that the FBI obtain prior approval for the use of consensual monitoring in a specific investigation.

**(U) Special Agent in Charge:** The Special Agent in Charge of an FBI field office (including an Acting Special Agent in Charge), except that the functions authorized for Special Agents in Charge by these Guidelines may also be exercised by the Assistant Director in Charge or by any Special Agent in Charge designated by the Assistant Director in Charge in an FBI field office headed by an Assistant Director, and by FBI Headquarters officials designated by the Director of the FBI.

**(U) Special Events Management:** Planning and conduct of public events or activities whose character may make them attractive targets for terrorist attack.

**(U) State, Local, or Tribal:** Any state or territory of the United States or political subdivision thereof, the District of Columbia, or Indian tribe.

**(U//FOUO) Surveillance:**

- A) (U//FOUO) **Electronic surveillance (ELSUR)** - under Title III and FISA is the non-consensual electronic collection of information (usually communications) under circumstances in which the parties have a reasonable expectation of privacy and court orders or warrants are required.

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[REDACTED]  
[REDACTED]

B) (U//FOUO) **Consensual monitoring of communications, including consensual computer monitoring, or electronic surveillance (ELSUR)** - where there is no reasonable expectation of privacy is permitted in Predicated Investigations. These methods usually do not require court orders or warrants unless they involve an intrusion into an area where there is a reasonable expectation of privacy or non-consensual monitoring of communications, but legal review is generally required to ensure compliance with legal requirements. [REDACTED]

[REDACTED]

(U//FOUO) **Physical surveillance** - is the deliberate observation by an FBI employee of persons, places, or events, on either a limited or continuous basis, in areas where there may or may not be a reasonable expectation of privacy. (See DIOG Section 18.5.8 for physical surveillance in situations not requiring a court order and a discussion of the distinction between physical surveillance and casual observation). Factors to consider in determining whether observations are casual observation or physical surveillance include: [REDACTED]

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(U) **Threat to the National Security:** International terrorism; espionage and other intelligence activities, sabotage, and assassination, conducted by, for, or on behalf of foreign powers, organizations, or persons; foreign computer intrusion; and other matters determined by the Attorney General, consistent with Executive Order 12333 or a successor order.

(U//FOUO) **Trap and Trace Device:** Captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing or signaling information reasonably likely to identify the source of a wire or electronic communication, provided that such information does not include the contents of any communication.

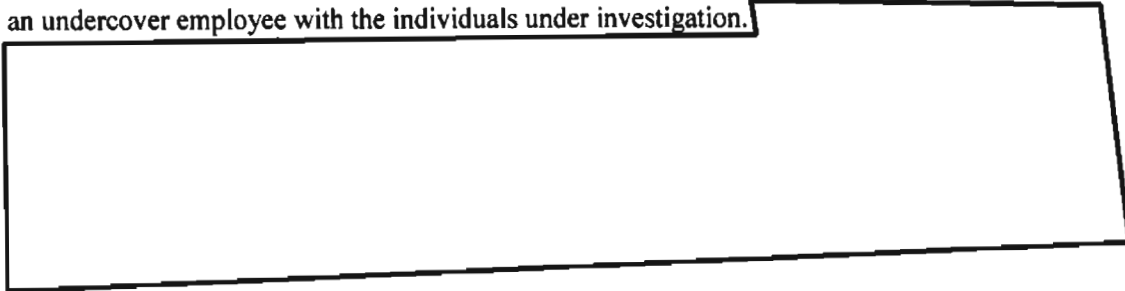
(U//FOUO) **Undercover Activity:** An “undercover activity” is any investigative activity involving the use of an assumed identity by an undercover employee for an official purpose, investigative activity, or function.

(U//FOUO) **Undercover Employee:** An employee of the FBI, another federal, state, or local law enforcement agency, another entity of the United States Intelligence Community (USIC), or another foreign intelligence agency working under the direction and control of the FBI whose relationship with the FBI is concealed from third parties by the maintenance of a cover or alias identity for an official purpose, investigative activity, or function.

(U//FOUO) **Undercover Operation:** An “undercover operation” is an operation that involves a series of related “undercover activities” over a period of time by an “undercover employee.” A

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series of related undercover activities consists of more than five separate substantive contacts by an undercover employee with the individuals under investigation.



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**(U) United States:** When used in a geographic sense, means all areas under the territorial sovereignty of the United States.

**(U) United States Person (USPER):** Any of the following, but not including any association or corporation that is a foreign power, defined as an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments:

- A) (U) An individual who is a United States citizen or an alien lawfully admitted for permanent residence;
- B) (U) An unincorporated association substantially composed of individuals who are United States persons (USPERs); or
- C) (U) A corporation incorporated in the United States.

(U) If a group or organization in the United States that is affiliated with a foreign-based international organization operates directly under the control of the international organization and has no independent program or activities in the United States, the membership of the entire international organization shall be considered in determining whether it is substantially composed of USPERs. If, however, the United States-based group or organization has programs or activities separate from, or in addition to, those directed by the international organization, only its membership in the United States shall be considered in determining whether it is substantially composed of USPERs. A classified directive provides further guidance concerning the determination of USPER status.

**(U) Use:** When used with respect to human sources, means obtaining information from, tasking, or otherwise operating such sources.

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**APPENDIX R: (U) SUPERCEDED DOCUMENTS AND NFIPM, MIOG,  
AND MAOP SECTIONS**

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(U//FOUO) This guide supersedes the following FBI policies and procedures:

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October 15, 2011

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DIOG Supersessions

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MIOG Intro	Section 2	2-2.5.1 Deleted	DIOG Preamble	DIOG Preamble
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MIOG Intro	Section 2	2-2.6.2 Deleted	DIOG Preamble	DIOG Preamble
MIOG Intro	Section 2	2-2.6.3 Deleted	DIOG Preamble	DIOG Preamble
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MIOG Intro	Section 2	2-2.7.1 Deleted	DIOG Preamble	DIOG Preamble
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MIOG II	Section 7	7-9.2 Complaints in Person or by Telephone		DIOG 18.5.6 and 5
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MIOG II	Section 10	10-6 MAIL COVERS		DIOG 18.6.10
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MIOG II	Section 10	10-6.2 Policy	DIOG 11.3	DIOG 18.6.10
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MIOG II	Section 10	10-7 STOP NOTICES		DIOG
MIOG II	Section 10	10-7.1 Definition		DIOG
MIOG II	Section 10	10-7.2 Placement of Stops		DIOG
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MIOG II	Section 10	10-7.5.1 Savings Bonds		DIOG
MIOG II	Section 10	10-7.5.2 Immigration and Naturalization Service (INS)		DIOG
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MIOG II	Section 10	10-8 STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS		DIOG 18.6.8
MIOG II	Section 10	10-8.1 Compelled Disclosure of the Contents of Stored Wire or Electronic Communications	DIOG 11.12	DIOG 18.6.8
MIOG II	Section 10	10-8.2 Access to Transactional Information		DIOG 18.6.8
MIOG II	Section 10	10-8.3 Access to and Use of Electronic Communications Located on the Internet, E-Mail, and Bulletin Board Systems		DIOG 18.6.8
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MIOG II	Section 10	10-9 ELECTRONIC SURVEILLANCE (ELSUR) PROCEDURES AND REQUIREMENTS	DIOG 11.12	DIOG 18.7.2
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MIOG II	Section 10	10-10.2.1 Access to Recordings and Information Concerning Monitored Inmate Telephone Calls in Federal Prisons	DIOG 11.5	DIOG 18.6.1 and 18.6.2
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MIOG II	Section 10	10-10.8 Use of Consensual Monitoring in National Security Matters	DIOG 11.5	DIOG 18.6.1 and 18.6.2
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MIOG II	Section 10	10-10.8 Electronic Tracking Devices	DIOG 11.6.3	DIOG 18.7.2
MIOG II	Section 10	10-10.9 Closed Circuit Television (CCTV) (Video Only) - Criminal Matters		DIOG 18.6.3
MIOG II	Section 10	10-10.9.1 CCTV Authorization - Criminal Matters		DIOG 18.6.3.4-5
MIOG II	Section 10	10-10.9.2 CCTV - ELSUR Records - Criminal Matters		DIOG 18.6.3
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MIOG II	Section 10	10-10.9.4 CCTV - Preservation of the Original Tape Recording		DIOG 18.6.3.7
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MIOG II	Section 10	10-19 HANDLING AND PRESERVATION OF AIRCRAFT-MOUNTED VIDEO AND EVIDENCE	DIOG 11.6.8	DIOG 18.6.3.8
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MIOG II	Section 12	12-2.1 Deadly Force - Standards for Decisions		DIOG has pdf of policy in Appendix F
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MIOG II	Section 16	16-4.1.3 Consensual Monitoring (Formerly 16-7.4.1)		Paragraphs # 3 and 4 only. DIOG 18.6.1
MIOG II	Section 16	16-4.1.4 Electronic Surveillance - Title III		DIOG 18.7.2
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MIOG II	Section 16	16-4.2.5 Roving Electronic Surveillance (RCU)		DIOG 18.7.2 and 18.7.3
MIOG II	Section 16	16-4.3 Consensual Monitoring - Technical Assistance (RCU)		Paragraph # 1, first two sentences only. DIOG 18.6.1 and 18.6.2
MIOG II	Section 16	16-4.4 Electronic Surveillance (ELSUR) Interceptions (RCU)		Paragraph # 1, first sentence only. DIOG 18.7.2 and 18.7.3
MIOG II	Section 16	16-4.4.2 Telecommunications Interceptions - Reporting Requirements (TICTU)		DIOG 18.7.2 and 18.7.3
MIOG II	Section 16	16-4.4.3 Telecommunications - Use of Pen Registers and Traps-Traces (TICTU)		Paragraph # 1 only. DIOG 18.6.9
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MIOG II	Section 16	16-4.8.1 Authorized Use of Technical Devices in Conducting Physical Surveillances (TTU)		Paragraph # 1, second, third and fourth sentences only. DIOG 18
MIOG II	Section 16	16-4.8.4 Technical Devices in Physical Surveillance - Technical, Practical, and Legal Considerations (TTU)		Paragraph # 1 only. DIOG 18
MIOG II	Section 16	16-4.8.9 Authorized Use of Electronic Tracking and Locating Devices and Techniques (TTU)		DIOG 18
MIOG II	Section 16	16-4.8.12 Tracking - Technical, Practical, and Legal Considerations (TTU)		Paragraph # 1; Paragraph # 2, third sentence; Paragraph # 4, second sentence only. DIOG 18
MIOG II	Section 16	16-4.9 Closed Circuit Television (CCTV) (VSU)		DIOG 18.6.3
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MIOG II	Section 16	16-4.13.4 Loan of Electronic Surveillance Equipment		DIOG 12
MIOG II	Section 21	21-12 APPREHENSION OF BUREAU FUGITIVES		Paragraph # 1 only. DIOG 19
MIOG II	Section 21	21-13.4 Policy		Paragraphs # 2 and 3 only. DIOG 19
MIOG II	Section 21	21-20 FUGITIVE INVESTIGATIONS FOR OTHER FEDERAL AGENCIES		Paragraph # 3, new classification 343 replaces 62. DIOG 12.5
MIOG II	Section 21	21-20.1 Fugitive Inquiries Abroad on Behalf of U.S. Marshals Service (USMS)		Paragraph # 4, new classification 343 replaces 62. DIOG 12.5
MIOG II	Section 23	23-2 THE FAIR CREDIT REPORTING ACT		DIOG Appendix M - FCRA
MIOG II	Section 23	23-2.1 Section 1681a. Definitions		DIOG Appendix M - FCRA
MIOG II	Section 23	23-2.2 Section 1681b. Permissible Purposes of Consumer Reports		DIOG Appendix M - FCRA
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MIOG II	Section 23	23-2.5 Section 1681e. Compliance Procedures		DIOG Appendix M - FCRA
MIOG II	Section 23	23-2.6 Summary		DIOG Appendix M - FCRA
MIOG II	Section 23	23-2.7 Penalties		DIOG Appendix M - FCRA
MIOG II	Section 23	23-2.8 Section 1681n, o, q, and r. Civil and Criminal Liability for Willful or Negligent Noncompliance		DIOG Appendix M - FCRA
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MIOG II	Section 23	23-4.10 Extraterritorial Investigative Activity	DIOG 11.5	DIOG 18.6.1 and 18.6.2
MIOG II	Section 23	23-6 TITLE XI, RIGHT TO FINANCIAL PRIVACY ACT OF 1978 (RFPA)		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.1 Statute		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.2 Access to Financial Records		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.2.1 Intent		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.2.2 Methods Available to FBI		DIOG Appendix O - RFPA
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MIOG II	Section 23	23-6.3.4 Customers Covered		DIOG Appendix O - RFPA
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MIOG II	Section 23	23-6.4 Responsibility of Financial Institutions		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.5 Certification of Compliance		DIOG Appendix O - RFPA
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MIOG II	Section 23	23-6.6.1 Customer Authorization		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.6.2 Search Warrants		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.6.3 Formal Written Request		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.6.4 Judicial Subpoena		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.6.5 Grand Jury Subpoena		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.7 Customer Notice		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.7.1 Contents of Notice		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.7.2 Delay of Notice		DIOG Appendix O - RFPA
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MIOG II	Section 23	23-6.10 Exceptions to RFPA		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.10.1 Financial Institutions		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.10.2 Corporations or Other Legal Entities		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.10.3 Not Identifiable with Customer		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.10.4 Parties in Interest		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.10.5 Federal Grand Jury		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.10.6 Foreign Counterintelligence		DIOG Appendix O - RFPA
MIOG II	Section 23	23-6.10.7 Telephone Company Toll Records		DIOG Appendix O - RFPA
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MIOG II	Section 23	23-6.11 Dissemination of Information		DIOG Appendix O - RFPA
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MIOG II	Section 23	23-6.12 Penalties		DIOG Appendix O - RFPA
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MIOG II	Section 23	23-6.12.2 Disciplinary Action		DIOG Appendix O - RFPA
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MIOG II	Section 23	23-6.13 Cost Reimbursement		DIOG Appendix O - RFPA
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MIOG II	Section 23	23-6.14.1 Dissemination of Information Obtained		DIOG Appendix O - RFPA
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MIOG II	Section 28	28-1 ATTORNEY GENERAL'S GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES		DIOG Appendix C
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NFIPM	Section 1	01-3: (U) Acronyms		DIOG Appendix P
NFIPM	Section 1	01-4: (U) File Classifications and Alpha Designations for Investigative and Administrative Activities Which Uniquely Fall Within the Purview of the FBI's National Foreign Intelligence Program		CPD #0015D. See RPO web-page.
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NFIPM	Section 2	02-3: (U) Summary Guidance and Applicability of Threat Assessments		DIOG 5
NFIPM	Section 2	02-4: (U) Summary Guidance and Applications for Preliminary Investigations		DIOG 6 and 18
NFIPM	Section 2	02-5: (U) Summary Guidance and Application for Full Investigations (FI)		DIOG 7, 8, 9 and 18
NFIPM	Section 2	02-6: (U) Collection of Foreign Intelligence		DIOG 9
NFIPM	Section 2	02-8: (U) Office of Origin		DIOG 14
NFIPM	Section 2	02-9: (U) Physical and Photographic Surveillances		DIOG 18.5.8
NFIPM	Section 2	02-10: (U) Interviews in National Security Investigations		DIOG 18.5.8
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NFIPM	Section 2	02-12: (U) Polygraph Examinations		DIOG 18.6.11
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NFIPM	Section 2	02-15: (U) Physical Searches in Which a Warrant is Not Required	DIOG 11.4	DIOG 18.6.12
NFIPM	Section 2	02-16: (U) Monitoring Devices Which Do Not Impose Upon Reasonable Expectations of Privacy		DIOG 18.6.3
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NFIPM	Section 2	02-21: (U) Mail Covers	DIOG 11.3	DIOG 18.6.10
NFIPM	Section 2	02-22: (U) Operations Conducted Outside the United States, the CIA MOU		See CPO MOU Library
NFIPM	Section 2	02-23: (U) The Role of Legal Attaches in Foreign Counterintelligence, Foreign Intelligence and Counterterrorism Investigations		See IOD PG
NFIPM	Section 2	02-24: (U) Otherwise Illegal Activities		DIOG 17
NFIPM	Section 2	02-25: (U) Arrests, Interdictions, Demarches and Declarations		DIOG 19 - Arrest Procedure
NFIPM	Section 2	02-29: (U) Laboratory Assistance		See Lab web-page
NFIPM	Section 2	02-32: (U) Blind Faith Program		DIOG 19.3, 18.4 and appendix G - 12.C
NFIPM	Section 2	02-33: (U) Foreign Counterintelligence and Counterterrorism Lookout (LO) Program		DIOG Appendix G - 12.C
NFIPM	Section 2	02-34: (U) Special Surveillance Group (SSG) Program		DIOG 18.5.8
NFIPM	Section 2	02-35: (U) The Behavioral Analysis Program (BAP)		DIOG 18.4
NFIPM	Section 2	02-36: (U) Investigations of Current and Former Department of State Personnel, and Diplomatic Missions Personnel Abroad		DIOG 10, generally
NFIPM	Section 2	02-37: (U) Investigations of Current and Former Central Intelligence Agency Personnel		DIOG 10, generally
NFIPM	Section 2	02-38: (U) Investigations of Current and Former Military and Civilian Department of Defense Personnel		DIOG 10, generally
NFIPM	Section 2	02-39: (U) Investigations of Current and Former Department of Energy Personnel		DIOG 10, generally
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NFIPM	Section 2	02-47: (U) Disseminating Information to Congressional Committees		DIOG 12.4 and 14.3(A)(4)
NFIPM	Section 2	02-48: (U) Disseminating Information to the Federal Judiciary		DIOG 12.4
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NFIPM	Section 2	02-50: (U) Disseminating Information to Foreign Governments and Investigations at their Behest		DIOG 12.4/DIOG 14.5
NFIPM	Section 2	02-51: (U) Disseminating Information to State and Local Government Agencies		DIOG 12 and 14
NFIPM	Section 2	02-52: (U) Disseminating Information to the Private Sector		DIOG 14.3 (A)(6-8)
NFIPM	Section 2	02-54: (U) IIIA (Integrated Intelligence Information Application)		See IIIA web-page
NFIPM	Section 2	02-58: (U) Intelligence Oversight Board Matters		DIOG 4/DIOG 18.6.6 (Re: NSLs) and CPD 0188PG
NFIPM	Section 2	02-57: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 3	03-1: (U) Consensual Monitoring	DIOG 11.5	DIOG 18.6.1
NFIPM	Section 3	03-2: (U) Volunteered Tape Recordings	DIOG 6.9(B)(7)	DIOG 18.5.7
NFIPM	Section 3	03-4: (U) Pen Registers and Trap and Trace Devices	DIOG 11.11-11.12	DIOG 18.6.9
NFIPM	Section 3	03-5: (U) Unconsented Electronic Surveillance	DIOG 11.12	DIOG 18.7.3
NFIPM	Section 3	03-6: (U) Electronic Surveillance Minimization, Logs and Indexing		0137PG
NFIPM	Section 3	03-8: (U) Operational Support to the Intelligence Community	DIOG 12.5/DIOG 14.5	DIOG 12
NFIPM	Section 3	03-9: (U) Operational Technology Division (OTD) Technical Assistance		CPD #0170D
NFIPM	Section 3	Section 3-10 (U) Operational Technology Division (OTD) Technical Assistance Support to the Intelligence Community		DIOG 12 (generally)
NFIPM	Section 3	03-11: (U) Unconsented Physical Searches	DIOG 11.13	DIOG 18.7.1
NFIPM	Section 3	03-12: (U) Tax Return Information		Appendix N - Tax Return Info
NFIPM	Section 3	03-13: (U) Searches of Mail Without Consent		DIOG 18.7.1
NFIPM	Section 3	03-14: (U) Unconsented Physical Search Minimization, Logs and Indexing		DIOG 18.7.1 and SMP PG
NFIPM	Section 4	04-1: (U) The Domain Program		DIOG 5, type 4 assessments generally.
NFIPM	Section 5	05-2: (U) Countries on the Current National Security List		Appendix G

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DIOG Supersessions

Part	Section	Section Title	DIOG 1 Supersession	DIOG 2 Supersession
NFIPM	Section 5	05-23: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 8	08-12: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 8	08-11: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 9	09-8: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 11	11-4: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 12	12-4: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 13	13-4: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 14	14-4: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 15	15-4: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 16	16-13: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 18	18-3: (U) Issue Threat Preliminary Investigations		DIOG 6
NFIPM	Section 18	18-4: (U) Issue Threat Full Investigations		DIOG 7
NFIPM	Section 18	18-6: (U) Issue Threat File Numbers		CPD #0015D. See RPO web-page.
NFIPM	Section 19	19-3: (U) Procedural Requirements in International Terrorism Investigations		DIOG 5, 6, 7, 8
NFIPM	Section 19	19-4: (U) Closing International Terrorism Investigations	DIOG 5,6,7	DIOG 5, 6, 7, 8
NFIPM	Section 19	19-11: (U) The Behavioral Analysis Program		DIOG 19.4
NFIPM	Section 19	19-13: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 20	20-9 (U) The Behavioral Analysis Program		DIOG 19.4
NFIPM	Section 20	20-10 (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 21	21-6: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 22	22-2: (U) Alpha Designations		CPD #0015D. See RPO web-page.
NFIPM	Section 27	Confidential Human Sources Manual		CHSPM
NFIPM	Section 27	Confidential Human Source Validation Standards Manual		CSHVSM
NFIPM	Section 28	Section : 28 (U) Undercover Operations (4)		DIOG and NSUCOPG
NFIPM	Section 28	28-1: (U) UC Operations	DIOG 11.12	DIOG 18.6.3 and NSUCOPG
NFIPM	Section 28	28-2: (U) Group I	DIOG 11.12	DIOG 18.6.3 and NSUCOPG
NFIPM	Section 28	28-3: (U) Group II	DIOG 11.12	DIOG 18.6.3 and NSUCOPG
NFIPM	Section 28	28-4: (U) UC Administrative Matters	DIOG 11.12	DIOG 18.6.3 and NSUCOPG
NFIPM	Section 30	30-11: (U) The Behavioral Analysis Program		DIOG 19.4
	MAP T	Appendix T		
		Memorandum of Understanding between the National Aeronautics and Space Administration and the FBI Authority of the Director		CPO MOU Library
MAOP I	0-1			DIOG 3.2.1
MAOP I	21-7 (6)	Monitoring, documenting and reviewing		DIOG 3.4.D
MAOP II	1-1	SAC and ASAC Supervisory Responsibility		Paragraphs # 2 and # 5. DIOG 3.4.C and Succession and delegation policy
MAOP II	1-1.4 (# 1)	Supervision of Cases		Paragraph # 1 - DIOG 14
MAOP II	1-1.4 (# 2 and # 3 a-f)	Supervisory File Reviews		Paragraph # 2 and # 3 (a-f) - # 2 Supervisory File reviews and # 3 PSAs. DIOG 3.4.D
MAOP II	1-1.5.1	Official Channels		Paragraph (5) b only - superseded by CPD 0152D - FBI Policy Cycle Directive.
MAOP II	1-3.5	Designation of Senior Resident Agent and Alternate		Second and third sentences only - DIOG 3.4.C and succession and delegation policy ?
MAOP II	1-3.6	Reporting to HQ City		First and second sentence - file reviews every 90 days: DIOG 3.4.D

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Part	Section	Section Title	DIOG 1 Supersession	DIOG 2 Supersession
MAOP II	1-3.13.2 (1)	Supervision of Investigations		Paragraph (1) - DIOG 3.4.C and succession and delegation policy ?
MAOP II	1-3.13.3 (all)	Case Reviews		All (paragraphs 1-8) - DIOG 3.4.D
MAOP II	2-3	Indexing		DIOG 14
MAOP II	2-3.1	Purpose		DIOG 14
MAOP II	2-3.2	General Policy		DIOG 14
MAOP II	2-3.3	Indexing Criteria and Guidelines		DIOG 14
MAOP II	2-3.3.1	Mandatory Indexing		DIOG 14
MAOP II	2-3.3.2	Discretionary Indexing		DIOG 14
MAOP II	2-3.4	Index Data		DIOG 14
MAOP II	2-3.4.1	Identifying Data		DIOG 14
MAOP II	2-3.4.2	Descriptive Data		DIOG 14
MAOP II	2-3.5	Indexing Requirements of General Indices Versus Automated Investigative Support Systems		DIOG 14
MAOP II	2-3.6	Responsibilities		DIOG 3 and 14
MAOP II	2-3.6.1	Special Agent		first introductory Paragraph only. DIOG 3
MAOP II	2-3.6.2	Supervisory Special Agent Responsibility		DIOG 14
MAOP II	2-4	Management of Files		DIOG 14
MAOP II	2-4.1	Investigative Files		DIOG 14
MAOP II	2-4.1.1	Serializing		DIOG 14
MAOP II	2-4.1.2	Zero Files		Paragraph (2) only. DIOG 14
MAOP II	2-4.1.3	Double Zero Files		DIOG 14
MAOP II	2-4.1.4	Dead Files - No Pending Investigation		DIOG 14
MAOP II	2-4.1.5	Control Files		Paragraph (1) first four sentences only. DIOG 14
MAOP II	2-4.2	Administrative Files		DIOG 14
MAOP II	2-4.2.1	Noninvestigative Files		DIOG 14
MAOP II	2-4.3.6	Consolidation of Files		DIOG 14
MAOP II	2-4.3.7	Reclassification of Files		DIOG 14
MAOP II	2-5	Case Management - Field Offices		DIOG 14
MAOP II	2-5.1	Opening Cases		Paragraphs 1, 2, 3, 4 (initial paragraph only before sub-letters), 4d, 4e, 4f, and 5 (first sentence only). DIOG various sections
MAOP II	2-5.1.1	Leads		Paragraph (2), delete "Discretionary Action" leads in first sentence only; and delete 2b. DIOG 14
MAOP II	2-5.2	Status of Cases		DIOG 14
MAOP II	2-5.2.1	Pending Case		DIOG 14
MAOP II	2-5.2.2	Pending Inactive		Paragraphs 2, 2a-c, and 3 only. DIOG 14
MAOP II	2-5.2.3	Referred Upon Completion to the Office of Origin (RUC)		DIOG 14
MAOP II	2-5.2.4	Closed		DIOG 6.11, 7.11, 8.8, 9.12
MAOP II	2-5.2.5	Unaddressed Work		DIOG 14
MAOP II	3-1	FBI Classifications/Sub-classifications and Program Groupings		CPD 0015D. RPO/RAU is now responsible for this area by EC 86F-HQ-1079817 serial 705. Link to RPO web-site. Supersede section 3.1 and all subparts.
MAOP II	3-1.1	FBI Classifications and Subdivided Classifications		only 82D; 82E replaced with new 343 classification. 163 M-U classification added. DIOG 12
MAOP II	3-3 (3c)	Task Force Officers (defined)		DIOG 3.3.2
MAOP II	3-3.2 (1)	Special TURK Recording Procedures (1) Major Cases		#1a-g. DIOG Appendix J- Major Cases
MAOP II	3-4.5 (9 a-g)	Case Count Information (# 9 re: closings)		Paragraph # 9 a-g was superseded by DIOG 6.11; 7.11; 8.8; and 9.12.
MAOP II	3-4.6	Reclassifying Cases and Error Correction		DIOG 6.11.C; 7.11.C; 8.8.C; and 9.12.C

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Part	Section	Section Title	DIOG 1 Supersession	DIOG 2 Supersession
MAOP II	3-4.8	Criminal Preliminary Inquires		Paragraph #1 only. DIOG Section 6.7 - PIS are authorized for 6 months; extension authorized for 6 additional months by SAC; and FBIHQ SC. DIOG 14
MAOP II	3-4.10 (1)	Spin-off Cases (paragraph #1 - defined)		DIOG 5, 6, 7, 8, and 9.
MAOP II	3-4.10 (2)	Spin-off Cases (paragraph #2 - who can authorize)		superseded paragraph #1, defined in DIOG 14
MAOP II	3-4.11(1)	Control Files (Paragraph #1 - defined)		superseded paragraph # 2, DIOG 14
MAOP II	3-4.11 (2)	Control Files (Paragraph #2 - leads)		delete third sentence only, DIOG 14
MAOP II	3-4.11 (3)	Control Files (paragraph #3, third sentence only)		DIOG 14.3 (generally)
MAOP II	9	Dissemination of Information		DIOG 14.3, 14.4, 14.5 and 14.6
MAOP II	9-3	Information to Be Disseminated		DIOG 14.3.A and B
MAOP II	9-3 (paragraph 1)	AG Memo 9/21/2001 - "Disseminating Information to Enhance Public Safety and National Security."		DIOG 14
MAOP II	9-3 (paragraph 2)			DIOG 14.3.A.5
MAOP II	9-3 (paragraph 3)			DIOG 14.3.A.3
MAOP II	9-3.1	Dissemination to State and Local Criminal Justice and Noncriminal Justice Agencies		DIOG 14.3
MAOP II	9-3.1.1	Dissemination to State and Local Criminal Justice Agencies		DIOG 14.4.B
MAOP II	9-3.2	Information Totally Within Jurisdiction of Other Federal Agencies		DIOG 3.4.E
MAOP II	9-3.3	Information within FBI Jurisdiction and of interest to another Federal Agency		DIOG 12.4
MAOP II	9-3.4.2	Interested Agency Outside a Field Office Territory		DIOG 12.4
MAOP II	9-3.4.3	Interested Agency Within a Field Office's Territory		DIOG 12.4 and 12.5
MAOP II	9-3.4.4	Reporting Information Furnished		DIOG 12.4 and 12.5
MAOP II	9-3.5	Method of Dissemination to Outside Agencies		DIOG 12 and 14, generally
MAOP II	9-3.5.3	Oral Dissemination to Outside Agencies		DIOG 12.4 and 12.5
MAOP II	9-3.5.4	Accounting of Dissemination		Interview or CHS - DIOG 18.5.6 and CHSPM
MAOP II	9-4.2.6	Investigative Activity in Congressional Offices		Interview or CHS - DIOG 18.5.6. Paragraph (2)
MAOP II	9-4.2.9	Dissemination to the White House Complex		Superseded by AGG-Dom, DIOG and AG Memo WH Contacts
MAOP II	9-6	Major Cases - Dissemination of Information		DIOG Appendix K - Major Cases
MAOP II	9-7	Threat to Life - Dissemination of Information		DIOG 14
MAOP II	9-7.1	Information Concerning Threats Against the President and Other Designated Officials		DIOG 14
MAOP II	9-7.2	Information Concerning Threats, Possible Violence or Demonstrations Against Foreign Establishments or Officials in the US		DIOG 14
MAOP II	9-7.2.1	Information Received Through other Than Technical Surveillance		DIOG 14
MAOP II	9-7.2.2	Information Received Through Technical Surveillance		DIOG 14
MAOP II	9-7.2.3	Miscellaneous		DIOG 14
MAOP II	9-8	Replies to Foreign Police and Intelligence Contacts		DIOG 14
MAOP II	9-8.1	Letterhead Memoranda Prepared by Bureau's Foreign Offices		DIOG 14
MAOP II	9-8.2	Dissemination of Classified Information		DIOG 12 and 14
MAOP II	9-9	Dissemination of Grand Jury Material		DIOG 18.6.5
MAOP II	9-10	Dissemination of Title XI, Right to Financial Privacy Act of 1978		DIOG Appendix O - RFP
MAOP II	9-13	Dissemination By Field Intelligence Groups		DIOG 14
MAOP II	10-9	General Rules Regarding Recording and Notification of Investigations		Supersede Paragraphs # 1a-c; 2a-c; 5; 6; 7; 9; 10a-c; 11-16; and 23-24, DIOG, various sections.
MAOP II	10-10.9.1	Approval by individuals Delegated to Act on Behalf of Higher Bureau Officials		DIOG 3.4.C
MAOP II	10-12	Notes made During Investigations - Interviews		DIOG 3 and 14
MAOP II	10-18.2	Office of Origin		DIOG 14



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Part	Section	Section Title	DIOG 1 Supersession	DIOG 2 Supersession
MAOP II	21-7 (6)	Monitoring, Documenting and Reviewing		Remove second to last and last sentence only. Remove citation to MAOP at the end of Paragraph # 6 and add citation "See DIOG 3.4.D"
NA	EC	[REDACTED]		34.D
N/A	EC	To Provide Guidance on Least Intrusive Techniques in National Security and Criminal Investigations - OGC EC [REDACTED] 12/20/2007	DIOG 4, 4.1, 11.1.1	DIOG 4.4.4, 18.1.1-2
N/A	EC	Mail Cover Cites - EC dated 12/22/2004	DIOG 11.3	DIOG 18.6.10
MIOG II	10-10.17.1	FD-670, Consensual Monitoring - Telephone Checklist	DIOG 11.5	DIOG 18.6.1
N/A	form	FD-671, Consensual Monitoring - Non-telephone Checklist	DIOG 11.5	DIOG 18.6.1
N/A	EC	Electronic Surveillance - EC dated 12/20/2007	DIOG 11.12	DIOG 18.7.2-3
N/A	EC	Civil Liberties and Privacy EC issued by OGC dated 3/19/2004		DIOG 4.1, 8.3, 8.3, 9.3, 15.3
N/A	EC	Civil Liberties and Privacy EC issued by OGC dated 9/8/2005		DIOG 4.1, 7.3
N/A	EC	Least Intrusive Techniques in National Security and Criminal Investigations - EC issued by OGC on 12/20/2007, file number [REDACTED]		DIOG 4, 4.4, 18.1.1-2
N/A	EC	Protection of First Amendment Rights EC issued by OGC dated 3/19/2004		DIOG 4.2
N/A	EC	EC issued by CTD dated 09/01/2004		DIOG 5.11
N/A	EC	EC issued by OGC dated 12/05/2003		DIOG 5.13
N/A	EC	FBI National Collection Requirements EC issued by DO dated 01/30/2003		DIOG 18.3, 18.5
N/A	EC	Retention and Dissemination of Privacy Act Records EC issued by OGC dated 03/19/2004		DIOG 18.3, 18.7
N/A	EC	Authorized Investigative Methods in Assessments ECs issued by OGC dated 03/19/2004 and 9/18/2005		DIOG 18.5.9, 18.6.5
N/A	EC	Authorized Investigative Methods in Full Investigations EC issued by OGC dated 10/29/2003		DIOG 18.6.4
N/A	EC	Federal Grand Jury Subpoena EC issued by OGC dated 08/01/2007		DIOG 18.6.8
N/A	EC	Administrative Subpoena EC issued by CID dated 06/08/2001		DIOG 18.6.9.3
N/A	EC	Voluntary Disclosure of Non-Content Customer Records		DIOG 18.7.3.1.5.3
N/A	EC	Definition of Investigative Method EC issued by OGC dated 10/14/2003		DIOG 12
N/A	EC	FISA Review Board for RISA Renewals EC issued by Director's Office dated 02/06/2006		DIOG 18
N/A	EC	Assistance to Other Agencies EC issued by OGC dated 12/5/2003		DIOG 18
N/A	EC	Emergency Disclosure Provision for Information from Service Providers Under 18 U.S.C. Section 2702(b) - EC issued by OGC 08/25/2005, file number [REDACTED] and [REDACTED]		DIOG 18
LHSA	7-4.1(7)	Consolidated Legal Handbook for Special Agents Section 7-4.1(7) into Interview Section of DIOG		DIOG 18
N/A	EC	Electronic Recording of Confessions and Witness Interviews - EC issued by OGC on 03/23/2006, file number [REDACTED] and [REDACTED]		DIOG 18
N/A	EC	FBI Mandated File Review Process - EC issued by INSD on 07/07/2010, file number [REDACTED]		DIOG 3
N/A	EC	Electronic Recording of Confessions and Witness Interviews - EC issued by OGC on 03/23/2006, file number [REDACTED] and [REDACTED]		DIOG 18
N/A	EC	Procedural and Operational Issuance - Guidance for Legislative Corruption - EC issued by CID on 08/08/2006, file number [REDACTED]		DIOG 18
N/A	EAU EAP PG	FBI Employee Assistance Unit, Employee Assistance Program PG, delete definition of task force officer on page 1		DIOG 3
N/A	RAP Tool User Guide v1.1	Resource Allocation Planning (RAP) Tool, User Guide v1.1 - delete definition of task force officer and task force member on page 1		DIOG 3

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## **APPENDIX S: (U) LISTS OF INVESTIGATIVE METHODS**

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### **S.1 INVESTIGATIVE METHODS LISTED BY NAME (ALPHABETIZED)**

- (U) Administrative subpoenas. (Section 18.6.4)
- (U) CHS use and recruitment. (Section 18.5.5)
- (U) Closed-circuit television/video surveillance, direction finders, and other monitoring devices. (Section 18.6.3)
- (U) Consensual monitoring of communications, including electronic communications. (Section 18.6.1)
- (U) Electronic surveillance – FISA and FISA Title VII (acquisition of foreign intelligence information). (Section 18.7.3)
- (U) Electronic surveillance – Title III. (Section 18.7.2)
- (U) FISA Order for business records. (Section 18.6.7)
- (U) Grand jury subpoenas. (Section 18.6.5)
- (U) Grand jury subpoenas – only for telephone or electronic mail subscriber information in Type 1 & 2 Assessments. (Section 18.5.9)
- (U) Information voluntarily provided by governmental or private entities. (Section 18.5.7)
- (U) Intercepting the communications of a computer trespasser. (Section 18.6.2)
- (U) Interview or request information from the public or private entities. (Section 18.5.6)
- (U) Mail covers. (Section 18.6.10)
- (U) National Security Letters. (Section 18.6.6)
- (U) On-line services and resources. (Section 18.5.4)
- (U) Pen registers and trap/trace devices. (Section 18.6.9)
- (U) Physical Surveillance (not requiring a court order). (Section 18.5.8)
- (U) Polygraph examinations. (Section 18.6.11)
- (U) Public information. (Section 18.5.1)
- (U) Records or information - FBI and DOJ. (Section 18.5.2)
- (U) Records or information - Other federal, state, local, tribal, or foreign government agency. (Section 18.5.3)
- (U) Searches – with a warrant or court order. (Section 18.7.1)

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(U) Stored wire and electronic communications and transactional records. (Section 18.6.8)

(U) Trash Covers (Searches that do not require a warrant or court order). (Section 18.6.12)

(U) Undercover Operations (Section 18.6.13)

**S.2 INVESTIGATIVE METHODS LISTED BY ORDER IN DIOG SECTION 18**

18.5.1 (U) Public information

18.5.2 (U) Records or information - FBI and DOJ.

18.5.3 (U) Records or information - Other federal, state, local, tribal, or foreign government agency.

18.5.4 (U) On-line services and resources.

18.5.5 (U) CHS use and recruitment.

18.5.6 (U) Interview or request information from the public or private entities.

18.5.7 (U) Information voluntarily provided by governmental or private entities.

18.5.8 (U) Physical Surveillance (not requiring a court order).

18.5.9 (U) Grand jury subpoenas – only for telephone or electronic mail subscriber information.

18.6.1 (U) Consensual monitoring of communications, including electronic communications.

18.6.2 (U) Intercepting the communications of a computer trespasser.

18.6.3 (U) Closed-circuit television/video surveillance, direction finders, and other monitoring devices.

18.6.4 (U) Administrative subpoenas.

18.6.5 (U) Grand jury subpoenas.

18.6.6 (U) National Security Letters.

18.6.7 (U) FISA Order for business records.

18.6.8 (U) Stored wire and electronic communications and transactional records.

18.6.9 (U) Pen registers and trap/trace devices.

18.6.10 (U) Mail covers.

18.6.11 (U) Polygraph examinations.

18.6.12 (U) Trash Covers (Searches that do not require a warrant or court order).

18.6.13 (U) Undercover operations.

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18.7.1 (U) Searches – with a warrant or court order.

18.7.2 (U) Electronic surveillance – Title III

18.7.3 (U) Electronic surveillance – FISA and FISA Title VII (acquisition of foreign intelligence information).