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## Department of Energy

Washington, DC 20585

MAY 22 2014

Re: Freedom of Information Act Request HQ-2013-00978-F

This is the Office of Inspector General (OIG) response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You asked for “A copy of the DOE Inspector General Investigations Manual version dated April 2012.”

The OIG has completed its search for documents responsive to your request. A review of the responsive documents and determination concerning its release has been made pursuant to the FOIA, 5 U.S.C. § 552. Certain information has been withheld pursuant to subsections (b)(6) and (b)(7)(E) of the Act, or Exemptions 6 and 7(E), respectively. Specifically, the OIG review determined:

- Documents 1 through 3, 8, 11, 15, 16, 19, 22, 24 through 29, and 31 through 35 are being released to you in their entirety.
- Documents 4, 5, 9, 10, 11, 14, 17, 18, 20, and 21 are being released to you with certain material withheld pursuant to Exemption 7(E) of the FOIA. In addition, portion of Document 30 is being withheld pursuant to Exemption 6.
- Documents 6, 12, 13, and 23 originated within or are under the jurisdiction at the U. S. Department of Justice. Document 7 originated at U.S. Department of Homeland Security. Document 36 originated at Council of the Inspectors General on Integrity and Efficiency. These documents have been forwarded to the respective agencies for a determination concerning their releasability. Those agencies will respond directly to you concerning these documents.

Names and information that would tend to disclose the identity of certain individuals have been withheld pursuant to Exemption 6. In invoking Exemption 6, we have determined that is not in the public interest to release the withheld material. In this request, we have determined that the public interest in the identity of individuals whose names appear in this file does not outweigh these individuals' privacy interests. Those interest include being free from intrusion into their professional and private lives.



Exemption 7(E) permits the withholding of records which “would disclose techniques and procedures for law enforcement investigations or prosecutions” if the techniques and procedures are not well known to the public or “the circumstances of their usefulness . . . may not be widely known.”

The information being withheld pursuant to Exemption 7(E) includes processes related to standards and responsibilities, coordination of investigations with other offices, the investigative process and performance measure systems, criteria for opening cases, and processes for conducting investigations and interviews. Disclosure of this information would allow potential law violators to tailor their actions so as to minimize detection, tamper with the investigative process, and interfere with investigations into wrongdoing. Additionally, the disclosure of information withheld pursuant to interviews could permit potential wrongdoers to interfere with the OIG’s ability to obtain and use statements effectively and could thus risk circumvention of the law.

To the extent permitted by law, the DOE, in accordance with Title 10, Code of Federal Regulations (C.F.R.), Section 1004.1, will make available records it is authorized to withhold pursuant to the FOIA unless it determines such disclosure is not in the public interest.

In invoking Exemption 7(E), we have determined that it is not in the public interest to release investigative techniques or procedures not widely known to the public as release could reduce or nullify their effectiveness. Because the OIG has determined a foreseeable harm, this information continues to be withheld pursuant to Exemption 7(E).

As required, all releasable information has been segregated from the material that is withheld and is provided to you. See 10 C.F.R. § 1004.7(b)(3).

This decision may be appealed within 30 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to the Director, Office of Hearings and Appeals, HG-1/L’Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585-1615.

Thereafter, judicial review will be available to you in the Federal district court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where the Department’s records are situated, or (4) in the District of Columbia.

Sincerely,



Michael S. Milner  
Assistant Inspector General  
for Investigations  
Office of Inspector General

Enclosures  
cc: DOJ, DHS, and CIGIE

## Document Number 1





U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

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### ABBREVIATIONS/ACRONYMS USED IN THIS MANUAL

ACE	Affirmation Civil Enforcement
AIGI	Assistant Inspector General for Investigations
AIGRM	Assistant Inspector General for Resource Management
ASAC	Assistant Special Agent-in-Charge
Audits	Office of Audit Services
AUSA	Assistant United States Attorney
CCC	Complaint Coordination Committee
CFR	Code of Federal Regulations
CO	Contracting Officer
CS	Confidential Source
DAIGI	Deputy Assistant Inspector General for Investigations
DCIS	Defense Criminal Investigative Service
DICE	Date, Initials, Case Number, and Exhibit Number
DIP <sup>3</sup>	Director for Policy, Plans, and Programs
DTIS	Department Training Information System
DOE	Department of Energy (Department)
DOJ	Department of Justice
EH	Office of Environment, Safety, and Health
EIGPT	Energy Inspector General Project Tracking system
E-Mail	Electronic Mail
ES&H	Environment, Safety and Health
FAM	Federal Air Marshal
FBI	Federal Bureau of Investigation
FLETC	Federal Law Enforcement Training Center
FOIA	Freedom of Information Act
FRE	Federal Rules of Evidence
GS	General Schedule
GSC	Ground Security Coordinator
ICAP	Investigations Career Advisory Panel
IDP	Individual Development Plan
IG	Inspector General
Inspections	Office of Inspections
IRM	Investigative Report to Management
IRP	Inventory Review Program
IRS	Internal Revenue Service

LEO	Law Enforcement Officer
MN	Monitoring Case
MOIA	Memorandum of Investigative Activity
MOU	Memorandum of Understanding
NCIC	National Crime Information Center
NNSA	National Nuclear Security Administration
OC	Oleoresin Capsicum
OGE	Office of Government Ethics
OHRM	Office of Human Resources Management
OJT	On-the-Job Training
OI	Office of Investigations
OIG	Office of Inspector General
OSA	Office of Security Affairs
OSS	Office of Safeguards and Security
PA	Proactive Case
PCIE	President's Council on Integrity and Efficiency
PFCRA	Program Fraud Civil Remedies Act
QAR	Quality Assurance Review
RA	Referral to the Office of Audit Services
RAIC	Relief Agent-in-Charge
RFPA	Right to Financial Privacy Act
RI	Referral to the Office of Inspections
RM	Office of Resource Management
ROI	Report of Investigation
RR	Referral, no response required
RS	Referral, response required
RV	Referral, to the Office of Investigations
SA	Special Agent
SAC	Special Agent-in-Charge
TSA	Transportation Security Administration
TCS	Technology Crimes Section
TDY	Temporary Duty
TF	Training Form
U.S.C.	United States Code
USMS	United States Marshals Service

VWPA	Victim and Witness Protection Act
VWC	Victim Witness Coordinator
ZZ	Case File identifier for predicated complaints with insufficient/ insignificant information or information handled by other means





## Document Number 2



## CHAPTER 1 – INTRODUCTION TO THE INVESTIGATIONS MANUAL

### CHAPTER 1

#### INTRODUCTION TO THE INVESTIGATIONS MANUAL

##### I. PURPOSE OF THE MANUAL

This Investigations Manual (Manual) serves to outline the policies and procedures to be followed by all Office of Investigations' personnel in processing and evaluating allegations of fraud, waste and abuse; planning, conducting and reporting on investigations; and carrying out investigative and law enforcement authorities within the U.S. Department of Energy (DOE), Office of Inspector General (OIG). It also serves to outline policies and procedures that impact the day-to-day administrative operations of the Office of Investigations (OI). Additionally, four operational handbooks supplement the Manual: Allegation Processing Handbook, Energy Inspector General Project Tracking System Handbook, Quality Assurance Review Program Handbook, and Technology Crimes Section Handbook.

##### II. APPLICABILITY

All OI personnel, including detailees, are required to follow the policies and procedures contained in this Manual.

**Note:** Unless otherwise specified, the Special Agent-in-Charge (SAC) may delegate responsibilities outlined in this Manual to an appropriate Assistant Special Agent-in-Charge (ASAC). If responsibilities are delegated, SACs continue to remain accountable for the outcomes. Responsibilities that cannot be delegated include, but are not limited to, approval for consensual monitoring, signature authority on certain reports, annual performance plan creation and review. Responsibilities that cannot be delegated to an ASAC are specifically identified throughout the Manual.

##### III. RELATIONSHIP OF THE MANUAL TO EXISTING STANDARDS, POLICIES AND PROCEDURES

The investigative standards, policies, and procedures to be followed in executing the OI mission were compiled from a variety of sources. This Manual is intended to be consistent with established standards and ensure that: (1) investigations conducted by the OI are fair, professional, and objective, (2) results are adequately supported and (3) efficient and effective techniques are employed.

###### A. Council of Inspectors General on Integrity and Efficiency (CIGIE) Standards for Investigations

Investigative operations within the OI are conducted in accordance with the following general and qualitative standards that have been adopted by CIGIE:

## CHAPTER 1 – INTRODUCTION TO THE INVESTIGATIONS MANUAL

### 1. General Standards for Investigations

Individuals assigned to conduct investigative activities must collectively possess professional proficiency for the tasks required. In all matters relating to investigative work, the investigative organization must be free from impairments – both in fact and appearance, must be organizationally independent, and must maintain an independent attitude. In addition, due professional care is to be used in conducting investigations and in preparing related reports.

### 2. Qualitative Standards for Investigations

Investigative priorities and objectives must be established to ensure that individual case tasks are performed in a timely, efficient, effective, thorough and legal manner. Reports must be accurate, objective, timely, understandable and logically organized. Additionally, results of investigations should be stored in a manner that allows efficient retrieval, referencing, and analysis.

Further information about CIGIE “Quality Standards for Investigations” can be found at <http://www.ignet.gov/pande/inv1.html#standards>.

### B. Additional Standards for Investigations

The following additional standards apply to investigations conducted by the OI:

1. The conduct of investigations must strike an appropriate balance between the responsibility to investigate violations of law or administrative regulations, and the responsibility to protect the rights of individuals.
2. An investigation will be conducted only when there are allegations that reasonably indicate civil and/or criminal violations of the U.S. Code(s), Departmental Standards of Conduct or administrative regulations within OIG responsibility or jurisdiction have occurred, is occurring or will occur. Investigations will be conducted with minimal intrusion into the privacy of individuals, consistent with the need to collect information and evidence in a timely and effective manner.
3. An investigation will be terminated promptly when all logical and reasonable investigative steps have been taken. When appropriate, evidence gathered during an investigation will be referred for prosecutive opinion.

## CHAPTER 1 – INTRODUCTION TO THE INVESTIGATIONS MANUAL

4. If a case is referred for prosecution and prosecution is declined, but administrative action appears to be warranted, the investigation will be continued to its logical conclusion with the results referred to appropriate DOE officials.
5. Special Agents will document investigative contacts and activities by preparing appropriate memoranda.

### C. Quality Assurance Review Program

The Inspector General has established a Quality Assurance Review Program. The Deputy Inspector General for Management and Administration is the designated Director of Quality Assurance. OI is fully dedicated to assisting the Quality Assurance Review Program in its missions to continually evaluate OIG programs and operations, identify opportunities for improvement and facilitate positive change within the OIG. External quality assessment reviews of OI are performed in cooperation with CIGIE. In addition, internal quality reviews are conducted by OI (see chapter 6 for more details).

## IV. STRUCTURE OF THE MANUAL

This Manual is divided into the following five major sections:

### A. Part I -- General

Part I of the Manual introduces the Investigations Manual and includes chapters on the authorities of the OI and standards and responsibilities for Special Agents.

### B. Part II -- Opening/Planning/Conducting Investigations

Part II of the Manual includes chapters on general policies and procedures for opening investigative cases and planning and conducting investigations.

### C. Part III -- Investigative Procedures

Part III of the Manual includes chapters on general and specialized investigative procedures and evidence.

### D. Part IV -- Reporting/Closing Media

Part IV of the Manual includes chapters on reporting policies, reporting results of investigations and closing investigative cases.

## CHAPTER 1 – INTRODUCTION TO THE INVESTIGATIONS MANUAL

### E. Part V – Administrative

Part V of the Manual includes chapters on general policies and procedures for office administration, personnel management, travel and professional development.

## V. PROCEDURES FOR UPDATING THE MANUAL

This Manual is intended to be the basic reference document for all OI guidance and instructions. The Manual should be kept current and as relevant to the way investigations are conducted as possible.

### A. Manual Revisions

The Assistant Inspector General for Investigations (AIGI) is responsible for approving all revisions to the Manual. The Office of Policy, Plans and Programs (P3) is responsible for processing all revisions to the Manual. Each Manual chapter will be reviewed for possible updates once every three years, absent extenuating circumstances. The following procedure will be used when updating a Manual chapter:

1. P3 notifies all OI personnel that a specific chapter is undergoing revision and requests comments on the chapter and related exhibits.
2. OI personnel submit suggested changes to the chapter and exhibits using the Suggested Policy Change Form (See Suggested Policy Change Form – Chapter 1, Exhibit A).
3. Based on the comments received, P3 provides a revised draft of the chapter and exhibits to SACs/ASACs for review/comments.
4. SACs/ASACs comments are reviewed and, as appropriate, incorporated into the final draft, which is shared with the SACs. P3 works with the SACs/ASACs to resolve any conflicting comments.
5. P3 submits the final draft to the AIGI for approval. P3 incorporates the AIGI comments and shares the changes with the SACs for a fatal flaw review.
6. P3 publishes the revised chapter on IGSNet – the OIG intranet – and notifies OI personnel that a revised chapter has been posted.

## CHAPTER 1 – INTRODUCTION TO THE INVESTIGATIONS MANUAL

### B. Other Changes

#### 1. Supplemental Policies

Occasionally, changes to the Manual may be required within short time frames. These types of changes should be infrequent and are at the discretion of the AIGI. In such cases, the proposed change should be submitted to P3 using the Suggested Policy Change Form (See Suggested Policy Change Form – Chapter 1, Exhibit A). P3 will present the proposed change to the AIGI. If the change is approved by the AIGI and it is not possible to quickly update the relevant Manual Chapter(s) to incorporate the change, the change or addition to the Manual will be accomplished using a supplemental policy. Supplemental policies will be drafted and vetted using the same process as Manual chapters. Supplemental policies will be incorporated into the relevant Manual chapter(s) when the chapter(s) is next updated.

#### 2. Waivers of Policy

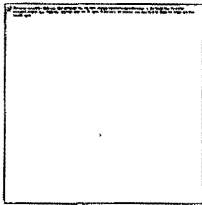
Request for waivers to provisions of this manual must be approved by the AIGI. Office-specific waivers cannot be approved by the SAC and/or ASAC.

### C. Distribution Procedures

The most recent version of the Manual is posted electronically on the IONet. OI personnel will be notified of any changes or additions made to the Manual.

## VI. OUTSIDE RELEASE OF THE MANUAL

OI personnel may not release or distribute the Manual, in whole or in part, to any non-OI entity or person. This includes but is not limited to DOE program or management officials, prosecutors, other law enforcement agencies, or the general public. Distribution and/or release of copies of the Manual will be controlled by P3, in coordination with the AIGI. All requests for copies of the Manual should be directed to the Director of P3.



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

**Suggested Policy Change Form**

Name:

Date:

Office:

Citation (Insert Policy Chapter, Section, Subsection Page, Exhibit Number):

Rating of the importance of the suggested change (1 = not very, 5 = extremely): Rate from 1-5

Name of Concurring SAC/ASAC:

Discussion

*Outline why the cited policy requires revision. Why is the current policy problematic, ineffective, etc.? How will the proposed change(s) improve the policy? Are there potential downsides to the change? If so, discuss.*

Suggested Revision

*Outline the suggested new language in the standard policy format (copy/paste current policy here and make suggested changes).*





## Document Number 3



CHAPTER 2

AUTHORITIES, RESPONSIBILITIES AND JURISDICTION OF THE  
OFFICE OF INVESTIGATIONS

A. SCOPE OF CHAPTER

This chapter provides information on the mission and organization of the OIG; investigative authority, responsibilities, and jurisdiction of the Office of Investigations; and other information useful for understanding investigative activities in the U.S. Department of Energy.

B. OFFICE OF THE INSPECTOR GENERAL ORGANIZATION

The Inspector General (IG) is a principal advisor to the Secretary of Energy concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of Departmental programs and operations, including those of the Federal Energy Regulatory Commission and the National Nuclear Security Administration (NNSA).

1. Mission The OIG conducts audits, inspections, investigations, and special reviews for the purposes of (i) promoting economy and efficiency and (ii) detecting and preventing fraud, waste, and abuse.

In carrying out this mission, the Office of Investigations and its personnel must be free, both in fact and appearance, from impairments to independence. Sound judgment must be exercised to ensure that the conduct and reporting of investigations are impartial, fair, equitable, objective, and respectful of individual rights. All investigations will be void of discrimination based on race, color, religion, sex, age, disability, or national origin.

2. Departmental Relationships The IG reports to the Secretary of Energy or, to the extent such authority is delegated, the Deputy Secretary of Energy. In addition, the IG is required to submit reports concerning fraud, abuses, other serious problems and deficiencies to the Congress via the Secretary on a semiannual basis. The Department's current organizational structure is outlined at <http://www.energy.gov/aboutus/org.category.html>.

3. Organizational Structure and Functions The OIG consists of four major elements: (i) the Office of the Deputy Inspector General for Audits, (ii) the Office of the AIGI, (iii) the Office of the Assistant Inspector General for Inspections, and (iv) the Office of the Assistant Inspector General for Resource Management. The overall OIG organization is depicted at <http://www.ig.doe.gov/organization.htm>. The OIG's major functions include:

- Supervising, coordinating and providing policy direction for audit, investigative, and inspection activities;
- Recommending policies for, and conducting, supervising, or coordinating relationships between, the Department and other

Federal agencies, State and local government agencies, and other nongovernmental entities with respect to (i) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud or abuse in, programs and operations administered or financed by the Department, and (ii) the identification and prosecution of participants in such fraud or abuse;

- Recommending action to correct problems, abuses, and deficiencies noted in the course of audits, inspections, and investigations;
- Monitoring and reporting on the progress of implementing actions to correct problems, abuses, and deficiencies; and
- Keeping the Secretary and the Congress fully and currently informed concerning fraud and serious abuses, problems, and deficiencies relating to the administration of the Department, its programs, and operations.

C. INVESTIGATIVE AUTHORITY, RESPONSIBILITIES, AND JURISDICTION

The IG is responsible for conducting investigations of specific allegations of violations of Federal law and serious administrative infractions committed against the Department by its employees, contractors, vendors and any others who have a relationship with the Department that impacts on the OIG mission of detecting and preventing fraud, waste, and abuse. Specific authority and responsibilities are discussed below.

1. Statutory Authority The Department of Energy Organization Act, Public Law 95-91, as amended, established an OIG in the Department. Public Law 100-504 amended the IG Act of 1978 (5 United States Code [U.S.C.] Appendix 3) and gave statutory authority to the Department's IG. The Homeland Security Act of 2002, Public Law 107-296, amended the IG Act of 1978 and granted statutory law enforcement authority to presidentially appointed Inspectors General.

a. Appointment of Assistant Inspector General for Investigations The IG Act states that each IG shall, in accordance with applicable laws and regulations governing the civil service, appoint an AIGI with the responsibility for supervising the performance of investigative activities relating to programs and operations of the establishment.

b. Reporting to Attorney General The IG Act states that in carrying out the responsibilities established under the Act, the IG shall report expeditiously to the Attorney General whenever the IG has reasonable grounds to believe that there has been a violation of Federal criminal law.

c. Coordination of Relationships with Other Agencies The IG Act states that the IG shall have the responsibility to recommend policies for,

and to conduct, supervise, or coordinate relationships, between the Department and other Federal agencies, State and local agencies, and nongovernmental entities with respect to the identification and prosecution of participants in fraud or abuse in Departmental programs and operations.

d. Preparation of Semiannual Reports The IG Act requires each IG to prepare semiannual reports summarizing the activities of the Office during the immediate preceding 6-month periods ending March 31 and September 30. Reports can be found at <http://www.ig.doe.gov/semi.htm>. Such reports are to include:

- A description of significant problems, abuses, and deficiencies relating to the administration of programs and operations;
- A description of the recommendations for corrective action made by the Office with respect to the significant problems, abuses, or deficiencies identified;
- An identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed; and
- A summary of matters referred to prosecuting authorities and the prosecutions and convictions that have resulted.

e. Distribution of Semiannual Reports In accordance with the IG Act, the IG's semiannual reports are to be furnished to the Secretary of Energy and transmitted by the Secretary to the appropriate committees or subcommittees of the Congress within 30 days after receipt of the report. The IG is also required to report immediately to the Secretary when he/she becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department.

2. Nonstatutory Responsibilities In addition to the statutory reporting responsibilities summarized above, the IG has additional nonstatutory reporting responsibilities.

a. President's Council on Integrity and Efficiency Requirements (PCIE) The PCIE was established by Executive Order 12301, dated March 26, 1981, to provide leadership for Government-wide activities to reduce waste, fraud, or abuse and to improve the economy and efficiency in Federal programs and operations. Its membership consists of the statutory IGs and representatives of other selected agencies. The PCIE requires the IG to:

- Report on specific reviews of Departmental programs and operations that may be of interest to the PCIE, and
- Participate in and report on general Government-wide reviews where the Department is one of the sample agencies.

Further information can be found at <http://www.ignet.gov/pcieecie.html>.

b. Requests from Other IGs From time to time, requests for investigative assistance are received from the IGs of other departments and agencies. These requests impose additional nonstatutory reporting responsibilities.

D. SPECIAL PRINCIPLES OF JURISDICTION

The authority for the Office of Investigations to conduct an investigation is delineated by the IG Act of 1978, as amended. Generally, the Office of Investigations has the authority to conduct investigations of specific allegations of violations of Federal law and serious administrative infractions committed against the Department by its employees, contractors, vendors and any others who have a relationship with the Department. However, in certain instances, violations of law relating to the Department fall within the jurisdiction of other law enforcement activities.

1. Authority of State and Local Law Enforcement Officers on Federal Property State and local law enforcement officers retain jurisdiction over violations of State criminal code on Federal property, except in extremely limited situations (for example, military installations and the U.S. Capitol).

2. Jurisdiction of the Federal Bureau of Investigation As the primary investigative arm of the Department of Justice, the Federal Bureau of Investigation (FBI) has jurisdiction in all matters involving fraud against the Federal Government, and shares jurisdiction with the OIG in the investigation of fraud. Additionally, the FBI has authority over certain criminal violations by virtue of the Atomic Energy Act of 1954, as amended, and a Memorandum of Understanding (MOU) between the FBI and OIG, dated June 7, 1982 see Exhibit A (IM02EXA.DOC). On December 8, 2003, the Attorney General issued guidelines that require OIG/FBI mutual written notification of any criminal investigation.

a. Atomic Energy Act of 1954 as Amended Pursuant to Public Law 703, the Atomic Energy Act of 1954, as amended, the FBI has exclusive jurisdiction to investigate the following:

- The unlicensed transfer, receipt, manufacture, possession, etc. of any special nuclear material;
- The unlicensed transfer, receipt, manufacture, possession, etc. of any atomic weapon;
- The unlicensed transfer, receipt, manufacture, possession, etc. of any production facility; and
- The unlawful interference with the agency's recapture of nuclear material or entry into a nuclear facility.

The FBI also has exclusive jurisdiction in matters involving espionage or sabotage concerning nuclear materials, atomic weapons, and defense nuclear

materials. Allegations received by the OIG concerning these matters should be referred to the FBI immediately.

b. Memorandum of Understanding Between OIG and FBI In accordance with the 1982 MOU between the FBI and the OIG, the FBI has the following jurisdictional authority involving criminal investigative violations:

- The investigation of all specific allegations of bribery, attempted bribery, and other specific, significant allegations of corruption which culpably involve U.S. Government employees; and
- The investigation of all matters involving the element generally known as "organized crime," including both traditional (La Cosa Nostra) and nontraditional (other criminal ethnic groups or outlaw motorcycle gangs) whether or not the matter is considered prosecutable.

c. The Homeland Security Act of 2002 which amended 6(e)(4) of the Inspector General Act of 1978, required that the Attorney General promulgate guidelines to govern the exercise of law enforcement authorities granted pursuant to the Act. These guidelines replaced the 1996 MOU between the OIG, Department of Justice (DOJ), and the FBI under which the DOJ deputized OIG investigators as Special Deputy U.S. Marshals.

3. Office of Nuclear Safety The Department's Office of Nuclear Safety and Enforcement has jurisdiction of violations of nuclear safety requirements, both civil and criminal, as set forth in the Code of Federal Regulations (CFR), 10 CFR Part 820, "Procedural Rules for DOE Nuclear Activities." Alleged civil and criminal violations of Department nuclear safety requirements should be reported immediately to the Director, Office of Nuclear Safety and Enforcement.

E. RELATIONSHIPS WITH PROSECUTIVE AUTHORITIES, OTHER LAW ENFORCEMENT AGENCIES, AND OTHER DEPARTMENTAL ENTITIES

The success of any investigation depends, in part, upon the degree to which SACs, ASACs, and Special Agents build coalitions and maintain cooperative efforts. Thus, it is important for Office of Investigation to set the groundwork for good working relationships. This includes, but is not limited to, providing *Fraud Awareness Briefings* to DOE and contractor personnel; maintaining a dialogue with prosecutors and other law enforcement officials; and interacting with DOE managers and program officials. These activities serve to improve customer understanding of, and familiarity with, Office of Investigation operations and personnel; foster the reporting of fraud indicators to the OIG; encourage the exchange and sharing of resources and information; expand Office of Investigation's intelligence base; and improve Office of Investigation's understanding of customer needs and priorities.

With this in mind, it is expected that each region sponsor *Fraud Awareness Briefings* at DOE sites within their purview. Such briefings are defined as formal presentations to two or more individuals for the purpose of (1) educating the participants on fraud indicators and schemes, and/or (2) familiarizing the participants with Office of Investigation programs, operations, and processes. Additionally, SACs and ASACs are expected to meet routinely with DOE and contractor managers/program officials to foster open dialogues and good working relationships. This includes, for instance, introductory "meet and greet" type meetings, periodic coordination meetings, or discussions on case openings, progress, or status. Field personnel are responsible for tracking efforts relative to fraud awareness briefings and interactions with managers/program officials. Headquarters Office of Investigations will distribute a form for tracking these activities and request updates periodically.

Some important relationships impacting on the quality of the investigative effort are described below (see chapter 4 for information on relationships with the OIG's Office of Audit Services and Office of Inspections).

1. Relationship With U.S. Attorneys and Assistant U.S. Attorneys (AUSA) SACs, ASACs, and Special Agents are expected to establish and maintain working relationships with U.S. Attorneys and/or Assistant U.S. Attorneys (AUSAs) that permit both formal and informal discussions of investigations. Special Agents are expected to consult with an AUSA as soon as reasonably possible after assignment of a case. The primary purposes of this consultation are to (i) inform the AUSA of the alleged criminal violation(s) which, according to a complaint or other information, may have been committed, and (ii) determine whether the AUSA will prosecute the case, if the Special Agent obtains sufficient evidence to prove that the alleged violation(s) actually occurred. In addition, early on, the Special Agent should also brief the civil AUSA on the alleged violation(s). In some of the smaller districts, one AUSA may handle both criminal and civil prosecutions.

2. Relationship With the Criminal Division, Department of Justice The DOJ Criminal Division, headed by an Assistant Attorney General, is responsible for supervising the enforcement of all Federal criminal laws except those specifically assigned to other divisions. Its jurisdiction extends to civil as well as criminal matters, and the Division may provide assistance to any U.S. Attorney. The Division also assists in matters involving the Federal Rules of Criminal Procedure, Federal Rules of Evidence, and speedy trial problems. The Fraud Section and the Public Integrity Section are the two most often used for coordination of white-collar crime and employee violations:

a. The Fraud Section The Fraud Section plays a critical role in the development of DOJ policy and implements enforcement initiatives. The Section advises the DOJ leadership on such matters as legislation, crime prevention, and public education. The Section frequently coordinates interagency and multi-district investigations and international enforcement efforts.

The Fraud Section also initiates, staffs, and conducts Grand Jury investigations and trials in certain specialized and complex cases. On policy and case-related matters, it cooperates with and has a close working relationship with the OIGs, the FBI, and other Federal agencies. In addition, the Fraud Section assists the Criminal Division's Office of Legislation in evaluating pending legislation and making appropriate comment on adverse court opinions.

b. The Public Integrity Section The Public Integrity Section oversees the federal effort to combat corruption through the prosecution of elected and appointed public officials at all levels of Government, and (ii) monitors the investigations and prosecution of election and conflict of interest crimes. It is the DOJ unit most frequently contacted by the OIG for the prosecution of cases involving senior Government officials. The Public Integrity Section has operational responsibility for litigation, and for providing support, advice and aid to U.S. Attorneys. It takes an active, direct role in the prosecution of corruption cases when the local U.S. Attorney has had a significant business, social, or political relationship with any subject or key witness in the case (recusal). The Section also becomes directly involved when additional staff is requested or needed in sensitive cases, or when the case extends over judicial district lines. Prosecutive authorization from the Section is required in all election-related cases, and in corruption cases brought under the provisions of the Hobbs Act.

3. Relationship With the Anti-Trust Division, Department of Justice. Since 1982, the DOJ Anti-Trust Division has placed special emphasis on working with the OIG to address anti-competitive practices affecting the Government acquisition process, particularly when those practices are provable violations of anti-trust statutes. In support of this emphasis, OIG cases indicating patterns of collusion, bid rigging, and other anti-competitive schemes are referred to the Anti-Trust Division. The Anti-Trust Division considers the cases for criminal or civil prosecution, and coordinates its activities with U.S. Attorneys and other DOJ components, as appropriate. The DAIGI serves as the point of contact with the Anti-Trust Division and is responsible for responding to Anti-Trust Division questions or requests for information from Headquarters components. SACs respond to Anti-Trust Division questions or requests for information from field investigations offices. SACs are responsible for keeping the DAIGI fully informed of their contacts with the Anti-Trust Division.

4. Relationship With the Civil Division, Department of Justice In addition to the pursuit of possible criminal prosecutions, the OIG Special Agent should aggressively pursue other civil and/or administrative remedies that may result in successful prosecutions. Therefore, the Special Agent should also contact the DOJ Civil Division while pursuing potential criminal prosecution of a case. The Program Fraud Civil Remedies Act of 1986 and the Affirmative Civil Enforcement Program provide alternative civil/administrative remedies.

a. Program Fraud Civil Remedies Act The Program Fraud Civil Remedies Act of 1986, 31 U.S.C. Sections 3801-3812, provides Federal agencies with an administrative remedy against those who submit a false claim, or a



group of related false claims, for cash, property, or services valued at less than \$150,000. The Program Fraud Civil Remedies Act offers an alternative to remedies that require Federal court litigation by granting Federal agencies authority to pursue small dollar value (less than \$150,000) frauds through an administrative version of the False Claims Act. The primary purpose of the Program Fraud Civil Remedies Act is to obtain restitution, and it provides agencies with an expeditious and inexpensive administrative procedure for recouping losses. A secondary purpose is to deter against future fraud by dispelling the belief that small-dollar frauds against the Government may be committed with impunity. The Program Fraud Civil Remedies Act allows the agency, with prior DOJ approval, to recover an assessment of up to twice the amount of each false claim or false statement in addition to a penalty of up to \$5,000 per false claim or false statement.

b. Affirmative Civil Enforcement Program The Affirmative Civil Enforcement Program was created in 1991, as part of the U.S. Attorney General's Advisory Committee on Financial Litigation. The Program is designed as a highly efficient vehicle for Inspectors General and U.S. Attorneys to work together to combat fraud against the Government. The Program uses the False Claims Act as the primary vehicle for aggressively pursuing civil settlements for a wide range of frauds against the U.S. Government. Each U.S. Attorney's Office has designated one or more AUSA from its Civil Division to participate in the Program. Any time that Special Agents believe they have proof of a false claim, they should coordinate with their SAC about contacting an Affirmative Civil Enforcement AUSA in the appropriate U.S. Attorney's Office.

5. Relationship With the Federal Bureau of Investigation The 1982 MOU with the FBI provides for (i) referral of criminal matters that require the resources or the expertise of the FBI for proper investigation, (ii) notification to the FBI of OIG investigations involving major incidents and/or widespread or ongoing criminal activities, and (iii) assistance to be furnished the FBI upon request. Additionally, the December 8, 2003 Attorney General Guidelines issued as a requirement of the Homeland Security Act of 2002, requires that the FBI/OIG mutual notification, in writing, 30 days after initiation of any criminal investigation (see Exhibit A, Chapter 3).

6. Relationship With State and Local Prosecutors If a Federal prosecutor declines a referral, or expresses no Federal interest during an early consultation, the Special Agent should be alert for opportunities to seek prosecution by State and local authorities. Examples of violations that could be prosecuted in State and local courts include: misuse of Government credit cards, criminal trespass, misuse of computers, and false utterances (bad checks). When State or local prosecutors accept a case, Special Agents will provide the same level of assistance, and follow the same administrative and reporting procedures, as in a Federal prosecution.

7. Relationship With Other Law Enforcement Agencies After a SAC determines that a complaint or allegation warrants investigation, the SAC will also determine whether optimum investigative results would be obtained by conducting the investigation internally, or by referring the complaint or

allegation to another law enforcement agency. The following are examples of other law enforcement agencies:

- Investigative components of other OIGs;
- General Services Administration Federal Protective Service;
- Postal Inspection Service;
- Customs Service;
- Internal Revenue Service;
- Secret Service;
- Securities and Exchange Commission;
- Drug Enforcement Administration;
- Bureau of Alcohol, Tobacco, Firearms and Explosives; and
- State and local enforcement agencies.

Standard procedures for referrals to other law enforcement agencies are discussed in chapter 5.

8. Relationship With Departmental Board of Contract Appeals The Board of Contract Appeals is a quasi-judicial arm of the Department, which, under statute, or acting for the Secretary, hears and resolves appeals of contract-related and other delegated matters. In addition to hearing contract appeals, the Board may act as the Department's Contract Adjustment Board, the Financial Assistance Appeals Board, the Invention Licensing Appeals Board, or the Patent Compensation Board. The Board was established by the Atomic Energy Commission in 1964, and it is 1 of 10 such Boards within the Executive Branch. The Board proper consists of three administrative judges, the minimum required by the Contract Disputes Act. The Chairperson is the Chief Administrative Judge.

Most matters that come before the Board originate in the field, and the Department's interests are represented by field counsel. With the exception of occasionally providing an administrative judge to preside over environmental hearings, the only interaction between the field offices and the Board is in the context of litigation of specific cases. The Counsel to the IG acts as the OIG liaison with the Board of Contract Appeals and advises the AIGI of any OIG investigative matter that has been docketed for trial or proceedings before the Board. While the AIGI retains full authority over its respective area of responsibility, the AIGI will notify the Counsel to the IG prior to initiating any inquiry or investigation involving the Board of

Contract Appeals. This notification includes, but is not limited to, matters relating to OIG Hotline complaints and investigations.

9. Relationship With Departmental Office of Security Affairs (or Equivalent) All Office of Investigations staff will cooperate fully with the Department's Office of Security Affairs, and promptly report to the Office of Security Affairs information regarding security concerns relating to DOE facilities or operations. SACs will review all complaints and/or information received or developed regarding security concerns for potential investigative action and/or referral. While investigations will be conducted of potential criminal issues pertaining to fraud and/or abuse, matters involving security issues will be referred to the Office of Security Affairs.

Referrals of information to the Office of Security Affairs will be made in accordance with Office of Investigation's *Allegation Processing Handbook*. In case of an emergency, a telephone referral may be made, followed by appropriate written notification.

**MEMORANDUM OF UNDERSTANDING  
IG, DOE**

This memorandum delineates distribution of each party's investigative responsibilities so as to utilize most efficiently the limited resources which are available. It is recognized that the efforts of the FBI will be directed at the investigation of certain criminal activity involving DOE programs and functions, either referred by the IG or initiated by the FBI. The efforts of the IG will be directed at both the detection and prevention of fraud, waste, abuse, and inefficiency and at the conduct, supervision and coordination of IG audits and investigations relating to the programs and operations of DOE.

**D. RESPONSIBILITIES OF THE IG**

1. The IG will refer to the FBI, upon receipt, all specific allegations of bribery, attempted bribery, and other specific, significant allegations of corruption which culpably involve U.S. Government employees.
2. The IG will refer to the FBI, upon receipt, all information pertaining to matters involving the element generally known as "organized crime", including both traditional (La Cosa Nostra) and nontraditional (other criminal ethnic groups or outlaw motorcycle gangs), whether or not the matter is considered prosecutable.
3. The IG will investigate all other criminal matters arising from and pertaining to DOE programs, functions and personnel. The IG may refer to the FBI those criminal matters which require the resources or expertise of the FBI for proper investigation. In cases involving major incidents and/or widespread or ongoing criminal activity where the IG proceeds alone with an investigation, the IG will notify the FBI of this fact.
4. The IG will investigate all administrative and civil matters arising from and pertaining to DOE programs, functions and personnel that do not involve violations of Federal criminal statutes. Certain civil investigations arising from criminal cases investigated by the FBI may, however, be handled by the FBI.
5. To the extent possible, the IG will provide assistance to the FBI upon request.

**MEMORANDUM OF UNDERSTANDING  
IG, DOE**

**8. The following services will be provided to the IG by the FBI:**

- a. Appropriate name checks;**
- b. Laboratory examinations;**
- c. National Crime Information Center inquiries;**
- d. Appropriate identification record searches;**
- e. The FBI will provide desired relevant training to IG personnel, as resources permit; and**
- f. Any other services normally available to Federal investigative agencies.**

**F. RESPONSIBILITIES CONCERNING JOINT ENDEAVORS BY THE FBI AND IG**

**1. The FBI and the IG may agree to enter into joint investigative endeavors, including undercover operations, in appropriate circumstances. The specific details of each endeavor, including resources to be committed, the delegation of responsibility, liabilities, etc., will be determined prior to the commencement of these endeavors. While differing circumstances will result in varied arrangements from project to project, the following conditions shall apply to all joint endeavors:**

- a. Participating personnel will be supervised by their respective agencies;**
- b. Only one evidentiary document, such as a record of interview, will be prepared;**
- c. Any contact with the news media, such as press releases, will be coordinated and agreed to in advance by both the FBI and the IG; and**
- d. In the case of undercover operations, a separate written agreement for both the FBI and the IG will be required setting forth their respective responsibilities as they pertain to manpower, economic and other resources**

**MEMORANDUM OF UNDERSTANDING  
IG, DOE**

6. The IG will be the focal point of liaison functions between DOE and the FBI with regard to the criminal matters that are the subject of this agreement and will be responsible for the security, control and dissemination of FBI reports, or other written and oral communications related to these matters. The IG will abide by the "third party rule" in regard to FBI documents, i.e., will obtain FBI approval prior to disseminating FBI-originated documents.

**E. RESPONSIBILITIES OF THE FBI**

1. The FBI will have the primary role in investigating bribery, attempted bribery and specific, significant allegations of corruption which culpably involve U.S. Government employees and all matters involving organized crime. The FBI will respond to allegations of bribery within one workday or less, as appropriate. The FBI will assume investigative responsibility for other significant criminal investigative matters referred by the IG, consistent with the availability of investigative resources within the appropriate FBI field office. The FBI will promptly notify the IG if it will not assume investigative responsibility for a matter referred to it, so that the IG may proceed to address the matter on a timely basis.

The primary objectives of these FBI investigations will be:

a. To provide evidence leading to the prosecution of individuals believed to have violated Federal criminal statutes;

b. As an ancillary result of a criminal investigation, to provide, through the IG, information potentially useful to DOE in taking any necessary corrective action for the purpose of averting the recurrence of fraud, waste or inefficiency; and

c. As an ancillary result of a criminal investigation, to provide, through the IG, information useful to DOE in taking specific administrative action against DOE employees or other individuals or entities who were involved in the investigation.

2. The FBI maintains the option to investigate any criminal allegations involving DOE's programs or functions, which the FBI receives independently.

MEMORANDUM OF UNDERSTANDING  
IG, DOE

3. The FBI will promptly notify the IG of the initiation of investigations which are predicated on other than an IG referral, unless disclosure might endanger the safety of FBI or other personnel, or otherwise have a potentially adverse impact upon the investigation.

4. The FBI recognizes the importance of expeditious investigation and reporting in situations where:

a. The subject(s) of the investigation is a DOE employee;

b. The subject(s) of the investigation is continuing to do business with DOE; and

c. The subject(s) of the investigation is under consideration to receive benefits which would involve DOE.

5. Upon request of the IG, the FBI will promptly notify the IG of developments during the investigation, unless disclosure might endanger the safety of FBI or other personnel, or otherwise have a potentially adverse impact upon the investigation.

6. The FBI will promptly furnish the IG with a written summary of findings at the conclusion of an investigation and the nature of judicial action, if any, taken. If administrative or civil action is being considered by DOE, the FBI will, upon written request, provide for the sole use of DOE, existing detailed investigative data, exclusive of any Federal grand jury or other material, the disclosure of which is not deemed to be in the best interest of FBI operations.

7. Except as provided in Paragraph E(6), the FBI will promptly furnish, at the conclusion of the investigation, and upon receipt of a written request identifying the exact data needed, FBI investigative documents and Special Agent testimony for use in administrative proceedings, consistent with regulations contained in Attorney General Order 919-80, effective December 4, 1980, concerning the release of Departmental documents in Federal or State proceedings.

MEMORANDUM OF UNDERSTANDING  
IG, DOE

to be committed and/or other conditions necessitated by the operation. Control of joint undercover operations will be the responsibility of the FBI.

2. All joint criminal investigations will be conducted under the supervision and control of the FBI.

3. Close and continuous liaison will be maintained between the IG and the FBI in an attempt to identify areas that require mutual attention. In this regard, both the IG and the FBI will designate an appropriate individual to serve as the primary contact for the liaison function.

**G. AMENDMENTS**

This agreement can be amended with the mutual consent of both parties.

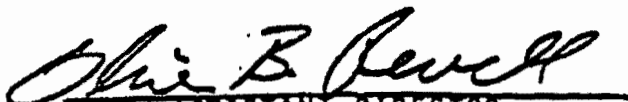
**H. TERMINATION**

This agreement will remain in effect until terminated by written notice by either party. The written notice will be provided at least 60 days prior to the termination date desired.

**I. AGREEMENT APPROVAL**

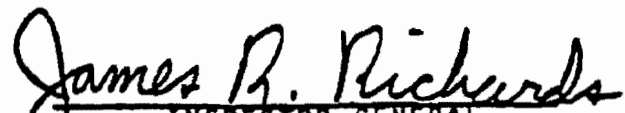
This agreement becomes effective when approved and signed by both parties.

APPROVED:

  
ASSISTANT DIRECTOR  
CRIMINAL INVESTIGATIVE DIVISION  
FEDERAL BUREAU OF INVESTIGATION

June 7, 1982  
DATE

APPROVED:

  
INSPECTOR GENERAL  
UNITED STATES DEPARTMENT OF  
ENERGY

6-7-82  
DATE





## Document Number 4



**CHAPTER 3**

**STANDARDS AND RESPONSIBILITIES FOR OIG SPECIAL AGENTS**

**I. SCOPE OF CHAPTER**

This chapter contains information relating to standards and responsibilities, including medical standards and physical requirements, that are applicable to all Office of Inspector General (OIG) Special Agents.

**II. GENERAL**

Special Agents are subject to close scrutiny by Federal, State, and local officials, as well as the general public. They are official representatives of the Government, the Department, the OIG, and the law enforcement community. Their actions, appearance, attitudes and conduct reflect upon each of these entities. Therefore, Special Agents must avoid any action that might adversely affect the public's confidence in the Government or the law enforcement community.

Special Agents' duties include Federal criminal law enforcement activities, which can be physically demanding and dangerous. As such, Special Agents are subject to medical standards and physical requirements.

**III. STANDARDS OF ETHICAL CONDUCT**

Special Agents must maintain the highest standards of honesty, integrity, objectivity and personal conduct. All Special Agents, along with all other OIG employees, are required to comply with the "Standards of Ethical Conduct for Employees of the Executive Branch," which are contained in 5 Code Federal Regulations (CFR) Part 2635.

**Note:** Special Agents are in an occupational series which also requires the filing of an annual confidential financial disclosure report. Some provisions of the standards of ethical conduct found in 5 CFR Part 2635 are reportable when filing the annual confidential financial disclosure report.

The following provides an overview of key provisions of the Standards of Ethical Conduct for Employees of the Executive Branch. Employees should refer to 5 CFR Part 2635 when addressing specific situations.

**A. Subpart A - General Provisions**

The principles embodied in this section apply to all OIG Office of Investigations (OI) employees. If a specific situation is not covered by the standards set forth in 5 CFR Part 2635, employees will apply the following principles in determining whether their conduct is proper:

## CHAPTER 3 – STANDARDS AND RESPONSIBILITIES FOR OIG SPECIAL AGENTS

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical conduct above private gain. Employees shall not hold financial interests that conflict with the conscientious performance of duty;
2. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest;
3. An employee shall not, except as permitted by Subpart B of 5 CFR Part 2635, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or non-performance of the employee's duties (refer to Section B below, "Gifts from Outside Sources");
4. Employees shall put forth honest effort in the performance of their duties;
5. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government;
6. Employees shall not use public office for private gain;
7. Employees shall act impartially and not give preferential treatment to any private organization or individual;
8. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities;
9. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment that conflict with official Government duties and responsibilities;
10. Employees shall disclose waste, fraud, abuse and corruption to appropriate authorities;
11. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State or local taxes that are imposed by law;
12. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age or handicap; and

## CHAPTER 3 – STANDARDS AND RESPONSIBILITIES FOR OIG SPECIAL AGENTS

13. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in 5 CFR Part 2635. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

### B. Subpart B - Gifts From Outside Sources

An employee is prohibited from soliciting or accepting any gift from a prohibited source, or given because of the employee's official position, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in Subpart B of 5 CFR Part 2635. Special Agents should not solicit or accept, without regard to the value thereof, a gift, a gratuity or a special privilege from any person even remotely connected with any phase of an investigation.

### C. Subpart C - Gifts Between Employees

An employee is prohibited from giving, donating to or soliciting contributions for a gift to an official superior, and from accepting a gift from an employee receiving less pay, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in Subpart C of 5 CFR Part 2635.

### D. Subpart D - Conflicting Financial Interests

Subpart D of 5 CFR Part 2635 contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by 5 CFR Section 2635.403. Notwithstanding that an employee acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with 5 CFR Section 2635.402 from participating in an official capacity in any particular matter in which, to the employee's knowledge, the employee or any person whose interests are imputed to the employee, has a financial interest, if the participation will have a direct and predictable effect on that interest.

### E. Subpart E - Impartiality in Performing Official Duties

Two provisions of Subpart E of 5 CFR Part 2635 are intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of official duties. Under 5 CFR Section 2635.502, unless an employee receives prior authorization, an employee should not participate in a particular matter involving specific parties which is likely to affect the financial interest of a member of his/her household, or in which the employee knows a

## CHAPTER 3 – STANDARDS AND RESPONSIBILITIES FOR OIG SPECIAL AGENTS

person with whom he/she has a covered relationship, if he/she determines that a reasonable person with knowledge of the relevant facts would raise the question of impartiality in the matter. Under 5 CFR Section 2635.503, an employee who has received an extraordinary severance or other payment from a former employer prior to entering Government service is subject, in the absence of a waiver, to a 2-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

### F. Subpart F - Seeking Other Employment

A disqualification requirement applies to employees when seeking employment with persons who otherwise would be affected by the performance or non-performance of the employees' official duties.

### G. Subpart G - Misuse of Position

Provisions in Subpart G of 5 CFR Part 2635 relate to the proper use of official time and authority and the use of information and resources to which an employee has access because of his/her Federal employment. Subpart G of 5 CFR Part 2635 sets forth standards regarding:

1. Use of public office for private gain;
2. Use of nonpublic information;
3. Use of Government property; and
4. Use of official time.

### H. Subpart H - Outside Activities

Subpart H of 5 CFR Part 2635 contains provisions relating to outside employment, outside activities and personal financial obligations of employees that are in addition to the principles and standards set forth in other subparts of 5 CFR Part 2635. Several of these provisions apply to uncompensated as well as to compensated outside activities. OI employees are not automatically precluded from outside activities provided all applicable laws, regulations and OI-specific policies are followed. OI employees must notify their supervisor prior to engaging in any outside activities. OI Special Agents must also review Chapter 13, Section C as it applies to outside activities and an agent's ability to be available for unscheduled duty.

## CHAPTER 3 – STANDARDS AND RESPONSIBILITIES FOR OIG SPECIAL AGENTS

### IV. SPECIAL AGENT DEPARTMENT

Special Agents must present a suitable appearance and demeanor and maintain a professional attitude commensurate with their status as representatives of the OIG.

#### A. Personal Appearance

The OIG dress policy is business casual. Generally, Special Agents may wear business casual clothing except when meeting with non-OIG individuals. When meeting with non-OIG individuals, agents should be suitably groomed, attired in good taste and present a neat, clean and businesslike appearance. Business casual may be acceptable for some meetings with non-OIG individuals; however, this should be determined on a case-by-case basis.

Exceptions to dress policy may be made only by specific authorization of the AIGI, SAC or Assistant Special Agent-in-Charge (ASAC), as appropriate. In the case of firearms or defense tactics training days, deviations from appropriate attire are acceptable.

Employees should refer to Chapter 14, Section II, D for additional information about OIG's dress policy.

#### B. Demeanor

In the conduct of official duties, Special Agents should:

1. Be courteous, unbiased, and objective;
2. Conduct interviews in a polite and businesslike manner;
3. Maintain control of themselves and not be drawn into arguments;
4. Not threaten, coerce, or intimidate anyone;
5. Conduct a thorough inquiry into the matter under investigation, while avoiding unnecessary injury to, or endangering, the reputation of the subject(s) of the investigation; and
6. Avoid the unwarranted invasion of the privacy of witnesses and subjects.

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### C. Attitude

Special Agents must be unbiased and impartial collectors of facts and they must report the facts in a fair and impartial manner. A Special Agent's approach and attitude toward the matter under investigation must be devoid of all bias and prejudice and should not be altered because of sympathy or outside influence. Special Agents must avoid obligations and/or associations that could create even the appearance of bias, favoritism or conflict of interest.

Frequently, investigations are of a highly sensitive nature and involve matters that are controversial, of high public interest and of political significance. The use of tact, diplomacy and good judgment, while important at all times, is especially important in these circumstances.

### D. Department Identification and OIG Credentials

#### 1. Use of Badges

Special Agents will use their Department identification badges for official business only and display such badges in accordance with Department regulations and requirements. OIG-issued badges and credentials must also be used for official business only. Special Agents will avoid excessive public display of their OIG-issued badges and credentials. Public display is permitted in appropriate circumstances (e.g., identifying oneself to a witness at the beginning of an interview, execution of a search warrant, during an arrest, etc.).

#### 2. Lost or Stolen Badges

Loss of an OIG-issued badge and/or credential must be reported immediately to the agent's ASAC and appropriate law enforcement officials must be notified. The agent will prepare a memorandum to the SAC within 24 hours explaining the circumstances. A copy will be forwarded to the AIGI's attention. Loss of an OIG-issued badge and/or credential may result in a letter of censure or other appropriate administrative action.

### V. BRIBERY

The integrity of Special Agents and the OIG is basic to the ability of Special Agents to perform as employees and to the ability of the OIG to function as an organization. An attempt to bribe a Special Agent constitutes a direct and flagrant attack on the integrity of both the Special Agent and the OIG.



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### A. Bribery Overtures

Special Agents must be perceptive and alert in recognizing bribery overtures, which are most often indirect and very subtle. Special Agents shall immediately report any such overtures through their Special Agent-in-Charge (SAC) to the Assistant Inspector General for Investigations (AIGI), who will evaluate the incident and take appropriate investigative action.

### B. Special Agent Responsibilities

A Special Agent, who has reasonable grounds to believe that a bribery attempt has been or will be made, has the duty and responsibility to:

1. Avoid any statement or implication that the bribe will or will not be accepted;
2. Attempt to keep the matter in abeyance;
3. Immediately report the incident to the AIGI through their SAC;
4. Cooperate fully in any ensuing investigation; and
5. Avoid any unnecessary discussion of the case.

## VI. COURT ACCESS TO SPECIAL AGENT HISTORY

Special Agents must recognize that the courts accord significant weight to a defendant's right to prepare an adequate defense and to otherwise receive due process under the Constitution. In this vein, a court may deem certain information about a Special Agent relevant to a particular case and, thus, make it available to the defense for use at trial.

### A. Constitutional Due Process

Constitutional due process (as formulated by the U.S. Supreme Court in cases such as *Napue v. Illinois*, 360 U.S. 264 [1959], *Brady v. Maryland*, 373 U.S. 83 [1963], and *Giglio v. United States*, 405 U.S. 150 [1972]) requires that prosecutors, upon request by the defense, identify and turn over certain material, exculpatory information or other relevant information that could have an impact on the outcome of a trial of the defendant. What information may be deemed relevant or material in a given case depends on several factors, but this information can include, but is not limited to, adverse information from a Special Agent's personnel file. This information may be used to impeach the credibility of a testifying Special Agent.

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These important constitutional safeguards dramatically highlight the need for proper comportment by Special Agents in their personal and professional lives at all times. This includes exercising care in dealing with disputes with fellow Special Agents.

### B. Exculpatory Information

The assigned prosecutor will work with the case agent and applicable ASAC and SAC to ensure that exculpatory information is provided to the prosecutor. Additionally, the Special Agent and his/her management must be aware that they are required to disclose exculpatory and other information to the prosecutor that would tend to impeach a witness, bearing in mind that the case agent will often be included as a witness.

Any response to a prosecutor's request, any disclosures, and any potential relevant material are coordinated through the Counsel to the IG's office.

## VII. ALLEGATIONS AGAINST OIG PERSONNEL

The following provides information on how to address allegations of fraud, criminal misconduct or other wrongdoing made against OIG personnel. Allegations regarding performance, competence and quality of work should not be processed using these guidelines but should be reported to the appropriate SAC and/or ASAC.

### A. Reporting Allegations

All allegations received by OI employees against personnel in any component of the OIG must be reported promptly. Allegations will be reported as follows:

1. An OI employee who receives an allegation against any OIG employee must immediately report the allegation to his/her team leader or supervisor;
2. The team leader or supervisor must verbally report the allegation directly to the AIGI within four hours of receipt, absent extenuating circumstances;
3. Allegations against the AIGI will be reported directly to the DIGI;
4. Allegations against any OIG Deputy Inspector General will be reported directly to the Inspector General (IG);
5. The OI employee who received the allegations must submit an OIG Complaint Form directly to the AIGI, DIGI or IG, as appropriate, within 48 hours of receipt of the allegation, absent extenuating circumstances;

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6. A disposition decision (e.g., investigate, refer to management, close without further action) will be made by the senior official who receives the OIG Complaint Form; and
7. Allegations against OIG employees will not be processed through the Complaint Coordination Committee.

**Note:** OIG employees who receive allegations against OIG personnel should not make any EIGPT-related entries on the allegation. EIGPT entries will be made by Headquarters Operations staff.

### B. Processing Allegations

The processing of allegations against OIG Personnel will be done by Headquarters Operations staff.

#### 1. Case Number

All allegations of fraud, waste, abuse or potential criminality against OIG employees will be processed as "PP" cases, regardless of the disposition decision. A regional or other designation, such as HQ, OR, RL, RS, RR, ZZ, etc., will not be assigned to such cases.

#### 2. Predication

Based on the disposition decision, the allegations/complaint will be predicated, opened as a "PP" case in the Energy Inspector General Project Tracking (EIGPT) system, and an official case file will be created.

#### 3. EIGPT Entries

With respect to EIGPT system entries:

- a. Only the IPR (Predication) and ICA (Case Assignment) screens will be completed;
- b. The IPR screen will make reference to an "OIG employee" not a specific subject name;
- c. The IDX (Indexing) screen will remain blank;
- d. The IEB (Executive Brief) screen will make a general reference to the date of the complaint and the nature of the complaint (e.g., "On 03-MAR-95, the OIG received an allegation that an OIG employee misused travel funds. Matter will be processed as a referral to management.")

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**Note:** All other policies and procedures for processing a complaint, such as case file organization, serialization, Memorandum of Investigative Activity, etc., will be followed.

### C. Investigating Allegations

#### 1. Case Agent

If a decision is made to investigate a complaint, a Special Agent will be assigned as the case agent.

#### 2. Case Reporting

The case agent will provide updates and report the findings directly to the AIGI.

#### 3. Referring Allegations

If a decision is made to refer a complaint to the Office of Audits, Office of Inspections or Office of Management and Administration for review and processing, the AIGI will make a written referral to the cognizant organization head. The manager, in turn, will provide a written response to the AIGI at the conclusion of his/her review. The AIGI will process the case file for closing.

### D. Accessing Case Files

The official case files for all open "PP" cases will remain in the possession of the AIGI. All closed "PP" cases will be maintained by in the OI Official Case File Room. Requests for access to open or closed "PP" files should be directed in writing to the AIGI. Access to these files will be granted only by the AIGI (or DIGI) and only on a need-to-know basis.

**Note:** All duties and responsibilities outlined in this section may be delegated to the DAIGI.

## VIII. MEDICAL STANDARDS AND PHYSICAL REQUIREMENTS

All Criminal Investigators (i.e., Special Agents) are strongly encouraged to maintain an acceptable level of physical fitness in order to safely perform the essential functions of investigation.

This section establishes medical standards and physical requirements for Special Agents in the OIG and provides procedures for their implementation. These standards provide a realistic means of ensuring that applicants and employees are physically capable of performing the duties of their positions, without undue risk to themselves or others. The standards and requirements also orient examining physicians to any medical disorder or physical condition,

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which would render an applicant or employee unable to meet the functional requirements of the position, or which would place the employee or others at risk. The standards and requirements also ensure the consistent application for applicants and incumbent agents.

### A. OIG Medical/Physical Requirements Policy

#### 1. Application of Standards

A basic premise of Federal employment is that employees must be fully qualified to safely and efficiently perform the essential duties and responsibilities of their positions without undue risk to themselves or others. Special Agent's duties include Federal criminal law enforcement activities, which can be physically demanding and dangerous. The standards and requirements apply equally to all Special Agent positions.

#### 2. Primary and Secondary Law Enforcement Positions

- a. Primary law enforcement positions are primarily held by Special Agents who interview witnesses, interrogate suspects, review, collect and analyze records, facts, and evidence, perform undercover assignments, carry firearms and conduct arrests, searches and seizures.
- b. Secondary law enforcement positions are held primarily by OIG Special Agent supervisors and managers. These positions require experience gained from primary law enforcement positions. The grade levels of secondary positions vary with the complexity of investigations, jurisdictional involvement and degree of individual responsibility.

### B. Regulatory Authority

#### 1. 5 CFR Part 339, Subpart B, "Physical and Medical Qualifications"

This subpart requires the Office of Personnel Management (OPM) to establish and/or approve medical standards for Government-wide occupations. Agencies are authorized to establish physical requirements for positions when they are considered to be essential for successful job performance.

#### 2. 5 CFR Part 731, Subpart C, "OPM Suitability Action Procedures"

This subpart sets forth the procedures to be followed when OPM proposes to take, or instructs an agency to take, a final suitability action against an applicant, appointee or employee due to medical issues.

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### C. Definitions

The following definitions apply to OIG medical standards and physical requirements policies:

#### 1. Arduous or Hazardous Positions

Positions that are dangerous or physically demanding to such a degree that an incumbent's medical condition is necessarily an important consideration in determining ability to perform safely and efficiently.

#### 2. Medical Standard

A written description of the medical requirements for a particular occupation.

#### 3. Physical Requirement

A written description of job related physical abilities that are normally considered essential for successful performance in specific positions.

#### 4. Temporary Disability

A condition that prohibits the employee from performing the full range of duties inherent to the position for a limited period of time (generally not more than 6 months). In accordance with Public Law 95-555, pregnancy, childbirth, and related medical conditions are considered temporary disabilities.

### D. Medical Standards

#### 1. Standards

The OIG uses the following medical standards for the Criminal Investigator 1811 Series:

- a. *OPM Established Standards* – The duties of Criminal Investigator 1811 Series position require moderate to arduous physical exertion involving walking and standing, use of firearms, and exposure to inclement weather. Manual dexterity with comparatively free motion of finger, wrist, elbow, shoulder, hip, and knee joints is required. Arms, hands, legs, and feet must be sufficiently intact and functioning in order that applicants may perform the duties satisfactorily. Sufficiently good vision in each eye, with or without correction, is required to perform the duties satisfactorily. Near vision, corrective lenses permitted, must be sufficient to read printed material the size of typewritten characters.

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Hearing loss, as measured by an audiometer, must not exceed 35 decibels at 1000, 2000, and 3000 Hz levels. Since the duties of these positions are exacting and responsible, and involve activities under trying conditions, applicants must possess emotional and mental stability. Any physical condition that would cause the applicant to be a hazard to himself/herself, or others is disqualifying.

- b. *U.S. Treasury OPM Approved Established Standards* – Uncorrected distant vision must test 20/200 and corrected distant vision must test 20/20 in one eye and 20/30 in the other.

### 2. Application

These medical standards aid the examining physician and OIG management officials in consistently determining what medical problems may hinder an individual's ability to satisfactorily perform the required work without causing undue risk to him/her or others. In making qualification decisions about specific medical problems, the OIG must also be guided by the considerations set forth in 5 CFR Part 339.

### E. Physical Requirements

The duties of the Special Agent position require moderate to arduous physical exertion involving working and standing, use of firearms, and exposure to inclement weather. Applicants and incumbent Special Agents must have no physical impairments which could prevent the performance of law enforcement tasks such as making searches, carrying out arrests, and using firearms, or inhibit performance of required practical exercises and tasks while participating in mandated training programs approved by the OIG. As such, applicants and incumbent Special Agents must possess the following general attributes in order to perform the duties of the position satisfactorily:

1. Arms, hands, legs and feet intact and functioning;
2. Full range of motion of all joints, limbs and trunk;
3. Average manual dexterity and hand-type coordination;
4. Average strength for age and build;
5. Acceptable eyesight;
6. Acceptable hearing (the ability to hear the conversational voice and whispered speech with or without the use of a hearing aid is required);

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7. Normal vocal abilities; and
8. Emotional and mental stability.

### F. Medical Examinations

#### 1. Examination Requirement

- a. *Applicants* – All applicants selected for initial appointment as a Special Agent must meet the physical requirements and medical standards, as determined by a pre-employment medical examination. Applicants must take the medical examination and meet the established standards before an official job offer can be made. Individuals who are transferring from another Federal agency without a break in service, and who have undergone an agency periodic examination within the last 12 months, may have the pre-employment examination waived. The transferring agent may submit copies of the examination to the designated Federal health facility for certification by the designated medical officer. If the medical officer is unable to make the required certification from the information submitted, the applicant may be required to undergo a pre-employment examination before an official job offer can be made.
- b. *Incumbents* – All incumbent Special Agents will be required to successfully pass periodic examinations to ensure that they maintain certain physical and medical standards. The periodic medical examination is preventive in nature. Examinations will be scheduled every 2 years for employees over 40 years of age and every 3 years for employees 40 years of age and under.

#### 2. Authorized Medical Physicians

An authorized medical unit designated by the OIG must perform the examinations. The AIGI will notify the OIG's Office of Management and Administration of the decision to use a physician other than at a designated Federal medical facility.



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- a. *Federal Medical Facilities* – Ideally, incumbent and applicant medical examinations will be performed at designated local Federal medical facilities within the incumbent/applicant's local commuting area. Requests to use recent examinations performed by another Federal law enforcement agency approved medical unit must be requested through the SAC and approved by the AIGI.
- b. *Personal Physicians* – Personal physicians may not be used for applicant examinations. Requests to use an incumbent Special Agent's personal physician must be requested through the agent's SAC and approved by the AIGI.

### 3. Use of Personal Physicians

- a. *Waiver* – The use of personal physicians by incumbents to perform examinations will be limited to unique circumstances including but not limited to instances where the designated doctor or health unit is or recently has been the focus of an OIG investigation; there is limited availability of qualified medical professionals locally; or other compelling situations.
- b. *Payment* – The Special Agent will be personally responsible for the costs to perform the medical examination by a personal physician.
- c. *Coordination* – In the event a personal physician is authorized for use, the requesting Special Agent is responsible for coordinating with the OIG's Office of Management and Administration to ensure that all required paperwork, scheduling, examination and billing requirements are understood and met.
- d. *Medical Forms* – The OIG Medical-Physical Evaluation Form will be used by the physician to document both the examination and conclusion as to whether the applicant has any limiting physical or medical conditions (See Medical-Physical Examination Form - Chapter 3, Exhibit A). The OIG will request that the examining physician submit the entire form and associated documents to the OIG's Office of Management and Administration. In the event this cannot be accomplished, the Special Agent may mail the completed form directly to the OIG's Office of Management and Administration and notify their immediate supervisor of the circumstances. The OIG's Office of Management and Administration will coordinate final review of the results with an OIG designated physician. The OIG designated physician, not the agent's personal physician, is responsible for making the final determination on the agent's medical qualifications.

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### 4. Responsibilities

The following outlines responsibilities pertaining to medical examinations for Special Agents:

- a. *AIGI* - The AIGI has the following responsibilities:
  - i. Considers all available medical information, including documentation, and renders employability decisions concerning an individual's ability to perform the essential duties of a Special Agent;
  - ii. If an applicant or employee is determined to have a limiting medical condition, determines if that individual is able to safely and efficiently perform the duties of the position (if so, the AIGI may waive the application of specific medical standards or physical requirements);
  - iii. Approving reasonable accommodations;
  - iv. Making determinations as to whether a personal physician can be used for medical examinations; and
  - v. Ensures that Special Agents report for medical examinations in accordance with mandatory schedules.
- b. *The Office of Management and Administration* – The Office of Management and Administration has the following responsibilities:
  - i. Budgets and plans for payment of any expenses related to medical examinations;
  - ii. Notifies applicants, Special Agents, the Special Agent's supervisor and the Policy, Plans and Programs (P3) Director when applicants/agents are due for medical examinations;
  - iii. Schedules the examinations on behalf of the applicant/agent;
  - iv. Ensures the medical facilities conducting the examinations have the medical/physical examination form (See Medical-Physical Examination Form- Chapter 3, Exhibit A);
  - v. Once the medical examination results are received, provides the documentation to the Department's designated physician for review;
  - vi. Notifies the AIGI of the physician's findings;
  - vii. Advises the AIGI and other managers on accommodation considerations and appropriate personnel actions in the event an employee or applicant does not meet medical requirements or refuses to submit to medical examination; and
  - viii. Ensures that a mechanism for storage of medical record information is established and maintained, in conformance with requirements for confidentiality, privacy, and "The Health Insurance Portability and Accountability Act of 1996 (HIPPA).".

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- c. *Supervisors* – Supervisors of Special Agents have the following responsibilities:
  - i. Ensure that Special Agents comply with schedules for physical examinations; and
  - ii. Upon request from the AIGI, provide information and documentation that will assist in rendering an employability decision (e.g., recent performance by the agent).
- d. *Special Agents* – Special Agents have the following responsibilities:
  - i. Meet the medical and physical requirements as a condition of employment as an OIG Special Agent,
  - ii. Report for scheduled physical examinations, and
  - iii. Inform the examining physician of any past or continuing medical treatment so the examining physician can take this information into consideration when evaluating and determining if the employee meets the medical requirements of the position.

### 5. Pregnancy-Related Temporary Disability

- a. *Reporting Requirements* – A Special Agent who is pregnant must:
  - i. Upon completion of the initial examination that confirms pregnancy, have her physician provide a narrative explanation of his/her conclusions regarding the employee's ability to continue functioning in her position (with or without duty restrictions or accommodations);
  - ii. Immediately provide the required medical documentation to their SAC in order to ensure that the agent is assigned duties that are commensurate with her physical capabilities;
  - iii. Obtain medical examinations every two months and provide recertification reports regarding the employee's ability to function in the position; and
  - iv. Ensure that medical examinations are taken and recertification statements are received in a timely manner.
- b. *Waivers*
  - i. A Special Agent will not be allowed to participate in firearms training during pregnancy.
  - ii. Fitness-for-duty examinations will not be required of pregnant Special Agents.

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### 6. Other Temporary Medical Conditions

- a. *Return to Work* – If a Special Agent has a temporary medical condition that initially prevents the agent from performing his/her investigative duties or has been on extended medical leave for surgery (e.g., back, knee, etc.) the Special Agent is required to provide a physician's clearance to return to work. The OIG may require an OIG designated physician review the "clearance to return to work" medical documentation or require the Special Agent be examined by an OIG designated physician.
- b. *Limited Duty* – A Special Agent may return to work in a temporary limited duty status. A reasonable accommodation for the agent will be made until the "limited" restriction is removed.
- c. *Reasonable Accommodations* – Reasonable accommodations must be approved by the AIGI. Medical conditions can be cause for revocation of the Special Agent's law enforcement authority and authority to carry a firearm. Chapter 4 of this Manual provides guidance on reasons for revoking a Special Agent's law enforcement authority and authority to carry a firearm.

### 7. Unscheduled Medical Examinations

Special Agents may be subject to a medical examination whenever there is a question about their continued ability to meet the physical or medical requirements of the position. These medical examination results will be used by management to determine medical limitations that may affect placement decisions. In addition, employees who have applied for, or are receiving, continuation of pay or compensation as a result of an on-the-job injury for more than one year may be required to undergo a physical examination. The OIG will follow the U.S. Department of Labor, Office of Worker's Compensation Programs guidance on returning a Special Agent to work following a workplace injury or illness.

### 8. Costs of Examinations

- a. *Initial and Periodic Exams* – The cost for initial and periodic medical examinations will be borne by the OIG.
- b. *Exams Conducting by Personal Physicians* – As noted in Section VII, D, 3 of this chapter, if the AIGI approves a Special Agent's request to have their periodic examination performed by their personal physician, the agent is responsible for the expenses incurred from the examination.

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- c. *Corrective Treatment* – If the examining physician (either the designated DOE physician or the agent's personal physician) makes a diagnosis indicating the need for corrective treatment of an existing physical or medical condition, the cost of treatment or additional medical examinations will be the responsibility of the applicant or employee.

### 9. Medical Examination Results

- a. *Responsibilities* – The examining physician is responsible for determining whether an individual meets the medical requirements of the position. The AIGI is responsible for determining whether an individual has the ability to perform the duties of the position.
- b. *Notification* – The OIG's Office of Management and Administration notifies the AIGI of the results of all medical examinations.
- c. *Standards Met* – If the examining physician reports that the individual meets the medical standards and physical requirements, generally, no further action will be required by the AIGI.
- d. *Standards Not Met or Not Fully Met* – If the report indicates that the medical standards and physical requirements are not met or not fully met, a diagnostic statement detailing the medical history, clinical findings, diagnosis, prognosis and an explanation of the medical basis for the conclusion and the impact of the condition on overall activities, when appropriate and relevant, will accompany the report.
- e. *Record Keeping Requirements* – The following information applies to the retention of and access to Special Agent medical records:
  - i. Medical information is covered under the provisions of the Privacy Act and HIPPA. All medical documentation will be maintained in DOE HQs Health Unit. The OIG's Office of Management and Administration will be informed if the employee "passed" or "not passed" his/her medical/physical examination.
  - ii. Access to the information contained in the medical folder will be available only to the applicant, employee, the representative of the employee (who has been designated in writing), the servicing personnel management specialist, medical officer, and management officials of OI and other Departmental components who are involved in making employment/retention determinations.
  - iii. The medical folder will be maintained for the length of the individual's employment with the OIG. If an employee transfers to another Federal agency, the medical folder will be transferred to the gaining agency. If the employee leaves Federal service, the medical folder will be retired to the Federal Records Center.

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### 10. Failure to Meet Medical Standards and Physical Requirements

Upon receipt or notification from the OIG designated reviewing physician that a Special Agent does not meet or does not fully meet the required medical standards and physical requirements, the AIGI and the OIG's Office of Management and Administration may consult with the designated reviewing physician regarding the determination. The AIGI will work closely with the OIG's Office of Management and Administration to determine the impact, if any, on the Special Agent's law enforcement authority, ability to carry a firearm and continued status as a Criminal Investigator. In making this determination, the AIGI will take into consideration the following:

- a. All relevant medical information provided by the designated reviewing physician.
- b. The relationship between the condition and the essential duties of the specific employee's position.
- c. The employee's ability or inability to perform these duties; and the probability of hazard to the employee and others.
- d. Additional Medical Documentation – The individual may provide other medical documentation to support his/her qualifications within 30 days from the date he/she is notified of the initial determination. The AIGI may allow for additional time based on extenuating circumstances. Failure to present the documentation within the required time frame could result in a determination that the individual does not have the ability to perform the duties of the position. The costs incurred for obtaining additional examinations will be the employee's responsibility. The AIGI will consider the additional medical documentation and may consult with the medical officer. The AIGI may also request that individuals be re-examined.

### 11. Waiver of Medical Standards and Physical Requirements

Failure by the applicant or employee to meet established medical standards or physical requirements means that the individual is not qualified for the position unless there is sufficient evidence that he/she can perform the duties of the position safely and efficiently despite the condition that would normally be disqualifying. The AIGI must waive any medical standard or physical requirement and accommodate a person who is able to demonstrate the capacity to perform safely and efficiently. This authority may not be delegated. Some of the factors that the AIGI will consider in making the decision to waive a standard or requirement are:

- a. Health and safety considerations;
- b. Recent satisfactory performance in the same or similar positions;

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- c. Successful performance of other activities with similar physical and environmental demands;
- d. Certification from a physician which states that the applicant or employee can perform the duties of the position safely and efficiently;
- e. Use of a prosthesis or other mechanical aides (including eyeglasses and hearing aides) which enables the candidate to perform the work; or
- f. A determination that the condition may be reasonably accommodated (without undue hardship on the OIG) to permit effective performance.

All waivers made by the AIGI will be in writing and will be maintained in the employee's medical folder.

### 12. Reasonable Accommodation

The OIG will make reasonable accommodation for the known physical or mental limitations of qualified disabled applicants/ employees provided:

- a. The individual is able to perform the essential functions of the position without endangering the health and safety of themselves or others; and
- b. The accommodation does not impose an undue hardship on the operations of the OIG.

Individuals seeking such an accommodation must either submit to the medical examination required by the OIG or produce medical documentation to support the request if the limitation is not immediately apparent. Further information can be found at 29 CFR Section 1613.704, Equal Employment Opportunity Commission Requirements for Reasonable Accommodation of Individuals With Disabilities.

### 13. Coordination of Employability Determinations

Generally, the existence of a medical condition or impairment, or a history of such a condition, is disqualifying only when there is a direct relationship between the condition and the essential duties of the specific position. Applicants who fail to meet the physical requirements or medical standards and are not able to provide sufficient evidence to be granted a waiver are not eligible for employment as a Criminal Investigator with the OIG. Before deciding to disqualify an applicant or employee because of a significant uncorrectable impairment, the AIGI will:

- a. Obtain Office of Personnel Management approval of any decision to medically disqualify a preference eligible candidate certified on a register;
- b. Review and consider all medical documentation from the applicant/ employee's personal physician; and

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- c. Follow agency procedures for non-selection of disqualified applicants or, as appropriate, OIG policies and procedures for reassignment, removal, or retirement of disqualified employees.

### 14. Removing Employees from the Criminal Investigator Series

Employees who refuse to submit to periodic medical examinations or fail to meet medical standards or physical requirements and are not able to provide sufficient evidence to be granted a waiver will be subject to the appropriate action as described under 5 CFR Part 432, "Reduction in Grade or Removal Based on Unacceptable Performance;" and, 5 CFR Part 752, "Adverse Action."

## IX. PHYSICAL FITNESS PROGRAM

This section outlines the policies and procedures relating to the OIG physical fitness program for Special Agents.

### A. General Provisions

The OIG has established a voluntary program for Criminal Investigators to participate in an on-duty physical fitness training program. The objective is to provide Special Agents with the opportunity to participate in physical fitness activities to enhance their ability to safely conduct investigations and to perform law enforcement functions. The program is not intended to provide a diversion or relaxation period from work activities. Participation must be balanced with official work obligations. Time spent in physical training activities must involve activities that will enhance physical conditioning. Participation in this program is a privilege given to Special Agents. Should a Special Agent be found to be abusing the program, he/she will no longer be allowed to participate.

### B. Physical Training

Special Agents are encouraged to participate in physical training.

#### 1. Duration

Special Agents are authorized three hours each week of on-duty time for physical training. A maximum of one hour can be used in any single day to pursue physical training. An agent may combine one hour of physical training time with any portion of his/her lunch break. On-site physical training time begins when the agent leaves his/her office and ends when the agent returns to his/her office.



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### 2. Frequency

Physical training time is authorized on a weekly basis and cannot be accumulated and carried to future weeks.

### 3. Beginning/End-of-Day

Physical training time may be utilized in conjunction with the first or last hour during a work day. Such physical training must be performed immediately prior to or following the work day (excluding commute time). An agent may not end his/her day at 5:00 p.m., participate in physical training at 8:00 p.m. and claim that time as physical training time.

**Note:** Time spent commuting to/from a physical training location at the beginning or end of the day cannot be claimed on a Workhour Report Form (i.e., it may not be claimed as basic work hours or availability hours).

### 4. Eligible Days

Special Agents may take physical training time only on "eligible" days or days made "excludable" by more than four hours of travel or training. Physical training on weekends, holidays, or days with more than four hours of leave may not be claimed or recorded on the Workhour Report Form.

### 5. Reporting

Physical training time will be reported on the top portion of the Workhour Report Form as IFYIN011 (the last two digits should reflect the current fiscal year). Physical training activities completed during an agent's core work hours will be recorded as "basic work hours" on the bottom of the form; activities performed outside an agent's core hours will be recorded as "availability hours."

## C. Responsibilities

The following responsibilities apply to the OIG's Physical Fitness Program:

1. ASACs are responsible for:
  - a. Implementing reasonable measures to ensure compliance with the requirements of the program; and

## CHAPTER 3 – STANDARDS AND RESPONSIBILITIES FOR OIG SPECIAL AGENTS

- b. Suspending or denying participation in the program if the Special Agent fails to comply with the requirements, does not meet the annual requirements for availability pay, refuses unscheduled time, or exhibits poor performance.

### 2. Special Agents are responsible for:

- a. Recognizing, without supervision, circumstances that require them to be on duty, or to be available as required by OI management;
- b. Ensuring that physical training activities fit within the intent of the physical training program;
- c. Ensuring that physical training is conducted at reasonable times during core hours; and
- d. Ensuring that physical training time does not have an adverse impact on office coverage or assignments.

## D. Activities

### 1. Enhancement of Physical Ability

It is the responsibility of Special Agents to decide which physical training activities will serve to maintain or enhance their physical ability to conduct investigations. Physical training selected by each Agent must promote maintenance or improvement in one or more of the following areas:

- a. Body composition (i.e., weight, body fat, etc.)
- b. Cardiovascular endurance
- c. Muscle tone
- d. Strength
- e. Flexibility

### 2. Suggested Activities

Suggested activities include running, jogging, walking, swimming, resistance training, aerobics, bicycling, rowing, stair climbing, calisthenics, elliptical training, weight lifting, and stationary skiing. Due to potential increased risk of injury through the actions of participants, traditional competitive and contact sports are not permissible activities. This includes, but is not limited to basketball, football, contact martial arts, softball and racquetball.

## CHAPTER 3 – STANDARDS AND RESPONSIBILITIES FOR OIG SPECIAL AGENTS

### E. Expenses

Special Agents participating in the OIG Physical Fitness Program must make their own arrangements for physical training. The OIG will not pay for, or reimburse, agents for transportation to facilities, health club membership fees, equipment, personal trainers, and/or any other expense associated with physical training. It is the sole responsibility of the participating agents to pay for their chosen physical training activity and related expenses.

### F. Safety

#### 1. Determination

It is the position of the OIG that all Special Agents should safely pursue their physical training privileges. The objective of the physical training program is to improve and maintain physical fitness levels that contribute to improving all aspects of an agent's performance. Special Agents are required to employ sound judgment and common sense when choosing exercise programs. It is an agents' responsibility to make a self-assessment of personal physical conditions that could limit their ability to safely participate in physical training. It is the Special Agent's responsibility to be aware of any temporary or chronic medical condition that may affect the agent's safe participation in physical training. To that end, the agent is responsible for ensuring his/her safe participation in physical training. Special Agents who are injured while performing physical training on duty are encouraged to seek medical attention immediately and notify the next level of supervision.

#### 2. Medical Certificate

Special agents are encouraged, but not required, to seek medical advice before initiating this or any exercise program. The OIG will not require agents to supply certifications from a doctor that they are fit to participate in physical training.



U.S. Department of Energy  
Office of Inspector General

Medical – Physical Evaluation

D6H\_EN20601

Notes: Agent is to complete the shaded medical history column of this form prior to appointment.

To be completed by Health Center Address/Location of Testing:			
Phone Number:			
Provider Name(s): (print clearly please)			
RN:			
MD/DO:			
<b>DEMOGRAPHIC DATA</b>			
NAME (print):		ID #:	
Date of Testing:	Date of Birth:	Sex:	
<b>PREPLACEMENT SERVICE - CHECK WHEN TEST COMPLETED</b>		<b>HEALTH EVALUATION (PERIODIC) - CHECK WHEN TEST COMPLETED</b>	
<u>Required Services:</u>		<u>Required Services:</u>	
<input type="checkbox"/> DFOH Profiles		<input type="checkbox"/> DFOH Profiles	
<input type="checkbox"/> Lead, Blood with ZPP		<input type="checkbox"/> Audiometry (Initials _____)	
<input type="checkbox"/> EKG		<input type="checkbox"/> Vision Screening	
<input type="checkbox"/> PPD (Initials _____)		<input type="checkbox"/> General Physical Exam	
<input type="checkbox"/> Audiometry (Initials _____)		<input type="checkbox"/> General Medical History	
<input type="checkbox"/> Spirometry (Initials _____)			
<input type="checkbox"/> Vision Screening			
<input type="checkbox"/> General Physical Exam			
<input type="checkbox"/> General Medical History			
<u>If Indicated Services:</u>		<u>If Indicated Services:</u>	
<input type="checkbox"/> Tetanus		<input type="checkbox"/> Chest X-Ray	
<input type="checkbox"/> Tonometry		<input type="checkbox"/> EKG	
<input type="checkbox"/> Stool Occult		<input type="checkbox"/> Tetanus	
<input type="checkbox"/> Stress EKG		<input type="checkbox"/> Tonometry	
		<input type="checkbox"/> Lead, Blood with ZPP	
		<input type="checkbox"/> PPD (Initials _____)	
		<input type="checkbox"/> Spirometry (Initials _____)	
		<input type="checkbox"/> Stool Occult	
		<input type="checkbox"/> Stress EKG	

Disclaimer: This examination does not substitute for a periodic health examination conducted by your private provider. It is being conducted for occupational purposes.

MEDICAL REQUIREMENT	MEDICAL HISTORY	DIAGNOSTIC AND PHYSICAL FINDINGS																																																																																																																															
<p>Moderate to arduous physical exertion involving walking and standing, use of firearms, and exposure to inclement weather is required.</p> <p>Manual dexterity with comparatively free motion of finger, wrist, elbow, shoulder, hip, and knee joints is required.</p> <p>Arms, hands, legs, and feet must be sufficiently intact and functioning in order that applicants may perform the duties satisfactorily.</p> <p>Sufficiently good vision in each eye, with or without correction, is required to perform the duties satisfactorily.</p> <p>Near vision, corrective lenses permitted, must be sufficient to read printed material the size of typewritten characters. Uncorrected distant vision must test 20/200, and corrected distant vision must test 20/20 in one eye, and 20/30 in the other.</p> <p>Hearing loss, as measured by an audiometer, must not exceed 35 decibels at 1000, 2000, and 3000 Hz levels.</p> <p>Applicants must possess emotional and mental stability.</p> <p>Any physical condition that would cause the applicant to be a hazard to himself/herself, or others is disqualifying.</p>	<p>Have you had or are you currently experiencing any of the following problems:</p> <p style="text-align: right;">Yes    No</p> <p>Frequent Headaches <input type="checkbox"/> <input type="checkbox"/></p> <p>Blurred Vision <input type="checkbox"/> <input type="checkbox"/></p> <p>Difficulty Reading <input type="checkbox"/> <input type="checkbox"/></p> <p>Have you ever been diagnosed with an eye disease? <input type="checkbox"/> <input type="checkbox"/></p> <p>Do you wear glasses? <input type="checkbox"/> <input type="checkbox"/></p> <p>Do you wear contact lenses? <input type="checkbox"/> <input type="checkbox"/></p> <p>Do you have cataracts? <input type="checkbox"/> <input type="checkbox"/></p> <p>Are you color blind? <input type="checkbox"/> <input type="checkbox"/></p> <p>Have you experienced any of the following:</p> <p>Loud, constant noise or music with the last 14 hours <input type="checkbox"/> <input type="checkbox"/></p> <p>Loud, impact noise in past 14 hours <input type="checkbox"/> <input type="checkbox"/></p> <p>Ringing in ears <input type="checkbox"/> <input type="checkbox"/></p> <p>Difficulty hearing <input type="checkbox"/> <input type="checkbox"/></p> <p>Eat infection or cold symptoms, in the last two weeks <input type="checkbox"/> <input type="checkbox"/></p> <p>Dizziness or balance problems <input type="checkbox"/> <input type="checkbox"/></p> <p>Are you in a Hearing Conservation Program? <input type="checkbox"/> <input type="checkbox"/></p> <p>Do you use hearing protective equipment? <input type="checkbox"/> <input type="checkbox"/></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="3">HEAD AND NECK</th> <th colspan="2">COLOR VISION</th> <th colspan="3">INTRAOCULAR PRESSURE</th> </tr> <tr> <td>Head, face, neck (thyroid)</td> <td>Normal</td> <td>Abnorm.</td> <td>Normal</td> <td><input type="checkbox"/></td> <td>Right</td> <td>mm/hg</td> <td>Type of Test</td> </tr> <tr> <td>Scalp</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Abnormal</td> <td><input type="checkbox"/></td> <td>Left</td> <td>mm/hg</td> <td>Puff <input type="checkbox"/></td> </tr> <tr> <td>Nose/Sinus</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Type of Test:</td> <td></td> <td>Depth Perception</td> <td></td> <td>Schiotz <input type="checkbox"/></td> </tr> <tr> <td>Mouth/Throat</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Ishihara Plates: (use 24 plates)</td> <td><input type="checkbox"/></td> <td>Normal</td> <td><input type="checkbox"/></td> <td>Abnormal <input type="checkbox"/></td> </tr> <tr> <td>Ocular Motility</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td colspan="5">PERIPHERAL VISION</td> </tr> <tr> <td>Ophthalmoscopic Findings</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td colspan="5"> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="2">Right Eye</th> <th colspan="2">Left Eye</th> </tr> <tr> <td>Temporal</td> <td></td> <td>Temporal</td> <td></td> </tr> <tr> <td>Nasal</td> <td></td> <td>Nasal</td> <td></td> </tr> <tr> <td>Total</td> <td></td> <td>Total</td> <td></td> </tr> </table> </td> </tr> <tr> <td colspan="4">Uncorrected Vision (Snellen Units)</td> <td colspan="4">Corrected Vision (Snellen Units)</td> </tr> <tr> <td>Near</td> <td>Both 20/</td> <td>Right 20/</td> <td>Left 20/</td> <td>Near</td> <td>Both 20/</td> <td>Right 20/</td> <td>Left 20/</td> </tr> <tr> <td>Far</td> <td>Both 20/</td> <td>Right 20/</td> <td>Left 20/</td> <td>Far</td> <td>Both 20/</td> <td>Right 20/</td> <td>Left 20/</td> </tr> <tr> <td colspan="8">Comment on HEENT abnormalities:</td> </tr> </table>								HEAD AND NECK			COLOR VISION		INTRAOCULAR PRESSURE			Head, face, neck (thyroid)	Normal	Abnorm.	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Yes	No																																							
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Back pain  <input type="checkbox"/> Back surgery  <input type="checkbox"/> Joint pain or swelling  <input type="checkbox"/> Lack of coordination  <input type="checkbox"/> Loss of joint/limb movement  <input type="checkbox"/> Loss of sensation  <input type="checkbox"/> Any limb or finger amputations  <input type="checkbox"/> Loss of strength  <input type="checkbox"/> Seizure disorders               </td> <td style="width: 50%; vertical-align: top;"> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">Normal</td> <td style="width: 50%; text-align: center;">Abnormal</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> </td> </tr> </table>			<input type="checkbox"/> Back pain <input type="checkbox"/> Back surgery <input type="checkbox"/> Joint pain or swelling <input type="checkbox"/> Lack of coordination <input type="checkbox"/> Loss of joint/limb movement <input type="checkbox"/> Loss of sensation <input type="checkbox"/> Any limb or finger amputations <input type="checkbox"/> Loss of strength <input type="checkbox"/> Seizure disorders	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; 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<b>PHYSICAL ACTIVITY OR EXERCISE PROGRAM:</b> <input type="checkbox"/> Low <input type="checkbox"/> Moderate <input type="checkbox"/> High Activities _____ Frequency _____ Days per week _____ Duration _____ Minutes _____			Please comment on "cannot participate" responses: _____																																					

D5H01EN20601 Client's Name: \_\_\_\_\_ Date: \_\_\_\_\_

MEDICAL HISTORY			DIAGNOSTIC AND PHYSICAL FINDINGS	
Have you had or do you currently experience any of the following:			<input type="checkbox"/> Normal	<input type="checkbox"/> Abnormal (describe abnormal)
Periods of nervousness	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/> Mental/emotional affect
Feelings of depression	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> G-U system
Diabetes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Abdomen, viscera
Stomach ulcers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Rectal/prostate
Liver disease	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Skin (scar/unique markings)
Diarrhea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Lymphatic
Kidney disease	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Other _____
Persistent stomach/abdominal pain	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Comments: _____	
Skin problems, urticaria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	
Hemip	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	
Thyroid disease	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	
Fainting	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	

MEDICATIONS		IMMUNIZATIONS	
Which of the following do you take more than once a week? <input checked="" type="checkbox"/> None		Have you received the Hepatitis B Vaccine? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input checked="" type="checkbox"/> Acetaminophen (Tylenol)	<input checked="" type="checkbox"/> Hormones	If "yes," number of shots? <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3      Year completed: _____	
<input checked="" type="checkbox"/> Antacids	<input checked="" type="checkbox"/> Ibuprofen (Advil/Motrin)	Year of last tetanus booster? _____	
<input checked="" type="checkbox"/> Antihistamines/allergy pills	<input checked="" type="checkbox"/> Insulin/diabetic pills	If born after 1955, date of last measles booster? _____	
<input checked="" type="checkbox"/> Arthritis medication	<input checked="" type="checkbox"/> Laxatives	ALLERGIES	
<input checked="" type="checkbox"/> Aspirin	<input checked="" type="checkbox"/> Stomach/intestinal pills	To which of the following are you allergic? <input type="checkbox"/> None	
<input checked="" type="checkbox"/> Birth control pills	<input checked="" type="checkbox"/> Thyroid medication	<input type="checkbox"/> Drugs (specify below) <input type="checkbox"/> Pollens <input type="checkbox"/> Foods	
<input checked="" type="checkbox"/> Blood pressure pills	<input checked="" type="checkbox"/> Tranquilizers/sedatives	<input type="checkbox"/> Dust or molds <input type="checkbox"/> Animal <input type="checkbox"/> Other (specify below)	
<input checked="" type="checkbox"/> Decongestants/cold pills	<input checked="" type="checkbox"/> Vitamins	Specify _____	
<input checked="" type="checkbox"/> Heart medication	<input checked="" type="checkbox"/> Weight reduction pills		

06H01EN20601 Client's Name: \_\_\_\_\_ Date: \_\_\_\_\_

EDUCATIONAL AND REFERRAL		SOCIAL HISTORY
Check the topics discussed during the diagnostic work-up or physical exam:		Have you ever smoked? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Diet:		If yes, When: <input checked="" type="checkbox"/> Current <input type="checkbox"/> Past - years since quitting: _____
Low-calorie	<input type="checkbox"/>	Type: <input checked="" type="checkbox"/> Cigarettes <input checked="" type="checkbox"/> Pipe <input type="checkbox"/> Chai
Low-fat	<input type="checkbox"/>	How many per day? _____ For how many years? _____
Low-salt	<input type="checkbox"/>	What is your average alcohol consumption in a week? _____ drinks (1 drink = 12 oz. beer, 1 glass of wine or 1.5 oz. liquor)
Cholesterol	<input type="checkbox"/>	How often do you drink alcohol? <input checked="" type="checkbox"/> Weekdays <input type="checkbox"/> Weekends <input type="checkbox"/> Both
Hypertension	<input type="checkbox"/>	Do you use recreational drugs? <input checked="" type="checkbox"/> Currently <input type="checkbox"/> Previously <input type="checkbox"/> Never
Exercise	<input type="checkbox"/>	SUMMARY OF ABNORMAL FINDINGS WITH PLAN OF ACTION: _____ _____ _____ _____ _____ _____ _____ _____ _____ _____
Obesity	<input type="checkbox"/>	
Smoking cessation	<input type="checkbox"/>	
Alcohol use	<input type="checkbox"/>	
Immunizations	<input type="checkbox"/>	
Hearing protection	<input type="checkbox"/>	
Vision referral	<input type="checkbox"/>	
Other personal protective equipment	<input type="checkbox"/>	
Job stressors	<input type="checkbox"/>	
Referral(s)	<input type="checkbox"/>	
Other(s) _____		
	SIGNATURES	DATE
Client	_____	_____
Nurse	_____	_____
Physician	_____	_____

D6H01EN20601 Client's Name: \_\_\_\_\_ Date: \_\_\_\_\_



Federal Occupational Health Medical Evaluation Form for DOE/Office of Inspector General  
D6H01EN20601

Name of Client: \_\_\_\_\_ Health Center Address: \_\_\_\_\_  
SSN: \_\_\_\_\_  
Agency Name: \_\_\_\_\_ Health Center Phone: \_\_\_\_\_

QUALIFICATION STATEMENT

- ☐ Employee/Applicant Fully Meets Medical Standards
- ☐ Employee/Applicant Does Not Fully Meet Medical Standards

Explain: \_\_\_\_\_  
\_\_\_\_\_

- ☐ Employee/Applicant Employability Determination: (impact on ability to perform duties of law Enforcement Officer)

Explain: \_\_\_\_\_  
\_\_\_\_\_

- ☐ Findings of a Temporary Nature – Individual is currently unable to perform the essential functional requirements effectively and without hazard to himself or others because of a medical condition of a temporary nature (not to exceed six months).

\_\_\_\_\_  
Reviewing Physician's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Reviewing Physician's Name (print/type)

D6H01EN20601 Client's Name: \_\_\_\_\_ Date: \_\_\_\_\_



## Document Number 5

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

### CHAPTER 4

#### LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

##### I. SCOPE OF CHAPTER

This chapter provides policies and procedures governing various aspects of law enforcement operations that are used by U.S. Department of Energy (DOE), Office of Inspector General (OIG), Office of Investigations (OI) Special Agents as they perform their duties. Subjects addressed include: statutory law enforcement; firearms authority, training, qualification and use; use of force; intermediate weapons; search warrants; arrest warrant execution; DNA collection; law enforcement equipment; undercover operations; and emergency driving.

The authorities outlined in this chapter may not be delegated unless specified as such within the chapter. In addition, any exceptions or waivers to the policies and procedures outlined in this chapter must be approved by the Assistant Inspector General for Investigations (AIGI).

##### II. LAW ENFORCEMENT AUTHORITY REFERENCES

The following is a partial list of statutes, regulations and other documents that have been referenced in the formulation of the OIG firearms policy:

- Inspector General (IG) Act of 1978, as amended;
- Homeland Security Act of 2002 (Public Law 107-296 Section 812);
- Atomic Energy Act of 1954, as amended;
- TSA Regulations Regarding Carriage of Accessible Weapons (49 CFR Section 1544.219);
- Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority, dated December 8, 2003.
- Law Enforcement Officers Safety Act of 2003

##### III. STATUTORY LAW ENFORCEMENT AUTHORITY

###### A. IG Act of 1978, As Amended

In November 2002, the Homeland Security Act of 2002 (Public Law 107-296 Section 812) contained a provision to amend the IG Act of 1978 to grant statutory law enforcement authority to certain OIGs, including the DOE OIG. Section 6(e)(1) of the IG Act, as amended, provided authority to OI Special Agents to carry firearms, make arrests and apply for and execute search warrants.

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

### B. Exercising Law Enforcement Authority

#### 1. Exercising Authority for Non-DOE Issues

A Special Agent may be exposed to situations where he/she is a witness to ongoing criminal activity not related to DOE programs or operations. OIG Special Agents exercising law enforcement authorities may exercise those powers only for activities authorized by the IG Act of 1978, as amended, other applicable statutes, or as expressly authorized by the Attorney General. The IG Act of 1978, as amended, does not expand the substantive jurisdiction of the OIG. Additionally, it does not, by itself, provide plenary authority to make arrests for non-federal criminal violations. Legal authority for agents to respond to such offenses generally depends on state law. Thus, actions taken outside the IG Act of 1978, as amended, or other applicable authority, are carried out as a private citizen and are governed by the laws of the State in which the action was taken.

#### 2. Primary and Secondary Law Enforcement Positions

- a. Primary law enforcement positions are held primarily by Special Agents who interview witnesses, interrogate suspects, review, collect and analyze records, facts, and evidence, perform undercover assignments, carry firearms and conduct arrests, searches and seizures.
- b. Secondary law enforcement positions are held primarily by OIG Special Agent supervisors and managers. These positions require experience gained from primary law enforcement positions. The grade levels of secondary positions vary with the complexity of investigations, jurisdictional involvement and degree of individual responsibility.

The AIGI is responsible for identifying which positions within OI are primary and secondary law enforcement positions.

### C. Good Samaritan Law

The Good Samaritan Law (Public Law 105-277, Section 627, 112 Statute 2681) does not expand a Special Agent's law enforcement authority. Rather, the law merely addresses when an agent, who is a bystander and intervenes, will be considered to have acted within the "scope of employment" for the purposes of tort liability.

#### 1. Actions considered within the scope of employment include:

- a. Protecting an individual in the presence of the officer from a crime of violence;

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

- b. Providing immediate assistance to an individual who has suffered or who is threatened with bodily harm; or
  - c. Preventing the escape of an individual who the officer reasonably believes to have committed in the presence of the officer a crime of violence.
2. To meet the requirements of scope of employment, an individual must:
- a. Be a federal law enforcement officer;
  - b. Have acted reasonably under the circumstances; and
  - c. Have acted as a result of one of the action considered within the scope of employment.

**Note:** If any of these criteria are not met, the scope of employment determination will be made via the laws of the State in which the action occurred.

### D. Department of Justice (DOJ) Guidelines

In December 2003, DOJ issued guidelines for OIGs with statutory law enforcement authority entitled *Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority*. These guidelines outline the responsibilities and obligations of OIGs and their Special Agents exercising law enforcement authorities (See Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority – Chapter 4, Exhibit A).

#### 1. Obligations

The guidelines delineate the following obligations for OIGs and Special Agents exercising law enforcement authorities:

- a. Training (entry-level and recurring)
- b. Mutual Notification of Case Openings between OIGs and the Federal Bureau of Investigation (FBI)
- c. Joint Investigations with the FBI
- d. Sensitive Undercover Operations
- e. Adherence to DOJ Policies on Criminal Investigations
- f. Consultation with a Prosecutor
- g. Agent Reporting Requirements
- h. Agency-Specific Addenda
- i. Peer Reviews

**Note:** These guidelines replace the Memoranda of Understanding (MOU) under which certain OIG investigators were deputized as Special Deputy United States Marshals.

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

### 2. Off-Duty Authority

Consistent with the authorities outlined in the DOJ guidelines, the Inspector General has determined that Special Agents are authorized to carry their firearms while off-duty for operational and safety reasons. The nature of, and inherent risks associated with, criminal investigative activities subject Special Agents to potential harm and require the ability to respond to situations in a safe and timely manner at all times.

- a. The authority to carry firearms while off duty does not expand a Special Agent's law enforcement authority, nor does it change the factors that determine whether OI Special Agents will be provided legal representation by DOJ or be subject to personal liability for an incident involving the use of a firearm.
- b. All laws, regulations and OI policies governing the use and handling of a firearm while in an on-duty status shall apply to a Special Agent carrying an OIG-issued firearm while off duty or when carrying off-duty under the Attorney General Guidelines for 24-7 carry authority.
- c. Special Agents are required to carry their OIG-issued firearm when traveling to and from work in order to ensure compliance with requirements that they always be available for work as outlined in Law Enforcement Availability Pay (LEAP) statutes and regulations<sup>1</sup>.

**Note:** Firearms and law enforcement related equipment must be stored in accordance with the provisions outlined in this policy.

### E. The Law Enforcement Officers Safety Act (LEOSA)

LEOSA is a Federal law enacted in 2004 and later amended by the Law Enforcement Officers Safety Act Improvement Act of 2010 that allows a "qualified law enforcement officer" and a "qualified retired law enforcement officer" who is carrying agency issued identification to carry a concealed firearm in any jurisdiction in the United States, regardless of any state or local law to the contrary, with certain exceptions.

1. The term "firearm" has the same meaning as in Section 921 of Title 18 U.S.C., and includes ammunition not expressly prohibited by Federal Law or subject to the provisions of the National Firearms Act. The term "firearm" does not include:
  - a. Any machinegun, as defined in section 5845 of the National Firearms Act;

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<sup>1</sup>DOE OIG has determined that the needs of the OIG require that each Special Agent receiving availability pay actually work the additional annual average of two hours per regular workday. See Chapter 13 for further discussion on availability pay.

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

- b. Any firearm silencer, as defined in Title 18, U.S.C., Section 921; and
  - c. Any destructive device including a bomb, grenade, poison gas or mine, as defined in Title 18, U.S.C., Section 921.
- 2. LEOSA does not supersede existing OI regulations or policies limiting, restricting, conditioning or otherwise affecting the carrying of concealed firearms.
- 3. LEOSA does preempt and supersede inconsistent state laws and local ordinances, whether criminal or civil.
- 4. LEOSA does not prohibit the OI from taking any appropriate disciplinary action for any violation of its existing regulations or policies.
- 5. LEOSA defines a qualified law enforcement officer as an individual who:
  - a. Is an employee of a governmental agency and is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and has statutory powers of arrest;
  - b. Is authorized by the agency to carry a firearm;
  - c. Is not the subject of any disciplinary action by the agency, which could result in suspension or loss of police powers;
  - d. Meets standards, if any, established by the agency that require the employee to regularly qualify in the use of a firearm;
  - e. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
  - f. Is not prohibited by Federal law from receiving a firearm.
- 6. LEOSA defines a qualified retired law enforcement officer as an individual who:
  - a. Separated in good standing from service with a public agency as a law enforcement officer, ;
  - b. Before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
  - c. Before such separation, served as a law enforcement officer for an aggregate of 10 years or more or separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;



## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

- d. During the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty within the State;
  - e. Has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued photographic identification by the Agency, or has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under for reasons relating to mental health and for those reasons would not receive photographic identification issued by the agency;
  - f. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
  - g. Is not prohibited by Federal law from receiving a firearm.
7. LEOSA does not override state laws that:
- a. Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property;
  - b. Prohibit or restrict the possession of firearms on any State or local government property, installation, building, base or park.
- Note:** This does not mean that qualified law enforcement officers are prohibited from carrying concealed firearms in such areas. Rather it means that they must obey whatever state laws that apply on these two points.
8. LEOSA does not override other Federal laws. Qualified law enforcement officers must continue to obey Federal laws and agency policies that restrict the carrying of concealed firearms in certain federal buildings and lands.
9. A qualified retired law enforcement officer, including a currently employed Special Agent who is about to retire, may submit a written request to the AIGI for issuance of a photographic identification indicating that the holder is a retired law enforcement officer. The requirements and procedures for this process are further discussed in Requirements and Procedures to Request Photographic Identification for Retired Special Agents (See Requirements and Procedures to Request Photographic Identification for Retired Special Agents – Chapter 4, Exhibit B).

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**Note:** Absent extenuating circumstances, DOE OIG will not issue, to an otherwise qualified Special Agent, photographic identification indicating that the holder is a retired law enforcement officer if the Special Agent separated from DOE OIG and was subsequently employed by another law enforcement agency that is eligible to issue a photographic identification under LEOSA. The Special Agent must request the photographic identification from a law enforcement agency with whom the Special Agent was employed after leaving DOE OIG.

### IV. FIREARM RESPONSIBILITIES

The operational responsibilities of the following OI officials are designed to ensure accountability and efficiency in the administration of the OI firearms policy and procedures. All responsibilities are understood to be within the confines of applicable laws and regulations. At no time will OI officials construe their responsibilities to exceed, circumvent or alter in any way the authorization provided by the IG Act of 1978, as amended, DOJ guidelines or the procedures established in this Manual. Unless otherwise stated, responsibilities outlined below cannot be delegated.

#### A. AIGI

The AIGI is responsible for:

1. In coordination with the Special Agent-in-Charge (SAC), authorizing and appointing a National Firearms Manager and Regional Firearms Coordinators as required in the field offices.
2. Providing written authorization for Special Agents to:
  - a. Carry approved personally-owned firearms or other such equipment not issued by the OIG;
  - b. Carry a firearm that has been modified, provided it was modified by an OI approved armorer or other authorized personnel; and
  - c. Carry a firearm without having their OIG badge, credentials and other required equipment with them.
3. Granting any other authorities or waivers as outlined in the firearms policy.

#### B. Director, Policy, Plans and Programs (P3)

The P3 Director is responsible for:

1. In coordination with the AIGI and SACs, updating the OI firearms policy;

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2. Procuring firearms and firearm-related equipment;
3. Coordinating with the OIG Office of Management and Administration (MA) on the acquisition and transfer/disposal of firearms outside the OIG, including ensuring all firearms are appropriately recorded in DOE's property management system.

### C. National Firearms Manager

The National Firearms Manager is assigned to Headquarters and is responsible for:

1. In conjunction with the SAC and Assistant Special Agent-in-Charge (ASAC) and Regional Firearms Coordinators, working to ensure consistent general management and supervisory responsibility over the firearms program and the Regional Firearms Coordinators;
2. Providing general daily oversight and coordination of the OIG firearms program;
3. Coordinating firearms matters requiring AIGI approval, notification and/or input;
4. Maintaining a complete inventory of firearms and law enforcement related equipment that is in the custody of the OIG and is designated for use by Special Agents;
5. Maintaining a list of the Special Agents to whom each firearm is assigned;
6. Maintaining and securing a consolidated list of field office safe combinations in which firearms are stored;
7. Coordinating with P3 on the acquisition and transfer/disposal of firearms outside the OIG; and
8. Other firearms-related duties as assigned by the AIGI or designee.

### D. Regional Firearms Coordinator

The designated Regional Firearms Coordinator is responsible for:

1. Successfully completing, at a minimum:
  - a. Firearms Instructor Training Course at the Federal Law Enforcement Training Center (FLETC) or OIG-approved equivalent training; and

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- b. Periodic firearms instructor refresher training, at intervals as recommended by FLETC.
- 2. Overseeing field offices compliance with OI firearms directives;
- 3. In coordination with the AIGI, National Firearms Manager, SACs, and ASACs serving as a focal point for evaluation and promotion of issues related to approved carry configurations, personally owned weapons approvals, modifications to assigned equipment and evaluation of training and qualification practice;
- 4. Overseeing and coordinating the OIG firearms program as it relates to the Regional Firearms Coordinator's assigned region;
- 5. Serving as the regional point-of-contact for firearms matters requiring AIGI approval, notification and/or input;
- 6. Maintaining a complete regional inventory of firearms and law enforcement related equipment that is designated for use by OIG Special Agents;
- 7. Maintaining a regional list of the Special Agents to whom each firearm is assigned;
- 8. Maintaining and securing a consolidated list of regional safe combinations in which firearms are stored;
- 9. Maintaining Special Agent certifications documenting that newly released firearms-related policy has been received, read and understood (See Release of New Firearms-Related Policy Certificate – Chapter 4, Exhibit C).
- 10. Immediately notifying the SAC or ASAC when an agent becomes medically or physically impaired;
- 11. Notifying the SAC and ASAC of an agent's failure to meet firearms standards, as outlined in this Manual; and
- 12. Other firearms-related duties as assigned by the AIGI.

**Note:** Regional Firearm Coordinators must ensure their firearms responsibilities do not adversely affect or interfere with their core investigative responsibilities.

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### E. SAC and ASAC

The SAC, in concert with the ASAC, is responsible for the following:

1. In conjunction with the Regional Firearms Coordinator, ensuring the effective and efficient implementation of the OIG firearms program within his/her region;
2. Ensuring Special Agents abide by the OIG firearms policy, the IG Act of 1978, as amended, Attorney General guidelines and other applicable Federal, state and/or local laws regarding the use of firearms and exercise of law enforcement authorities;
3. Suspending authorization to carry a firearm and recovering issued firearms when, in the SACs or ASACs judgment, such action is in the best interest of the OIG and the safety of all concerned;
4. Notifying the AIGI if firearm authorizations are suspended;
5. Ensuring appropriate steps are taken following a report of a lost or stolen OIG-issued or approved firearm, including:
  - a. Entry of relevant information in National Crime Information Center's (NCIC) records immediately with 24 hours of receiving the report (and providing any follow-up information concerning the status of the firearm);
  - b. Immediately notifying the National Firearms Manager and AIGI following discovery that a firearm has been lost or stolen (verbal or email); and
  - c. Ensuring the Special Agent submits a follow up memorandum to the AIGI, through the SAC, within 24 hours of loss of a firearm giving a full description of the circumstances;
6. Assisting the Regional Firearms Coordinator either directly or through delegation in conducting an annual inventory of all issued firearms and law enforcement related equipment;
7. In consultation with the National Firearms Manager and Regional Firearms Coordinator, provide written approval for agents to use of holsters that are not part of the standard carrying configuration;

**Note:** This responsibility may not be delegated below the SAC level.

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8. Notifying the AIGI and National Firearms Manager of any Special Agent who fails to meet firearms standards as outlined in this Manual;

**Note:** The AIGI will determine if a follow-up memorandum is needed.

9. When not otherwise provided or arranged by Headquarters (e.g., annual agent conferences), ensuring local periodic refresher training is provided in the following areas:
  - a. Trial processes
  - b. Federal criminal and civil legal updates
  - c. Interviewing techniques and policy
  - d. Law of arrest, search and seizure
  - e. Physical conditioning/defensive tactics

**Note:** These areas of training are required under the Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority (See Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority – Chapter 4, Exhibit A).

10. Ensuring, in coordination with the Regional Firearms Coordinator, that the acquisition, transfer, and/or disposal of firearms outside the OIG are:
  - a. Coordinated with the National Firearms Manager and P3;
  - b. Handled in accordance with DOE property accountability guidelines; and
  - c. Properly entered into or removed from official DOE property lists (including completing all necessary paperwork)
11. Ensuring, in coordination with the National Firearms Manager, that individuals assigned as Regional Firearms Coordinators or Firearms Instructors:
  - a. Successfully complete, at a minimum, the Firearms Instructor Training Course at the Federal Law Enforcement Training Center (FLETC) or OIG-approved equivalent training; and
  - b. Complete periodic firearms instructor refresher training at intervals as recommended by FLETC.

### F. Special Agents

Special Agents are responsible for:

1. Understanding and adhering to the OIG firearms policy, the IG Act of 1978, as amended, Attorney General guidelines and other applicable Federal, state and/or local laws regarding the use of firearms and exercise of law enforcement authorities;

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2. Maintaining proficiency with a firearm as demonstrated by periodic training and qualification on an approved OIG firearms course of fire;
3. Maintaining a level of physical fitness conducive to the performance of the activities for which a Special Agent is authorized;
4. Carrying firearms at all times while on official duty except:
  - a. In circumstances prohibited by law;
  - b. When in the judgment of the Special Agent, carrying a firearm is inappropriate; or,
  - c. When in the judgment of the Special Agent, carrying a firearm is not warranted (e.g., while in the office preparing MOIAs, telecommuting, etc.).
5. Ensuring that their OIG-issued firearm is readily available to them in order to be in compliance with requirements that they always be available for work as outlined in Law Enforcement Availability Pay (LEAP) statutes and regulations.
6. Carrying, unless otherwise authorized by the AIGI, their OIG badge and credentials, handcuffs, handcuffs key, (b)(7)(E) when:
  - a. Armed during duty hours;
  - b. Carrying an OIG-issued firearm off-duty; or
  - c. Carrying under the Attorney General guidelines for 24-7 carry authority.
7. Ensuring they attend all quarterly firearm qualifications and training unless specifically authorized not to;
8. Asking their physician if any prescribed medication they are taking will impair their ability to carry and use firearms;
9. Informing the Regional Firearms Coordinator if they are taking any medications or if they have any medical conditions that may impair their ability to abide by the requirements of the OIG firearms policy or to carry or handle a firearm in a safe manner;
10. Completing the Individual Firearms and Law Enforcement Related Equipment Log each time an issued firearm and/or law enforcement related equipment is placed into or removed from the general office safe (See Individual Firearms and Law Enforcement Related Equipment Log - Chapter 4, Exhibit D).

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**Note:** Special Agents may store their firearms in individually-assigned safes located in their offices. No equipment log is required for individually-assigned safes.

11. Completing a Firearms and Law Enforcement Related Equipment Receipt whenever a firearm and/or related equipment is issued or exchanged (See Firearms and Law Enforcement Related Equipment Receipt Form - Chapter 4, Exhibit E);
12. Completing a U.S. Department of Energy, Certificate of Property Receipt whenever a firearm is issued or exchanged – this requirement is in addition to completing a Firearms and Law Enforcement Related Equipment Receipt – (See U.S. Department of Energy, Certificate of Property Receipt Form – Chapter 4, Exhibit F); and
13. In coordination with the Regional Firearms Coordinator, obtaining an annual Certification of Firearm Serviceability from an OIG-approved armorer for OIG-issued firearms or, if applicable, OIG-approved personally-owned firearms (See Certificate of Firearm Serviceability Form – Chapter 4, Exhibit G).

**Note:** The purpose of the annual inspection is to determine if the firearm is in proper working order and is free from any modification not previously approved by the OIG.

14. Signing a certification documenting receipt, review, and understanding of all newly issued firearms-related policies (See Release of New Firearms-Related Policy Certificate – Chapter 4, Exhibit C).
15. Notifying the AIGI and OIG's Headquarters' Security Officer (HSO) within three working days of an arrest, citation, summons or other action taken against them for a broad range of Federal, state, and local violations in accordance with DOE *Personnel Security Directive* 470.4-5, Chapter V.3.a. This requirement is above and beyond the Lautenberg Amendment. Incumbent Special Agents are also subject to all reporting requirements set forth in the OIG Directive IG-908H, *Office of Inspector General Security Policy*.

### G. Suitability to Possess Firearms and Ammunition (Lautenberg Amendment)

The Lautenberg Amendment to the Omnibus Consolidated Appropriations Act of 1997 (Amendment) made changes to the Gun Control Act of 1968. The Amendment makes it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess or receive firearms or ammunition and further makes it unlawful for any person to sell or give a firearm or ammunition to any person who has been convicted of such a misdemeanor. Prior to this amendment,



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the law only prohibited those indicted or convicted for any *felony* from possessing or owning a firearm or ammunition.

### 1. Misdemeanor Crime of Domestic Violence

A "misdemeanor crime of domestic violence" is defined in the Act as an offense that is a misdemeanor under Federal or State law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

### 2. DOJ Interpretation

DOJ has interpreted this definition to include all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery) if the offense is committed by one of the defined parties, whether or not the state statute or local ordinance specifically defines the offense as a domestic violence misdemeanor.

### 3. Applicability

The Amendment applies to all persons ever convicted of such a misdemeanor, even if the conviction occurred prior to the effective date of the law. Unlike other provisions of the Gun Control Act, this Amendment applies to all Federal, State and local Government employees, including all law enforcement officers and members of the Armed Forces.

### 4. Exceptions

Any person with a conviction is prohibited from owning or possessing a firearm or ammunition unless one of the following applies:

- a. The conviction has been expunged or set aside;
- b. The person has been pardoned;
- c. The person's civil rights were restored after being forfeited as a result of a conviction;

**Note:** The exception to these stated provisions would be if a condition of the pardon, expungement or restoration provides that the person may not own, possess or receive firearms or ammunition.

### 5. Policy

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The provisions of the Gun Control Act apply to all criminal investigators throughout their careers. Candidates for, and incumbents in Special Agent positions within the OIG, will certify (1) that they do or do not have a felony or misdemeanor conviction covered by the Act, and (2) whether they are currently the subject of a court order that restrains the agent from harassing, stalking, or threatening an intimate partner, a child of such intimate partner or your child, or from engaging in any other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner, child of the partner, or the agent's child.

### 6. Incumbent Special Agent Responsibilities

OIG Criminal Investigators must provide the following to their SAC who will forward the documents to the P3 Director:

- a. A completed Lautenberg Amendment Initial Qualifications Inquiry Form (See Lautenberg Amendment Initial Qualifications Inquiry Form - Chapter 4, Exhibit H); and
- b. Notification of any conviction covered by the Amendment —as well as any court orders as described above—that occurs subsequent to submission of the initial certification.

### 7. Special Agent Candidate Responsibilities

Candidates for Special Agent positions must provide a completed Lautenberg Amendment Initial Qualifications Inquiry Form (See Lautenberg Amendment Initial Qualifications Inquiry Form - Chapter 4, Exhibit H) to the OIG's Office of Management and Administration as part of the security clearance process.

### 8. Convictions

- a. The OIG's Office of Management and Administration will immediately notify the OIG's HSO as well as the AIGI of candidates who report a conviction or court order covered by the Amendment. The HSO will verify the fact of the conviction through court documentation and available police reports.
- b. An incumbent Special Agent's new conviction or court order (as described above) must be verbally reported to the agent's SAC within one business day of the agent becoming aware of the event (i.e., conviction or court order) followed by submission of an updated form within two business days of initial notification (See Lautenberg Amendment Initial Qualifications Inquiry Form - Chapter 4, Exhibit H). The SAC will advise the Regional Firearms Coordinator and the AIGI as soon as practical. The AIGI

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will consult with the OIG's Office of Management and Administration, the HSO, and IG Counsel as to applicability and appropriate course of action.

- c. If a conviction covered by the Amendment exists, a Special Agent or candidate may pursue legal action and/or obtain documentation necessary to bring the conviction within one of the exceptions of the Amendment. Agents and/or candidates are responsible for any expenses associated with such actions. If this conviction has been previously adjudicated in another law enforcement agency, the OIG will consider that adjudication with full faith and credit.
- d. If an incumbent Special Agent or candidate has established that the conviction falls within one of the exceptions, the AIGI will issue an adjudication letter attesting to the fact that the candidate is suitable for duties that require him/her to be able to possess, use, or receive firearms or ammunition
- e. If an incumbent Special Agent or candidate has failed to establish an exception to the Amendment—or the exception cannot be validated—the AIGI shall notify the appropriate SAC of the agent/candidate's inability to legally perform the essential job functions of the position. An incumbent Special Agent's firearm and law enforcement authority will be revoked. The AIGI will consult with the OIG's Office of Management and Administration, the HSO, and IG Counsel to determine the appropriate course of action.

### H. Failure to Meet Firearms Responsibilities

#### 1. Failure to Meet Standards

If an agent fails to meet any general standards or responsibilities set forth in this chapter, the Regional Firearms Coordinator will verbally advise the SAC. The SAC and Regional Firearms Coordinator will jointly arrange appropriate remedial action.

**Note:** Failure to meet qualification standards is addressed in Section XIII of this chapter.

#### 2. Documentation

If deemed necessary based on the seriousness of the deficiency, the Regional Firearms Coordinator will provide a memorandum to the SAC outlining the facts and circumstances surrounding an agent's failure to meet the standards and the specific manual standards that have not been met.

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### 3. Action Plan

A written plan of action will be initiated to address or remedy the identified deficiencies. Depending on the nature of the deficiency, potential corrective actions include, but are not limited to, remedial training and/or temporary suspension of firearms and law enforcement authority.

### 4. AIGI Evaluation

The SAC will forward a memorandum to the AIGI outlining the identified deficiencies and outlining the action plan for remediation. The AIGI will evaluate the information presented and will make a determination on whether or not additional action is needed. In conducting the evaluation, the AIGI will solicit input from appropriate Regional Firearms Coordinator, the National Firearms Manager and the SAC.

**Note:** Violation of the firearms policy and procedures or applicable Federal, state or local law is a serious offense. Violations may result in disciplinary action up to and including removal from employment. In addition, violations of statutes may result in the Special Agent being subject to criminal prosecution.

## V. AUTHORIZED FIREARMS AND LAW ENFORCEMENT RELATED EQUIPMENT

The following section contains information on OI requirements concerning firearms and equipment that may be used by Special Agents.

### A. General Safety Rules

The following safety rules apply to all Special Agents whenever firearms are handled for any reason:

1. Treat all firearms as if they are loaded;
2. Always keep the muzzle pointed in a safe direction;
3. Never point a firearm at anything you are not willing to destroy;
4. When using a firearm, know your target and backstop; and
5. Never place your finger inside of the trigger guard until the firearm is on target.

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### B. Standard Authorized Carrying Configuration

The OIG's standard authorized carrying configuration consists of:

1. Authorized semi-automatic pistol;
2. A fully loaded magazine inserted with a round in the chamber, the hammer down and the safety off (if applicable);
3. A minimum of one additional fully loaded magazine;
4. An OIG-issued or approved strong hand belt side/hip holster or agency approved non-standard holster;
5. A set of handcuffs;
6. The OIG-issued badge, if practical; and
7. Concealing the firearm, when appropriate.

### C. Criteria for Authorized Firearms and Law Enforcement Related Equipment

All firearms and law enforcement related equipment designated for official use must be evaluated by the OIG and approved by the AIGI. The following general requirements pertain to firearms that may be issued to Special Agents.

#### 1. Semi-Automatic Handguns

Semi-Automatic handguns authorized for official duty carry by Special Agents must meet the following requirements:

a. (b)(7)(E)

b.

c.

d.

e.

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- f. (b)(7)(E)
- g. Deemed to be in a safe operating condition pursuant to an annual inspection by an approved armorer; and
- h. In factory-issued condition without modification, other than those specifically approved by the OIG;

### 2. Personally Owned Firearms

Special Agents must receive authorization from the AIGI to carry personally owned firearms during the performance of official duties. The approval process to carry a personally owned firearm requires the Special Agent to:

- a. Ensure the privately owned weapon meets the criteria set forth for Semi-Automatic Handguns as outlined in this chapter;
- b. In coordination with the Regional Firearms Coordinator, receive a certification of firearm serviceability from an OIG-approved armorer that certifies the firearm has not been altered from its factory issued condition and that the firearm is in good working order (See Certificate of Firearm Serviceability Form - Chapter 4, Exhibit G);
- c. Successfully qualify with the firearm and law enforcement related equipment after receipt of the Certificate of Serviceability Form;
- d. Pay for all costs associated with requesting to use a personally owned firearm;
- e. Include the following items in the Request to the AIGI for Authorization to Use a Personally Owned Firearm:
  - i. The Certificate of Firearm Serviceability Form with the request to the AIGI;
  - ii. Supplemental information in the comments section of the request that the AIGI should consider when assessing the request.
  - iii. A firearms description, including a diagram or manufacturer specification.
- f. Send the "Request to the AIGI for Authorization to Use a Personally Owned Firearm" through the SAC, Regional Firearms Coordinator and National Firearms Manager to the AIGI for approval (See Sample Memorandum for Request to AIGI to Carry Personal Firearm - Chapter 4, Exhibit I);

### 3. Personally Owned Firearms Approved for Official Duty

- a. *Approval* – The authorization to carry a personally owned firearm will remain in effect until such time as the AIGI rescinds the approval or the Special Agent, while still employed with the OIG, submits a notification in

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writing to the SAC that use of a personally-owned firearm will be discontinued.

- b. *Law Enforcement Related Equipment* – Special Agents who are approved to use a personally-owned firearm for official duty are responsible for obtaining, at their own expense, any necessary law enforcement related equipment (e.g., non OIG-issued holster, magazines, magazine pouches, and parts etc.). The SAC, in coordination with the Regional Firearms Coordinator and ASAC, must approve this law enforcement related equipment for use and the equipment must be compliant with other provisions in this chapter.
- c. *Qualifying* – The Special Agent must qualify with his/her personally owned firearm that has been approved for official duty on a quarterly basis. The Special Agent will be required to qualify with the OIG-issued firearm at least once every 365 days.
- d. *Annual Certification* – All personally owned firearms approved for official duty must be inspected by an OIG-approved armorer annually.
- e. *Personal Use* – The Special Agent may not use OIG-issued or funded equipment, including ammunition, during personal use of any personally owned firearm approved for official duty.
- f. *Sale* – The Special Agent will immediately advise the Regional Firearms Coordinator of the disposal or sale of a personally-owned firearm approved for official duty. A memorandum will be directed to the Regional Firearms Coordinator listing the description of the firearm and the date of transfer. The Regional Firearms Coordinator will ensure that a copy of the Memorandum is sent to the agent's SAC and ASAC, the National Firearms Manager and the AIGI. The disposal or sale of a personally owned firearm will result in immediate rescission of OIG approval to carry that firearm on duty. A new or replacement personally owned firearm must be approved by the AIGI.

### 4. Backup/Secondary Firearms

The AIGI must give written approval for a Special Agent to carry a backup and/or secondary firearm. The backup/secondary firearm must meet the criteria set forth for Semi-Automatic Handguns as outlined in this chapter. A request to carry a backup/secondary firearm must include:

- a. A general description of the firearm including the make, model and caliber of the weapon;
- b. A general description of required training;
- c. A description of any limitations/restrictions; and
- d. A justification for use of the firearms.

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### 5. Modifications and Repairs to Firearms

Special Agents are prohibited from carrying any firearm that has been modified, except as specifically approved by the AIGI. Agents may carry a firearm that by manufacture design is functionally equivalent to the OIG-issued firearm. Functionality is defined as elements related to the operational mechanism of the firearm as opposed to enhanced design. All approved modifications, repairs or refinishing will only be performed by an OIG-approved armorer. The following identifies modifications that have been previously approved and/or denied by the AIGI and do not require additional review by the AIGI:

- a. Custom handgrips are considered an acceptable modification under this policy and they may be installed on an issued firearm provided they in no way interfere with the operation of the firearm;
- b. Night sights are also considered an acceptable modification under this policy;
- c. Hammer and trigger adapters are prohibited and not considered to be acceptable modifications. No modifications to firing mechanisms will be authorized whatsoever.

### 6. Holsters

- a. *OIG-issued holsters* – OIG-issued holsters are defined as strong hand on the belt side/hip holsters (pancake or paddle), fitted with a thumb break or similar retention device, the trigger guard completely covered, and designed for the make and model of the authorized firearm. Such holsters are considered part of the standard authorized carrying configuration and are approved for official use. Firearm qualification with the standard configuration holster is required.
- b. *Approval of non-OIG-issued holsters* – Non-OIG-issued holsters require review and written approval by the SAC, in consultation with the appropriate Regional Firearms Coordinator and ASAC prior to on duty use. SAC approval will be documented in a Memorandum to the Regional Firearms Coordinator, with a copy to the National Firearms Manager. The AIGI will be consulted prior to approval. Approval documentation will, at a minimum, include a general description of the equipment, justification(s) as to why the equipment is necessary or desirable for the agent's use, a general description of any required training and any limitations/ restrictions. Completion of required training will be coordinated with the Regional Firearms Coordinator and documented in the agent's regional firearms file.

**Note:** SAC approval of non-OIG-issued firearms law enforcement related equipment applies to all Special Agents within his/her purview but



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applies only to the make(s) and model(s) listed in the approval memo. Any deviations from the approved make(s) and/or model(s) must be approved by the SAC in writing under the conditions outlined within this Manual chapter.

- c. *Non-OIG-issued holster requirements* – Non-OIG-issued holsters must be fitted with a guard completely covered and designed for the make and model of the authorized firearm. When in use, the agent will follow manufacturer and/or reasonable training guidance and will complete firearm qualifications with the non-OIG-issued holster. Non-OIG-issued belt side/hip holsters must meet the following requirements for approval:
  - i. The holster must secure the weapon to the agent's person at all times, (i.e., the holster is properly designed to keep the weapon from inadvertently falling out while running or jumping);
  - ii. The holster must allow for the weapon to be secured, drawn and holstered with one hand;
  - iii. Shoulder holsters must be designed to keep the barrel of the firearm pointed downward or horizontally to the rear;
  - iv. The holster must have been specifically designed by the manufacturer for use with the approved firearm or equipment;
  - v. Agents must receive OIG-approved Firearms Instructor orientation on the use of the non-OIG-issued holster before approved;
  - vi. Qualification is not mandatory; however, semi-annual re-familiarization with the approved non-OIG-issued holster is required.
- d. *Non-OIG-issued approved holsters* – When using an approved non-OIG-issued holster, agents must be aware of their responsibility for the security of their weapon. Agents must be able to conceal the weapon at all times unless the situation dictates otherwise. If the holster becomes inoperable, the agent must refrain from use at the first opportunity and replace or repair the holster. The agent is responsible for the cost of replacement with an identical holster or repair. If the holster is not identical to the one approved, the agent will need to obtain approval for the new holster. All repairs will be coordinated with the Regional Firearms Coordinator.
- e. *Limitations to non-OIG-issued holsters* – Certain approved non-OIG-issued holsters, including ankle holsters, tactical holster shirts, and purse holsters, are not authorized on pre-planned arrest, search warrants or high-risk subpoena service. In these circumstances, the agent will only carry the configuration on which he/she has been qualified (e.g., the standard belt side/hip holster or tactical duty holster, if applicable).

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### 7. Other Law Enforcement Related Equipment

Only handcuffs and restraining devices issued by the OIG, or approved by the AIGI, will be used. Only protective and safety equipment, such as body armor, which has been authorized by the AIGI or is issued by the OIG will be used. Functionally equivalent range safety equipment, such as protective glasses and ear protection, do not require AIGI approval. Personally owned functionally equivalent magazine retention devices and handcuff cases are authorized for official use. In such instance, agents must follow manufacturer and/or reasonable training guidance prior to use.

### 8. Ammunition

Only OIG-approved ammunition is authorized for Special Agents to train, qualify and carry on duty. OIG-approved ammunition is a 165-grain Jacketed Hollow Point. Frangible ammunition is authorized for training purposes only. Reloaded or personally owned ammunition is not authorized for duty carry.

## VI. ISSUANCE OF FIREARMS AND LAW ENFORCEMENT RELATED EQUIPMENT

Firearms and law enforcement related equipment will be issued to Special Agents through the Regional Firearms Coordinators. The Regional Firearms Coordinator will maintain receipts for each agent in his/her region in the Agent's firearms file.

### A. Firearms and Law Enforcement Related Equipment Receipts

A "Firearms and Law Enforcement Related Equipment Receipt" must be completed whenever the following equipment is issued or exchanged:

- Firearms
- OC spray
- Extendable batons
- Body Armor
- Raid jackets
- Handcuffs
- Gun locks
- Portable gun safes
- Holsters (including fanny packs)
- Magazines
- Magazine pouches

(See Firearms and Law Enforcement Related Equipment Form – Chapter 4, Exhibit E)

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### B. DOE Certificate of Property Receipt

A "U.S. Department of Energy, Certificate of Property Receipt" must be completed whenever a firearm is issued or exchanged. This form is not required for other law enforcement related equipment (See U.S. Department of Energy, Certificate of Property Receipt Form – Chapter 4, Exhibit F).

## VII. STORAGE AND CONTROL OF FIREARMS AND LAW ENFORCEMENT RELATED EQUIPMENT

### A. Storage

#### 1. Safes

Firearms and ammunition will be stored in a GSA approved fireproof safe with a combination lock. The safe must be located in an office/area secured by a lock. The safe may not be located in an area that is accessible by non-OIG personnel (e.g., DOE employees, contractors, and general public). The safe and its combination will be accessible to all Special Agents. Administrative personnel will not have access to the safe combination; therefore, the safe will be designated solely for the use of storing firearms and law enforcement related equipment.

#### 2. Safe Combinations

Safes must be locked at all times when agent personnel are not physically present in the room. Firearm safe combinations must be changed:

- a. At least annually;
- b. Within 30 days of an agent's departure from the office (e.g., retirement, resignation, etc.); or
- c. At discretion of the Regional Firearm Coordinator, SAC or ASAC.

#### 3. Office Safes

Special Agent's may temporarily maintain their firearms in an authorized office safe. Because office safes are accessible by multiple agents, equipment logs must be completed each time a firearm is placed into or removed from the safe (See Individual Firearms and Law Enforcement Related Equipment Log – Chapter 4, Exhibit D). Special Agents may also store their firearms in individually-assigned safes located in their offices. An equipment log is not required for individually-assigned safes. At no time will handguns or ammunition be left in unattended briefcases or unlocked desks or cabinets.

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### 4. Other Storage

During the course of a workday, an agent may temporarily safeguard his/her firearm in a *locked* desk drawer or file cabinet. If the agent temporarily leaves the office where the desk or cabinet is located, if possible, the door also must be locked. If an authorized container or location is not available during the work day, the agent will safeguard the handgun by carrying it on them at all times. Firearms may not be left in the desk or cabinet overnight. At the end of the work day or if an agent leaves the office for an extended period during the day, the agent must return his/her firearm and law enforcement related equipment to an approved firearms safe or carry it on them.

### 5. Temporary Duty Location (TDY)

While on official TDY travel away from the office, Special Agents will make every attempt to safeguard their handguns by carrying them on them at all times. However, circumstances may arise where this is not feasible or recommended. When this occurs, Special Agents are responsible for ensuring the adequate safety and storage of firearms and ammunition. Acceptable storage devices/locations include (b)(7)(E)

(b)(7)(E)

However, such storage locations and/or devices must be used on a limited basis for short duration. Firearms stored in such a manner must be inspected at least once every 24 hours in order to validate continued presence and security of the firearm. Unacceptable storage options include desk/dresser drawers, closets and the hotel manager's office safe. However, in-room safes may be used for temporary storage of a firearm if the safe is permanently mounted and has a user-defined/controlled combination lock. This does not include safes that use room keys or hotel-issued keys for entry.

**Note:** This provision regarding temporary storage (b)(7)(E) applies in non-TDY situations when possession of a loaded firearm is not permitted, such as a courthouses or a prison cellblock, and no other suitable storage is available.

### B. Safety Lock

An OIG-issued or approved handgun safety lock or other OIG-approved safety device will be used (installed and locked) anytime an OIG-issued or approved handgun leaves the immediate physical possession of an OIG agent and the handgun is unloaded. Potential circumstances when this may occur include but are not limited to securing a firearm at an agent's residence.

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**Warning:** Inserting a trigger safety device inside the trigger guard of a loaded handgun is dangerous. Be sure firearms are unloaded and cleared before attempting to install a trigger safety device. Agents must follow the manufacturer's instructions for inserting trigger safety device. The proper use of handgun trigger lock devices will be included, at least semiannually, in routine firearms training.

The requirement for a safety lock does not apply to the following situations:

1. Loaded handguns stored in an OIG authorized storage container located in OI offices;
2. During approved firearms training sessions; and
3. Handguns not capable of firing live ammunition (e.g., due to disassembly or special design).

**Note:** Disassembly in lieu of a safety device would be appropriate when shipping a handgun via U.S. mail or other common carrier.

### C. Securing of Firearms in Personal Residences

Authorized Special Agents may take their firearm to their residence to ensure that it is immediately accessible in the event of that the agent will need its use in the performance of their official duties. Under no circumstances will the decision to carry a firearm to the residence exceed the limits set forth by the authority of the IG Act of 1978, as amended.

It is also the Special Agent's responsibility to ensure that unauthorized individuals do not gain access to their firearm and/or ammunition.

#### 1. Educate Family Members

Safeguarding a firearm and/or ammunition in the home includes educating the family and other occupants as to the potential dangers involved associated with the unauthorized handling of firearms. Children, especially, must be instructed not to handle firearms and/or ammunition and be taught to prevent other children from doing the same.

#### 2. Limit Access/Minimize Potential for Accidental Use

Dependent upon the presence of small children, the number of individuals who have access to the residence, and the reason the firearm was carried to the residence, the following safeguarding measures must be used:

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- a. Store the firearm in a secure and secluded container with a combination lock;
- b. Unload the firearm, locking it and the ammunition in separate, secured areas;
- c. Secure an unloaded firearm with a safety lock And/or disassemble the firearm to make it inoperable.

### D. Loss/Theft of Firearms

Immediately upon discovering that an OIG-issued or an OIG-approved personally-owned firearm has been lost or stolen, the Special Agent must report this to the SAC. The SAC will be responsible for immediately notifying a law enforcement agency with the capability of entering the loss/theft into NCIC and for providing any subsequent status reports. Within 24 hours of the loss/theft, the Special Agent will submit a memorandum, thru his/her supervisor, to the AIGI giving a full description of the circumstances. The circumstances surrounding the loss/theft will be evaluated. If circumstances warrant, the Special Agent may be subject to disciplinary or other administrative action.

## VIII. MAINTENANCE OF FIREARMS AND LAW ENFORCEMENT RELATED EQUIPMENT

The Regional Firearms Coordinators will be responsible for the care and preventative maintenance of firearms and related equipment within their assigned regions.

### A. Preventive Maintenance of Firearms

Preventative maintenance consists of a program of regular inspection and replacement of designated parts based on wear and/or other pertinent criteria. All Regional Firearms Coordinators, in coordination with regional Special Agents, are responsible for taking/shipping firearms within his/her region to an OIG-approved armorer for inspection and preventative maintenance on an annual basis. The coordinator will obtain the armorer's certification of serviceability pursuant to the inspection and maintenance, and will place the Certification of Firearm Serviceability in the agent's firearms file (See Certificate of Firearm Serviceability Form – Chapter 4, Exhibit G).

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### B. Care and Cleaning Firearms

Once a firearm has been issued to a Special Agent, either for training or under the authority of the IG Act, the care and cleaning of the firearm is the responsibility of the individual Special Agent to whom it is assigned. Regional Firearms Coordinators may, in consideration of safety, prohibit the use of any firearm that is not in an acceptably clean and/or safe condition. Special Agents must adhere to the following guidelines when cleaning their assigned firearm:

1. The firearm will be cleared before cleaning in accordance with the policies for clearing a firearm;
2. The firearm will be cleaned in accordance with manufacturer recommendations or guidance;
3. Ammunition will be separated from the firearm before cleaning;
4. Eye protection will be worn at all times; and
5. The use of cleaning solvents will only be used in well-ventilated areas.
6. Preventive Maintenance of Handcuffs

### C. Preventative Maintenance on Issued Handcuffs

Preventative maintenance must be performed on issued handcuffs. The Special Agent must inspect and ensure smooth operation through cleaning and proper lubrication. If the handcuffs are deemed to be non-functioning or functioning inappropriately, the Special Agent must immediately notify the Regional Firearms Coordinator for repair or replacement.

### D. Preventive Maintenance of Other Law Enforcement Related Equipment

All other law enforcement related equipment issued to a Special Agent must be inspected regularly by the Special Agent and if found to be non-operational, the Special Agent must notify the Regional Firearms Coordinator for repair or replacement.

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### IX. SHIPPING AND TRANSPORT OF FIREARMS AND LAW ENFORCEMENT RELATED EQUIPMENT

#### A. Shipping Firearms Between OIG Offices

Firearms will be unloaded during shipping and will not be shipped in any package that also contains ammunition. All firearms will be sent between OIG offices by registered United States Mail, return receipt requested, or by a tracked shipping method such as FedEx or UPS. Before a firearm is shipped, the sender and the receiver must have both agreed to the shipment. Prior to the shipment of firearms, the sender will comply with any requirements set forth by the shipping entity. The outer wrapper of packages containing firearms must not indicate the contents; as such markings have led to thefts of weapons from the mail. The office shipping the firearm must notify the receiving office in writing when the firearm is shipped. The notification must contain a description of the firearm (i.e., make, model, serial number) and any other items shipped along with the firearm. The recipient must address any requirements that may exist for receiving a firearm through the recipient's mailing center. When the destination office receives the shipped firearm, they must acknowledge the receipt of the firearm in writing. After acknowledgement, both the shipper and receiver will maintain copies of the notifications with their regional firearms inventory records. If the recipient does not report the firearm as being received within three days of the package being mailed, the sender must contact the recipient and, if necessary, the mailing service, to determine the location of the package.

#### B. Shipping Firearms to FLETC

Two weeks before a new agent attends the FLETC Criminal Investigator Training Program, the Regional Firearms Coordinator will initiate contact with the FLETC Firearms Division point of contact (POC) who receives firearms for new agents. The Regional Firearms Coordinator will send a letter to the FLETC POC that provides the student's name, class number, start date, weapon type and weapon serial number. On the agreed upon date, the weapon must be shipped to the FLETC POC. The firearm must be shipped in an appropriate box and not be shipped with any other items (e.g., magazines or cleaning brushes, etc.). The firearm must be sent via FedEx, UPS Express, or U.S. Postal Service Overnight/Express Mail with a shipping invoice attached for tracking purposes.

**Note:** The magazines and other necessary equipment must be assigned and given to the Agent prior to going to FLETC.



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### C. TSA Requirements for Carrying Firearms Aboard Commercial Aircraft

#### 1. Individuals Who May Fly Armed

Transportation Security Administration (TSA) regulation 49 CFR Section 1540.111 prohibits any person from carrying a deadly or dangerous weapon on or about them, either concealed or unconcealed, while on board a commercial aircraft. Criminal penalties for violations of this regulation are set forth in 49 U.S.C. Section 46505. This regulation does not apply if the person having the weapon is a law enforcement officer (LEO). Federal regulations implemented on February 17, 2002, by TSA govern who may fly armed on commercial airlines and under what conditions. The TSA requires that the individual to be armed during flight must:

- a. Be a Federal LEO or a full-time municipal, county, or state LEO who is a direct employee of a government agency;
- b. Be sworn and commissioned to enforce criminal statutes or immigration statutes;
- c. Be authorized by the employing agency to have the weapon in connection with assigned duties; and
- d. Have completed the training program "Law Enforcement Officers Flying Armed."

#### 2. Circumstances When Individuals May Fly Armed

TSA Regulation 49 CFR Section 1544.219, (Federal Register, Vol. 67 page 8369) sets out the six types of duty situations that will substantiate a need for a LEO to possess a firearm onboard an aircraft. An LEO may possess a firearm onboard an aircraft when:

- a. Providing protective escort (dignitary protection or witness protection);
- b. Conducting hazardous surveillance operations;
- c. Official travel is required to report to a new location armed and immediately prepared for duty;
- d. Employed as a Federal LEO, whether or not on official travel, and armed in accordance with an agency-wide policy governing that type of travel established by the employing agency by directive or policy statement;
- e. Escorting a prisoner, in accordance with 49 CFR 1544.221; or traveling to or from escorting a prisoner; and
- f. On Federal Air Marshal duty status.

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### 3. Unique Federal Agency Number (UFAN)

On February 1, 2010, TSA began transitioning to enhanced identification verification procedures for all LEO's flying armed. The enhanced procedures is an interim solution for identification verification until biometric technology becomes operational in accordance with 49 C.F.R § 44903(h)(6) Use of Biometric Technology for Armed Law Enforcement Travel.

The enhanced identification procedures require each Federal LEO flying armed, in accordance with 49 C.F.R. § 1544.219 and respective agency policy, to be in possession of a Unique Federal Agency Number (UFAN). The UFAN is an agency/entity-specific alpha-numeric number and will serve as an additional means to verify a Federal LEO's identity. The UFAN is law enforcement sensitive for official use only and can only be shared with OI Special Agents authorized to fly armed. Appropriate measures must be taken to ensure the number remains protected (e.g., share it only with TSA security officials at an airport, do not store with credentials, etc.). The UFAN is distributed and periodically updated by TSA. TSA sends the UFAN to a designated point of contact within each Federal law enforcement agency or entity. Within OI, the AIGI and one field SAC have been designated points of contact. These points of contact distribute the UFAN to the SACs and ASACs via secure communication for distribution to all Special Agents.

**Note:** Simple knowledge of the OIG's UFAN alone **does not satisfy** the requirements to fly armed.

### D. OIG Requirements for Carrying Firearms Aboard Commercial Aircraft

The TSA requests that law enforcement agencies implement internal guidelines to comply with TSA regulations regarding flying armed. The following internal policies govern carrying firearms aboard commercial aircraft by OIG Special Agents.

#### 1. Training

TSA regulations require that Special Agents receive a briefing on the rules and guidelines for LEOs flying armed. The training received in the Criminal Investigator Training Program at FLETC or an OIG-approved equivalent training program satisfies this requirement. The TSA guidelines for flying armed have also been incorporated into a training text issued by FLETC entitled TSA Regulations: Flying Armed (See TSA Regulations: Flying Armed – Chapter 4, Exhibit J).

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Prior to flying armed, all Special Agents authorized to carry firearms must certify that they have received, read and understand the guidelines contained in TSA Regulations: Flying Armed by signing "Certification of Reading TSA Regulations: Flying Armed" (See Certification of Reading TSA Regulations Form – Chapter 4, Exhibit K). This certification will be submitted to the National Firearms Manager by the respective Regional Firearms Coordinator(s). A copy of the form will also be maintained by the Regional Firearms Coordinator in the individual Special Agent firearms training folder. Unless TSA guidelines change, this form need only be submitted once. In the event TSA guidelines change, the National Firearms Manager will notify all Special Agents of the changes and require an updated certification from each Special Agent.

### 2. Special Agents Who May Fly Armed

OIG Special Agents are authorized to be armed aboard commercial aircraft while engaged in official duties or as otherwise allowed by this chapter. Due to possible unexpected changes in the agent's duty activity, the OIG requires all Special Agents who are authorized to carry a firearm to be armed and immediately prepared for duty upon the completion of their flight. It is, therefore, the policy of the OIG that all Special Agents traveling with a firearm aboard a commercial aircraft will maintain their firearm and ammunition on them. When transporting more than one firearm, additional firearms must be placed unloaded in a carry-on bag with a trigger safety lock or other OI-approved safety device installed on the firearm(s). Special Agents must never relinquish control of their firearm(s) or ammunition.

### 3. Procedures for Flying Armed

The OIG procedures for carrying a firearm on board a domestic commercial aircraft are as follows:

- a. Special Agents will properly identify themselves to airline officials at the ticket counter by displaying their Departmental badge and credentials and will discreetly notify these officials of their intent to transport a firearm aboard the aircraft. This notification must be made as soon as possible in advance of departure or, in case of an emergency, as soon as possible before flight departure. The identity of the Special Agent and the fact that he/she is carrying a firearm will be made known only to airline or law enforcement personnel who need that information.
- b. Special Agents will complete all forms requested by the airline, and will comply with all other airline and TSA procedures as identified by their representatives.

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- c. If an airline official refuses to allow the carrying of a firearm onboard the aircraft, the Special Agent will request the assistance of the airline Ground Security Coordinator (GSC) in resolving the dispute, and the agent will notify his/her supervisor as soon as practical. The resolution of this situation might entail traveling on a different flight with that airline, or traveling with a different airline. The agent will not, however, relinquish custody of their firearm.
- d. When the armed Special Agent reaches the LEO checkpoint, he/she will present the paperwork along with credentials and a second form of government identification to the designated airport official at the LEO checkpoint. The Special Agent will be required to provide the OIG's UFAN at the LEO checkpoint. Upon verification of identification, the armed Special Agent will clear the checkpoint and proceed to the departure gate, at which time he will identify him/herself to the airline representative working the gate of the Special Agent's flight.
- e. In the event of a hijacking, if a Federal Air Marshal (FAM) is on board, the Special Agent must take no action unless requested to do so by the FAM. If a FAM is not on board, the LEO shall take action to prevent imminent loss of life or serious bodily harm to the passengers or crew. The crew is trained to respond to other "in-flight disturbances." The Special Agent must not attempt to physically intervene unless requested to do so by a uniformed crew member or unless human life is clearly and imminently at risk. *TSA Regulations: Flying Armed* identifies the proper reaction by LEOs to a hijacking, as well as, the proper reaction by LEOs to an in-flight disturbance (See *TSA Regulations: Flying Armed – Chapter 4, Exhibit J*). All OIG Special Agents flying armed must be fully familiar and fully comply with these rules.
- f. Armed Special Agents will not consume alcoholic beverages eight hours prior to flying, or during the flight;
- g. Armed Special Agents will act with the utmost discretion to avoid displaying their firearms while in flight and causing undue alarm to other passengers and airline personnel;
- h. Armed Special Agents will not release their firearm to a crew member, as they are not authorized to personally take possession of a LEO's firearm;
- i. Armed Special Agents will maintain absolute control over the firearm. If they have additional firearms in a carry-on bag, they will not leave the bag unattended (or place in the overhead storage) for any reason; and
- j. Special Agents are authorized to carry firearms on international flights provided they are approved to do so by their SAC and ASAC and they have coordinated with appropriate law enforcement agencies, the State Department and airline officials. The coordination will be documented by a memorandum for the record, which will be maintained by the agent's Regional Firearms Coordinator. An Operations Officer will also be given advance notice of plans to carry a firearm on an international flight.

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

### X. INVENTORY AND DISPOSITION OF FIREARMS AND LAW ENFORCEMENT RELATED EQUIPMENT

#### A. Inventory

##### 1. Responsibilities

Each SAC, in coordination with the Regional Firearms Coordinator, will conduct an annual inventory of all issued firearms and inherently law enforcement related equipment in April of each year. The inventory will compare the serial numbers on the individually assigned firearms and law enforcement related equipment with the serial numbers listed on the inventory record from the previous annual inventory (See Firearms and Law Enforcement Related Equipment Annual Inventory Form – Chapter 4, Exhibit L). An explanation will be provided for all additions and deletions to the inventory.

The Regional Firearms Coordinator will send copies of the Certificate of Property Receipt Form and the annual inventory form to the National Firearms Manager. The National Firearms Manager will use the Certificate of Property Receipts for the annual inventory conducted by the Department's Office of Safeguards and Security, which normally occurs in May.

**Note:** SAC's, at their discretion, may conduct additional inventories if the circumstances warrant it.

##### 2. Inherently Law Enforcement Related Equipment

Inherently law enforcement related equipment includes, but is not limited to:

- a. OC spray
- b. Extendable batons
- c. Body Armor
- d. Raid jackets
- e. Handcuffs
- f. Gun locks
- g. Portable gun safes
- h. Holsters (including fanny packs)
- i. Magazines and pouches
- j. OIG Special Agent credentials and badge

**Note:** When inventorying a Special Agent's credentials, the badge number associated with the credential must be verified.

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### 3. Non-Inherently Law Enforcement Related Equipment

Non-inherently law enforcement related equipment does not need to be included in the annual inventory. Non-inherently law enforcement related equipment includes, but is not limited to:

- a. Pants
- b. Shirts
- c. Safety glasses
- d. Gloves

### B. Return of Equipment

#### 1. Transfer and Disposal

SACs, in coordination with Regional Firearms Coordinators, must ensure that the transfer or disposal of firearms outside of the OIG are pre-coordinated with the National Firearms Manager and handled in accordance with DOE property accountability guidelines. This includes but is not limited to ensuring the proper entry or removal of firearms from official DOE property lists, completion of appropriate paperwork, etc.

#### 2. Special Agent Departure

SACs, in coordination with the Regional Firearms Coordinators, are responsible for ensuring the complete and timely return of OIG-issued firearms and law enforcement related equipment upon an agent's departure from the OIG. When a Special Agent leaves or retires from OI, he/she will turn in his/her firearm and all inherent and non-inherent law enforcement related equipment. The Regional Firearms Coordinator will compare this equipment with the equipment that was issued to the Special Agent and documented in the "Individual Firearms and Law Enforcement Related Equipment Log" (See Individual Firearms and Law Enforcement Related Equipment Log – Chapter 4, Exhibit D). Any discrepancies will be resolved at that time.

#### 3. Equipment Eligible for Transfer

A departing Special Agent may transfer body armor and duffle bags with them under certain conditions. This policy allows other Federal Law Enforcement Agencies to benefit from issued equipment that might otherwise be disposed of or go unused. In order for these items to be transferred, the following conditions must be met:

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- a. The agent is transferring to another Federal Law Enforcement Agency that has law enforcement powers to carry a firearm, make arrests, and apply for and serve search warrants;
- b. The agent will serve in a GS-1811 position with such authorities;
- c. The new agency issues the same or similar property to its agents;
- d. The new agency has requested the transfer of the property;
- e. The property will be transferred to the new agency and will not become the personal property of the agent; and
- f. In the case of body armor, the manufacturer's warranty has at least six months remaining.

### 4. Request to Transfer Equipment

Special Agents transferring to another agency who wish to transfer property to their new agency must coordinate with the new agency to have the agency submit a written property transfer request. The written request may be made before the employee transfers to the new agency but cannot be made more than 30 days after the employee transfers. The request must be a memorandum, or an email from an official Government email address, to P3 or the AIGI. The request must be from a SAC or above, and must include the following information:

- a. The make, model and serial number (if available) of the requested item(s);
- b. Information supporting that the aforementioned conditions have been or will be met (with the exception of item #6, which will be verified by P3); and
- c. The name, title and contact information for a person at the new agency with whom OI can coordinate the transfer.

### 5. Process to Transfer Equipment

Upon receipt of a property transfer request, P3 will make a determination as to whether the property can be transferred. If the transfer of property is approved, P3 will contact the gaining agency to affect formal transfer of the property. The property will be provided to the departing agent during the exit process. At that time, the agent will sign a property receipt (See Property Receipt Transfer Form – Chapter 4, Exhibit M). The Regional Firearms Coordinator is responsible for updating all DOE and OIG inventory records to accurately reflect the transfer of the property. The SAC of the transferring agent is responsible for validating that the inventory records have been appropriately updated.

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### 6. Eligible Equipment Not Transferred

Body armor that is not transferred will first be examined for possible assignment to another OI Special Agent. This will occur only if the measurements match. Unused body armor will be forwarded to the National Firearms Manager for disposal. Disposal options include, but are not limited to, transfer to FLETC for training purposes. Duffel bags not transferred with the agent may be maintained by the office to which the agent was assigned for whatever official purpose the office deems appropriate.

### 7. Disposable of Personal Equipment

Other OIG property of a distinctly disposable and personal nature, such as tactical pants, shirts and hats, may be taken by the departing agent without the need for a formal request or transfer to another agency. Items with DOE or OIG logos, emblems or lettering may not be sold, transferred, donated or otherwise given to another person or entity unless the markings are removed. Further, upon removal, any logos or emblems must be retained by the agent, destroyed or returned to OI. The Regional Firearms Coordinator must document the agent's file to reflect that these items have been taken by the agent.

**Note:** Reusable equipment will not be transferred. This includes, but is not limited to, items such as raid jackets, handcuffs, batons, holsters and eye and ear protection. Other property not covered or envisioned by this memorandum may be discussed with the P3 Director on a case-by-case basis.

## XI. PROCUREMENT OF FIREARM AND LAW ENFORCEMENT RELATED EQUIPMENT

Procurement of needed firearms and law enforcement related equipment will be accomplished pursuant to the IG Act of 1978, as amended. The OIG must approve the requisition, procurement, acquisition and issuance of all firearms and law enforcement related equipment. The OIG's Office of Management and Administration will provide guidance to OI on meeting the Department's requirements for the acquisition, and if applicable, destruction of firearms. P3 is responsible for coordinating the procurement of all firearms and law enforcement related equipment.



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### XII. ACCEPTANCE OF FIREARMS AND LAW ENFORCEMENT RELATED EQUIPMENT

#### A. Requirements

OI personnel are prohibited from permanently accepting any firearms or law enforcement related equipment (e.g., holsters, ammunition, firearms, binoculars, cameras, audio/video equipment, etc.) or funding from any non-OIG source, (e.g., other law enforcement agency, DOE contractor, etc.) without prior approval from the AIGI.

#### B. Exceptions to Requirement

The prohibition to accepting firearms and law enforcement related equipment without AIGI approval does not apply to:

1. Ammunition, targets, and related items consumed or utilized at contractor operated firearms range;
2. Funding routinely made available by Department offices in support of local OIG offices; or,
3. Training supplies and/or the use of facilities routinely made available by other law enforcement organizations, such as the FBI and Federal Protection Service.

#### C. Accepting Equipment

Special Agents in the field will notify their respective ASAC and SAC in those instances when firearms or law enforcement related equipment or funding is being made available for sale, donation, or grant to OI for official use. When reporting the availability of any equipment or special funding, the SAC must be apprised of the following:

1. Description and cost or value of the investigative equipment/special funding;
2. Identification of the name, position, agency and/or organization of the individual(s) who will be furnishing the investigative equipment/special funding;
3. Description of the circumstances and explanation of how the investigative equipment and/or special funding is being made to OI;
4. Justification of the need for the equipment/special funding; and
5. An assessment that demonstrates that use of the equipment/special funding will not conflict with existing OI policy (e.g., holsters will comply with existing standards in the Investigations Manual and acceptance of special funds will not

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interfere with the OIG's ability to conduct its mission in an objective and independent manner).

SACs will relay the information concerning the availability of the equipment/special funds to the AIGI in writing. The AIGI, in consultation with the IG and other OIG senior management, will determine the appropriateness of accepting or denying the use of the equipment/special funds. The AIGI will notify the SAC of the final decision and recommend appropriate follow-up action if necessary.

### **XIII. FIREARMS TRAINING AND QUALIFICATION**

Special Agents will not carry firearms without appropriate training and qualification. The ability to successfully and safely qualify with a firearm is a condition of serving as a Criminal Investigator (GS-1811) in the DOE OIG. Failure to do so in accordance with the provisions of this chapter could result in an agent's removal from the GS-1811 Criminal Investigator job series.

#### **A. Firearms Training Objective**

Firearms training is meant to ensure that the Special Agent is qualified to carry out the duties of his/her position by safely employing firearms with speed and accuracy without hazard to self, other Special Agents or innocent parties. To attain this objective, the Firearms Training and Qualification Program includes emphasis on knowledge of OI policies governing firearms carry and use; safety practices relating to firearms; and the proficiency of the shooter during range training. The Firearms Training and Qualification Program is designed to positively assist Special Agents in becoming safe and competent firearms handlers.

#### **B. Training Requirements**

It is the responsibility of the Regional Firearms Coordinator to conduct required firearms training and qualification or schedule the required training with an OIG-approved entity. All OIG provided training will be conducted in accordance with Department mandated firearms range safety rules. Training provided by organizations other than the OIG, DOE or NNSA Office of Safeguards and Security must be approved by the AIGI. In those instances where training is provided by an outside organization, Special Agents must comply with all of the hosting organizations safety regulations.

**Note:** Consideration should be given to conducting static, dynamic and interactive firearms training, provided such facilities are available and appropriate safeguards are taken. Agent and public safety is vital.

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### 1. Initial Training

OI Special Agents will not be authorized to carry firearms or make arrests, regardless of experience, prior to qualifying with a firearm in an OIG-approved qualification course. Newly hired Special Agents will not be assigned duties which, potentially, will involve the exercise of law enforcement powers (e.g., firearms, arrests, search warrants, etc.) prior to the successful completion of basic investigator training by FLETC or equivalent OIG-approved training. Failure to qualify with a firearm at the FLETC may result in employment termination of the newly hired Special Agent.

### 2. Transition Training

Special Agents must attend transition training for newly issued/authorized firearms when the model/manufacturer or caliber differs from the firearm previously issued, authorized or used in training. The transitional training will be accomplished by OIG Firearms Instructors or through another OIG-approved training course.

### 3. Off-Duty Training

Special Agents may not train or qualify at a Government or private range with OIG-issued firearms and related equipment while off-duty (e.g., after hours or weekends). Absent extenuating circumstances, all OIG-related training and qualification must be done during scheduled work hours and must be accompanied by a Regional Firearms Coordinator or other designated OIG firearms trainer.

### 4. Private Range Training

OIG-related training and qualification may only occur at a private range when suitable Government ranges are not available. When a private range is used for OIG-related training and qualification, agents must be accompanied by a Regional Firearms Coordinator or other designated OIG firearms trainer.

### 5. Regional Firearms Coordinator Training

There will be at least one designated Firearms Coordinator at each regional office. At a minimum, the designated Regional Firearms Coordinators will attend Firearms Instructor Training at the FLETC or equivalent OIG-approved training.

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### C. Quarterly Firearms Range Training and Qualification

#### 1. Responsibilities

- a. All GS-1811 Criminal Investigators must attend a minimum of one official firearms range training session per fiscal year quarter;
- b. Special Agents will listen to and obey all range commands given by the Range Master and/or firearms instructor(s);
- c. Special Agents will, while on the range, always wear ear and eye protection, unless otherwise directed by the Range Master or firearms instructor(s);

#### 2. Waivers

- a. SACs may grant a written waiver to a Special Agent for a particular quarter if the agent will be unavailable for training due to circumstances beyond his/her control or the control of his/her supervisor;
- b. Waivers should be the exception rather than the rule;
- c. If Special Agent receives a waiver for a particular quarter, the agent must shoot a qualifying score by the end of the following quarter;
- d. A Special Agent may not be exempted from range training for two consecutive quarters and no more than twice in any two calendar year period; and
- e. The Regional Firearms Coordinator will maintain copies of the written waiver in the agent's firearms file.

#### 3. Course of Fire

During a scheduled quarterly training, the Regional Firearms Coordinator or other OI-approved instructor, will run the attending Special Agents through the official OIG course of fire, as outlined in the Semiautomatic Pistol Course (July 2011 Edition) (See Semiautomatic Pistol Course (July 2011 Edition) – Chapter 4, Exhibit N).

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### 4. Alternate Course of Fire

The Regional Firearms Coordinator can use an alternate official OI course of fire as outlined in the Alternate Semiautomatic Pistol Course (See Alternate Semiautomatic Pistol Course – Chapter 4, Exhibit O). This alternate course of fire will only be used in situations when the range (e.g. DOE contractor operated, a rented range, etc.) being utilized for the firearms training and qualifications will not allow the use of the primary course of fire outlined in the OIG Semiautomatic Pistol Course of Fire (July 2011 Edition) (See Semiautomatic Pistol Course (July 2011 Edition) – Chapter 4, Exhibit N).

### 5. Use of Force and Safety Briefing

During a scheduled quarterly training, the Firearms Instructor or Regional Firearms Coordinator will conduct a use of force and safety briefing prior to live fire.

### 6. Qualification

- a. The minimum shooting score to qualify on the course of fire is 240 out of 300 (80 percent);
- b. Special Agents are required to qualify with the standard authorized carrying configuration, as described in Section V of this chapter;
- c. Any problems, issues, etc. relating to qualification will be brought to the attention of the SAC and National Firearms Manager;
- d. Upon completion of training and qualification, each participant will sign the OIG Firearms Training and Qualification Roster acknowledging the accuracy of the score recorded and receipt/understanding of safety and use of force policies (See Firearms Training and Qualification Roster Form – Chapter 4, Exhibit P);
- e. The Firearms Instructor will ensure that all fields on the OIG Firearms Training and Qualification Roster are completed and are accurate, to include the make, model and serial number of all firearms being used to qualify (e.g., OIG-issued and OIG-approved personally owned firearms).

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### D. Failure to Qualify

#### 1. Initial Failure to Qualify

- a. *Firearms Authority* – A Special Agent who fails to qualify in accordance with the criteria outlined in this section, will have his/her firearms authority immediately but temporarily suspended. The suspension will remain in effect until the agent successfully qualifies based on the criteria established in this section. The Special Agent who has relinquished their weapon will not engage in any law enforcement activity (i.e., search warrants, arrests or other hostile situations, as determined by the SAC).
- b. *Follow-up Training* – If an agent completes a formal qualification course of fire and fails to shoot the minimum score or above, the SAC and the Regional Firearms Coordinator will arrange an additional session(s). The first of these sessions will be conducted within three workdays from the day the agent failed to qualify. Dependent upon the availability of range time and instructor personnel, the SAC may extend this time period from three workdays to no more than seven workdays. Such extensions must be limited and only granted under the most exigent circumstances. Follow-up training will consist of up to twelve hours of instruction that addresses and re-enforces weapons handling skills and the fundamentals of marksmanship, in addition to any specific deficiencies noted by the primary Firearms Instructor. Specifically, this remedial training will consist of not less than one four hour block of instruction, with up to two additional four hour blocks of instruction provided as necessary. At the conclusion of each four hour block of remedial training, the Special Agent will be provided one opportunity to qualify on the standard course of fire (See Semiautomatic Pistol Course (July 2011 Edition) – Chapter 4, Exhibit N). Another Firearms Instructor, ASAC or designee, shall be present during the qualification. The Special Agent will have a maximum of three opportunities to qualify. The Regional Firearms Coordinator will document the results of the agent's efforts to qualify in the agent's firearms file.

#### 2. Repeated Failure to Qualify

- a. *Firearms and Law Enforcement Authority* – A Special Agent's law enforcement authority authorized under the IG Act of 1978, as amended, may be rescinded or suspended upon a determination by the AIGI that the individual has not complied with guidelines promulgated by Attorney General. If the agent failed to qualify during the quarterly training and qualification and is receiving remedial instruction and fails to qualify during any of the three subsequent qualification course(s), the Regional Firearms Coordinator will immediately verbally advise the SAC of the

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failure and the SAC will suspend the agent's firearms and law enforcement authority in writing. The SAC will inform the AIGI verbally of an agent's failure to qualify.

**Note:** If a Special Agent's firearms authority is suspended/removed, the Special Agent loses his or her right to carry a concealed firearm under LEOSA.

- b. *Action Plan* – The Regional Firearms Coordinator will submit a follow up memorandum to the SAC within two workdays after the verbal advisement. The memorandum will advise the SAC of the facts and circumstances surrounding the agent's failure to shoot a qualifying score and the action plan to remedy the situation. The action plan must be documented in writing and must be completed within 120 calendar days. The agent's firearms and law enforcement authority will not be reinstated until the agent qualifies under the criteria established in this section.
- c. *Failure to Qualify After Completion of Action Plan* – Special Agents who complete the established action plan but fail to qualify under the criteria established in this section, will, absent extenuating circumstances, be subject to removal from the GS-1811 Criminal Investigator job series. Special Agents, who fail to complete the established action plan and fail to qualify under the criteria established in this section, will also, absent extenuating circumstances, be subject to removal from the GS-1811 Criminal Investigator job series. The AIGI, in consultation with the DIGI, is responsible for making the decision as to whether an agent will be removed from the GS-1811 Criminal Investigator job series. Subject to OIG needs, an individual subject to removal from the GS-1811 Criminal Investigator job series may be offered another position with OIG.

**Note:** Removal from the GS-1811 Criminal Investigator job series will result in loss of Law Enforcement Availability Pay and other benefits associated with the GS-1811 Criminal Investigator job series.

- d. *Extension of the Period of Time to Qualify* – The requirement for a Special Agent to qualify under the criteria established in this section cannot be waived. However, on a limited case-by-case basis, the AIGI, in consultation with the DIGI, may extend the period of time in which a Special Agent has to qualify under an established action plan from 120 calendar days to 180 calendar days. The Special Agent must submit a written request for an extension to the AIGI, through his/her SAC. The written request must justify the need for an extension.

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### 3. Inability to Safely Carry, Handle, Train and/or Qualify with a Firearm Due to a Medical Condition

- a. *Medical Condition* – A Special Agent who has a medical condition (which includes the use of prescription medications) that impairs the agent's ability to abide by the requirements of the OIG firearms policy or to safely carry or handle a firearm is considered to have a short-term medical condition if the condition is expected to last for fewer than 30 consecutive calendar days. If the medical condition is expected to last for 30 or more consecutive calendar days, the agent is considered to have a long-term medical condition.

**Note:** Pregnancy is not considered a medical condition for the purposes of this section. Chapter 3, Section VIII addresses pregnancy-related temporary disability.

- b. *Suspension of Firearms Authority* – If a Special Agent has a medical condition (either short or long-term), the agent must inform the assigned Regional Firearms Coordinator immediately. The Coordinator will inform the SAC and ASAC. The agent will be notified in writing that his/her firearms authority has been suspended and the suspension will be documented in the agent's firearm file. The Special Agent who has relinquished their weapon will not engage in any law enforcement activity (i.e., use of firearms, search warrants, arrests or other hostile situations, as determined by the SAC).
- c. *Exemption Request* – If an agent has a long-term medical condition, the agent must submit a written request (email or memorandum) to be exempted from carrying, handling, training and/or qualifying with a firearm. The written request must be submitted to the agent's SAC and be accompanied by written documentation from the agent's personal physician with the following minimum information:
  - i. a declaration that the agent is under the care of the named physician;
  - ii. a general description of the condition;
  - iii. information about the impact of the agent's medical condition on their ability to safely carry, handle, train and/or qualify with a firearm; and
  - iv. a general statement about the prognosis and projected time for recovery.
- d. *Exemption Decision* – The SAC will consult with the AIGI before rendering a decision on the request for an exemption. In making the determination, the OIG may also consult with OIG's MA as well as a DOE approved physician. If approved, the exemption will be granted for a period not to



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exceed 60 calendar days from the date of the approval. Any extension beyond the initial approved period will require a follow-up request from the agent prior to the expiration of the exemption. The follow-up request must contain updated supporting medical documentation from the agent's physician. The costs incurred for obtaining additional documentation or examinations by the personal physician will be the employee's responsibility.

**Note:** At any point in this process, the agent may be subject to a medical examination by a DOE approved physician. OIG will pay the cost for any DOE-ordered medical exams.

- e. *Exemption Limitations* – Absent extenuating circumstances, an exemption may not extend beyond 180 consecutive calendar days from the date of the initial exemption request. A one-time extension may be granted, if an agent can demonstrate that there is a likelihood that the medical condition will be resolved in another 60 calendar days.

**Note:** A Special Agent under a medical condition exemption at the time this chapter is released will have 180 consecutive calendar days from the date of release of this chapter to resolve any existing medical conditions that impair their ability to carry, handle, train and/or qualify with a firearm.

- f. *Removal from GS-1811 Criminal Investigator Job Series* – If one or more medical conditions persist for more than 180 consecutive calendar days, the agent may be subject to removal from the GS-1811 Criminal Investigator job series. The AIGI, in consultation with the DIGI, is responsible to making the decision as to whether an agent will be removed from the GS-1811 Criminal Investigator job series. Subject to OIG needs, an individual subject to removal from the GS-1811 Criminal Investigator job series may be offered another position with OIG.

**Note:** Removal from the GS-1811 Criminal Investigator job series will result in loss of Law Enforcement Availability Pay and other benefits associated with the GS-1811 Criminal Investigator job series.

- g. *Reinstatement of Firearms Authority* – The agent must submit a written request to his/her SAC requesting reinstatement from either a short or long-term medical suspension. The request must contain a statement that the agent is no longer taking the prescription medication(s) and/or the medical condition has improved (i.e., the agent is able to safely carry or handle a firearm without undue risk to others). Written documentation from the agent's personal physician **may** be required for

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short-term medical conditions in order for the agent's firearms authority to be reinstated. Written documentation from the agent's personal physician or DOE-approved physician **must** be provided for long-term medical conditions in order for the agent's firearms authority to be reinstated.

### **XIV. CONTROL/DEFENSIVE TACTICS TRAINING PROGRAM**

In order to effectively carry out their official duties and responsibilities, it is imperative that Special Agents maintain proficiency in control/defensive techniques.

#### **A. Regional Control/Defensive Tactics Instructors Responsibilities**

1. Maintain proficiency in control/defensive tactics by attending FLETC "Law Enforcement Control Tactics Refresher Training Program," or equivalent, at least once every three years after initial certification or as resources permit;
2. Participate in other defensive/control tactics and use of force professional development training opportunities when available and as resources permit;
3. Conduct refresher training for field agents, absent extenuating circumstances, on regular basis, to include, at a minimum, handcuffing, weapon retention and ground defense;

**Note:** It is recommended that such training be conducted each quarter. For primary law enforcement positions, such training must be completed at least once a year. For secondary positions, such training must be completed at least once every two years.

4. Control/Defense Tactics training, absent extenuating circumstances, will be conducted during quarterly firearms training sessions.
5. When possible, work closely with Regional Firearms Instructors to conduct realistic scenario-based training that involves making reasonable use of force decisions and implementing reasonable force options in situations likely to be encountered by OIG agents; and

**Note:** For primary law enforcement positions, such training must be completed at least once a year. For secondary positions, such training must be completed at least once every two years.

6. Maintain training rosters/documentation for all training conducted.

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### B. Special Agents Responsibilities:

1. Participate in all control/defensive tactics training unless medically restricted from participating in such training;
2. Inform control/defensive tactics instructors of any injuries or medical restrictions prior to such training;
3. Immediately inform control/defensive tactics instructors of any suspected injuries incurred during training; and
4. Strive to maintain a level of physical fitness that is conducive to regular/periodic control/defensive tactics training.

## XV. USE OF FIREARMS AND LAW ENFORCEMENT RELATED EQUIPMENT

Special Agents must use common sense and sound judgment when carrying and/or using firearms and law enforcement related equipment.

### A. Limitations on Carrying Firearms and Law Enforcement Related Equipment

Supervisors may limit or revoke a Special Agent's ability to carry a firearm if a Special Agent:

1. Fails to meet training and qualification standards (set forth later in this chapter);
2. Fails to meet OIG firearms standards;
3. Fails to meet the medical and physical standards outlined in Chapter 3, Section VIII; or
4. Has his/her law enforcement authority revoked.

### B. Loading and Clearing Firearms

For safety reasons, the loading and clearing of firearms will take place as infrequently as possible. When it is necessary to load/unload a firearm, extreme caution will be taken to prevent the endangering of life or the destruction of property that might result from an accidental discharge. When loading firearms in a field situation (where no bullet containment device is available), care will be taken to ensure that the muzzle of the firearm is pointed in a safe direction during the operation. When it is deemed necessary to load or unload a firearm in the office environment, a Special Agent need to refer to the Guidelines for Loading/Unloading

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Firearms (See Guidelines for Loading and Unloading Firearms – Chapter 4, Exhibit Q). A copy of these guidelines will be displayed in the location where the clearing barrel is maintained.

### C. Inadvertent Discharge or Mishandling of a Firearm

Special Agents carrying a firearm must take every precaution to preclude the possibility of an accidental discharge of a firearm or creating a hazard to innocent people. A discharge of a firearm, other than during authorized training, or any mishandling of a firearm, must be reported by OI staff immediately to the next level supervisor. The person reporting the discharge/mishandling will follow this notification with a memorandum, thru his/her supervisor, to the AIGI within 24 hours. The supervisor and/or Regional Firearms Coordinator are authorized to recover the firearm from the agent who discharged/mishandled the firearm, if deemed necessary.

### D. Prohibited Acts

Special Agents must not engage in any activity while carrying a firearm that might impair the confidence of the public in an agent's judgment and professional abilities. Activities specifically prohibited while armed include, but are not limited to:

1. Firing warning shots, or shots for signaling purposes;
2. Firing shots to prevent the escape of a fleeing subject, unless the Special Agent has probable cause to believe that the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and the escape of the subject would pose an imminent danger of death or serious physical injury to the agent or to another person;
3. Firing shots at a moving vehicle, or the occupants therein, with the expectation of rendering the vehicle inoperable, or incapacitating the driver, unless the agent has a reasonable belief that the subject poses an imminent danger of death or serious physical injury to the agent or another, and the public safety benefits of using such force outweigh the risks to the safety of the agent or other persons;
4. Horseplay;
5. Dry Firing for any reason, other than when specifically directed to do so by an instructor during the course of official firearms training;
6. Practicing "quick draw" methods, other than at the specific direction of an instructor during official training;

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7. Using alcoholic beverages, medications or intoxicants, which may impair one's judgment or ability;
8. Carrying a firearm into a courtroom where it is prohibited by the rules of the court;
9. Carrying a firearm into a prison cellblock; and
10. Carrying a firearm while on travel to a foreign country (unless otherwise authorized).

### E. Display of Firearms and Law Enforcement Related Equipment

Special Agents will act with utmost discretion to avoid unnecessary display of their firearms and law enforcement related equipment. Special Agents must not openly wear an exposed firearm in the hallways of a Department building (i.e., duty location/office) or in public. Special Agents must take care not to unnecessarily display firearms and law enforcement related equipment in those instances in which OI is co-located with other DOE or OIG organizations. Firearms must be concealed from public view at all times, except during the performance of law enforcement duties that require such exposure (e.g., execution of a search warrant, during an arrest, etc.). In those cases when firearms and law enforcement related equipment are exposed, the Special Agent will wear readily visible law enforcement identification (e.g. raid jacket, badge, etc.).

## XVI. USE OF FORCE

Special Agents must exercise good judgment at all times and not take undue risks when danger threatens. Special Agents must avoid the use of force whenever their assigned responsibilities can be discharged in a more peaceful manner. In the event their responsibilities cannot be discharged without resorting to the use of force, Special Agents shall use the minimum amount of force necessary, consistent with the policies outlined in this Manual Chapter and the DOJ Use of Deadly Force policy, to bring a situation under control (See DOJ Policy Guidelines – Use of Deadly Force – Chapter 4, Exhibit R).

### A. Advanced Preparation

When possible all available information concerning a dangerous or hostile situation or person needs to be fully developed in order to effectively prepare for responding to all contingencies with mature judgment. Information relating to the dangerous or hostile nature of the situation/persons involved needs to be evaluated and extra precautions and diligence in the proper use of firearms needs to be applied to those situations.

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Special Agents need to be alert to potential confrontations with armed and dangerous persons. When information has been received that a person, with whom a Special Agent might have contact, is prone to resort to the use of firearms or other deadly weapons, owns or has access to firearms or other dangerous weapons, has been known to have firearms in his/her possession, or has a history of violence with weapons, that person needs to be considered armed and dangerous.

### B. Drawing a Firearm

#### 1. Verbal Command

Conditions may arise where it might be in the best interest of the Special Agent to draw their firearm based on the totality of the circumstance in which the Special Agent is confronted. In such circumstances, if feasible, and if to do so does not increase the danger to the agent or others, a verbal warning to submit to the authority of the agent must be given prior to the use of the firearm. The proper command a Special Agent uses when drawing a weapon on a suspect is: "POLICE! DON'T MOVE!" This phrase instantly establishes who the agent is and tells the challenged person exactly what the agent wants them to do. The word "police," or variations thereof, are universally understood and, if forcefully delivered, may be sufficient to keep a situation from deteriorating. As soon as possible after issuing the command the agent must display his/her badge.

#### 2. Notification

In the event a Special Agent draws his/her weapon in the course of duty, the AIGI will be promptly notified of the incident. Notification can be made verbally initially, to be followed by a memorandum from the involved agent, through his/her SAC, within 48 hours. This notification is not required for routine search warrant and arrest situations or training and qualification activities. If a violation of the guidance set forth herein has occurred, an inquiry will be initiated by the AIGI.

### C. Legal Representation

In the event that a use of force incident results in serious physical injury or death, the Special Agent involved may become the target of local, state, or Federal criminal investigations. In that event, the Special Agent has the right to consult with an attorney of his or her own choosing before being questioned by investigators. Emergency interim legal representation may be available from private counsel at Government expense, in accordance with the Attorney General's guidelines on Legal

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Representation in Critical Incidents, which outlines the procedure for obtaining this assistance (See Procedure for Obtaining Emergency Legal Representation for Federal Law Enforcement Agents Involved in Critical Incidents – Chapter 4, Exhibit S).

The Special Agent's SAC, as the OIG's "agency designee" with DOJ will initiate contact with the DOJ's Civil Division, Torts Branch, Constitution and Specialized Torts Staff. The Constitution and Specialized Torts Staff will make a decision on emergency interim legal representation after considering scope of employment and other pertinent issues, based on the facts and information provided by the agency designee.

### **XVII. USE OF DEADLY FORCE**

#### **A. DOJ Use of Deadly Force Policy**

A November 1995 resolution from DOJ outlines the deadly force policy for agencies of the DOJ (See Department of Justice Policy Guidelines – Use of Deadly Force – Chapter 4, Exhibit R). This policy and all subsequent updates (if any) are applicable to all OI Special Agents with law enforcement authority.

#### **B. Definitions**

##### **1. Deadly Force**

Deadly force is the use of any force (e.g., firearm, baton, hands, knife, etc.) that is likely to cause death or serious physical injury.

##### **2. Reasonable Belief**

A reasonable belief means facts and circumstances, including the logical inference drawn there from, known to the agent at the time of the use of the deadly force that would cause a reasonable agent to conclude that the point at issue is probably true. The reasonableness of a belief or decision must be reviewed from the perspective of the agent on the scene, who may often be forced to make split-second decisions in circumstances that are tense, unpredictable and rapidly evolving. Reasonableness is not to be viewed from the calm vantage point of hindsight.

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### C. Circumstances Warranting the Use of Deadly Force

#### 1. Imminent Danger

Deadly force may be used only when necessary – that is, only when the agent has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the agent or to another person. The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to Special Agents and others have failed or would likely fail. If, under all the circumstances confronting the Special Agent, non-lethal force - as opposed to deadly force – could reasonably be expected to accomplish the same result (such as the arrest of a fleeing subject) without increasing the danger to the Special Agent or others, then non-lethal force must be considered. If force other than deadly force reasonably appears to be sufficient to accomplish an arrest or otherwise accomplish the law enforcement purpose, deadly force is not necessary.

#### 2. Constitutional Standard

The constitutional standard for using any force, whether deadly or not, is the Fourth Amendment standard of “objective reasonableness.” In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court made clear that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. The Court recognized that the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, so proper application requires careful attention to the facts and circumstance of each particular case.

#### 3. Discontinuing the Use of Deadly Force

When the circumstances justify the use of deadly force, agents must continue its application until the imminent danger is ended through the surrender or physiological incapacitation of the subject(s). The firing of a weapon must only be undertaken with the intent of rendering the person at whom the weapon is fired incapable of continuing the activity that prompted the Special Agent to fire. The agent needs to cease firing the weapon when such activity has been discontinued.



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### **XVIII. SHOOTING INCIDENTS AND DISCHARGE OF FIREARMS**

#### **A. General Guidelines**

The discharge of a OI firearm resulting in injury or death, or any discharge of a firearm by a OI Special Agent other than during authorized training or qualifications, will be reported immediately to the Special Agent's SAC by the OI Special Agent who is first aware of the facts, regardless of the time of day. If the SAC cannot be contacted immediately, then the ASAC will be contacted. If the ASAC cannot be contacted immediately, then the AIGI will be contacted. The SAC, or ASAC in the SAC's absence, shall report the incident to the AIGI as expeditiously as possible, regardless of the time of day.

Special Agents needs to recognize that another appropriate Federal, state, or local law enforcement authority may be responsible for investigating shooting incidents within its jurisdiction. Accordingly, the SAC, or other OI authority in the event the SAC cannot be reached, shall expeditiously notify the appropriate law enforcement agency(ies). These reporting requirements also apply to any discharge of a firearm resulting in injury or death by an employee or officer of another agency during a joint investigation with OI if a OI Special Agent is a witness to the event.

#### **B. Responsibilities**

##### **1. Special Agent**

The Special Agent involved in the incident will:

- a. Secure the scene and request necessary emergency medical aid for any injured party(ies);
- b. Notify local law enforcement so they can assist in crowd control and preservation of evidence;
- c. Notify his/her SAC, or ASAC in the SAC's absence or AIGI in the ASAC's absence;
- d. If OI management cannot be reached, notify the appropriate Federal, state, or local law enforcement authorities;
- e. If the injured party is taken into custody, maintain control of him/her until appropriate law enforcement authorities arrive;
- f. Cooperate with the investigating law enforcement authorities by identifying himself/herself and advising that a firearm was discharged.
- g. Prior to providing investigating law enforcement authorities with additional details, either verbal or written, consult with OI management; DOE OIG legal staff; personal legal counsel, if any; and/or the cognizant Assistant U.S. Attorney;

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- h. Protect firearms used in the shooting and upon request, turn over the firearms to the appropriate law enforcement authorities by way of the first non-involved Special Agent to arrive on the scene;
  - i. Obtain an appropriate receipt from the law enforcement authority receiving the firearm.
  - j. If the investigating law enforcement authorities do not request the firearm and spent cartridges, turn over the firearm and the spent cartridges to the first non-involved OI Special Agent or supervisor that arrives on the scene.
  - k. In the event a Special Agent relinquishes control of a OI firearm to law enforcement in connection with being detained, arrested, or otherwise charged with any misdemeanor or felony, notify his/her SAC, or ASAC if the SAC cannot be contacted, or AIGI if the ASAC cannot be contacted as soon as possible but not later than 24 hours after control of the firearm is relinquished
- 2. SAC or ASAC - The SAC, or ASAC if the SAC cannot be contacted, will:
  - a. Notify the appropriate Federal, state, or local law enforcement agency(ies);
  - b. Immediately notify the AIGI regardless of the time of day;
  - c. Travel as expeditiously as possible to the shooting scene;
  - d. Ensure the needs of all OI personnel at the shooting scene are appropriately attended to;
  - e. In the event of death or injury to a Special Agent determine who in the Special Agents' family is the most appropriate to contact and contact that individual in person as soon as feasibly possible;
  - f. When a Special Agent is injured, arrange for another Special Agent to proceed to the hospital and:
    - i. Ensure the security and privacy of the injured Special Agent;
    - ii. Direct media contacts to DOE OIG's Media Liaison Officer;
    - iii. Coordinate inquiries from Headquarters; and
    - iv. Secure additional items of evidence at the hospital.

**Note:** The identities of Special Agents involved in the incident will not be released to the news media.

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- g. Remove Special Agents who were personally involved in the shooting incident from the scene as soon as possible and relieve them of any duties regarding the investigation of the incident;
- h. Secure as evidence all spent cartridges and the Special Agent's firearm (even if it is a personally owned firearm) that was discharged and forward it as soon as possible under chain of evidence procedures to the AIGI (if the local authorities do not request the firearm);

**Note:** The firearm will be maintained by the AIGI as evidence until it is needed for laboratory analysis or until civil, criminal, and administrative action has been completed.

- i. Determine when to issue another firearm to the involved Special Agent;
- j. Obtain a statement from all involved Special Agents, if possible;
- k. Review the incident facts and evidence with the investigating law enforcement agency;
- l. Consult the pertinent U.S. Attorney's Office;
- m. Obtain the appropriate reports from the investigating law enforcement agency; and
- n. Continuously update the AIGI regarding latest information obtained concerning the shooting incident.

### C. Written Report of Discharge

In all situations where a Special Agent discharges a firearm as described in Section XIII of this chapter, the involved Special Agent, along with any witnessing Special Agents, will prepare a detailed memorandum of the incident within 72 hours of the incident. The memorandum will be forwarded through the SAC to the AIGI.

### D. Guidelines for Conducting OI Post Shooting Investigation

#### 1. Responsibility for Investigation

The investigation of the shooting incident will normally be the responsibility of the appropriate law enforcement authorities having jurisdiction. The FBI may choose to assist or direct the investigation since the incident involves a Federal employee or if there are alleged civil rights violations or alleged excessive use of force.

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### 2. Post-Shooting Investigative Team

The AIGI will select Special Agents from outside the region of the involved Special Agent to form a Post-Shooting Investigative Team (PSIT). The AIGI will select a PSIT leader who will direct the investigation of the shooting incident concurrent with any other investigations. PSIT team members cannot have had any involvement with the incident. The PSIT leader will report directly to the AIGI in all matters relating to the investigation of the shooting incident and the activities of the PSIT.

### E. Post Shooting Incident Administrative Leave

Any Special Agent who has participated in an operation where the discharge of a firearm has resulted in death or injury may be placed on administrative leave by the SAC or AIGI for up to 10 days. This does not imply that the Special Agent's actions were improper. If additional administrative leave is required, the SAC, with the concurrence of the AIGI, may extend administrative leave as deemed appropriate.

### F. Post Shooting Incident Trauma Counseling

#### 1. Availability

In all cases where a person has been seriously injured or killed from a firearm discharge by an OI Special Agent, the Special Agent will be required to participate in trauma counseling with a mental health professional at the expense of the agency. Psychological services will also be made available to the employee's immediate family and other Special Agents directly involved in the incident.

#### 2. Confidentiality

Consultation with such counselors/psychologists is confidential and no report concerning this counseling will be sent to the DOE OIG. The only documentation required is a confirmation letter from the counselor/psychologist indicating that he/she has spoken to the Special Agent.

#### 3. Evaluation

OI may require a medical and/or psychological evaluation, at agency expense, of Special Agents directly involved in a shooting incident to determine the Special Agents' fitness to return to duty.

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### **XIX. INTERMEDIATE WEAPONS**

If a Special Agent encounters a situation in which the totality of the circumstances and the Special Agent's objective reasonableness at the time the force is to be used does not warrant using deadly force, and the use of an intermediate weapon does not apparently increase the danger to the Special Agent or others, then an intermediate weapon may be employed. The OIG recognizes the extendable baton in addition to Oleoresin Capsicum spray for use by Special Agents in situations where deadly force is not immediately reasonable.

#### **A. Extendable Baton**

##### **1. Requirement**

All Special Agents are required to maintain proficiency in the use of the baton and must have it available on pre-planned law enforcement activities such as search warrants, arrests or high risk subpoena service. The OIG has authorized Special Agents (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

If the Special Agent desires a longer or different baton, the agent must provide a request in writing, through the ASAC and Regional Control Tactics Instructor, to their SAC for approval in consultation with the AIGI. The purchase and replacement of a non-standard OIG-issued baton and related equipment is the responsibility of the Special Agent making the request. However, aside from length, the baton must be functionally identical to the OIG standard issue baton and must be concealable in accordance with the criteria set forth in this section.

##### **2. Responsibilities**

The SAC, in conjunction with the ASAC, will be responsible for implementation and management of the baton program for his/her region. SACs/ASACs affect this in coordination with designated Regional Firearms Coordinators and Regional Control Tactics Instructors.

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- a. *Regional Firearms Coordinators* – Regional Firearms Coordinators assist the SAC/ASAC by issuing, recovering and conducting inventory reviews of batons issued to Special Agents under their regional purview. This includes maintaining the region's record of the baton provided to Special Agents. Regional Firearms Coordinators work closely with Regional Control Tactics Instructors to schedule periodic control and/or defensive tactics training and issue or replace batons.
- b. *Regional Control Tactics Instructors* – Regional Control Tactics Instructors have the responsibility of providing control and/or defensive tactics and other related training within OI. Regional Control Tactics Instructors assist the SAC/ASAC in ensuring Special Agents receive initial and periodic refresher training in accordance with the baton policy. They also facilitate the completion and filing of required documentation. Regional Control Tactics Instructors work closely with Regional Firearms Coordinators to issue or replace batons.
- c. *Special Agents* – Special Agents are responsible for understanding and adhering to the baton policies and procedures outlined this Manual Chapter.

### 3. Initial Training Requirements

All Special Agents must successfully complete OIG-approved baton training prior to being authorized to carry and deploy a baton during the performance of their official duties. Baton training is designed to provide knowledge and skills needed to utilize the baton. Approved training includes that provided by the Criminal Investigator Training Program (CITP) at the Federal Law Enforcement Training Center (FLETC) or a training add-on course approved by the OIG. During baton training, agents will be required to demonstrate proficiency with the baton. OIG-approved training will include, at a minimum:

- a. Tactical Baton Positions – closed low/high ready; open low/high ready;
- b. Drawing Techniques – closed; open to sky/ground;
- c. Tactical Closing;
- d. Strikes – closed forward/clearing/straight; open forward/clearing/straight;
- e. Strike Areas – large muscle groups and cessation of use; and
- f. Retention Techniques

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### 4. Refresher Training Requirements

Agents will be required, at a minimum, to attend annual refresher training sessions conducted by an OIG Regional Control Tactics Instructor or by an OIG-approved baton instructor. Annual refresher training will, at a minimum, include a briefing on baton policies and procedures. Subject-specific training may also be provided to those agents who, in the evaluation of the SAC, ASAC or Regional Control Tactics Instructor, require additional training.

### 5. Documentation of Training

Regional Control Tactics Instructors will ensure that successful completion of initial and refresher training is documented.

- a. *Forms* – Successful completion of initial baton training is documented on the OIG Extendable Baton Skill Assessment (See Extendable Baton Skill Assessment Form - Chapter 4, Exhibit T), or, if available/applicable, FLETC/CITP certificate of completion and Student Evaluation Form. Annual refresher briefing/training will be annotated on the Extendable Baton Refresher Briefing/Training Record (See Extendable Baton Refresher Briefing and Training Record Form – Chapter 4, Exhibit U).
- b. *Training File* – Regional Control Tactics Instructors may maintain a copy of the training records for each training session they conduct or regions they service but original records will be forwarded to the SAC/ASAC for retention in the Special Agent training file by the Regional Firearms Coordinator. Regional Firearms Coordinators, in coordination with Regional Control Tactics Instructors, will ensure that successful completion of training is documented in the Special Agent training file, along with the Special Agent's acknowledgement and understanding of, and agreement to comply with, this policy, prior to issuing a baton to the agent. If proper documentation is not in the training file, the equipment will not be issued and the Regional Firearms Coordinator will notify the Regional Control Tactics Instructor.

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### 6. Issuance and Inventory of Batons

The OIG must issue or approve the carry of, consistent with the provisions of this Chapter, all batons for Special Agent usage. Issuance, storage and inventory of the baton will be consistent with the provisions regarding firearms and other law enforcement related equipment. Regional Firearms Coordinators, in coordination with Regional Control Tactics Instructors, will monitor and note the condition of batons during the semiannual firearms/equipment inventory. Questions regarding serviceability of batons will be coordinated with the Regional Control Tactics Instructor as necessary.

### 7. Transporting Batons Aboard Commercial Aircraft

Special Agents will carry batons aboard commercial aircraft only in accordance with current TSA regulations. Agents traveling via aircraft must maintain control and concealment of their baton and related equipment at all times. Verification of authority to carry a baton to foreign destinations must be coordinated with TSA and the U.S. Department of State.

### 8. Carry and Use of the Baton

Special Agents are provided with OIG-issued batons for their safety and to assist them in maintaining lawful control of an individual or situation.

- a. *Carry Requirements* – Special Agents may carry a baton whenever armed (consistent with the provisions of this Chapter), unless specific circumstances, such as unavailability of a baton due to travel requirements, dictate otherwise. Special Agents need to carry a baton and/or OC spray on pre-planned law enforcement activities such as search warrants, arrests or high risk subpoena service. Special Agents should consider carrying these intermediate weapons at any other time a Special Agent deems it appropriate. Special Agents may carry, if certified, both OC spray and the baton. When carried, the baton will be carried concealed and readily accessible for use consistent with the operational situation or requirements dictated at the time.
- b. *Use of Force* – Employing a baton constitutes a use-of-force. The OIG recognizes that the baton can cause death or serious bodily injury. However, its primary function will be to bring a non-compliant person into compliance. When deemed appropriate and reasonable, baton strikes need to be targeted to the large muscle groups of the person's attacking limbs. Once control of the person is gained, baton strikes must be discontinued. Special Agents need to be alert to the fact that baton strikes may not be 100 percent effective and, conversely, can also result in the death of the person being struck. Special Agents need to be



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prepared to quickly transition to an alternate force option if the baton strikes are not effective. For those circumstances that meet the standards of *Graham vs. Connor*, 490 U.S. 386 (1989) (Use of Force), Special Agents may use the baton, or any other device available to them, as a deadly force weapon.

- c. *Medical Attention* – After a baton is tactically employed, Special Agents must make medical attention available to persons exhibiting injuries or if they request medical assistance. The need for medical assistance needs to be made after considering the totality of the circumstances at the time (e.g., the tactical situation is secure and safety of the agent and/or public at the scene is under control).
- d. *Reporting Requirements* – The operational use of a baton must be verbally reported to the SAC/ASAC as soon as possible after an actual striking incident. The SAC will notify the AIGI of the matter if anyone is injured. Each Special Agent involved in an actual striking incident involving the use of the baton will prepare a memorandum to the SAC within 72 hours after the incident, detailing the facts and circumstances surrounding the use of the baton. In the event that a death occurs as a result of baton strikes, the Special Agent involved in the incident will follow the procedures set forth in Section XIII, Shooting Incidents and Discharge of Firearms, of this chapter.
- e. *Malfunction of the Extendable Baton* – In the event a baton does not function as designed, Special Agents must immediately discontinue carrying that baton and immediately seek replacement through their Regional Firearms Coordinator. The Special Agent must immediately notify the Regional Control Tactics Instructor and provide a written description of the problem, the conditions under which the problem occurred and identification of the malfunctioning baton. The Regional Control Tactics Instructors will forward the report to the SAC and ASAC.
- f. *Replacing or Disposal of Batons* – The Regional Firearms Coordinator, who generally handles the issuance of firearms and firearms-related equipment within Regional offices, will, in coordination with the Regional Control Tactics Instructor, exchange a malfunctioning OIG-issued baton for a correctly functioning baton. Special Agents who have opted to carry their personally-owned OIG-approved baton and wish to continue to carry a personally-owned baton will be required to repair or replace their baton at their own expense. Malfunctioning or broken OIG-issued batons will be coordinated with the Regional Control Tactics Instructor, and disposed of in accordance with U.S. Department of Energy regulations. (Refer to DOE order DOE O 580.1, "Department of Energy Personal Property Management Program" for more information). Malfunctioning personally-owned batons will be removed from use. The Regional Firearms Coordinator will document the record of disposal for OIG-issued batons in the Regional firearms/equipment inventory record.

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### B. Oleoresin Capsicum

#### 1. General Information

Oleoresin Capsicum (OC) aerosol sprays utilize OC as the main ingredient to cause incapacitation. Oleoresin is a mixture of oils and resins that occurs naturally in various plants. Capsicum is any of 300 varieties of peppers that contain pungent seeds in a fleshy pod (e.g., cayenne, chili, jalapeno, etc.). When the peppers are processed, the alkaloid called Capsaicin is extracted. Capsaicin is a very powerful inflammatory substance that provides the incapacitating characteristics of OC. The OC is mixed with a carrier such as alcohol, water, or Freon, and combined with a propellant in an aerosol container. OC will allow an agent to maintain distance from a non-compliant subject and gain control while minimizing the possibility of injuries to the agent. When properly applied to the face, OC will generally affect four physiological areas:

- a. Respiratory (uncontrollable coughing and gasping for breath);
- b. Eyes (tearing, rapid opening and closing due to burning sensation);
- c. Temporary loss of motor control/disorientation, which may cause the subject not hear agent's verbal directions; and
- d. Skin/Mucous membranes (burning/swelling).

The reaction of these areas to OC is usually temporary and will normally cease without decontamination in 15 – 45 minutes. Decontamination procedures are contained in the OC Decontamination Procedures (See OC Decontamination Procedures – Chapter 4, Exhibit V).

#### 2. Initial Training Requirements

All OI Special Agents must successfully complete OIG-approved OC training prior to being certified and authorized to carry OC during the performance of their official duties. OIG-approved training includes, at a minimum:

- a. Information on the nature and composition of OC;
- b. Effects of OC;
- c. Information on the constitutional standard for using any force, whether deadly or not as it applies to OC;
- d. Thorough familiarization with the OIG-issued OC device;
- e. Proper carrying configurations for OC;
- f. General use/spraying guidelines;
- g. Limited exposure to OC; and
- h. OC decontamination.

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### 3. Refresher Training Requirements

Special Agents will be required to attend an annual refresher briefing/training on OC policies and procedures. Regional Control Tactics Instructors will provide subject-specific training to those agents who, in the evaluation of the Regional Instructors, require additional training.

### 4. Waiver Requirements

Any Special Agent who does not wish to complete the required training and carry OC must submit an OC Carry Waiver annually to the AIGI through their ASAC/SAC (See OC Carry Waiver Form – Chapter 4, Exhibit W). If a Special Agent, after having submitted a waiver, chooses to carry OC, he/she will need to complete the refresher training requirements set forth in this chapter with a completion date after the date of waiver.

### 5. Documentation of Training

OIG Regional Control Tactics Instructors will ensure that successful completion of this training occurs prior to issuing OC to a Special Agent.

- a. *Forms* – OC Training will be documented on the OIG OC Qualification Record (See OIG OC Qualification Record Form – Chapter 4, Exhibit X). Annual refresher briefing/training will be annotated on the OC Refresher Briefing/Training Record (See OC Refresher Briefing/Training Record Form – Chapter 4, Exhibit Y).
- b. *Training File* – The Regional Control Tactics Instructors will maintain a copy of the OC Qualification Record, OC Refresher Briefing/Training Record or OC Carry Waiver, as applicable, in the Special Agent training file. Regional Control Tactics Instructors may maintain a copy of the training records for each training session they conduct or regions they service but original records will be forwarded to the SAC/ASAC for retention in the Special Agent training file by the Regional Firearms Coordinator. Regional Firearms Coordinators, in coordination with Regional Control Tactics Instructors, will ensure that successful completion of training is documented in the Special Agent training file, along with the Special Agent's acknowledgement and understanding of, and agreement to comply with, this policy, prior to issuing OC to the agent. If proper documentation is not in the training file, the equipment will not be issued and the Regional Firearms Coordinator will notify the Regional Control Tactics Instructor.

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### 6. Issuance, Storage and Inventory of OC

The OIG must issue or approve the requisition, issuance and use, consistent with the provisions of this chapter, of all OC and related equipment. Issuance, storage and inventory of OC will be consistent with the provisions regarding firearms and other law enforcement related equipment, with the following additions and exceptions:

- a. *Shelf-life* – Regional Control Tactics Instructors will monitor and note the expiration date of OC during the annual firearms/equipment inventory and promptly notify the National Firearms Manager of the need to replace expended or expired OC.
- b. *Storage* - OC is contained in aerosol devices; therefore, storage precautions must be taken to prevent the explosion or bursting of the container or malfunction of the device:
  - i. Store at room temperature;
  - ii. Do not store at temperatures above 120°F;
  - iii. Do not store near a heat source or an open flame;
  - iv. Do not store in confined spaces such as a vehicle glove box or trunk, which may reach high temperatures; and
  - v. Do not expose to temperatures below 32°F for long periods, which may cause slow discharge from the canister.

**Note:** Special Agents are responsible for the safe handling and storage of OIG-issued OC in the workplace and at home. OC must be treated as a weapon. Special Agents need to educate family members of the dangers of improperly handling or storing OC.

### 7. Shipping of OC

OC may only be shipped by surface transportation. Contents must be identified to the shipper. Other shipping and wrapping requirements will be consistent with the provisions for firearms and other law enforcement related equipment as discussed in Section IX of this chapter.

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### 8. Transporting OC Aboard Commercial Aircraft

In accordance with TSA regulations, OC is prohibited in the passenger compartment of commercial aircraft and may not be carried aboard by the Special Agent's or in a carry-on bag. OC may be transported on commercial aircraft in checked baggage only. Special Agents may pack one OC canister that does not exceed 4 fluid ounces containing not more than 10% active ingredient (for OC) in personal checked baggage. OC issued by the OIG does not exceed the 4 fluid ounce, 10% limitation. The Special Agent must inform the airline of the OC when checking the baggage.

### 9. Carry and Use of OC

- a. *Carry Requirements* – OC must not be handled or inspected within the view of the public, except when using for its intended purpose. Special Agents must carry OC on pre-planned law enforcement activities such as search warrants, arrests or high risk subpoena services. The Special Agent should also consider carrying this non-lethal alternative at any other time a Special Agent deems it appropriate. Authorized Special Agents may carry an OIG-issued OC device whenever armed (consistent with the provisions of this Chapter), unless specific circumstances, such as unavailability of OC due to travel requirements, dictates otherwise. OC must be carried in the OIG-issued OC holster in the following authorized configurations, as taught during OI-approved OC training:
  - i. Weapon side carry/Weapon side draw;
  - ii. Non-weapon side carry/cross draw; and
  - iii. Non-weapon side carry/non-weapon side draw.

**Note:** Under special circumstances, and as approved by the ASAC (i.e., during approved undercover operations, etc.), OC may be carried out of the holster or while unarmed.

- b. *Use of Force* – Spraying with OC constitutes a use of force. OC may be used in the following circumstances:
  - i. Against persons who physically assault or attempt to assault the agent or other persons;
  - ii. When lesser measures, such as verbal commands or persuasion and unarmed restraining techniques/defensive tactics have proved ineffective, or the agent reasonably believes that the lesser measures are unlikely to be effective; and
  - iii. Against dogs and other animals when the agent reasonably believes that the animal poses a danger to the agent or other persons.

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

OC is not a substitute for a firearm, and cannot be used when deadly force is justified and necessary. OC is to be used only as an intermediate control device. Once control of the subject(s) is gained, the use of OC must be discontinued. Special Agents need to be alert to the fact that non-lethal weapons will not be 100 percent effective on all subjects. Agents must be prepared to quickly use an alternate force option if the OC is not effective.

- c. *Medical* – Normally a person sprayed with OC does not require medical treatment. Special Agents must, however, make prompt medical attention available to a sprayed person if the person exhibits more severe reactions than typically associated with being sprayed by OC or if they request medical assistance.
- d. *Reporting Requirements* – The operational use of OC must be verbally reported to the ASAC and SAC as soon as possible after the incident. The Special Agent(s) involved in the use of the OC will prepare a memorandum to the SAC within 72 hours after the incident, detailing the facts and circumstances surrounding the use of OC. The SAC will notify the Regional Control Tactics Instructor.
- e. *Malfunction of OC* – In the event an OC device does not function as designed or other technical problems occur with use, Special Agents must immediately discontinue carrying that OC device. The Special Agent must immediately notify the Regional Control Tactics Instructor and provide a thorough written description of the problem, the conditions under which the problem occurred and the identification of the malfunctioning device. The Regional Control Tactics Instructor will forward the report to the SAC and ASAC, who will notify the AIGI.
- f. *Replacing or Disposal of OC* – Malfunctioning, expended or expired OC will be turned in to the Regional Control Tactics Instructor for disposal in accordance with manufacturer's instructions and DOE regulations. The Regional Control Tactics Instructor will record the record of disposal on the Regional firearms/equipment inventory record. Regional Control Tactics Instructors must coordinate with local DOE Environmental Safety and Health personnel to ensure that OC disposal is accomplished in accordance with DOE, Federal and State environmental laws and regulations.

**Note:** Following the use of the OC device in the field, the Special Agent must, as soon as possible, notify the Regional Control Tactics Instructor. The Regional Control Tactics Instructor will issue the Special Agent a new OC device.

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### 10. OC as a Weapon

Various types of chemical self-defense aerosols and sprays, including OC, are widely available to the public. The availability of these devices increases the risk that such devices might be used against a Special Agent. The Special Agent must keep this in mind and be vigilant when dealing with the public. An agent sprayed with OC may be unable to defend him or herself for a period of time against further attacks. Special Agents need to be prepared to take whatever actions are necessary and prudent to protect themselves and their firearms from the attacker(s).

### C. Restraint Devices

A set of handcuffs and a handcuff key will be issued to each Special Agent authorized to carry a firearm. Special Agents will carry these handcuffs at all times when engaged in any type of law enforcement activity (excluding undercover work, with AIGI approval). The use of thumb cuffs or “come along” claws is prohibited.

In the event it is necessary to restrain a dangerous individual or person who has been arrested by a Special Agent, only OI authorized or functionally equivalent handcuffs and restraint devices will be used. The arresting Special Agent assumes responsibility for the safety and security of the prisoner.

## XX. LAW ENFORCEMENT ACTIVITY AT DOE FACILITIES

### A. Intervention in Work Site Disturbances

Absent compelling circumstances, Special Agents must not intervene as a law enforcement officer in workplace disturbances or threats to the physical security of a DOE facility. In the event of a disturbance in the workplace or threats to the physical security of a DOE facility, OI Special Agents need to recognize that the on-site security force and local law enforcement organizations have primary jurisdiction. The agent must immediately notify these entities of the disturbance or incident. The agent can only intervene if the situation entails an imminent threat of death or serious physical injury to the agent or to another person, at which time the agent needs to use personal judgment pursuant to Section XII of this chapter that addresses the use of deadly force.

### B. Making an Arrest on a DOE Facility

Special Agents are authorized, while engaged in the performance of official duties, to make arrests. Absent compelling circumstances, Special Agents must notify on-site security if a planned arrest is to be made in a DOE owned, occupied or operated facility.

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### XXI. SEARCH WARRANTS

This section provides information on the OIG's authority to execute search warrants, determining when a search warrant will be used and providing guidance on the execution of a search warrant.

#### A. Authority to Serve and Execute Search Warrants

Federal Law Enforcement Officer's authority to serve and execute search warrants is derived from the following:

1. Rule 41 of the Federal Rules of Criminal Procedure, which provides, in part, that "The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof, or to a person so authorized by the President of the United States;"
2. Title 18, U.S.C., Section 3105, which provides, in part, that "A search warrant may in all cases be served by any of the officers mentioned in its direction or by an officer authorized by law to serve such warrant, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution."
3. The Homeland Security Act of 2002 (Public Law 107-296 Section 812), which amended the IG Act to allow Special Agents to seek and execute warrants for arrest, search of a premises or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

#### B. Determination to Use a Search Warrant

When considering the use of a search warrant in an investigation, the Special Agent will consult with and seek guidance from the appropriate prosecutive authorities. For cases that have been referred to the DOJ or a U.S. Attorney's Office, the appropriate prosecutive authority is the DOJ attorney or the AUSA handling the case. For cases that have not been formally referred, the appropriate prosecutive authority is either the DOJ attorney or the AUSA contacted during early consultation, or the official who will be responsible for prosecuting the case. All applications for search warrants will be made through the DOJ or the appropriate U.S. Attorney's office.



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### C. Consent to Search Form

An OIG Special Agent can obtain a consent to search for a residence, place of work, vehicle, person, computers or electronic equipment. When obtaining a consent to search, the agent needs to use the General Consent to Search Form for non computer/electronic-based searches and the Consent to Search Computer/Electronic Equipment Form for all computer and electronic-based searches (See General Consent to Search Form – Chapter 4, Exhibit Z or Consent to Search Computer/Electronic Equipment Form – Chapter 4, Exhibit AA).

### D. Executing Search Warrants

#### 1. Planning

When a Special Agent plans to execute a search warrant, the agent needs to refer to Suggested Guidelines for Planning and Executing a Search Warrant (See Suggested Guidelines for Planning and Executing a Search Warrant – Chapter 4, Exhibit BB). The Special Agent must also prepare an Operational Plan (See Operational Plan – Chapter 4, Exhibit CC).

#### 2. Execution

If the search is under the control of the OIG Special Agent, the Special Agent must make sure there will be an adequate number of Special Agents to conduct the search, and that there is enough administrative staff and agents to conduct a post inventory to identify, number, and record all documents, electronic media, and other materials seized. In addition, the Special Agent is responsible for obtaining proper secured storage for the documents.

#### 3. Reporting

The SAC must notify the AIGI in advance of the execution of a search warrant. The SAC must provide case number, case title, assigned Special Agent(s), and date/place of execution. After the execution of a search warrant, the Special Agent will prepare normal case documentation. However, in the event of a significant development, the Special Agent will fully brief the SAC as soon as possible after the execution of the warrant. The SAC will advise the AIGI of the significant developments. The AIGI will decide on the necessity of any specialized written reports.

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### XXII. ARREST WARRANTS AND DNA COLLECTION

This section discusses the execution of arrest warrants and the requirements for collecting DNA.

#### A. Executing Arrest Warrants

Special Agents, in the course of performing their investigative duties may be called upon to execute arrest warrants. When a Special Agent plans to execute an arrest warrant, the agent needs to refer to the Suggested Guidelines for Executing an Arrest Warrant (See Suggested Guidelines for Executing an Arrest Warrant – Chapter 4, Exhibit DD).

#### B. DNA Collection

##### 1. Requirement

The FBI's Federal Convicted Offender Program develops nuclear DNA profiles from known samples submitted from Federal and District of Columbia convicted offenders, as well as Federal arrestees and non-United States persons detained by the United States Government. DNA profiles are entered into the National DNA Index System. The DNA Fingerprint Act of 2005 and the Adam Walsh Child and Safety Act of 2006 require Federal agencies to collect DNA samples from individuals who are "arrested, facing charges or convicted or from non-United States persons who are detained under the authority of the United States." The DNA collection requirement applies only to individuals arrested for *Federal* criminal offenses. It does not apply to persons arrested on State charges.

**Note:** It is possible persons facing Federal charges in the District of Columbia will not be fingerprinted by any Federal agency if they are arrested and/or fingerprinted by the Metropolitan Police Department. In such cases, the Special Agent must follow-up to ensure that a DNA sample is collected and submitted to the FBI.

##### 2. Responsibilities

- a. *Ordering DNA Collection Kits* – Each field office is responsible for ordering DNA collection kits known as "Buccal Collection Kits." The kits are free of charge and can be obtained directly from the FBI. Instructions for placing an order, a description of kit contents, general guidance on sample collection, and submission of samples to the FBI can be found at: <http://www.fbi.gov/about-us/lab/dna-nuclear/fco-buccal-kit>.

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- b. *Training* – SACs must ensure that all Special Agents are trained on the proper collection, storage and submission of samples to the FBI laboratory.
- c. *Collection* – DNA collection will be done at the time of fingerprinting, which usually occurs during the arrest and booking process. Special Agents are generally expected to collect and submit a DNA sample in the following two circumstances:
  - i. The OI Special Agent performs the fingerprinting; or
  - ii. The OI Special Agent is present during fingerprinting performed by another agency but the OI's Originating Agency Identifier (or ORI) is used on the fingerprint paperwork.
- d. *Forms* – The Special Agent must complete a National DNA Database Entry Form (FD-936) and send it to the FBI along with the sample. A copy of each FD-936 form completed by an OI Special Agent will be maintained in OI's corresponding official case file.

**Note:** A copy of the FD-936 form is included in the DNA collection kit.

- e. *Other Federal Law Enforcement Entities* – When another Federal law enforcement entity arrests and fingerprints the subject of an OI investigation—without an OI Special Agent present—that agency is responsible for the collection and submission of the DNA sample to the FBI. In cases where the OI Special Agent is present, but another agency's ORI is used, it is generally expected that the other agency will collect and submit the DNA sample. If a defendant is directed to appear on a summons in lieu of an arrest, the OI Special Agent will coordinate with the United States Marshals Service to ensure that DNA collection is completed. A copy of each FD-936 form completed by another agency, if available, must be placed in the OI official case file.

**Note:** An agency that arrests and fingerprints an individual and then transfers the individual to another agency (such as the United States Marshals Service) for detention cannot transfer responsibility for DNA sample collection to the detention agency unless that agency agrees to assume responsibility for that function.

### **XXIII. UNDERCOVER OPERATIONS**

Undercover operations are stratagems or maneuvers by law enforcement officers to keep secret their true identities by assuming fictitious identities, occupations or both. The purpose of this deception is to introduce oneself by stealth or otherwise establish oneself in the good graces with those who are or who may become targets of investigations. The proper use of undercover techniques is essential to the success of the law enforcement mission. Successful undercover activities and operations have proven to be effective techniques to detect, prevent,

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solve and prosecute criminal activities. The inherent dangers of undercover operations, coupled with legal and policy implications, require that considerable management review and oversight take place on a regular basis.

### A. Planning Undercover Operations

The AIGI will approve all undercover operations conducted by OIG Special Agents. An Operational Plan will be created for all undercover operations in which the OIG is involved (See Operational Plan – Chapter 4, Exhibit CC). If another law enforcement agency is the lead agency on a joint investigation with the OIG, then their Operational Plan may be used.

**Note:** The Memorandum of Understanding between the FBI and DOE OIG identifies the OIG's responsibilities when initiating joint OIG/FBI undercover operations (See Memorandum of Understanding with FBI – Chapter 2, Exhibit A).

If an agent plans to utilize a Confidential Informant or confidential funds in an undercover operation, the agent needs to refer to Chapter 8, Section IV, Confidential Informants, for additional guidance.

### B. Safety of Agents

Safety of the undercover agent is of paramount importance. Therefore, potentially dangerous situations (e.g., undesirable neighborhoods), must be evaluated and all risks must be assessed. In addition, where circumstances dictate, consideration needs to be given to appropriate support or backup. All OIG staff must protect the secrecy and confidentiality of undercover operations as any unauthorized release of information pertaining to such operations could potentially jeopardize the operation and lives of the Special Agents.

### C. Council of Inspectors General on Integrity and Efficiency (CIGIE) Guidelines on Undercover Operations

The Attorney General Guidelines for Offices of Inspectors General with Statutory Law Enforcement Authority (December 2003) require the formation of an OIG Undercover Review Committee (URC). The purpose of the URC is to review and approve certain categories of undercover operations in the OIG community. As a result, CIGIE issued the *Guidelines on Undercover Operations*, dated June 2010. OIG regulations concerning undercover operations are set forth pursuant to these guidelines (See CIGIE Guidelines on Undercover Operations, dated June 2010 – Chapter 4, Exhibit EE).

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

The following definitions are outlined in these guidelines:

### 1. Undercover Activities

Undercover Activities are any investigative activities involving the use of an assumed name or cover identity by an employee of an OIG or another Federal, state, or local enforcement organization working with an OIG.

### 2. Undercover Operation

An Undercover Operation is an investigation involving a series of related undercover activities over a period of time by an undercover employee(s). For purposes of these Guidelines, a “series of related undercover activities” generally consists of more than three separate substantive contacts by an undercover employee with the individual(s) under investigation. However, undercover activity involving sensitive or fiscal circumstances constitutes an undercover operation regardless of the number of contacts involved. A contact is “substantive” if it is a communication with another person, whether by oral, written, wire, or electronic means, which includes information of investigative interest. Mere incidental contact (e.g., a conversation that establishes an agreed time and location for another meeting) is not a substantive contact within the meaning of these Guidelines.

**Note:** In the context of online communications, such as e-mail and Internet Relay Chat (IRC), multiple transmissions or e-mail messages can constitute one contact much like a series of verbal exchanges can comprise as a single conversation. Factors to be considered in determining whether multiple online transmissions constitute a single contact or multiple contacts includes, the time between transmissions, the number of transmissions, the number of interruptions, topical transitions and the media by which the communications are exchanged (i.e., e-mail versus IRC).

### 3. Undercover Employees

An undercover Employee is any employee of an OIG, or employee of a Federal, state, or local law enforcement agency working under the direction and control of an OIG in a particular investigation, whose relationship with the OIG is concealed from third parties in the course of an investigative operation by the maintenance of a cover or alias identity.

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

### 4. IG Undercover Review Committee

The IG Undercover Review Committee is a committee established by these guidelines consisting of six or more AIGI's, or equivalent senior managers, who review submitted undercover operation plans and provide the relevant Inspector General with a consensus recommendation as to whether the undercover operation should be approved.

## XXIV. EMERGENCY DRIVING POLICY

### A. Definition of Emergency Driving

Emergency driving is defined as a Special Agent using a Government vehicle to deliberately violate the posted legal speed limit and traffic laws for one or more of the following purposes:

1. Pursuing a suspect vehicle to make an apprehension;
2. Conducting surveillance;
3. Transporting prisoners; and/or
4. Responding to other exigent circumstances.

### B. Decision to Use Emergency Driving

The determination of whether to engage in or terminate emergency driving shall be made by the Special Agent or his/her superiors in accordance with this policy.

#### 1. Prohibitions

A Special Agent will not engage in an emergency vehicle response or vehicle pursuit while transporting prisoners, witnesses, suspects or any other non-law enforcement personnel in the authorized emergency vehicle. Emergency driving is prohibited except when a Special Agent reasonably believes that the seriousness of the emergency outweighs the danger created by such driving.

#### 2. Requirements

Special Agents are responsible for knowing and complying with the appropriate emergency driving guidelines and requirements applicable to the state's law enforcement officials. Special Agents must use authorized emergency warning devices and headlights, when appropriate, during emergency driving. When engaged in emergency driving, Special Agents must continually reevaluate the

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

need to engage in such driving when balanced against safety considerations. Special Agents will consider all relevant factors, including but not limited to the:

- a. Nature of the emergency;
- b. Imminent danger to public safety if a suspect is not apprehended;
- c. Seriousness of the offense;
- d. Probability of apprehending a suspect at a later time;
- e. Location, weather, speed, traffic and road conditions;
- f. Time of day;
- g. Presence of pedestrians;
- h. Agent's driving abilities;
- i. Condition of all vehicles;
- j. Age of suspect driver and vehicle occupants (i.e. juveniles, infants, elderly and disabled);
- k. Availability of emergency equipment;
- l. Availability of assistance from uniformed police officers in marked police vehicles; and
- m. Possibility of alternative courses of action.

**Note:** The discontinuation of emergency driving for safety concerns is always an approved action.

### C. Use of Law Enforcement Warning Devices

The use of emergency law enforcement warning devices, headlights and other related equipment when engaging in an emergency driving situation is merely a request for the right-of-way by an emergency vehicle. The use of emergency law enforcement warning devices does not guarantee the right-of-way. The fact that a Special Agent is engaged in an emergency response does not relieve the Special Agent from the duty to operate the authorized emergency vehicle with due regard for the safety of all persons using the roadway nor does it protect that Special Agent from the consequences of an arbitrary exercise of the privileges accorded to an emergency vehicle under state law.

### D. Offensive Tactics

Intentional contact between a Government law enforcement vehicle and a suspect vehicle (including attempts to force a fleeing vehicle off the road) are generally prohibited. Such actions are only allowed if the Special Agent reasonably believes that the failure to engage in such activities poses an immediate threat of loss of life or serious bodily injury to the Special Agent or another person.

## CHAPTER 4 – LAW ENFORCEMENT AUTHORITIES AND OPERATIONS

In some circumstances, offensive tactics (e.g., blocking, ramming, and forcing vehicles off the road) may constitute the use of deadly force. See Section XVII of this chapter for guidance on the Use of Deadly Force.

### E. High Risk Car Stop

A high risk car stop is an attempt by a Special Agent in the course of official business, to use a Government law enforcement vehicle to stop another vehicle by using appropriate vehicle emergency warning devices. It is recommended that Special Agents use state or local law enforcement to conduct high risk car stops. However, in limited circumstances, a Special Agent may engage in a high risk car stop. In these limited circumstances, a Special Agent should, when possible, contact the local law enforcement office and advise the office of his/her identity and location and request that a marked law enforcement vehicle assist with the stop. If the violator disregards attempts to stop his/her vehicle, the Special Agent is prohibited from engaging in emergency driving unless the Special Agent reasonably believes that the failure to engage in emergency driving poses an immediate threat of loss of life or serious bodily injury to the Special Agent or another person.

### F. Employees Use of Emergency Vehicles

DOE OIG employees who are not Special Agents (e.g., Auditors and Inspectors) are authorized to operate a government vehicle equipped with emergency law enforcement warning devices (e.g., lights, sirens, etc.) provided doing so will not violate any State or local laws. The SAC or ASAC will ensure DOE OIG employees who are not Special Agents review and sign the Government Owned Vehicle Usage Certification form. This certification indicates that the driver of the vehicle will comply with all Federal, State and local laws and policies for the safe and proper operation of any government vehicle. The certification also emphasizes that the warning devices on the vehicle are for official law enforcement purposes and may not be used by anyone other than OIG Special Agents (See Government Owned Vehicle Usage Certification – Chapter 4, Exhibit FF).

**Note:** DOE OIG employees who are not Special Agents must be reminded that when driving a government vehicle equipped with emergency law enforcement warning devices, the employee must carry his/her OIG-issued credentials.





## U.S. Department of Energy

Office of Inspector General  
Office of Investigations

### Requirements and Procedures to Request Photographic Identification for Retired Special Agents

#### Carrying of Firearms by Retired Special Agents

##### A. Background

The Law Enforcement Officers Safety Act (LEOSA) exempts qualified retired law enforcement officers from State laws prohibiting the carrying of concealed firearms. LEOSA does not exempt retired Federal law enforcement officers from state laws (a) enabling private persons or establishments to prohibit the possession of concealed firearms on their property, or (b) prohibiting the possession of firearms on any state or local government property, installation, building, base, or park. LEOSA does not convey any law enforcement authority, either Federal or state. As such, it does not provide authority for carrying a firearm aboard commercial aircraft. There are no circumstances under which retired Special Agents will be deemed to be acting within the scope of official duties.

##### B. Requirements

Retired OIG Special Agents who separated after May 23, 2003, and are otherwise qualified, may submit a written request to the Assistant Inspector General for Investigations for issuance of a photographic identification indicating that the holder is a retired law enforcement officer. Currently employed OIG Special Agents may start the process by submitting the written request no sooner than 60 days prior to their retirement date. Regarding the May 23, 2003, separation date, the Act requires that during the retired law enforcement officers' employment they possessed statutory arrest authority. OIG Special Agents gained statutory arrest authority pursuant to Section 812 of the Homeland Security Act. The effective date of that statutory authority was May 23, 2003. However, OIG Special Agents who separated from DOE OIG before May 23, 2003, but were employed by a law enforcement agency having statutory arrest authority prior to joining the OIG, may qualify under the Act with that other agency.

**Note:** Absent extenuating circumstances, DOE OIG will not issue, to an otherwise qualified Special Agent, photographic identification indicating that the holder is a retired law enforcement officer if the Special Agent separated from DOE OIG and

was subsequently employed by another law enforcement agency that is eligible to issue a photographic identification under LEOSA. The Special Agent must request the photographic identification from a law enforcement agency with whom the Special Agent was employed after leaving DOE OIG.

Upon receipt of the written request from the retired OIG Special Agent, the OIG will determine if the retired Special Agent is qualified by determining if the individual:

- Separated in good standing for reasons other than mental instability;
- Separated with an aggregate of 10 years of service as a law enforcement officer or, after completing any applicable employment probationary period, Separated due to a service-connected disability; and
- Is not prohibited by Federal law from receiving a firearm.<sup>1</sup>

#### C. Procedures

To determine if the retired Special Agent is not prohibited by Federal law from receiving a firearm, the OIG will request the retired Special Agent to attest that he or she is not prohibited by Federal law from receiving a firearm. The retired Special Agent will also sign an authorization for the OIG to perform a check of the National Crime Information Center (NCIC) database for the purpose of verifying that the retiree is not prohibited by Federal law from receiving a firearm. (See Attestation and Authorization to Perform an NCIC Database Check Form below).

The AIGI will either accept or reject the request. (See Sample Acceptance/Rejection Letter below).

If the AIGI accepts the request, the retired Special Agent will be provided a letter from the AIGI stating the agent's request has been accepted and OIG-issued

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<sup>1</sup> Under Title 18, United States Code, prohibited persons include:

- (1) Those under indictment for or convicted of a crime punishable by imprisonment for a term exceeding one year;
- (2) fugitives from justice;
- (3) unlawful users and/or addicts of any controlled substances;
- (4) those adjudicated as mentally defective or who have been involuntarily committed to a mental institution or otherwise judged incompetent to handle their own affairs;
- (5) illegal aliens admitted to the United States under a nonimmigrant visa;
- (6) those dishonorably discharged from the United States Armed Forces;
- (7) those who have renounced their United States citizenship;
- (8) subjects of a protective order; and
- (9) those convicted of a misdemeanor crime of domestic violence.

photographic identification will be issued.

To comply with LEOSA:

- A retired Special Agent must have been tested or otherwise been found by the agency, within the last 12 months, to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm.

OR

- A retired Special Agent must possess a certification, issued by the State in which they reside or by a certified firearms instructor that is qualified to conduct firearms qualification tests for active duty officers within that State. The certificate must indicate that the individual has, within the last 12 months, been tested or otherwise found by the State or State certified firearms instructor to have met the State's active duty standards for qualification with the same type of firearm as the concealed firearm. If the State has not established standards, the certificate must indicate that the individual has, within the last 12 months, met the standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.
- A retired Special Agent must have in their possession both the DOE OIG-issued photographic identification and a current state-issued certification.

**Note:** Retired Special Agents are responsible for ascertaining and complying with all applicable state requirements. The OIG will not reimburse Special Agents for any costs associated with the qualification requirements.

## ATTESTATION

I hereby attest that, to the best of my knowledge, I am not prohibited by Federal law from purchasing, receiving, or carrying a firearm. In so attesting, I understand that Title 18 of the United States Code prohibits the following persons from purchasing, receiving, or carrying a firearm:

- (1) those under indictment for or convicted of a crime punishable by imprisonment for a term exceeding one year;
- (2) fugitives from justice;
- (3) unlawful users and/or addicts of any controlled substances;
- (4) those adjudicated as mentally defective or who have been involuntarily committed to a mental institution or otherwise judged incompetent to handle their own affairs;
- (5) illegal aliens or aliens admitted to the United States under a nonimmigrant visa;
- (6) those dishonorably discharged from the United States Armed Forces;
- (7) those who have renounced their United States citizenship;
- (8) subjects of a protective order; and
- (9) those convicted of a misdemeanor crime of domestic violence.

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

AUTHORIZATION TO PERFORM  
A NATIONAL CRIME INFORMATION CENTER (NCIC) DATABASE CHECK

I hereby authorize the Department of Energy, Office of the Inspector General, to perform a National Crime Information Center database check to confirm that I am not prohibited by Federal law from purchasing, receiving or carrying a firearm.

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## SAMPLE RESPONSE LETTER - ACCEPTANCE

Dear \_\_\_\_\_:

I am writing in response to your request that the Department of Energy, Office of Inspector General (OIG) provide you with photographic identification indicating that you are a retired law enforcement officer. Your request was made for the purpose of obtaining the authority to carry a concealed firearm pursuant to The Law Enforcement Officers Safety Act of 2004, as amended by the Law Enforcement Officers Safety Act Improvements Act of 2010 (Act).

Our records indicate that you separated from the OIG in good standing for reasons other than mental instability after May 23, 2003<sup>1</sup> with an aggregate of 10 years or more of service as a Special Agent. Accordingly, you are qualified to receive the photographic identification you requested unless you are prohibited by Federal law from receiving a firearm. Please sign and return the enclosed attestation that you are not prohibited by Federal law from receiving a firearm.<sup>2</sup> Also sign the enclosed authorization for the OIG to perform a check of the National Crime Information Center (NCIC) database so that we can confirm that you are not subject to such a prohibition. Upon receipt of this attestation and the completion of an NCIC check, the photographic identification you requested will be mailed to you. You must carry this identification any time that you are carrying a concealed weapon pursuant to the Act.

In addition to obtaining this photographic identification that you are a retired law enforcement officer, the Act requires:

- You to have tested or otherwise been found by the agency, within the last 12 months, to meet the active duty standards for qualification in firearms training

---

<sup>1</sup> The Act requires that during the law enforcement officer's employment he or she possessed statutory arrest authority. OIG Special Agents gained statutory arrest authority pursuant to Section 812 of the Homeland Security Act. The effective date of that statutory grant was May 23, 2003.

<sup>2</sup> The Act requires that during the law enforcement officer's employment he or she possessed statutory arrest authority. OIG Special Agents gained statutory arrest authority pursuant to Section 812 of the Homeland Security Act. The effective date of that statutory grant was May 23, 2003.

mentally defective or who have been involuntarily committed to a mental institution or otherwise judged incompetent to handle their own affairs;

(5) illegal aliens or aliens admitted to the United States under a nonimmigrant visa;

(6) those dishonorably discharged from the United States Armed Forces;

(7) those who have renounced their United States citizenship;

(8) subjects of a protective order; and

(9) those convicted of a misdemeanor crime of domestic violence.

as established by the agency to carry a firearm of the same type as the concealed firearm.

OR

- You must possess a certification, issued by the State in which you reside or by a certified firearms instructor that is qualified to conduct firearms qualification tests for active duty officers within that State. The certificate must indicate that you have, within the last 12 months, been tested or otherwise found by the State or State certified firearms instructor to have met the State's active duty standards for qualification with the same type of firearm as the concealed firearm. If the State has not established standards, the certificate must indicate that you have, within the last 12 months, met the standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

**Note:** The OIG will not reimburse you for any cost associated with this qualification requirement, and will not provide firearms qualification testing for a personally owned firearm.

In addition, please be advised that the term "firearm" has the same meaning as in Section 921 of Title 18 U.S.C. and includes ammunition not expressly prohibited by Federal Law or subject to the provisions of the National Firearms Act. The term "firearm" does not include:

- Any machinegun, as defined in section 5845 of the National Firearms Act;
- Any firearm silencer, as defined in Title 18, U.S.C., Section 921; and
- Any destructive device including a bomb, grenade, poison gas or mine, as defined in Title 18, U.S.C., Section 921.

The Act does not override State laws that permit private persons or entities to prohibit the possession of a concealed firearm on their property, or the possession of firearms on any State or local government property, installation, building, base, or park. In addition, you may not be under the influence of alcohol or another intoxicating or hallucinatory drug or substance while carrying a concealed firearm.

Finally, it is important for you to understand that the Act does not convey any law enforcement authority and does not vest you with the power of arrest. Accordingly, you will not be provided representation by the Department of Energy in any suit arising from a critical incident related to your carrying of a concealed firearm.

If you have any questions about this letter, please contact me or the Counsel to the Inspector General.

Sincerely,

Assistant Inspector General  
for Investigations

**SAMPLE RESPONSE LETTER - DECLINATION**

Dear \_\_\_\_\_:

I am writing in response to your request that the Department of Energy Office of Inspector General (OIG) provide you with photographic identification indicating that you are a retired law enforcement officer. Your request was made for the purpose of obtaining the authority to carry a concealed firearm pursuant to The Law Enforcement Officers Safety Act of 2004, as amended by the Law Enforcement Officers Safety Act Improvements Act of 2010 (Act). The Act requires, among other things that prior to retirement you were employed as a law enforcement officer for an aggregate of 10 years or more and that during this employment you had statutory arrest authority.

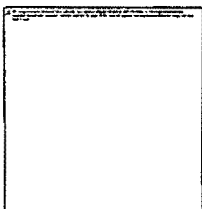
OIG Special Agents gained statutory arrest authority pursuant to Section 812 of the Homeland Security Act. The effective date of that statutory grant of authority was May 23, 2003. Our records indicate that you retired from the OIG prior to that date. Accordingly, you do not qualify under the terms of the Act unless you were employed as a law enforcement officer in another agency or agencies having statutory law enforcement authority for an aggregate of 10 years or more prior to joining the OIG. If you were so employed, please provide evidence of such employment to that agency for their consideration of your request.

If you have any questions about this letter, please contact me or the Counsel to the Inspector General.

Sincerely,

Assistant Inspector General  
for Investigations





**U.S. Department of Energy**

Office of Inspector General  
Office of Investigations

**Release of New Firearms-Related Policy Certificate**

I certify that I have received, read, understand and agree to comply with the Office of Investigations  
*Firearms* policy issued on . I also understand that I may not release or distribute the policy, in  
whole or in part, to any non-Office of Investigations entity or person.

\_\_\_\_\_  
Employee Printed Name

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

**Individual Firearms and Law Enforcement Related Equipment Log**

Special Agent:		Signature:			Office Location:		
Equipment Type	Qty	Serial Number	Model Number	Date/Time Out/Issued	Agent's Initials	Date/Time In/Returned	Agent's Initials

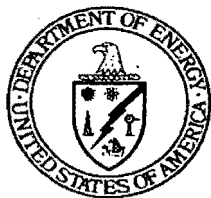


U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

**Firearms and Law Enforcement Related Equipment Receipt<sup>1</sup>**

Special Agent:				Office Location:			
Equipment Type	Qty	Serial No.	Model No.	Date Issued	Agent's Initials	Date Returned	Agent's Initials
Firearm							
Magazines							
Gun Lock							
Handcuffs							
Holster							
Magazine Pouches							
Fanny Pack							
Raid Jacket							

<sup>1</sup> This receipt will be completed whenever a firearm or related law enforcement equipment is issued, returned, and/or exchanged. This includes but is not limited to firearms, handcuffs, magazines and magazine pouches, gun locks, holsters, and raid jackets. Receipts will be maintained by the Regional Firearms Coordinator.



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

OC – Oleoresin Capsicum							
Extended Baton							
Body Armor							
Portable Gun Safes							

HQ F 4420.1 (03-93)		U.S. DEPARTMENT OF ENERGY <b>CERTIFICATE OF PROPERTY RECEIPT</b>		ADP UPDATED BY _____ DATE _____	
TO:				REFERENCE NO.:	
ROUTING SYMBOL:	LOCATION:	ROOM NO.:	TELEPHONE NO.:		
FROM: LOGISTICS MANAGEMENT DIVISION			SUBJECT: CERTIFICATE OF RECEIPT		
The following item is hereby forwarded to you as requested:					
ITEM:					
MAKE:			MODEL:		
TAG NO.:			SERIAL NO.:		
<b>Instructions</b> Complete this receipt and return white to Logistics Operations Branch, GTN, Room R-006, Germantown, AD-643. Keep yellow copy for your files and give blue copy to your Accountable Property Rep. (APR).					
I hereby acknowledge receipt for the above item and will hold myself accountable for it's safety. It will be used in connection with official government business only.					
<div style="text-align: right;">_____ (SIGNATURE)</div> <div style="text-align: right;">_____ (DATE)</div>					
Remarks:					



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

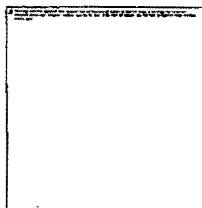
Chapter 4, Exhibit G

**Certificate of Firearm Servicability**

Special Agent:	
Firearm Make:	
Model:	
Caliber:	
Serial Number:	
Owner:	
Examining Aromorer:	
Examining Agency/Vendor:	
Examination Conducted At:	
Serviceable:	<input type="checkbox"/> Yes <input type="checkbox"/> No

Signature of Examiner

Date



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

### Lautenberg Certification Initial Qualification Inquiry Form

As a candidate, and/or a Special Agent for the U.S. Department of Energy, Office of Inspector General (OIG), you are required to complete this Qualification Inquiry. In completing this form, you are advised:

- The purpose is to obtain information that will assist in the determination of whether you are suitable for law enforcement or other positions requiring the use or handling of a firearm.
- Completion of this form is voluntary; however, failure to complete this form will disqualify you from consideration for an OIG law enforcement position. Agency disciplinary action, including dismissal, may be undertaken if you fail to reply fully and truthfully.
- Neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal prosecution for a violation of Title 18, United States Code (U.S.C.), Section 922(g)(9). However, the answers you furnish and any information or evidence resulting from your answers may be used against you in a prosecution for knowingly and willfully providing false statements or information, and in the course of agency disciplinary proceedings.

#### Qualification Inquiry

1. Are you the subject of a court order that restrains you from harassing, stalking, or threatening an intimate partner, a child of such intimate partner or your child, or from engaging in any other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner, child of the partner, or your child:

Yes ☐ No ☐ Initial \_\_\_\_\_ Date \_\_\_\_\_

2. Have you ever been convicted of any felony or a misdemeanor crime of domestic violence within the meaning of the Gun Control Act of 1968, as amended by the Lautenberg Amendment to the Omnibus Consolidated Appropriations Act of 1997?

Yes ☐ No ☐ Initial \_\_\_\_\_ Date \_\_\_\_\_

If you are not sure of the outcome of a past incident, initial here \_\_\_\_\_ and contact the OIG Headquarters Security Officer on (202) 586-4138, to discuss the incident.

3. If you answer YES to either question, provide the following information with respect to the court order and/or conviction:

Court/Jurisdiction: \_\_\_\_\_

Docket/Case Number: \_\_\_\_\_

Statute/Charge: \_\_\_\_\_

Date of Sentence: \_\_\_\_\_

I hereby certify that, to the best of my knowledge and belief, all of the information provided by me is true, correct, complete, and made in good faith. I understand that false or fraudulent information provided may be grounds for adverse action, up to and including removal, and is also criminally punishable pursuant to Federal law, including Title 18, U.S.C., Section 1001.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



3. If you answer YES to either question, provide the following information with respect to the court order and/or conviction:

Court/Jurisdiction: \_\_\_\_\_

Docket/Case Number: \_\_\_\_\_

Statute/Charge: \_\_\_\_\_

Date of Sentence: \_\_\_\_\_

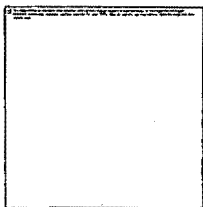
I hereby certify that, to the best of my knowledge and belief, all of the information provided by me is true, correct, complete, and made in good faith. I understand that false or fraudulent information provided may be grounds for adverse action, up to and including removal, and is also criminally punishable pursuant to Federal law, including Title 18, U.S.C., Section 1001.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**U.S. Department of Energy**Office of Inspector General  
Office of Investigations**Date:****To:****From:****Subject:****Firearm Make:****Firearm Model, Caliber:****Firearm Serial Number:****Date of Last Qualification Utilizing Above Firearm:****Comment(s) (including factors to be considered when assessing the request):**

I certify that (a) I have read and understand the Office of Inspector General's policy relating to personal firearms; (b) I have successfully qualified on an OIG-approved course of fire with the above listed firearm; and (c) the firearm has received a certification of firearm serviceability from a DOE-approved armorer.

\_\_\_\_\_  
Special Agent Signature\_\_\_\_\_  
Date

(circle one) Approve/ Disapprove

\_\_\_\_\_  
Regional Firearms Coordinator\_\_\_\_\_  
Date

(circle one) Approve/ Disapprove

\_\_\_\_\_  
Special Agent-in-Charge\_\_\_\_\_  
Date

(circle one) Approve/ Disapprove

\_\_\_\_\_  
Assistant Inspector General for  
Investigations\_\_\_\_\_  
Date

Attachment: Certificate of Firearm Serviceability

cc: National Firearms Manager



## Document Number 8



## U.S. Department of Energy

Office of Inspector General  
Office of Investigations



Chapter 4, Exhibit K

### Certification of Reading TSA Regulations

I certify that I have received, read, and understand the document "TSA REGULATIONS: FLYING ARMED" issued by FLETC'S Enforcement Operations Division and dated January 2004.

\_\_\_\_\_  
Employee Printed Name

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Firearms and Law Enforcement Related Equipment Annual Inventory**

Special Agent:				Office Location:	
Conducted By:				Date:	
Equipment Type	Quantity	Serial No.	Model No.	Comments	Agent's Initials



## U.S. Department of Energy

Office of Inspector General  
Office of Investigations

### Property Receipt Transfer Form

I certify that I received the following Office of Inspector General property for transfer to [insert agency name]:

[List body armor and/or duffel bag and include make, model and serial number (where available)]

I understand that the listed item(s):

- Are Government property, not personal property;
- May be used for official purposes only;
- Must be entered into the property/inventory system for [insert agency name];
- May not be altered or modified contrary to manufacturer guidelines;
- Must be stored in accordance with manufacturer guidelines; and
- May not be sold, transferred or otherwise disposed of for my personal gain or the gain of others.

I further understand that in the event the property is lost, missing or stolen prior to entry into [insert agency name] property/inventory system, I will notify my DOE OIG Special Agent-in-Charge within 24 hours of discovery and provide a written explanation of the circumstances within 72 hours.

Separate and apart from the items listed above, I also received [insert disposal items received by agent]. I understand that items containing DOE or OIG logos, emblems or lettering may not be sold, transferred, donated or otherwise given to another person or entity unless the markings are removed. Upon removal, I will retain or destroy any logos or emblems or return them to the DOE OIG.

\_\_\_\_\_  
Employee Printed Name

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

Property Released By: \_\_\_\_\_

Printed Name

Signature

## Document Number 9







**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Semiautomatic Pistol Course**

(b)(7)(E)

(b)(7)(E)



**RANGE COMMANDS**

(b)(7)(E)



(b)(7)(E)



(b)(7)(E)



(b)(7)(E)





## Document Number 10





U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

FLETC Survival Shooting Applications  
Course of Fire/Range Commands

DISTANCE	STAGE	POSITION	ROUNDS	SHOTS	TIME	DESCRIPTION/COMMANDS
(b)(7)(E)						

DISTANCE	STAGE	POSTION	ROUNDS	SHOTS	TIME	DESCRIPTION/COMMANDS
(b)(7)(E)						

DISTANCE	STAGE	POSITION	ROUNDS	SHOTS	TIME	DESCRIPTION/COMMANDS
(b)(7)(E)						

DISTANCE	STAGE	POSITION	ROUNDS	SHOTS	TIME	DESCRIPTION/COMMANDS
(b)(7)(E)						



## Document Number 11



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations



**Firearms Training & Qualification Roster**

Training Date: \_\_\_\_\_

Location of Training: \_\_\_\_\_

**Instructor Names**

**Instructor Signatures**

_____	_____
_____	_____
_____	_____
_____	_____

	<b>Student Name</b>	<b>Firearm Model/ Serial Number</b>	<b>Score</b>	<b>Student Signature*</b>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____
9.	_____	_____	_____	_____
10.	_____	_____	_____	_____

\* Signature acknowledges score accuracy, and receipt/understanding of safety and use of force policies.



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Guidelines for Loading/Unloading Firearms**

**I. General**

- A. Loading and/or clearing a firearm in an office environment should be conducted only when absolutely necessary; therefore, firearms will be maintained in the same condition (loaded or unloaded) in which they were brought into the office setting. If loaded, authorized semi-automatic pistols will be temporarily maintained, along with duty ammunition, loaded and holstered so as to prevent any potential for accidental discharge during unloading. Ammunition other than that amount considered "duty ammunition" will be stored in a separate drawer. In the event the loading or unloading of a firearm is necessary in an office environment, an OIG-approved clearing barrel or bullet containment device must be used.
- B. All Office of Investigations offices will be equipped with a clearing barrel or other bullet containment device capable of stopping, at a minimum, a .40 caliber round, and comply with the safety requirements of the local Department Office. The clearing barrel should be located in a part of the office that offers the least distraction from other office activity. A copy of these guidelines will be displayed in the area where the clearing barrel is located.
- C. When other activity surrounds an agent who is about to load/unload a firearm, the agent should announce to the others around that the operation is about to take place. The agent should only conduct the operation when he/she is fully capable of focusing on the operation without being distracted; and
- D. All loading and unloading of firearms in the office will be conducted with the proper use of the clearing barrel.



## II. Unloading

- A. Loaded firearms will remain holstered until the agent steps up to the clearing barrel to unload;
- B. Prior to unholstering the loaded firearm, the agent will place the manual safety/decock lever (if so equipped) to the "safe" position and then remove the magazine. (Note: The holster might need to be unsnapped to operate the manual safety/decock lever, but the firearm should not need to be removed from the holster. This will still allow the trigger to remain protected by the holster until the manual safety/decock lever is engaged.);
- C. While the firearm is still in the holster, the special agent will remove the magazine from the firearm. (Note: Removing the magazine removes the source of ammunition should the slide inadvertently be allowed to move forward later in the unloading process and chamber another round.)
- D. The agent will remove the firearm from the holster and immediately place the muzzle in the clearing barrel ensuring that a safe muzzle direction is maintained, while keeping the finger outside of the trigger guard;
- E. Keeping the muzzle of the firearm in the clearing barrel, the agent will lock the slide to the rear, thereby removing the round in the chamber. (Note: The agent should not attempt to catch this round as it is ejected from the chamber. Nothing should distract the agent from keeping the muzzle of the firearm in the clearing barrel while locking the slide to the rear.);
- F. The agent will then remove the muzzle from the clearing barrel, and both visually and tactually inspect the chamber to ensure it is empty. All unloaded firearms in the office environment will remain with the slide locked to the rear and the manual safety/decock lever (if so equipped) engaged until it is deemed necessary to load the firearm for official OIG investigative activity; and
- G. The agent must then recover the rounds ejected from the unloading process and ensure it is stored in accordance with approved ammunition storage procedures.

### III. Loading

- A. Unloaded firearms will be brought to the clearing barrel with the slide locked to the rear and the manual safety/decock lever (if so equipped) in the "safe" position. In addition, Special Agents should have with them two fully loaded magazines and a single extra round;
- B. The agent will both visually and tactually inspect the chamber to ensure it is empty, and place the muzzle of the firearm in the clearing barrel;
- C. Keeping the muzzle in the clearing barrel, the agent will insert a fully loaded magazine into the magazine well and release the slide so that a round is inserted into the chamber. Before the muzzle is removed from the loading barrel and holstered, the special agent will complete a "press check" or other verification method to confirm that a round has been chambered;
- D. Before the muzzle is removed from the clearing barrel, the agent will ensure that the manual safety/decock lever (if so equipped) is still in the "safe" position;
- E. The agent will then remove the muzzle from the clearing barrel and immediately holster the firearm, while keeping the finger outside of the trigger guard; and
- F. Once the firearm is holstered with the manual safety/decock lever (if so equipped) engaged, the agent will remove the magazine and bring this magazine to full capacity with the single extra round. While the firearm is still holstered, the agent will then reinsert the fully loaded magazine into the firearm well ensuring that it locks in place.



## Document Number 14



Department of Energy  
Office of Inspector General  
Office of Investigations

**Extendable Baton Skill Assessment**

Assessment Date:  Training Location:

Instructor(s) Name:

Student Name:

Topical Area	Subcategory(s)	Satisfactory	Unsatisfactory
(b)(7)(E)			

Comments:

Assessment Results: ☐ Satisfactory ☐ Unsatisfactory

Instructor Signature:



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Extendable Baton Refresher Briefing/Training Record**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Regional Office

I certify that the above Special Agent has received Extendable Baton Refresher Briefing/Training and continues to meet the qualification standards necessary for Extendable Baton certification.

\_\_\_\_\_  
Instructor Signature

\_\_\_\_\_  
Briefing/Training Date



Document Number 15





## U.S. Department of Energy

Office of Inspector General  
Office of Investigations

### Oleoresin Capsicum Decontamination Procedures

The effects of Oleoresin Capsicum (OC) on a subject will generally subside after 45 minutes without any decontamination. However, use of the following methods can greatly decrease this timeframe as well as the subject's (or student's) discomfort:

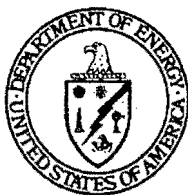
**Note:** Decontamination should only be provided when the subject is under control and a safe and secure environment is available.

1. After spraying a subject, wait 5 to 10 seconds before you approach the subject. Rushing in directly after spraying will increase your chance of receiving secondary exposure. If the subject is incapacitated and complains, cautiously approach and handcuff the subject. Verbally order the subject into a handcuffing position prior to approaching. Advise the subject not to rub their eyes or skin.
2. Prior to, and after handcuffing, verbally assure the subject that they are safe and will be okay. Tell them to relax and attempt to breathe normally. These verbal reassurances may help in keeping the subject from panicking and possibly continuing resistance.
3. The subject may be "wet" with the OC for a short period of time after being sprayed if possible you should allow them to "dry" for several minutes before handling and transporting. Remain very cautious when handling the subject to prevent contaminating yourself. Be especially careful of actions such as rubbing your eyes or placing your hands on your face after handling a sprayed subject. When feasible, thoroughly wash with a non-oil based soap and water.
4. When a safe environment is available, rinse the affected areas with large amounts of cool, drinkable water. This will assist in removing the OC resin. Several sources could be used, such as a flowing water hose, spray bottle or bucket containing 3 – 5 gallons of water. Encourage the subject to open their eyes in the water source to help speed recovery. If the subject was sprayed while wearing contact lenses, they should be allowed to remove them (when safe to do so).
5. If possible, expose the subject to a fresh, moving air source. This will assist in removing the resin from the skin and clothing. Possible sources are outdoor breezes or an electric fan.

6. The affected areas may be cleaned with a non-oil based soap and water to assist in removing the resin. "Ivory" dishwashing liquid is an example of a non-oil based soap, which would be applicable for decontamination use. Oil based soaps should not be used, as the oil may trap the resin against the skin.
7. If burning on the skin persists, ice packs applied to those areas will help provide relief. Wet towels may also be used to "pat" (do not rub!) the affected areas for relief.
8. The effects of the OC should diminish after 45 minutes without decontamination. You should monitor the subject during this time frame for any adverse reactions or affects of the OC. If the subject's symptoms do not decrease after 45 minutes, the subject exhibits reactions that are not consistent with OC exposure, or the subject requests medical assistance, then you should seek medical attention for the subject as soon as possible.
9. OC sprayed into a room, vehicle, etc., will normally vacate the area using normal ventilation in approximately 45 minutes. You can decrease this time frame by opening windows and doors, and/or brining in fans to increase the air movement. However, be cautious of accidentally contaminating other areas when using these methods. If a surface becomes saturated with OC spray, it can be cleaned with a mop and water (no special cleaning agents are required).



Document Number 16



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

**Oleoresin Capsicum Carry Waiver**

I, \_\_\_\_\_, state that I voluntarily elect not to receive training in the  
(Print Name)  
use of Oleoresin Capsicum (OC) or to carry OC as a means available to me for intermediate use of  
force. I acknowledge that training in the use of OC was offered to me and that an OIG approved OC  
aerosol device was made available to me by the U.S. Department of Energy, Office of Inspector  
General (OIG), Office of Investigations (OI). I further state that I have received, read, and understand  
the provisions of the OIG's OC Pepper Spray and deadly force policies.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## Department of Energy

Office of Inspector General

Office of Investigations

**Oleoresin Capsicum (Pepper Spray) Qualification Record**

Student Name:

Training Date:

Signature:

Date:

I certify that I have read and understand the OIG policy regarding  
Oleoresin Capsicum (OC)

**Evaluation and Testing**

The student will demonstrate the proper application/understanding of the following OC skills and concepts:

	<u>Pass</u>	<u>Fail</u>
1. FI Stand/Body Position	<input type="checkbox"/>	<input type="checkbox"/>
2. Strong Side Draw	<input type="checkbox"/>	<input type="checkbox"/>
3. Cross Draw	<input type="checkbox"/>	<input type="checkbox"/>
4. Reaction Hand Draw	<input type="checkbox"/>	<input type="checkbox"/>
5. OC Ready Position	<input type="checkbox"/>	<input type="checkbox"/>
6. OC Loaded Position Disengage/Spray	<input type="checkbox"/>	<input type="checkbox"/>
7. Defensive Push, Draw, Spray	<input type="checkbox"/>	<input type="checkbox"/>
8. Loaded Position, Defensive Push, Spray	<input type="checkbox"/>	<input type="checkbox"/>
9. Side Step, Draw, Spray	<input type="checkbox"/>	<input type="checkbox"/>
10. Loaded Position, Side Step, Spray	<input type="checkbox"/>	<input type="checkbox"/>
11. Ground Defense	<input type="checkbox"/>	<input type="checkbox"/>

- ☐ I certify that the above Special Agent has met the qualifications standards necessary for OC certification, which included personal exposure to OC.
- ☐ I certify that the above Special Agent has not met the qualifications standards necessary for OC certification.

OC Instructor Signature:

Date:



**U.S. Department of Energy**  
**Office of Inspector General**  
**Office of Investigations**

**Oleoresin Capsicum Refresher Briefing/Training Record**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Regional Office

I certify that the above Special Agent has received Oleoresin Capsicum (OC) Refresher Briefing/Training and continues to meet the qualification standards necessary for OC certification.

\_\_\_\_\_  
OC Instructor Signature

\_\_\_\_\_  
Briefing/Training Date



## U.S. Department of Energy

Office of Inspector General  
Office of Investigations

### Consent to Search

Date: \_\_\_\_\_

Location: \_\_\_\_\_

I, \_\_\_\_\_, having been informed of my constitutional right  
(Print Name)  
not to have a search made of my (residence, place of work, vehicle or person) hereinafter  
mentioned without a search warrant and of my right to lawfully refuse to consent to such a  
search, hereby authorize Special Agents of the Department of Energy, Office of Inspector  
General, and (if applicable) \_\_\_\_\_ to conduct a complete search of my  
(Print Name)  
(residence, place of work, vehicle or person) located at \_\_\_\_\_

(Print Address)

\_\_\_\_\_. These personnel are authorized by  
me to take from my (residence, place of work, vehicle or person) any letters, papers, materials  
or other property which they may desire. This written permission is being given by me to the  
above-named personnel voluntarily and without threats or promises of any kind. I also  
understand that, at any time, I can revoke my consent and/or limit the scope of my consent to  
certain areas.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Signature





# U.S. Department of Energy

Office of Inspector General  
Office of Investigations

## Consent to Search Computer/Electronic Equipment

I, \_\_\_\_\_, have been asked to give my consent to the search  
(Print Name)

of my computer/electronic equipment. I have also been informed of my right to refuse to consent to such a search.

I hereby authorize, \_\_\_\_\_, and any other person(s) designated by the  
(Print Agent Name)

U.S. Department of Energy, Office of Inspector General to conduct at any time a complete search of:

☐ All computer/electronic equipment located at \_\_\_\_\_  
(Print Address)

\_\_\_\_\_. These persons are authorized by me to take from the above location: any computer hardware and storage media, including internal hard disk drive(s), floppy diskettes, compact disks, scanners, printers, other computer/electronic hardware or software and related manuals; any other electronic storage devices, including but not limited to, personal digital assistants, cellular telephones, and electronic pagers; and any other media or materials necessary to assist in accessing the stored electronic data.

☐ The following electronic devices [Description of computers, data storage devices, cellular telephone, or other devices (makes, models, and serial numbers, if available)]:

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I certify that I own, possess, control, and/or have a right of access to these devices and all information found in them. I understand that any contraband or evidence on these devices may be used against me in a court of law.

I relinquish any constitutional right to privacy in these electronic devices and any information stored on them. I authorize the U.S. Department of Energy, Office of Inspector General to make and keep a copy of any information stored on these devices. I understand that any copy made by the U.S. Department of Energy, Office of Inspector General will become the property of the U.S. Department of Energy, Office of Inspector General and that I will have no privacy or possessory interest in the copy.

This written permission is given by me voluntarily. I have not been threatened, placed under duress, or promised anything in exchange for my consent. I have read this form and I understand it. I understand the English language and have been able to communicate with the agents.

I understand that I may withdraw my consent at any time. I may also ask for a receipt for all things turned over.

---

Signature

---

Date

---

Time

---

Witness Signature

---

Date

---

Time

---

Witness Signature

---

Date

---

Time



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Suggested Guidelines for Planning and Executing a Search Warrant**

**I. ESSENTIAL ELEMENTS OF A SEARCH WARRANT OPERATION**

The essential elements for a Search Warrant Operation are: Safety, Legality, Surprise, Speed and Simplicity.

**A. Safety – Safety is the most important element.**

1. Search Warrant execution is inherently risky;
2. Preventing loss of life or serious injury is more important than any warrant service;
3. The search warrant leader has responsibility for safety; and
4. The search warrant team must maintain the highest degree of safety awareness.

**B. Legality – The primary legal considerations include:**

1. Avoid suppression of seized evidence;
2. The search must be reasonable;
3. The search must not violate civil rights, criminal statutes or agency policies; and
4. Property destruction must be no more than necessary.

**C. Surprise – The element of surprise:**

1. Decreases the likelihood that the entry team will be detected;
2. It increases safety;
3. It increases the likelihood of preserving evidence; and
4. Provides an overall positive advantage.

**D. Speed – A fluid and methodical entry should:**

1. Increase safety;
2. Increases the likelihood of preserving evidence;
3. Reduces occupant control issues; and
4. Provides an overall position advantage.

E. Simplicity – Simple operations typically are:

1. Less confusing;
2. Easier to understand and follow;
3. Less problematic; and
4. More likely to result in success.

II. PHASES OF A SEARCH WARRANT OPERATION

When planning the execution of a search warrant, the Special Agent should consider these four phases of a search warrant operation- Planning, Briefing, Execution and Debriefing.

A. Planning

Ill-fated operations frequently can be attributed to poor planning. There will always be some degree of risk and unknown with each warrant. The objective is to be well prepared and to minimize risks as much as possible. The agent should use his/her experience, training, advice of the AUSA and common sense. The Agent needs to remain operationally flexible.

1. Develop a mission objective.
  - a. Determine items to be seized;
  - b. Identify location of items to be seized; and
  - c. Determine the safest and most efficient method to seize evidence.
2. Assess the risks
  - a. Gather intelligence concerning subjects, their associates and the search warrant sites
  - b. Gather intelligence on subjects of the investigation
    - Physical descriptions;
    - Photographs;
    - Criminal records;
    - Associates;
    - Weapons;
    - Routines; and
    - Registered vehicles
  - c. Gather intelligence on search warrant sites

- Take photographs
  - Observe general site characteristics (e.g. neighborhood crime rate, population density, traffic, lookouts, etc.);
  - Identify building entrances; and
  - Identify street access, alleys, parking, etc.
- d. Identify and prepare for site fortification
- Burglar bars, door stops, door braces, etc.
- e. Gather intelligence on building floor plan
- Knowledge of floor plan can reduce risk and allows team leader to assign team members to specific areas during entry and search;
  - Develop intelligence on floor plan through informants, undercover activities, exterior observation;
  - Identify rooms or areas to be searched, including basements and attics; and
  - Provide directions to rooms or areas.
- f. Identify co-located businesses
- g. Determine occupants most likely to be present
- Subjects;
  - Associates of subjects;
  - Employees;
  - Customers or other uninvolved persons;
  - Children; and
  - Animals
- h. Determine personnel needs
- Entry team;
  - Occupant control team;
  - Search team;
  - Arrest team;
  - Site security "cover" team;
  - Special skills (e.g. SWAT, computer forensics, evidence technicians, firearms identification, interpreters, etc.);
  - Outside agencies; and
  - Emergency medical personnel.

- i. Create a personnel assignment chart
- j. Identify communication needs
  - Vehicle and hand-held radios;
  - Radio frequencies to be used;
  - Command post;
  - Team member identification badge, pin, hat, shirt, arm band, etc.
  - Cell phone numbers; and
  - Nextel direct connected codes.
- k. Determine equipment needs
  - Vehicles, boats, etc.
  - Weapons;
  - Body armor;
  - Law enforcement "police/agent" outerwear;
  - Disposable handcuffs;
  - Flashlights;
  - Helmets;
  - Gloves;
  - Eye protection;
  - Note pads;
  - Labeling;
  - Evidence envelopes and bags; and
  - Tape
- l. Transportation of team members and equipment
  - Assign personnel to transport particular equipment; and
  - Assign personnel to particular vehicles.
- m. Identify primary and secondary staging areas
- n. Determine entry methods
  - Determine best approach path to entry points to maximize element of surprise;
  - Identify cover and concealment points;
  - Determine entry tools needed;
  - Decide whether firearms should be drawn or holstered during entry; and

- Plan the security sweep.
- o. Identify possibility of site contamination by team members and appropriate responses
  - Environmental Testing Laboratory;
  - Medical facility; and
  - Electronics manufacturing plant, etc.
- p. Consider occupant control issues
  - Occupant staging area;
  - Controlling occupant departure;
  - Controlling visitor entry; and
  - Occupants' use of telephones.
- q. Determine site security
  - Determine cover team requirements and assign team members;
  - Determine whether uniformed officers will be used;
  - Identify method for controlling occupant's departure; and
  - Identify method for controlling visitor entry.
- r. Crowd control
  - Call upon local police agencies to assist; and
  - Have barrier tape on hand.
- s. Be on alert for weapons
  - Assess likelihood of encountering weapons;
  - Determine method for conducting data base checks on weapons (e.g. ATF, local, county and state law enforcement agencies, etc.), including point of contact; and
  - Assess whether ATF agents should be present.
- t. Hazardous materials
  - Assess likelihood of encountering hazardous materials;
  - Identify local, state or federal resources for dealing with hazardous materials; and
  - When in doubt, get out.
- u. Safes
  - Discuss in advance with AUSA the protocol for dealing with locked safes at the search warrant site;

- Identify firms that can respond to site and open safes; and
  - Determine in advance the method of payment for locksmith services.
- v. Computers
- Ensure coverage on the search warrant for computers and software. Have TCS agent review draft search warrant and also operational plan;
  - Operation plan should include instructions to take immediate steps upon entry to remove occupants from computers;
  - Consider having TCS agents assigned to the search warrant execution team;
  - Coordinate with TCS to determine responsibility for imaging or seizure of computers;
  - Plan to search waste baskets near computers and printers; and
  - Plan to photograph computers prior to seizure.
- w. Handling children
- Presence of children could have an impact on the method of entry (including display of firearm);
  - Discuss with AUSA if it becomes necessary to take minors into custody;
  - Generally speaking, minors can be arrested if arrest would be lawful for adult; and
  - May be appropriate to work with local police departments or U.S. Marshal's Service if it becomes necessary to take minors into protective custody.
- x. Encountering and seizing animals
- Agents are permitted to defend themselves against animals;
  - Pepper spray and mace may not be effective;
  - Defensive actions against animals are likely to be sensitive and problematic;
  - Arrange for animal control services in advance whenever possible;
  - Discuss with AUSA prior to seizing animals; and
  - Make transportation and lodging arrangements in advance with local animal shelters, Humane Society or other organizations.
- y. Media Inquiries
- Media should be directed to the search warrant team leader;



- Team leader typically directs media to the Assistant United States Attorney assigned to the case or an Agency official; and
- Determine media contact (AUSA, Agency, etc.) in advance.
- z. Establish protocol for bathroom use by search warrant occupants
  - Thoroughly search bathroom first; and
  - Bathroom users should be accompanied by one or two agents.
- aa. Medical emergencies
  - Provide trauma kits to each site and designate team members responsible for trauma kits;
  - Determine telephone number for medical emergency;
  - Identify location of hospital emergency room;
  - Determine methods of transporting to hospital, including vehicles and personnel; and
  - Place driving directions to hospital in designated vehicles.
- bb. Prepare an operational plan (See DOE OIG Operational Plan Go-by – Chapter 8, Exhibit I)
  - The operational plan should be reviewed by a senior agent prior to review and approval by the ASAC and/or AUSA.
- cc. Review search warrant for errors
- dd. Search warrant site reconnaissance
  - Case agent and team leaders should conduct reconnaissance prior to the briefing; and
  - Report results of site reconnaissance to team members during the search warrant briefing.

**B. Briefing**

1. Introduce Self and Team Leaders/Members
  - a. Entry team;
  - b. Search team;
  - c. Arrest team;
  - d. Site security "cover" team;
  - e. Special skills (e.g. SWAT, computer forensics, evidence technicians, firearms identification, etc.);
  - f. Outside agencies; and

- [illegible]

- o. Encountering or seizing animals;
- p. Handling children;
- q. Hazardous materials;
- r. Medical issues and emergencies;
- s. Staging areas;
- t. Use of force policy;
- u. Provide final instructions;
- v. Confirm clarity of assignments and instructions;
- w. Answer questions; and
- x. Collect briefing packets (unless needed later).

C. Execution

18 U.S.C. 3109; Breaking door or windows for entry or exit. The officer may break open any outer or inner door or window of a house or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance.

1. Ensure that the door is locked prior to using a forced entry – Try the doorknob first.
2. Execute the search warrant in accordance with the Operational Plan.
  - a. Search warrant leader should lead, with no specific duty assignments;
  - b. Team members should work in pairs to ensure safety, a thorough search and integrity of evidence;
  - c. Exercise flexibility and adapt to changing situations; and
  - d. Expect to encounter issues not planned for.
3. Weapons
  - a. Maintain constant awareness for weapons;
  - b. Firearms discovered during the search should be made safe and secured for safety;
  - c. Firearms not seized should be returned unloaded; and
  - d. Do not remove your body armor at or near the site.
4. Concluding the search operation.
  - a. Always conduct a final walk-through;
  - b. Secure premises; and

- c. Ensure accountability of all team members prior to departure.

5. Debriefing

- a. Debriefing basics.
  - Conducted by the search warrant leader as soon as practical after search operation;
  - All team members should be present;
  - Input should be encouraged. Explain that honest feedback will significantly benefit the execution of future search warrants and lessons learned can be considered and/or incorporated;
  - Cover overview of evidence seized, disposition of evidence and persons arrested; and
  - Cover positive and negative aspects of the operation.
- b. Primary benefits of debriefing.
  - Allows discussion of lessons learned;
  - Provides information that can be used to brief AUSA and Agency officials. (A narrative "after-action report" can also be helpful).
  - Helpful in preparation for prosecution;
  - Allows for discussion of the possible need for additional search warrants; and
  - Especially important for multiple-site operations.



## Department of Energy

Office of Inspector General  
Office of Investigations

## Operational Plan

Field Office:		Case Number:	
Case Agent:		Telephone:	
Date of Operation:		Time of Operation:	

## Type of Operation

Surveillance <input type="checkbox"/>	Arrest Warrant <input type="checkbox"/>	Search Warrant <input type="checkbox"/>	Undercover <input type="checkbox"/>	Other <input type="checkbox"/>
--	--	--	--	-----------------------------------

Overall Concept of Mission (Brief Statement of who, what, where, when and why)

--

## Target Location

Address:		Telephone:		
		Photograph Attached	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Location Description:

--

## Staging Area

Date:		Address:	
Time:			

Directions:

--

# Operational Plan Suspect Information

Name:				Home Address:				Home Telephone:			
DOB:	Month	Date	Year	Social Security Number:				Driver's License # - State			
Race:				Sex:				Height:			
Weight:				Hair:				Eye:			
Place of Work:				Work Address:				Work Telephone:			
Suspect Known to be Armed: <input type="checkbox"/> Yes <input type="checkbox"/> No											
Additional Information (Include type(s) of weapon(s), etc.)											
Suspect Photograph Attached: <input type="checkbox"/> Yes <input type="checkbox"/> No											
Suspect Description/Characteristics (Scars, marks, tattoos, etc.):											
Suspect Criminal History (Arrests and convictions):											
Specialized Training (i.e. military, police, martial arts, etc.):											
Other Names, Aliases, Addresses Used:								Suspect Vehicle Information:			
								Year:			
								Make:			
								Model:			
				Color:							
				License/State:							

**Operational Plan**  
**Undercover/Informant Information**

<b>Name/Call Sign:</b> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	<b>Description/Clothing Day of Operation:</b> <div style="border: 1px solid black; height: 200px; width: 100%;"></div>
<b>Photograph Attached:</b>	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Vehicle Information:</b>	
Year: <div style="border: 1px solid black; width: 150px; height: 20px;"></div>	
Make: <div style="border: 1px solid black; width: 150px; height: 20px;"></div>	
Model: <div style="border: 1px solid black; width: 150px; height: 20px;"></div>	
Color: <div style="border: 1px solid black; width: 150px; height: 20px;"></div>	
License/State: <div style="border: 1px solid black; width: 150px; height: 20px;"></div>	

**Bust Signals**

<b>Primary (Audible):</b> <div style="border: 1px solid black; width: 150px; height: 20px;"></div>	<b>Secondary (Visual):</b> <div style="border: 1px solid black; width: 150px; height: 20px;"></div>
<b>Comments:</b> <div style="border: 1px solid black; height: 60px; width: 100%;"></div>	

**Command, Control and Communications**

<b>Command Post (if utilized)</b>			
<b>Contact Name:</b>	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>	<b>Location:</b>	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
<b>Telephone:</b>	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>	<b>Radio Channel:</b>	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
<b>Other Contact Information:</b>	<div style="border: 1px solid black; height: 40px; width: 100%;"></div>		
<b>On Scene Command</b>			
<b>Contact Name:</b>	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>	<b>Location:</b>	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
<b>Telephone:</b>	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>	<b>Radio Channel:</b>	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
<b>Other Contact Information:</b>	<div style="border: 1px solid black; height: 40px; width: 100%;"></div>		
<b>Other Contact Information:</b>			
<div style="border: 1px solid black; height: 60px; width: 100%;"></div>			

**Operational Plan  
Case Background**



## **Operational Plan Case Background**

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### **DOE/OIG Use of Force Policy**

Deadly force may be used only when necessary--that is, only when the agent has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the agent or to another person. The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to Special Agents and others have failed or would likely fail.

Deadly force is the use of any force that is likely to cause death or serious physical injury. (May 2004)

## Operational Plan Emergency Information

<b>Nearest Trauma Center:</b>	<b>Address:</b>	<b>Telephone Number:</b>						
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 100px;"><b>Main:</b></td> <td style="width: 150px;"></td> </tr> <tr> <td><b>Emergency:</b></td> <td></td> </tr> <tr> <td><b>Other:</b></td> <td></td> </tr> </table>	<b>Main:</b>		<b>Emergency:</b>		<b>Other:</b>	
<b>Main:</b>								
<b>Emergency:</b>								
<b>Other:</b>								

**Directions to Trauma Center:**

### Telephone Numbers

Department/Utility:	Contact Person:	Telephone Number:
Police:		
SWAT:		
Bomb:		
Fire:		
EMS:		
Telephone:		
Gas:		
Water:		
Electric:		

Team Member/ Agency	Cell Phone:	Work Number:

**Operational Plan**  
**Administrative and Equipment**

**Weapons and Ammunition**

**Clothing and Equipment (Include protective gear, identifying clothing and special equipment)**

**Intelligence Updates and Notes**



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Suggested Guidelines for Executing an Arrest Warrant**

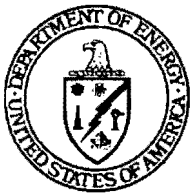
Special Agents, in the course of performing their investigative duties may be called upon to execute arrest warrants. When a Special Agent plans to execute an arrest warrant, he/she may want to refer these recommended/suggested guidelines for executing an arrest warrant. Although not all inclusive, the following is a list of steps to consider:

1. Ensure you have a valid arrest warrant;
2. Determine if the arrest warrant has been input into NCIC. Many detention centers will not take a person without a valid warrant;
3. Ensure you have a photo and description of the subject;
4. Know the subject's criminal history;
  - a. Has he been known to be violent
  - b. Does he have a record of resisting arrest
5. Verify the location of the subject;
6. Attempt to determine who else may be with subject at arrest location;
7. Know the area where the arrest will take place;
  - a. Is it a high crime area;
  - b. Is it a business/house
8. Determine the number of Law Enforcement Officers (LEO) needed for the arrest;
  - a. There should be a minimum of two LEOs to execute the arrest;
9. Determine if there are any pets at the arrest location;
10. Determine what vehicle or vehicles will the agents/LEOs be using when making the arrest;

11. Ensure the transport vehicle has been inspected for weapons, anything harmful to LEOs or the subject, etc., by at least two LEO's prior to leaving the office so this does not have to be done at the arrest location;
12. Notify another agent who will be at the OIG's office in order to provide them the arrest location (e.g. address, etc.) in case of emergency;
  - a. Notify this person when you arrive at the location and when you depart the arrest location with or without subject to keep them informed;
  - b. If the arrest is made, contact the above person to provide them with the time and mileage of the transport vehicle when you leave the arrest location and when you arrive at the detention center; (NOTE: Person receiving this information will log it for reference);
13. Depending on gender of the subject, attempt to have at least one LEO of the same gender during arrest (NOT A REQUIREMENT, just a suggestion);
14. Ensure you have leg restraints with you in case they may be needed at the time of arrest or during transport;
15. Determine what vehicle the subject will be transported in;
  - a. Know your vehicle;
  - b. Will the subject ride in front or back?
  - c. Are leg restraints needed?
  - d. Will a LEO ride in back with the subject?
16. When the arrest is made, ensure a proper patdown is conducted prior to placing the subject into the vehicle
  - a. The LEO making arrest should perform the patdown;
  - b. If the subject is transferred to another LEO after initial arrest and patdown, the receiving LEO should also perform a patdown;
  - c. If the Special Agent/LEO receives a subject from another Law Enforcement Agency, the Agent/LEO should ensure a proper patdown is conducted when received;
17. During the arrest and initial patdown, attempt to leave as much property found on the subject at their location (if it is at their home then there are less items to inventory or for which the Agent/ LEO is responsible);

18. Ensure the LEO has at least two sets of handcuffs present during an arrest;
  - a. Some subjects may require two sets of handcuffs based on a large build, not being flexible, being injured, etc.;
19. Ensure handcuffs are double locked at time of arrest;
20. Determine the travel time between the arrest location and the detention center;
  - a. Need to determine if you will need to have a bathroom stop during travel;
  - b. Consider having the subject use the bathroom just prior to departure;
  - c. If a bathroom stop is required, you need to know before the arrest where you will be stopping, where the restrooms are located, and what type of area you're in (e.g. high crime, etc.)
  - d. Need to know what your plan will be to allow subject to use restroom, (i.e. will you remove handcuffs?)
21. Familiarize yourself with detention center procedures for transporting a subject to the detention center. Know beforehand what the requirements are for taking a prisoner to the detention center.
  - a. What will you do with your weapon when you arrive at the detention center?
  - b. Are there lock boxes for your weapon? or
  - c. Will you have to secure weapon in vehicle?
22. Ensure you have DNA Collection Kits (see DNA Collection procedures below) and Fingerprint Cards (if appropriate) in your vehicle to utilize when booking the subject.

The Special Agent may want to consider utilizing the OIG's Operational Plan when executing an arrest (See OIG Operational Plan – Chapter 4, Exhibit BB).



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Government-Owned Vehicle Usage Certification**

I understand that as an employee of the U.S. Department of Energy, Office of Inspector General (OIG), I am authorized to operate Government Owned Vehicles (GOVs) equipped with emergency law enforcement warning devices (e.g., lights, sirens, etc.) provided that doing so will not violate any State or local laws. In addition to complying with all Federal, State and local laws and policies for the safe and proper operation of any GOV, I understand that the warning devices are for official law enforcement purposes and may not be used by anyone other than OIG Special Agents.

\_\_\_\_\_  
Employee Printed Name

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date





## Document Number 17

CHAPTER 5OPENING INVESTIGATIVE CASESA. SCOPE OF CHAPTER

This chapter sets forth the policies and procedures to be followed in receiving and adjudicating allegations emanating from various sources. Specifically, this chapter discusses the Investigative Process and Performance Measurement System employed by the Office of Investigations, the OIG Hotline and allegation processing, qui tam complaints, whistleblower complaints, various "MN" processes, and miscellaneous case opening topics.

B. INVESTIGATIVE PROCESS AND PERFORMANCE MEASUREMENT SYSTEM

A standardized Investigative Process and Performance Measurement System, as illustrated in Exhibit A (IM05EXA), has been established by the Office of Investigations to promote economy and efficiency in conducting investigations. The System is characterized by specific decision points and timeframes for completing various stages of an investigation. It further establishes a method for measuring the collective and individual performance and effectiveness of investigations. The primary stages of this investigative process include the receipt of allegations and information, predication, case opening, conduct of investigation through stages, reporting investigative results, and case closing. Deviations from the timeless, as outlined, should be very rare and exceptions must be fully justifiable. This chapter discusses the receipt of allegations and information, predication and case opening criteria. Chapter 6 of this Manual discusses the conduct of the investigation; chapter 11 outlines investigative reports; and chapter 12 outlines case closing.

C. OIG HOTLINE AND ALLEGATION PROCESSING

The Office of Inspector General (OIG) Hotline serves as a mechanism for U.S. Department of Energy (DOE) managers, employees, contractors, other Government agencies, and the general public to report allegations of fraud, waste, abuse and mismanagement involving DOE programs, operations, facilities, personnel, and funds. Effective June 30, 2000, the management, staffing and operation of the OIG Hotline was transferred from the Office of Investigations to the Office of Inspections' HQ operations.

The Hotline offers a toll free telephone number (1-800-541-1625) and a commercial number (202) 586-4063. The Hotline also provides a facsimile telephone number (202) 586-4902 as well as a mailing address for individuals who wish to submit their complaint(s) in writing, as follows:

U.S. Department of Energy  
Office of Inspector General  
Attn: Office of Inspections, Hotline Coordinator  
1000 Independence Avenue, SW  
Mail Stop 5D-031  
Washington, DC 20585

The policies and procedures to be followed by Office of Investigations personnel during the processing of allegations are outlined in a document entitled, "*Allegation Processing Handbook*." The Handbook is issued separately from the general *Office of Investigations Manual*, and it is a stand-alone document that is updated as circumstances warrant. The Handbook must be used in conjunction with the *Office of Investigations Manual* and the Energy Inspector General Project Tracking (EIGPT) system Handbook.

D. QUI TAM COMPLAINTS

The False Claims Act of 1986 (Act) provides that private citizens may act as "private Attorney Generals" and may file suit on behalf of the U.S. Government for a violation of the Act (codified at Title 31, U.S.C. Section 3730). The complainant, also known as a "relator," files a complaint under seal in Federal District Court. A copy of the complaint is served on DOJ for their review within 60 days. During this period, the defendant is not officially notified of the filing. The Government has the right to either intervene and proceed with the action or decline to intervene. If the Government declines to intervene, the relator may proceed on his/her own.

Routinely, DOJ forwards *qui tam* actions relating to the DOE to the Office of General Counsel who, in turn, requests OIG analysis. Occasionally, Office of Investigations field staff is contacted directly by DOJ. OIG Directive IG-919A sets forth the procedures to be used in processing *qui tam* actions potentially involving the OIG.

1. Processing Qui Tam Complaints *Qui tam* complaints will be processed in the same manner as all other incoming allegations. The current system for handling complaints is outlined in the Office of Investigations' *Allegation Processing Handbook*. More specifically, *qui tams* received by the Front Office, Audits, Inspections, or HQ Investigations will be forwarded to the Hotline Section for processing (e.g., complaint form, predication, etc.). In such cases, the Hotline section will provide a courtesy copy of the complaint within 48 hours to an Operations Officer, who, in turn, will furnish copies to the IG Counsel and the appropriate Investigations field office. The local ASAC must immediately assess the complaint for possible case opening. If case opening is declined, the ASAC must inform an Operations Officer, who will coordinate the decision with the Hotline Section. If case opening is accepted, the Hotline section will follow soon thereafter with a formal referral to Investigations.

Whenever an Investigations field office is the first recipient of a *qui tam*, the matter will be predicated, a complaint form will be prepared, and appropriate EIGPT entries will be made by the local Investigations field office. It is important to predicate and make indexing entries immediately. If the ASAC decides to open a case or ZZ the matter, a file is created and handled locally. ASACs should share case openings with their local Audit and Inspections counterparts to determine if they have had, or currently have, projects relating to new *qui tam* complaints. This may necessitate a local and national search by Audits and Inspections.

If the ASAC recommends another course of action such as an RS (Referral to DOE Management with a response requested), RR (Referral, no response requested), RA (Referral to Audits) or RI (Referral to Inspections), the complaint form and all relevant information is forwarded to the Hotline for presentation to the Complaint Coordination Committee (CCC). Note: For information on processing a ZZ (see G.7 of this chapter. For information on processing a RS, RR, RA, or RI see chapter 6.D.2.)

2. Duplicate Qui Tams Duplicate processing of individual qui tams can be avoided by simply performing an "Indices" search in EIGPT before predication to determine if the complaint has already been received. On occasion, allegations in a qui tam are repeated by a second Relator in another qui tam filing. Such filings are not considered "duplicate" because they involve a new complainant and, therefore, must be predicated and processed separately. Filings such as this may be processed as a ZZ and incorporated into the existing investigation.

3. Referrals for Prosecution Under most circumstances, EIGPT entries will not be made in the "Action" screen until DOJ renders an intervention decision. Upon intervention, the appropriate judicial "referral" and "response" code will be entered (e.g., JCL, ACC, etc.). No entries will be made for qui tams in which DOJ decides not to intervene.

#### E. WHISTLEBLOWER COMPLAINTS

The IG Act of 1978, as amended, specifically prohibits retaliation by managers against employees who make a complaint or provide information to the OIG (Title 5, U.S.C. App. 3, Section 7(c)). Various other Federal regulations prohibit a full range of whistleblower retaliation. Additionally, the Secretary of Energy has stated that DOE will have a zero tolerance to retaliation against whistleblowers. The OIG receives allegations of potential or actual retaliation for disclosure of information concerning danger to public or worker health or safety; substantial violations of law; for participation in Congressional proceedings, or for refusal to participate in dangerous activities.

As a general rule, the OIG does not investigate allegations of retaliation against Federal or contractor employees. Rather, the Office of Special Counsel has primary jurisdiction for investigating allegations of retaliation (adverse personnel actions) against Federal employees (Title 5, U.S.C. Section 1214), while the Office of Hearings and Appeals and/or local DOE employee concerns offices have primary jurisdiction over DOE contractor employees (5 CFR Part 708).

An OIG complaint form will be written regardless of the nature of the alleged retaliation—that is, as a result of cooperation with the OIG or unconnected to the OIG. The complaint will be processed in EIGPT. The complainant must be asked whether or not his/her identity may be disclosed, and the OIG confidentiality policy must be explained.

The complainant will be given contact information for the appropriate investigative authority in order for the employee to make direct contact

(i.e., Office of Special Counsel for Federal employees and the Office of Hearings and Appeals, and/or local employee concerns offices for contractors.) In cases where the complainant is alleging retaliation for cooperating with the OIG, the agent will ask the complainant if he/she would like OIG assistance in making the referral. The complainant will be told that a referral by the OIG may be done only if the complainant agrees to have his or her name released. If the complainant refuses, they should be advised that their allegation cannot be forwarded without their consent. Any referrals of retaliation complaints will be made via the OIG's "RS/RR" system. Generally, the OIG does not directly refer matters to Special Counsel, Office of Hearings and Appeals, etc., on non-OIG related retaliation allegations. The complainant should be advised to contact the appropriate authority directly.

By their very nature, retaliation allegations often include an underlying allegation of fraud, waste, abuse, or some other wrongdoing. Separate and apart from the retaliation, a case opening must be evaluated and considered.

For Federal employees, contact information for the Office of Special Counsel is:

U.S. Office of Special Counsel  
1730 M Street, N.W.  
Washington, D.C. 20036-4505  
<http://www.osc.gov>

Special Agents are responsible for being familiar with the current telephone number.

For contractor employees, they will be advised that Title 10 of the Code of Federal Regulations (CFR), Part 708, addresses contractor employee retaliation. The lead DOE office for the "Contractor Employee Protection Program" is the Office of Hearings and Appeals. More information can be obtained at <http://www.oha.doe.gov/>, including applicable regulations and whistleblower protection information.

Note that these guidelines regarding whistleblower complaints apply during the course of an investigation. Specifically, individuals who allege retaliation to an agent during the course of an investigation must provide the above contact and referral information. Further, the discussion must be fully documented in the case file. Discretion must be exercised as to the completion of a separate, stand-alone complaint form.

#### F. OTHER SOURCES OF COMPLAINTS

The Office of Investigations receives allegations from numerous sources other than the OIG Hotline, including the following: information directed to the IG, other OIG managers, the Offices of Inspections and Audit Services, the Secretary of Energy, Congress, the general public, DOE managers and program personnel, and contractors. All formal allegations received by the Office of Investigations—except those falling within the

parameters of the Office of Investigations' various MN programs--must be recorded on an OIG Complaint Form. See the *Allegation Processing Handbook* for specific guidance.

G. CRITERIA FOR OPENING CASES

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CHAPTER 5 -- OPENING INVESTIGATIVE CASES

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c. Environment, Safety and Health Issues Pursuant to an Memorandum of Understanding (MOU) with the Office of Environment, Safety and Health, the OIG has agreed to take specific action when it receives an allegation of ongoing or potential Environment, Safety and Health violations. When a regional office receives an Environment, Safety and Health allegation, personnel will follow the procedures outlined in the *Allegations Processing Handbook*. OIG Directive IG-9108, "Processing Environmental, Safety, and Health Allegations," provides additional policy and procedural guidelines for processing these allegations.

d. Matters Investigated by Other Law Enforcement Agencies A complaint or allegation should be referred to another law enforcement agency when the following conditions apply:

- The subject matter is either traditionally, or by law, investigated by another agency;
- The complaint/allegation does not involve DOE employees, programs, operations, or property;
- The complaint/allegation indirectly involves DOE employees, programs, operations, or property, but it has a major impact on another agency; and/or
- The complaint/allegation involves a threat to the safety of the President or any other protectee of the U.S. Secret Service.

SACs will make referrals to other agencies by contacting the local office having jurisdiction over the geographical area in which the alleged violation(s) occurred. All such allegations should be predicated in the EIGPT. Referrals may be made initially by telephone or in person, but they must be confirmed in writing.

Referral letters should contain the following information:

- Details of the complaint/allegation, along with any information developed by the Office of Investigations;
- A statement that the matter is being referred for informational purposes, and any action deemed appropriate;
- When appropriate, an offer of OIG assistance and support. The provisions of the OIG/FBI MOU (see chapter 2) are to be used as guidelines for suggested joint investigations; and
- A request that the SAC receive periodic notice of the status of the matter, if the referral involves DOE employees, programs, or property.

When the SAC is notified of the other agency's final action on a referral involving DOE employees, programs, operations, or property, the SAC will determine whether further OIG action is appropriate. Such action could involve initiation of an investigation, or referral of the matter to another OIG component.

3. Matters Outside the Office of Investigations' Jurisdiction The IG Act provides the Office of Investigations with a very narrow jurisdictional mandate. Matters falling outside that jurisdiction should be directed to the appropriate organization for disposition.

a. Noncriminal Personnel Matters Other matters not investigated by the Office of Investigations include those best handled by DOE management or personnel issues. These include, but are not limited to

quarrels or fighting amongst employees, chronic tardiness, time and attendance abuse, misuse of a Government vehicle, intoxication on duty, conducting personal business on Government time and misusing Government equipment, insubordination, and improper off-duty conduct (e.g., excessive indebtedness).

Without specific approval otherwise, allegations of this nature should be directed to the appropriate manager or personnel office, unless they involve misconduct so serious that termination is a distinct possibility, or emanate from a Hotline complaint. Complaints received by the Hotline should be handled in accordance with section C of this chapter.

b. Sexual Harassment/Equal Employment Opportunity Complaints Allegations involving sexual harassment and Equal Employment Opportunity complaints will be investigated by the DOE's Office of Civil Rights and Diversity. Personnel with complaints in these areas should be directed to that office, except in the case of the Hotline. Matters of this nature received by the Hotline should be handled in accordance with section C of this chapter.

c. Nuclear Safety The DOE Office of Nuclear Safety has jurisdiction over violations of nuclear safety requirements, both civil, and criminal as set forth in the *Code of Federal Regulations*, 10 CFR Part 820, "Procedural Rules for DOE Nuclear Activities." Alleged civil and criminal violations of DOE nuclear safety requirements should be reported immediately to the Deputy Assistant Secretary for Nuclear Safety.

4. Conflicts of Interest The Office of Investigations may be required to investigate actions on the part of individuals that may indicate criminal conflict of interest. Most, if not all, noncriminal conflict of interest allegations will be referred to the Office of Inspections.

a. Criminal Conflict of Interest The "200" series of Title 18 contains those criminal statutes dealing with conflict of interest, such as 18 U.S.C. Section 208, "Acts Affecting a Personal Financial Interest." Agents should refer to these sections when they have an allegation of possible conflict of interest for the elements of proof required for such a violation. Title 41, U.S.C. Section 423, "Procurement Integrity," provides further restrictions on those employees fulfilling the definition of a "procurement official." This statute has civil, criminal, and administrative remedies for such violations.

b. Referral of Conflict of Interest Matters to the Office of Government Ethics Pursuant to the Ethics in Government Act of 1978, the Office of Government Ethics has published regulations under 5 CFR, Section 2638.603 that require the OIG to concurrently notify the Office of Government Ethics when the DOJ is notified of a suspected criminal violation of Title 18, U.S.C. Sections 203, 205, 207, 208, or 209. Upon any referral of an investigation to either a U.S. Attorney's Office or other prosecutorial arm of DOJ, a "Notification of Conflict of Interest Referral" form, as depicted in Exhibit D (IM05EXD.PDF), must be completed by the referring Special Agent. The form can also be found here:

<http://ethics.od.nih.gov/forms/OGE-202.pdf>. Following SAC or ASAC review, the form will be forwarded to DIP<sup>3</sup> at HQ and a copy added to the official case file. HQ, in turn, will periodically forward the forms to the Office of Government Ethics.

c. Standards of Ethical Conduct The Office of Government Ethics issued a final rule on August 7, 1992, prescribing new standards of ethical conduct applicable to all Executive Branch employees. These standards were codified at 5 CFR Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," effective February 3, 1993.

Employees should endeavor to avoid any actions creating the appearance that they are violating ethical standards. Whether particular circumstances create an appearance that ethical standards have been violated should be determined from the perspective of a reasonable person with knowledge of relevant facts. Just some of the "relevant facts" that might not be known to an otherwise "reasonable" person include the fact that the employee may have raised the ethical concern with his or her supervisor or the designated agency ethics official, and a determination was made that the interests of the Government in the employee's participation outweighed the concerns of a reasonable person. Although the "appearance" standard of conduct has been the subject of much criticism in various forums for being too vague or too broad, it nonetheless is part of the standards governing Federal employee conduct. Potential "appearance" standard issues should be fully coordinated with the AIGI and, if appropriate, the Counsel to the IG before making a final determination to include such language in written comments.

5. Suspect or Counterfeit Items The basic authority or requirement for reporting instances of suspected fraud, waste, and abuse to the OIG is contained in DOE Order 221.1, "Reporting Fraud, Waste, and Abuse to the Office of Inspector General." Although not specifically listed in the Order, the Order covers Suspect or Counterfeit Items and a wide range of other suspected wrongdoing involving DOE programs, operations, personnel, and contracts. There are other DOE pronouncements that specifically mention the need to report Suspect or Counterfeit Items to the OIG, but the basic reporting requirement stems from DOE Order 221.1.

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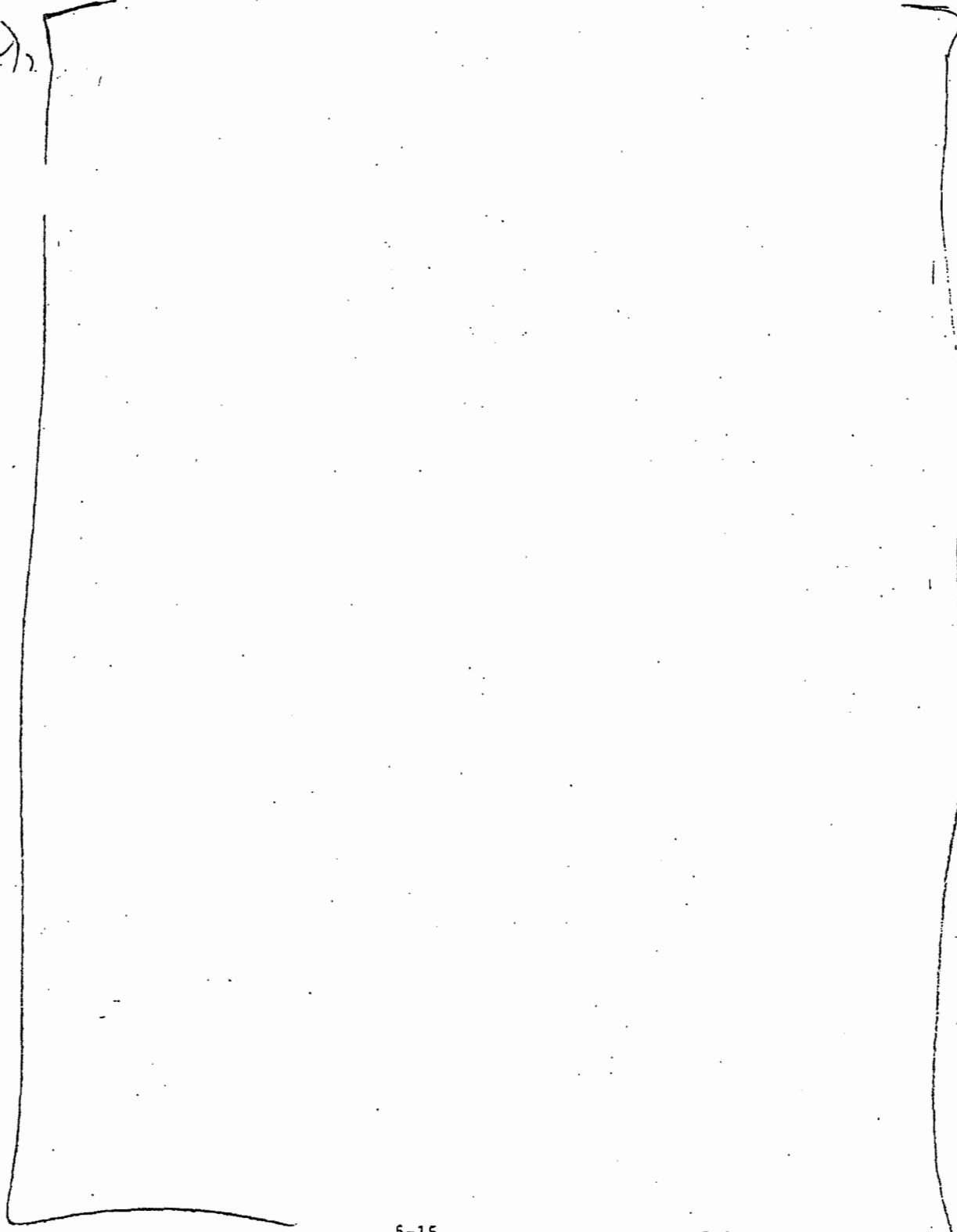
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## Document Number 18



OFFICE OF INVESTIGATIONS

# Investigative Process and Performance Measurement System

INVESTIGATION PROCESS
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Efficiency in Staff Days (S) and Elapsed Days (E)
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## Document Number 19



United States Government

Department of Energy

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# memorandum

DATE:

REPLY TO: IG-?? *[Insert Agent Name]*

SUBJECT: Receipt of TGP Report (OIG Case No. I01MN001)

TO: File

The *[Albuquerque, Pittsburgh, Oak Ridge, etc.]* Investigations Office received a *[verbal, written, e-mail, etc.]* Theft of Government Property (TGP) report from *[insert name, title, and location]* on *[insert date]*.

*[The text of the second paragraph must outline all relevant information about the incident(s), including (1) a full description of the item(s) such as make, model and serial number; (2) dollar value of the item(s); (3) date(s) of the alleged theft(s); (4) the location of the DOE site where the theft(s) occurred; (5) a description of why the item(s) was classified as "stolen"; (6) actions taken by the OIG (including referrals to other law enforcement agencies); (7) actions taken by DOE or the contractor; and (8) any other relevant information.]*

*[Note: If the above information is already contained in a complaint form, written report, e-mail, memorandum, etc. , there is no need to restate it in this memorandum.]*

*[Name]*  
Special Agent

Attachment(s)



IM05EXC.xls

**FY Theft of Government Property Reported to (INV Office)**

EXHIBIT C

Reported By	Item	Estimated # of Items	\$ Amount	How Reported	Location	Date Reported to OIG	Action by OIG/Other Comments
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## Notification of Conflict of Interest Referral

For use in cases involving possible violations of 18 U.S.C. §§ 203, 205, 207-209 by current or former executive branch employees only; see reverse for summary of statutory/regulatory background. Please return directly to: U.S. Office of Government Ethics, 1201 New York Ave. NW, Suite 500, Washington, DC 20005-3917. Phone: Chief, Program Assistance Division (202)523-5757, Extension 1123. FAX: (202)523-6325.

Agency Referring the Case	Agency Case or Referral Number	Case Referred to: <input type="checkbox"/> DOJ, Public Integrity Section, Criminal Division <input type="checkbox"/> U.S. Attorney for (district) _____ <input type="checkbox"/> DOJ (other) _____
Date of Referral to DOJ	Name of Employee Involved in Case (optional), Agency, and Agency Component Where he/she was Employed.	

Please check each statute involved in the case, and answer all questions concerning those statute(s).

Is there any evidence the individual received ethics training? Yes ☐ No ☐ Unclear ☐

☐ **18 U.S.C. § 203 (Compensation for Representation Affecting the Government)**

Federal entity before which representation occurred: \_\_\_\_\_

Compensated representation on behalf of: \_\_\_\_\_

Were representational services rendered or to be rendered by the employee? ☐ or by another? ☐

☐ **18 U.S.C. § 205 (Representation Affecting the Government)**

Federal entity before which representation occurred: \_\_\_\_\_

Representation on behalf of: \_\_\_\_\_

☐ **18 U.S.C. § 207 (Post-Employment)**

Federal entity before which representation occurred: \_\_\_\_\_

Representation on behalf of: \_\_\_\_\_

Was the communication/representation oral? ☐ and/or written? ☐

☐ Former employee terminated service before January 1, 1991. Check subsections involved:

☐ 207(a) ☐ 207(b)(i) ☐ 207(b)(ii) ☐ 207(c)

☐ Former employee terminated service on or after January 1, 1991. Check subsections involved:

☐ 207(a)(1) ☐ 207(a)(2) ☐ 207(b) ☐ 207(c) ☐ 207(d) ☐ 207(f)

If 207(b) or 207(f) is checked, was behind-the-scenes aid or advice involved? Yes ☐ No ☐

☐ **18 U.S.C. § 208 (Acts Affecting a Personal Financial Interest)**

Does the case involve the financial interest of the employee? ☐ that of the employee's spouse? ☐ minor child? ☐

a firm with which the employee was negotiating for employment? ☐ other? ☐

Was a waiver sought? Yes ☐ No ☐ Was it granted? Yes ☐ No ☐

Was the employee required to file a financial disclosure form? Yes ☐ No ☐

If so, was the basis for the interest disclosed on the financial disclosure form? Yes ☐ No ☐

☐ **18 U.S.C. § 209 (Supplementation of Salary)**

Type of supplementation (meals, travel, cash, etc.): \_\_\_\_\_

Value of supplementation: \$ \_\_\_\_\_ Number of supplements: \_\_\_\_\_

☐ **Additional Statutes Involved in Conflict of Interest Referrals**

Was 18 U.S.C. § 201 (bribery/gratuity) involved? Yes ☐ No ☐

Was 5 U.S.C. App. (Ethics in Government Act) § 501 (outside earned income) involved? Yes ☐ No ☐

Was 5 U.S.C. App. (Ethics in Government Act) § 502 (outside employment) involved? Yes ☐ No ☐

Was 18 U.S.C. § 1001 (false statements) involved? Yes ☐ No ☐

Was 5 U.S.C. App. (Ethics in Government Act) § 101 et seq. (financial disclosure) involved? Yes ☐ No ☐

Other (list) \_\_\_\_\_

Agency Contact/Telephone Number

Date

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## Statutory/Regulatory Background

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28 U.S.C. § 535 requires every department or agency to report to the Attorney General any information, allegations, or complaints relating to violations of title 18 of the United States Code involving Government employees, including possible violations of 18 U.S.C. § 207 by former Government employees. The Director of the Office of Government Ethics (OGE), in accordance with 5 U.S.C. App. § 402(e)(2), has promulgated regulations at 5 C.F.R. § 2638.603 requiring agencies to concurrently notify the Director when any matter involving a violation of 18 U.S.C. §§ 203, 205, 207, 208, and/or 209 is referred to the Department of Justice pursuant to 28 U.S.C. § 535. Such notification may be accomplished by providing a copy of the referral document or by submitting this optional form, unless such notification would otherwise be prohibited by law. OGE regulations also require that the department or agency subsequently notify the Director of the referral's disposition, including any disciplinary or corrective action taken by the department or agency. 5 C.F.R. § 2638.603(c). Information relating to the disposition of a referral may be communicated to the Director in writing.

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Additional agency comments (if any):

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### Disposition of Referral (OGE use only):

\_\_\_ DOJ declined prosecution.

\_\_\_ DOJ initiated prosecution.  
Resolution:

Agency disciplinary or corrective action, if any:



United States Government

Department of Energy

# memorandum

DATE:

REPLY TO: IG-?? *[Insert Agent Name]*

SUBJECT: Receipt of SC/I Report (OIG Case No. I01MN001)

TO: File

The *[Albuquerque, Pittsburgh, Oak Ridge, etc.]* Investigations Office received a *[verbal, written, e-mail, etc.]* Suspect/Counterfeit Item (SC/I) report from *[insert name, title, and location]* on *[insert date]*.

*[The text of the second paragraph must outline all relevant information about the incident(s), including (1) a full description of the item(s) such as manufacturer, make, model and serial number; (2) date of purchase and vendor name; (3) date of discovery; (4) dollar value of the item(s); (5) intended use for the item(s) (e.g., heating system, weapons system, critical, non-critical, etc.); (6) the location of the DOE site where the SC/I was found; (7) a description of why the item(s) has been identified as suspect or counterfeit; (8) actions taken by the OIG (including referrals to other law enforcement agencies); (9) actions taken by DOE or the contractor; and (10) any other relevant information.]*

*[Note: If the above information is already contained in a complaint form, written report, e-mail, memorandum, etc., there is no need to restate it in this memorandum.]*

*[Name]*  
Special Agent

Attachment(s)





## Document Number 20

CHAPTER 6PLANNING AND CONDUCTING THE INVESTIGATIONA. SCOPE OF CHAPTER

This chapter sets forth the policies and procedures to be followed in planning and conducting an investigation once a decision has been made that an investigative case will be opened. Specifically, this chapter outlines Stage 1 and Stage 2 of the investigative process and discusses investigative workplans, case performance measures, investigative files, quality control, and case chronologies.

B. INVESTIGATIVE PROCESS AND PERFORMANCE MEASUREMENT SYSTEM

(e)

CHAPTER 6 -- PLANNING AND CONDUCTING THE INVESTIGATION

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D. INVESTIGATIVE FILES

Proper case file preparation and organization is necessary to document investigative work performed and to provide adequate support for findings developed as a result of an investigation. The official Office of Investigations' file pertaining to a particular investigation is referred to as the "official case file." No other file will be authorized.

1. Official Case File for Investigations An official case file will be established by the case agent for each investigation and shall be used as a repository for all memoranda, correspondence, reports, statements, forms and other documents or materials relevant to that investigation. All investigative activity, both exculpatory and incriminating, should be documented in the official case file. Official case files must not contain extraneous documents that are unrelated or irrelevant to the investigation.

A duplicate "working file" will not be maintained by the case agent or others; however, the case agent or Investigations management may elect to separately retain copies of specific case documents and related information and materials for reference purposes during the course of an open investigation. Reference documents that are not part of the official case file will be disposed of before the file is forwarded to HQ at case closing.



[Note: This does not include bulky exhibits. Once a document or documents are logged as bulky exhibits, they become a part of the official case file. However, at case closure, the bulky exhibits may be evaluated for retention or removal. See D.1.c(3) of this chapter.]

Any documents entered into the case file must be understood by a neutral reader. If it is not readily apparent from reading a particular document why it is relevant to the investigation, the document must be added to the official case file attached to an explanatory Memorandum of Investigative Activity.

a. Control Official case files will be maintained by the assigned case agent, and the security of the case files is his/her responsibility until case closing. Case files must be stored in a locked file cabinet or other secure container. Official case files may not be removed from Office of Investigations work areas without the approval of the ASAC. This includes, for instance, shipping files to another region or providing a copy of a file to a prosecutor.

b. Identification The outside cover of an official case file, file extension, or a bulky exhibit will be labeled U.S. Department of Energy, Office of Inspector General, Office of Investigations, Official Use Only. The cover must also contain the following information: (1) the assigned case number and volume number, (2) case title, (3) the assigned case agent's name, (4) case open date, and (5) case closing date.

All material entered into the case file must be marked with the case file number. Each Memorandum, note, photograph, exhibit, letter, envelope, or other addition or attachment to the file must be clearly marked with the case number.

c. Format Official case files will be organized in a standardized manner, with each document filed within one of six sections and serialized/indexed with an identification number. Each section is labeled with a tab letter. Each tab is reserved for certain investigative information, documents, and materials. The following represents a general listing of documentation and the proper filing locations:

TAB A	Record of Disclosure Form Exhibit C (IM06EXC.DOC) *Inspector General Subpoena Requests and Issued Subpoenas *Consensual Monitoring Requests and Approvals *Federal and State Grand Jury Subpoenas [Note: Files with Grand Jury documents must be properly labeled in accordance with the requirements outlined in chapter 8.] Names of OIG Staff authorized access to 6 (e) material *Affidavit for Search Warrant *Search Warrants Search Warrant Related Documents (e.g. Operations Plans, Safety Plans, etc.).
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(\* = Memorandum of Investigative Activity  
related to these activities will be filed  
in tab F)

TAB B	General Correspondence Correspondence with Federal, State, and Local Attorneys Congressional Correspondence News Clippings E-Mails
TAB C	Other Background Checks and Information (ChoicePoint, Procurement and Assistance Data System (PADS), Dun & Bradstreet, Lexis/Nexis, etc.) **Note: NCIC reports will not be maintained in a case file; Retain with agent notes and discard at case closure. Make notation on closure checklist.
TAB D	Reports of Investigation Investigative Reports to Management Referral Memoranda to the Office of Audits, the Office of Inspections, or other Departmental offices Management Responses to Referrals; Documentation relating to Judicial Actions, such as Indictments/Information, Convictions, Judgements, Plea Agreements; Civil Settlements, and Sentencing
TAB E	Closing Documents Printout of Final EIGPT System Case Assignment and Closing Screens Case Closing Checklist, with printouts of Final EIGPT Case Index Listing Report (RDX) and Investigative Actions summary screen (QAT) Written Case Closing Notification (where appropriate) Closing Memorandum or close-out Executive Brief (IEB)
TAB F	Case Opening Documents Complaint Form and Supporting Documentation Printouts of Initial EIGPT Predication and Case Assignment Screens Workplans (Original and Revised) Memoranda of Investigative Activity Evidence Receipts

Note: An Investigative Case File Log [IG Form 1324.1] Exhibit D  
(IM06EXD.PDF) will be filed loosely (not bound) within the inside cover of  
each official case file. Exhibit D is for reference only. An original form  
should be maintained in each official case file.

d. Serialization/Indexing Each document in a case file will be filed chronologically under the appropriate tab and numbered sequentially to correspond with the tab location. For example, closing documents would be numbered E-1, E-2, E-3, etc., under tab E. Documents will be serialized at the time they are placed in the official case file. A listing of case file documents will be placed in each tab under the title "Table of

Contents," as illustrated in Exhibit B (IM06EXB.DOC). A separate table of contents will be maintained for each tab. The title of the documents will be entered along with the corresponding index number and document date. All Table of Contents will be filed under the corresponding tab.

e. Multiple Volumes If an official case file requires multiple folders, due to a particular tab overflowing from the original six- part folder, a single section flip top folder should be used. However, if more than one Tab overflows, then a second six part folder with tabs A through F, a table of contents for each tab, the necessary identifying labels, and the notation "Volume 1 of #" on the outside cover, will be established. The last entry on each tab that is extended should state "last entry" and direct the reader to the next volume.

f. Bulky Items If voluminous or bulky evidence or supporting materials cannot be maintained in the official case file, the case agent will store the item(s) in a separate folder in a secure location. Any box, envelope, or other container used to store bulky materials must be marked in accordance with the procedures set forth in Section D.1.b with the notation "Bulky Exhibit 1 of #." To ensure that this material may be retrieved when necessary, the case agent will prepare a Memorandum of Investigative Activity documenting the receipt and/or review of the bulky items. An "Agent's Note" in the Memorandum of Investigative Activity will explain that the material is being maintained in "Bulky Exhibit 1 of #." The original Memorandum of Investigative Activity will be placed in the official case file and a copy will be placed in the bulky exhibit folder.

All bulky items must be evaluated by the case agent and ASAC at case closure to determine if disposal is appropriate. Reference materials (e.g., relevant statutes, telephone directories, etc.) and copies where the original is maintained by another party (e.g. contract file, personnel file, etc.), in particular, must be evaluated for disposal. At a minimum, all disposal actions must be documented on the Case Closure Checklist. Additionally, the case agent or ASAC should make a handwritten or typed note on the original Memorandum of Investigative Activity (i.e., the Memorandum of Investigative Activity that documented initial receipt of the record), with a reference to "disposal of records," the date of disposal, by whom, and the method of disposal (e.g., discarded, returned to original owner, etc.). The ASAC will use discretion in determining if a separate, brief Memorandum of Investigative Activity is necessary to document the disposal. Words such as "destruction of evidence" and similar language will be avoided in notes and/or memoranda; disposal or return of records is preferred.

g. Notes Original investigator notes will be stored in an envelope or folder marked "Original Investigator Notes." The envelope or folder will also be marked with the case file number. All investigator

notes will be retained during the course of an investigation. See chapter 7 for a discussion of notes retention at case closing. If notes are retained at case closing, the envelope or folder--along with the rest of the case file--will be forwarded to HQ upon case closing.

**Note:** If a party submits a FOIA request, DIP<sup>3</sup> will immediately notify the ASAC and case agent via electronic mail. No files or case file documents may be discarded or disposed until further notice (including, but not limited to, investigator notes, bulky exhibits, reference materials and evidence). See chapters 4 & 12 for additional information relating to FOIA and document retention/disposal.

h. Reference Materials Reference materials refer to documents, publications, files, directories, codes/statutes, orders/directives, Departmental memoranda, and other written materials without specific evidentiary or documentary value. Case agents have occasion to gather, copy, review, analyze and maintain such materials during the course of an investigation. Examples may include telephone directories, Title 18, U.S.C. provisions, etc. Any reference material entered into the official case file must be marked with the case number.

(1) Filing After review and consideration of the relevancy to the issues and allegations being investigated, a determination must be made concerning the material's evidentiary value. If it is determined that particular material has specific evidentiary or documentary value, the material(s) will be included in the official case file. If it is determined that particular material has no evidentiary or documentary value, the material may be cited in a Memorandum of Investigative Activity as reference material. The case agent will record the receipt and analysis/review of that material, but the actual reference document(s) need not be included in the official case file.

(2) Extraneous Material Case agents and supervisors must take special care not to introduce into the official case file, and subsequently require continued maintenance, extraneous or irrelevant reference material. Questionable reference materials will be withheld from inclusion in official case files until later in the development of an investigation, or until case closing review, when their relevancy or merit is clearer.

(3) Disposition When reference materials, as described above, are determined by the case agent and supervisor not to meet the criteria for inclusion in the official case file, they will be returned to their source or discarded, where appropriate.

**Note:** See chapters 4 & 12, Closing Investigative Cases, for additional information relating to FOIA and document retention/disposal.

2. Official Case File for RS, RR, RI, and RA Matters These matters are generally processed by Inspections. However, in the event Investigations is tasked with the processing of an RS, RR, RI, or RA matter, a standard single section folder will be used, with appropriate labels on the outside cover as set forth in Section D.1.b. Serialization of case file documents, multiple tabs, and a table of contents are not required.

Completed files will contain, at a minimum, the following information: an OIG Complaint Form; supporting documentation (if available); a printout of the EIGPT system Predication screen (IPR), Case Assignment screen (ICA), and Actions Information/Summary screen (QAT); copy of referral letters and management's response (where appropriate); an Investigative Case File Log [IG Form 1324.1] Exhibit D (IM06EXD.PDF); and any other information deemed relevant. The Executive Brief (IEB) and Index (IDX) screens must be completed, but IEB and IDX printouts will not be included in the case file. Completed files must be forwarded to the Records Liaison Officer at HQ for filing. For a discussion on ZZ files, see chapter 5.

#### E. QUALITY CONTROL SYSTEM

A strong quality control system for investigative cases is paramount to protecting the integrity of the investigation and the investigative agency. Characteristics of a strong quality control system include (1) indexing case files, (2) controlling access to files, (3) requiring independent verification of investigative findings and factuality of evidence used to support the findings, and (4) ensuring that investigations are planned, executed, and reported in a thorough, objective, and timely manner consistent with legal requirements and professional standards.

1. Open Cases Official case files are the property of the OIG and will be utilized only for official purposes. The information in the files is for official use only, and its disclosure to unauthorized persons is prohibited. The file and its contents will be protected in accordance with the provisions of the Privacy Act, 5 U.S.C. Section 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. Section 522 (see chapter 4). Unless there is a legitimate need to know, the existence of open cases will not be confirmed or denied to non-OIG personnel. All requests for closed files will be forwarded to the HQ Records Liaison Officer.

Open case files will be made available within the OIG only on a need-to-know basis. All requests from outside the OIG for access to an open case file--or a specific document in the file--should be directed in writing to the appropriate case supervisor, who will then confer with DIP<sup>3</sup>. After a determination has been made by the supervisor that the requestor has a legitimate need to access the file (or document), the case agent and supervisor will review the file (or document) to determine whether any portion should be protected or otherwise not disclosed (e.g., complainant identity, confidential source information, etc.). The remainder of the file (or document) may then be viewed by the requestor. The individual given access must present picture identification and must complete a Record of Disclosure Form Exhibit C (IM06EXC.DOC), which will be placed in the case file.

If the requestor needs copies, the case supervisor will confer with DIP<sup>3</sup>. Copies will be given only to individuals with a "need-to-know." All requests for copies must be made in writing. All copies, in turn, will be forwarded to the requester with a transmittal letter. The letter must contain appropriate disclosure warnings. See chapter 2 for details.

**Note:** If a party submits a FOIA request, DIP<sup>3</sup> will immediately notify the ASAC and case agent via electronic mail. No files or case file

documents may be discarded or disposed of until further notice (including, but not limited to, investigator notes, bulky exhibits, reference materials and evidence). See chapters 4 & 12 for additional information relating to the FOIA and document retention/disposal.

a. Access Log An Investigative Case File Log, IG Form 1324.1 Exhibit D (IM06EXD.PDF) will be used to document access to, or removal of, the case file for other than routine investigative use by the assigned case agent or administrative/supervisory use by the SAC or ASAC. The access log will be completed by the individual removing the file and will remain in the file cabinet until the official case file is returned. [Note: The log remains with the file when it is forwarded to the HQ file room. This is a Standard IG Form, available from DOE office supply stores.]

b. Transmittal Any transmittal of an official case file, or its contents, from the custodian's field office (e.g., case agent) to a separate OIG location (e.g., regional office or HQ) will be accompanied by a transmittal slip, as illustrated in Exhibit E (IM06EXE.DOC). The slip will contain, at a minimum, the case number, a brief description of the document(s)/material(s), the date of the transmittal, the identity of the custodian, and the identity of the intended recipient. The case agent will retain a copy of the slip until notification is received that the document(s)/material(s) have been received. For instance, this procedure would be used when a Special Agent in a satellite office transmits original documents to his/her ASAC for review or when the ASAC forwards a case file to HQ after case closing.

See chapter 4, section H, for additional guidance on transmitting and mailing case files or related documents:

2. Case Progress Reviews ASACs will conduct periodic reviews of each open case assigned to Special Agents under his/her supervision. The case progress reviews will serve as a tool for the ASAC to monitor the progress of investigations, provide investigative guidance and direction, track milestone accomplishments, assess compliance with PCIE standards and ensure compliance with administrative requirements.

a. Frequency The first review for each case will occur within 90 days of case opening and assignment, and subsequent reviews will be completed at intervals not to exceed 90 days. An ASAC may, at his/her discretion, conduct reviews at intervals less than 90 days. The SAC may extend the 90 day requirement to 120 days on a *limited basis*. Such extensions must be the rare exception rather than the rule. In any event, file reviews may not exceed 120 days. If the ASAC is unable to complete a progress review within the required timeframe, the review may be conducted and documented by the SAC or a Relief Agent-in-Charge. If it is not economical or feasible to conduct a case review in person, it may be conducted by telephone and by reviewing the appropriate EIGPT system screens relating to that case. However, review of the official case file and a face-to-face meeting between the ASAC and case agent must occur at least every other file review.

b. Case Review Form An Investigative Case Progress Review Form, as illustrated in Exhibit F (IM06EXF.DOC), will be completed by the case

agent and the ASAC for each review conducted. This form serves as a guide for the ASAC and documents that a case review has been completed.

The case agent will complete each item from "FILE NUMBER" thru "BRIEF DESCRIPTION OF WORK TO BE DONE DURING NEXT FILE REVIEW PERIOD" (except "DATE OF REVIEW and ELAPSED CALENDAR DAYS SINCE LAST FILE REVIEW"). The ASAC will complete the remainder of the form during his/her review. "DATE OF REVIEW" represents the date the ASAC initiates his/her review, not the date the case agent completes the form. The "BRIEF DESCRIPTION OF WORK DONE SINCE LAST FILE REVIEW" and "BRIEF DESCRIPTION OF WORK TO BE DONE DURING NEXT FILE REVIEW PERIOD" sections will include a concise listing of significant activities. The "SAC/ASAC/OTHER COMMENTS AND INSTRUCTIONS" section will include information such as a reference to all suspense dates and milestones that had been accomplished (or not accomplished) during the current file review period; recommended investigative activities for the next review period; issues related to prosecutive potential; and other information deemed relevant by the ASAC. Upcoming suspense dates and milestones will be noted in this section, as well.

c. Reviewer Activities The ASAC should generally consider performing the following activities during a case progress review: Discuss the investigation with the assigned case agent, evaluate case progress to date and planned activities; review the most recent investigative workplan to determine if adjustments are necessary, determine which milestone dates have been met and which have not been met, examine case chronology, review the official case file, and review the Executive Brief, Investigative Actions, and Indexing screens in the EIGPT system to ensure that all entries are accurate, complete, and timely.

d. Case Agent/ASAC Discussions Issues, concerns, and specific instructions will be discussed with the assigned case agent. During completion of the Case Review Form, the case agent and ASAC should discuss, at a minimum:

- Results of the investigation to date;
- Activities since the last file review and anticipated activities for the next review period;
- Prosecutive potential;
- Progress towards objectives and milestones identified in the workplan and the Investigative Process and Performance Measurement System;
- Need for modification to the workplan; and
- Compliance with administrative requirements (e.g., timeliness of EIGPT system entries, case file organization, preparation of memoranda of interviews, etc.).

e. Documenting Case Progress Reviews After completing a case review, the ASAC will update the EIGPT system to reflect the date of the

most recent case review. Original documents prepared in connection with the case review process, including the Case Review Form, will be maintained by the ASAC. After case closure, the ASAC will continue to maintain the documentation until completion of the next outside peer quality assurance review (i.e., PCIE review). Case review documents will not be placed in the official case file.

3. Indexing and Referencing Investigative Reports An effective quality control system ensures that investigative findings and reports are reasonable, factual and consistent with professional standards. Therefore, the Office of Investigations will "index" and "reference" all Reports of Investigation, Investigative Reports to Management, and Closing Memorandum, as well as other documents which may be designated by the AIGI, DAIGI, SAC, or ASAC on a case-by-case basis.

a. Definitions "Indexing" is the process of linking all information in a report--facts, numbers, quotes, statutes, dates, names, etc.--to source documents in the official case file. "Referencing" is the process of independently checking the indexed report against information in the official case file to: 1) verify factual data; 2) determine the reasonableness of the findings reached in view of case file documentation; 3) determine the practicality of the recommendations made in the report; and 4) ensure proper grammar usage.

"Source documents" are entries in the official case file, including bulky exhibits. Source documents include, but are not limited to, Memoranda of Investigative Activity; Memorandum to the File; Affidavits; and other records collected during an investigation. All information in a report must be supported by a source document in the case file.

b. Process Indexing and referencing should occur after a report has been approved by the ASAC. Using the *formal* process of indexing and referencing too early in the drafting process minimizes its value, since new information that has not been "verified" by the referencer may be added.

The case agent will always serve as the indexer. Specifically, the case agent will make a hand-written notation in the left or right-hand column of a draft report that identifies the case file document(s) and specific page number(s) which supports a particular statement, quote, numerical figure, or finding. For example, "F-4, p.2, par. 1" signifies that the adjacent statement in the report is supported by document F-4, page 2, paragraph 1 in the case file. The index notation should be placed directly opposite the information to which it relates. This will be done throughout the entire report for each sentence and paragraph. The indexer will initial and date the upper portion of the draft report.

Once the case agent completes this process, another agent will reference the report. The referencing process is an essential step in assuring overall investigative report quality. The referencer will be an individual who has had minimal to no involvement in the investigation. Under no circumstances will any agent who prepared or assisted in the preparation



of the report reference the report. Where administratively feasible, referencing will be performed by a GS-12 or above Investigations staff member in the case agent's region, as designated by the ASAC.

The referencer will review the indexer's hand-written notations (e.g., F-4, page 2) and trace the contents of the report to source documents in the official case file. No findings, facts, numbers, quotes, statutes, dates, names, etc. may be included in a report without documentary support in the case file, and recommendations must be based on findings in the report (i.e., the Department manager must be able to consider action on the recommendation(s) based on facts presented to him/her). Verified data will be initialed by the referencer (i.e., next to the indexer's hand-written notation that is approved). For questioned data, the referencer will circle the indexer's hand-written notation (e.g., F-4, page 2). Corrections and suggested revisions will then be made directly on the report and will be discussed between the referencer and the case agent. After agreement is reached, the referencer will initial indexer's hand-written notation.

The indexing and referencing processes must be repeated for any new and/or revised information that is added to the report. Upon completion, the referencer will initial and date the upper portion of the draft report. The indexer and ASAC will also initial the draft as verification the process was completed correctly.

The fact that the cross-indexing/referencing occurred--along with the names of the indexer and referencer and the appropriate dates must be documented in the official case file with a Memo to the File. The indexed/referenced report will not be filed in the official case file. However, it will be retained until case closing--at which time it will be discarded.

4. Inventory Review Program The Inventory Review Program is a tool for SACs and ASACs to manage the status and direction of cases within their regions. Currently, there are mechanisms in place within the Office of Investigations, such as the case progress review process (described above), to assist supervisors in managing case direction and progress. The IRP program is designed to supplement, not replace, the case progress review process.

a. Inventory Review Program Report The Investigations Tracking Module of the EIGPT system contains an "Inventory Review Program" report option. The report lists cases that fall into certain categories that were developed to identify investigations that have had limited recent progression or otherwise require additional scrutiny (e.g., cases currently on "hold" status; cases having over 300 total hours charged; cases having priority status with no time charged in the past 30 days; etc.). These categories will be adjusted as necessary.

An IRP report may be generated for a specific region.

b. Periodic Review At least every quarter (120 days), SACs and ASACs must generate an IRP report for their particular regions and offices. SACs and ASACs must take the necessary steps to ensure that listed cases are being adequately addressed. This includes, but is not limited to,

directing the case agent to dedicate additional time to resolving the case, assigning the case to another agent, or processing the case for closure.

HQ may also periodically generate an IRP report for evaluation. The Operations Officers will review the report and highlight those cases that require follow-up with the field. Generally, Operations Officers will not highlight cases that recently involved a Priority Alert, a narrative in the Weekly Report, a briefing paper, or some other communication with Headquarters. The IRP report will be forwarded to the field for review and response concerning the status of the highlighted cases. Upon receipt of an IRP report from Headquarters, ASACs will be given a specific deadline by which to provide a status update for the highlighted cases. ASACs will respond to HQ through their respective SAC. The Operations Officers may conduct necessary follow-up with the appropriate ASAC.

5. Quality Assurance Review Program The Office of Investigations has implemented a "Quality Assurance Review" program, or internal inspection process, designed to assess the efficiency and effectiveness of organizational operations. The inspection program is managed by DIP<sup>3</sup>, who reports to the AIGI and DAIGI. The objectives of the program are to:

- Evaluate whether field sites are operating in compliance with relevant Federal, Departmental, and Office of Inspector General laws, regulations, orders, policies and procedures and professional standards;
- Evaluate whether field operations and practices are in compliance with Office of Investigations objectives and priorities;
- Evaluate investigative accomplishments; and
- Evaluate whether field managers administer personnel, fiscal, and other resources in an efficient and effective manner.

The Quality Assurance Review (QAR) program is designed so that each of the Office of Investigations offices is inspected once every 2 to 3 years. Inspections will be performed on a rotating basis. The timing and sequence will be determined on an annual basis. Each QAR inspection is scheduled to last 5 workdays. This timeframe will be adjusted as circumstances warrant.

Each QAR is comprised of field and HQ personnel. Generally, the Chief Inspector will designate one ASAC, one Operations Officer, and two or more Relief ASACs to serve as Inspector's Aides. The size of the inspection team will vary from four to eight members depending on the size of the offices and/or number of offices being inspected at the time. The team is expected to perform in-depth, critical, and impartial analyses of office operations, practices, and personnel, and generate final reports summarizing its findings.

More specific details about the QAR program's implementation and operation can be obtained from the document entitled, "Quality Assurance Review Program Handbook," which is maintained at Headquarters.

6. Closed Case Files All closed official case files, including any bulky exhibits, should be forwarded directly to the Office of Investigations, Records Liaison Officer, at HQ in accordance with the policies and procedures set forth in chapters 4 and 12. Prior to forwarding the closed case files and any bulky exhibits to Headquarters, ensure that the files contain all the identifying information necessary and in accordance with D.1.b., D.1.c.(2), and D.1.c.(3) of this chapter. It is important that files with Grand Jury materials and/or subpoenas are appropriately marked.

a. Inventory The Records Liaison Officer will maintain all case files in the Mobile Electronic Filing System (MOBIE) maintained at Headquarters. Destruction dates for closed files are calculated according to guidelines approved in the most current edition of the Records Retention Schedule. See the OIG Records Manager for a copy of the Retention Schedule.

b. File Room Access Access to the file room and to MOBIE is strictly controlled. Access to MOBIE is limited by lock and key to the Records Liaison Officer, HQ Office of Investigations supervisors, and designated staff responsible for tracking and maintaining the closed files. Access to the file room area is strictly controlled and is for official business only. All visitors outside of Office of Investigations HQ staff are required to sign a visitors log to access the file area. Access is permitted only in the company of an Office of Investigations staff member.

c. File Accessibility Official Case files are the property of the OIG. Closed case files are accessible to:

- OIG staff on a need-to-know basis only;
- the media, educational/scientific institutions, and the general public through FOIA procedures; and,
- other limited requestors, such as law enforcement officials, as part of the Routine Uses provisions contained in the Privacy Act System of Records for the Office of Inspector General.

OIG staff may request a file by contacting the Office of Investigations Records Liaison Officer or other designated Office of Investigations staff. The requestor will be required to present their security access pass and to state the purpose of the request. The OIG staff member will be asked to sign an Investigative Case File Log, IG Form 1324.1 Exhibit D (IM06EXD.PDF) to charge out the file. Files must be returned to the Office of Investigations within 10 working days of charge out.

Non-Office of Investigations employees must sign an access log if granted access to the HQ File Room.

Public disclosure of all, or portions of, closed case file records may be permitted under the FOIA. Guidelines for disclosure appear in chapter 4.

Other limited requestors from outside of the OIG may demonstrate a need-to-know the contents of an official case file. These requestors generally require use of the file for law enforcement purposes. Such requests for access to closed files will be referred to DIP<sup>3</sup>. The requestor must submit a written request. Upon approval, requestors will be permitted to view the file within Office of Investigations office space. In addition, the requestors will be required to complete a Record of Disclosure Form Exhibit C (IM06EXC.DOC), which identifies the case number, date of request, name of requestor, signature of requestor, purpose of request, and the form of identification presented by requestor. This form will be made part of the case file upon completion of the review. Individuals given access will be permitted to take notes; however, they will not be permitted to remove the contents of a case file without formal Office of Investigations approval and dissemination. If a copy of any portion of the case file is needed, the requestor will be asked to identify the appropriate document(s) and submit the request in writing. An Operations Officer or Office of Investigations supervisory staff member will determine formal dissemination of the documents requested. Confidential source information will be protected.

d. Disposal Files are purged according to Records Retention Schedules (aka: RIDS). File disposal is accomplished through shredding or burning.

e. Periodic Review The Records Liaison Officer and/or supervisory Office of Investigations staff shall conduct periodic reviews of the file room inventory. File procedures are also subject to periodic IG audits to insure compliance with records management requirements.

#### F. CASE CHRONOLOGIES

A case chronology is a sequential listing of investigative activities and events. Generally, the purposes of the case chronology are to:

- Record the occurrence of significant events, such as the completion of an interview, review of a contract file, issuance of a subpoena, use of a specialized investigative technique, etc.;
- Record incidental investigative activities and events that normally do not warrant a Memorandum of Investigative Activity, such as verbal case closing notification to Department management, cancellation of a scheduled interview, a change in the assigned case agent, preparation of a spreadsheet, etc.; and
- Reflect periods of inactivity when the case agent is unable to work on the case due to such things as leave, priorities in other cases, or temporary details to other assignments.

Preparation and maintenance of case chronologies are not mandatory. However, the case supervisor may, at his/her discretion, require a chronology, where appropriate. Generally, the format and content of a

supervisor-directed chronology will be determined by the supervisor. At a minimum, case chronologies will identify the case number and agent name, as well as the date and nature of the activities recorded. The chronology will not serve as a substitute for a Memorandum of Investigative Activity, which fully document interviews and other significant investigative activities (see chapter 7).

If chronologies are prepared, the chronologies will not be serialized and entered into the official case file. Instead, the requirements for maintaining and retaining Case Review Forms will apply (see chapter 6, section E 2 b, "Documenting Case Progress Reviews").

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

**INVESTIGATIVE WORKPLAN: STAGE 2**

**I. ADMINISTRATIVE DATA**

Case No: \_\_\_\_\_ Case Title: \_\_\_\_\_  
Case Agent: \_\_\_\_\_ Supervisor: \_\_\_\_\_  
Date Predicated: \_\_\_\_\_ Date Opened: \_\_\_\_\_  
Date Assigned: \_\_\_\_\_ Current Status: Routine \_\_\_\_\_ Priority \_\_\_\_\_  
U.S. Attorney's Office: \_\_\_\_\_  
Stage 2 Workplan: Original [ ] Modified/Revised [ ]

**II. PERFORMANCE MEASURES AND OUTCOMES**

Planned Elapsed Calendar Days to:

- o Complete Draft ROI/IRM: \_\_\_\_\_
- o Issue Official ROI/IRM: \_\_\_\_\_
- o Complete Stage 2: \_\_\_\_\_

Estimated Investigative Recovery Amount: \$ \_\_\_\_\_

IG Subpoenas Anticipated: \_\_\_\_\_  
(Recipient) (Date)

\_\_\_\_\_  
(Recipient) (Date)

III. DETAILS OF INVESTIGATION

PARAMETERS/FOCUS OF STAGE 2 INVESTIGATION

STATUTE(S) INVOLVED AND SPECIFIC ELEMENTS OF OFFENSE(S)



STAGE 2  
LISTING OF ANTICIPATED INVESTIGATIVE ACTIVITIES

IV. REVIEW AND APPROVAL

Initials

Date

Stage 2 Workplan Submitted by Agent to Supervisor \_\_\_\_\_

Stage 2 Workplan Approved by Supervisor \_\_\_\_\_

SUPERVISOR COMMENTS/DIRECTIONS

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

Official Case File  
Table of Contents

Case Number:

Index No.	Document Description	Document Date
F-1		
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**TAB F**

6-B-1

**U.S. Department of Energy  
Office of Inspector General  
Office of Investigations**

**RECORD OF DISCLOSURE**

(Privacy Act, 5 U.S.C. 552(j) (2) & (k) (2);  
10 C.F.R. 12(a) (2) & (b) (2);  
10 C.F.R. 1004-1008)

**FOR OFFICIAL USE ONLY**

Review Date:

ID Presented:

OI Staff Initials:

<i>Case Number (Complete a Separate Form for Each File)</i>	<i>Date of Request:</i>
<i>Name of Subject(s):</i>	
<i>Subject(s) Employer</i> _____ Government _____ Contractor	<i>Employee Location (DOE Location, City, State)</i> _____ Other
<b>PRIVACY ACT STATEMENT</b>	
<b>OFFICIAL CASE FILES ARE THE PROPERTY OF THE OFFICE OF INSPECTOR GENERAL. THE INFORMATION IN THE FILES IS FOR OFFICIAL USE ONLY AND ITS DISCLOSURE TO UNAUTHORIZED PERSONS IS PROHIBITED. THE FILE AND FILE CONTENTS SHOULD BE PROTECTED IN ACCORDANCE WITH THE PROVISIONS OF THE PRIVACY ACT, TITLE 5, U.S.C., 522A. PUBLIC AVAILABILITY IS DETERMINED BY THE FREEDOM OF INFORMATION ACT, TITLE 5, U.S.C., 522</b>	
<i>Name of Requestor (Print):</i>	<i>Telephone Number:</i>
<i>Organization:</i>	<i>Address:</i>
<i>Purpose of Request:</i>	
I certify that I am the person named above and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. 1001 by fine or imprisonment, and that requesting or obtaining any record(s) under false pretense is punishable under the provisions of 5 U.S.C. 552(a)(1)(3).	
<i>Signature of Requestor:</i>	
<i>DOE OIG Approval:</i>	<i>Date:</i>



U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

TRANSMITTAL SLIP

Case No.: \_\_\_\_\_

Description of Document(s)/Material(s) enclosed: (check all that apply)

\_\_\_\_ Official Case File (number of volumes): \_\_\_\_\_

\_\_\_\_ Exhibits (number of volumes/boxes): \_\_\_\_\_

\_\_\_\_ Investigative Reports (number of reports): \_\_\_\_\_

\_\_\_\_ Other material (describe): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Transmittal: \_\_\_\_\_

Custodian of Documents (Released by): \_\_\_\_\_

Intended Recipient of Documents: \_\_\_\_\_

Remarks/Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please contact \_\_\_\_\_ to confirm receipt date of this  
material by: (check one and list phone number or address on the line)

\_\_\_\_ Mail (with signed receipt): \_\_\_\_\_

\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_ Fax: \_\_\_\_\_

**INVESTIGATIVE CASE PROGRESS REVIEW FORM**

FILE NUMBER: \_\_\_\_\_ AGENT'S NAME: \_\_\_\_\_

OFFICE: \_\_\_\_\_ DATE OF REVIEW: \_\_\_\_\_

DATE OPENED: \_\_\_\_\_ DATE ASSIGNED: \_\_\_\_\_

- Stage: \_\_\_\_\_
- Action Item: \_\_\_\_\_
- Total Case Hours: \_\_\_\_\_
- Total Hours Since Last Review : \_\_\_\_\_
- Elapsed Calendar Days Since Last File Review: \_\_\_\_\_

**BRIEF DESCRIPTION OF WORK DONE SINCE LAST REVIEW:**•  
•  
•  
•  
•  
•**BRIEF DESCRIPTION OF WORK TO BE DONE DURING NEXT REVIEW PERIOD:**•  
•  
•  
•  
•  
•**ESTIMATED WORKHOURS NECESSARY DURING NEXT REVIEW PERIOD:** \_\_\_\_\_**SAC/RAC/OTHER REVIEWER COMMENTS AND INSTRUCTIONS:**

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**AGENT'S INITIALS:** \_\_\_\_\_**REVIEWER ACTIVITIES:**

- Review Case File [Y] or [N]
- Review Workplan [Y] or [N]
- Review Case Chronology [Y] or [N]
- Review Performance Goals [Y] or [N]
- Review EIGPT Screens: [Assignment] [Executive Brief] [Actions] [Index] [Other]

**(Use Continuation Sheet for Additional Narrative Comments)**

Case No. \_\_\_\_\_

**INVESTIGATIVE CASE REVIEW FORM**

**(Continuation Sheet for Additional Narrative Comments)**

This image shows a single page of white paper with horizontal black ruling lines. The lines are evenly spaced and run across the width of the page, typical of notebook or legal stationery. There are no margins, text, or other markings on the page.



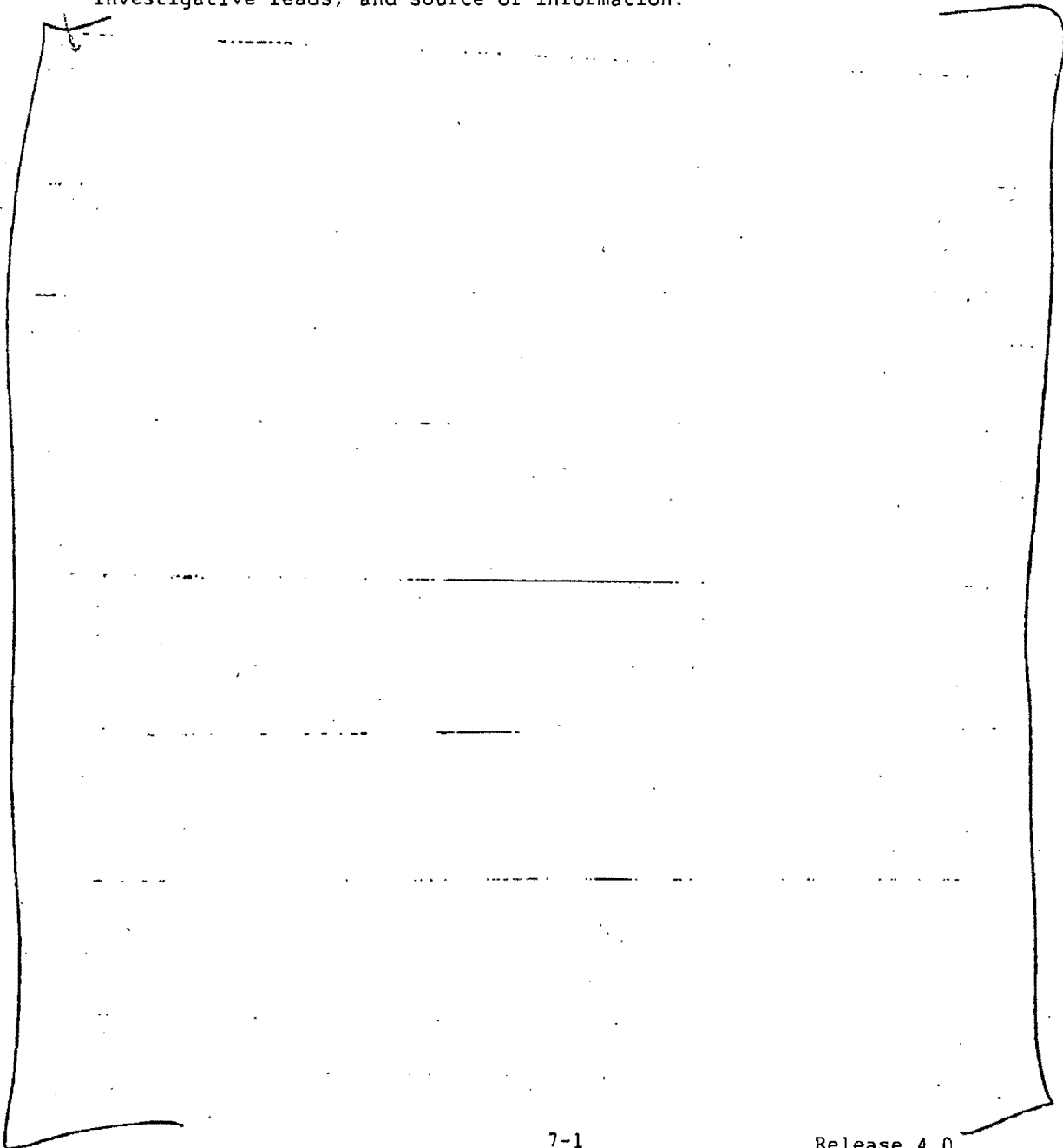


## Document Number 21

b 7(e)

CHAPTER 7GENERAL INVESTIGATIVE PROCEDURESA. SCOPE OF CHAPTER

This chapter provides policy and guidelines regarding the preparation and conduct of interviews; interview notes; recording of interviews; and proper advisements and warnings that may be necessary during interviews. Other topics include affidavits and written statements; confidentiality; rights of representation; collateral investigative leads; and source of information.



7(e)

b. Location of Interview To the extent possible, a Special Agent should conduct an interview in a location that is favorable to both the interviewee and interviewer. If this is not possible, interviews should be conducted at a neutral location.

c. Privacy Special Agents should strive to conduct interviews in private, whenever possible, to avoid embarrassment to the interviewee, to prevent possible compromise of the investigation, and to ensure that interruptions and/or distractions are minimized.

d. Timing of Interview Special Agents conduct most interviews during normal business hours; however, circumstances sometimes dictate that interviews must be conducted during non-business hours. Special Agents should consider all relevant factors in selecting the appropriate time and place to conduct an interview after normal business hours.

e. Interviewing Persons of the Opposite Sex When a Special Agent is to interview a person who is of the opposite sex, during non-business hours or at a location other than the work area, it is advisable to have a witness present--preferably another Special Agent. This is especially important if the interview is to be conducted at a location that is isolated and not easily observed by others. In such situations, in order to avoid allegations of improper conduct, arrange to have another Special Agent present during the interview.

b2  
7(e)

If another Special Agent cannot be present, conduct the interview in a public place--in an area in which the interview will not be overheard, but which is easily observed by others.

7(c)

2e)

re)

7(c)



7(2)

7(2)

7/2/

7(c)

C. DOCUMENTING THE INTERVIEW

The purpose of an interview is to obtain facts. These facts must be preserved in writing. The writing may take one of the following forms:

- Affidavit;
- Question and Answer Statement;
- Memorandum of Investigative Activity; and/or,
- Agent's Notes.

Any recorded interview must be maintained in the official case file pertaining to the investigation.

1. Affidavits An affidavit is a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer an oath or affirmation (e.g., an 1811 Criminal Investigator). The person who makes and subscribes an affidavit is called the affiant. The recommended standard affidavit format is illustrated in Exhibit A (IM07EXA.DOC).

a. Coordination With Prosecutors Special Agents should consult prosecuting attorneys for guidance on obtaining affidavits from witnesses and/or subjects during the conduct of an investigation. If a witness provides information that is exculpatory, as to a subject or defendant, the Special Agent should take notes, prepare a Memorandum of Investigative Activity, and refer the matter to the prosecutor as potential Brady (exculpatory) material.

b. Admissibility in Court Proceedings In criminal proceedings, affidavits by witnesses are generally deemed to be hearsay and are thus inadmissible as evidence. However, under the proper circumstances, they may be used in court as a means to impeach the testimony of a witness or a defendant.

Affidavits of subjects should reference or incorporate appropriate advisement of rights at the beginning, and the declarations of the affiant should follow the portion concerning rights against self-incrimination.

c. Administrative Proceedings In an administrative proceeding--such as an adverse action case on appeal before the Merit Systems Protection Board--an affidavit is generally admissible in spite of hearsay rules. However, affidavits are generally accorded less weight as evidence than the actual testimony of witnesses or depositions given under oath, in which witnesses were subject to cross-examination. Ultimately, admissibility of an affidavit will be determined by the Board.

d. Investigations of Government Employees Affidavits should be obtained from material witnesses during an administrative investigation that has the potential for a major adverse administrative action (e.g., removal from service, suspension, etc.) against an employee. However, in a criminal case being coordinated with a prosecutor, affidavits from key witnesses should not normally be taken unless approved in advance by the prosecutor.

e. Substance of Affidavits Special Agents who plan to obtain an affidavit from a witness should, in order to obtain the most true, complete, accurate, and substantive statement possible, be thoroughly familiar with the investigation and conduct a detailed interview. The Special Agent's notes from the affiant's interview should serve as a foundation for the affidavit. Affidavits should contain an accurate account of the witness' first-hand knowledge of matters that are relevant to the investigation. Affidavits should include specific details that relate to elements of an offense or other matter under investigation.

f. Procedures The affidavit may be typed by the affiant, interviewer, or clerical staff, depending on the preference of the affiant and availability of the support personnel. If the affidavit is handwritten, it is preferable to have it written by the affiant in ink. This procedure is preferred because it ensures that the statements made are in the affiant's own words and it reinforces the appearance that the statement is made freely and voluntarily.

The Special Agent should be aware that affiants often lack an understanding of what information should or should not be included in an affidavit. Therefore, the Special Agent should be prepared to discuss before the affiant begins writing the affidavit the types of information that should be included and that a logical order in a narrative format is best. The Special Agent can write the Affidavit too--with appropriate consent (see j.)

g. General Guidelines for Preparation The following are general guidelines for preparing an affidavit:

- Affidavits are usually prepared after the Special Agent has finished asking questions of an interviewee, and in the presence of the Special Agent.
- Before beginning to prepare an affidavit, the interviewing Special Agent should review with the affiant the information he/she provided in the interview in a chronological order, or according to the actual sequence of events, so that the information will have a logical beginning, middle, and end.

- The Special Agent should be available to answer questions raised by the affiant about what type of information to include in the affidavit.
- All affidavits must be furnished voluntarily. No promises, threats, pressure, or coercion of any kind shall be used to obtain an affidavit, and the absence of such should be reflected in the affidavit. Affidavits from subjects (or potential subjects) must incorporate or reference the appropriate advisement of rights at the beginning of the affidavit.
- Affidavits should not be used to record statements made by confidential sources.
- The affiant should be given the opportunity to make any necessary corrections, deletions, and/or additions to the affidavit.

h. Composition of Affidavits The Special Agent may advise the affiant that the affidavit should:

- Be written in the first person tense;
- Contain short, concise, and grammatically correct sentences;
- Adhere to factual information, and be substantive and devoid of extraneous information;
- Present information in a logical order of development; and,
- Be written in ink or typed.

i. Format of Affidavits Affidavits are prepared in a narrative format. Affidavits, as illustrated in Exhibit A, should contain the following elements:

- Sufficient information to identify the affiant--such as his/her driver's license number or social security number, job title and employer, home address, date of birth, etc.;
- A written advisement of rights, or proper warnings and assurances;
- The affiant's official title or position;
- The affiant's level of expertise or years of experience;
- Text;

- Sworn and affirmed statements;
- Jurat;
- Signature; and,
- Signature of witness, if any. (i.e.: union rep, second Special Agent).

j. Specific Procedures An affidavit must contain only information provided by the affiant. To the extent possible, the text of an affidavit should contain the words and terminology used by the affiant in providing the information. Standard opening and closing paragraphs are outlined in Exhibit A.

An affidavit is to be prepared by the affiant, but in the event he/she requests the Special Agent to assist in the preparation of the affidavit (e.g., the affiant cannot provide a typed or handwritten statement due to an injury), a statement must be included that the affiant has requested the assistance of the Special Agent in the preparation of the statement.

Provide the affiant the opportunity to completely review the affidavit, make any corrections, deletions, and additions. Any change to the original text will be initialed by the affiant. Should the affiant want to make substantial changes to the executed affidavit, another affidavit should be taken, and the previously executed affidavit should be preserved in the official case file as an attachment to a Memorandum of Investigative Activity which explains the circumstances. Any blank unused lines, or blank spaces at the end of lines, should be marked and initialed by the affiant, to indicate that the affiant intended them to be blank and unused. The affiant must sign or initial the top and bottom of each page of the affidavit. At the end of the text section of the affidavit and before the standard closing paragraph, the affiant should write "End of Statement."

The affiant will insert the number, corresponding to the number of pages of the affidavit, in the correct blank on the last page of the affidavit. The last page of the affidavit form is always included in the number of pages of the affidavit, even if there is no text on the last page.

After ensuring that the affiant has completed his/her statement, the Special Agent will ask the affiant to sign agent full name on the "signature of affiant" line on the last page of the affidavit. Once the affiant has signed the affidavit, the text of the affidavit must not be changed.

k. Administration of the Oath An oath may be defined as any form of attestation (certification) by which a person signifies that he/she is bound in conscience to perform an act faithfully and truthfully. Persons who have religious or other reasons for not taking an oath may be willing to make a solemn, formal affirmation that their testimony is true, complete, and accurate. According to Rule 54(c) of the Federal Rules of Criminal Procedure, the term oath includes affirmation. A person who provides false information, under oath, may

be subject to the penalty imposed by the law for perjury (see Title 18, U.S.C., Section 1621).

To be effective, an oath must be administered by an officer authorized to do so by law. The IG Act of 1978, as amended, authorizes the IG to administer oaths in connection with the functions assigned by the Act. The IG has delegated to all OIG Special Agents the authority to administer oaths and affirmations.

(1) Ceremony An oath should be administered with a level of seriousness befitting the occasion. When a witness has made a written statement, the Special Agent will administer the oath or affirmation after the witness has made all necessary corrections, initialed each page of the statement, and signed the statement.

(2) Form of Oath or Affirmation The Special Agent who is to administer the oath and the affiant will stand, and the affiant will raise his/her right hand. The Special Agent then asks:

"Do you solemnly swear or affirm that the information you have furnished is true, complete, and accurate to the best of your knowledge and belief, so help you God?"

If the witness objects to taking an oath, the Special Agent may administer the following affirmation, in accordance with Title 28, U.S.C., Section 1746:

"Do you solemnly certify under penalty of perjury under the laws of the United States of America that the information you have furnished is true and accurate to the best of your knowledge and belief?"

An affirmative response by the witness--such as "Yes, I do"--validates the oath or affirmation.

1. The Jurat The jurat on the last page of an affidavit states, "Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_." This statement, when completed and signed by the officer administering the oath, provides evidence that an oath or affirmation was properly taken before a duly authorized officer. The jurat should be completed by the Special Agent who administered the oath or affirmation.

Although it is desirable to have a witness present throughout an interview potentially involving an affidavit, a third party may be brought in to serve as a witness only to the fact that the affiant signed the affidavit. However, a witness is not absolutely necessary.

Affidavits must be preserved in their original state, and handled as documentary evidence. No alteration, stamping, addition, or mutilation shall be made to a signed affidavit. Additional information or substantive changes should be incorporated into a new affidavit, which contains a reference to the previous affidavit.

If the affiant or his/her attorney requests a copy of the affidavit, a copy should generally be provided only after the affidavit has been signed by the affiant and the oath administered. However, once



a case has been referred to the AUSA, any requests for copies of affidavits should be directed to the AUSA by the Special Agent.

m. Need for Preparation of a Memorandum of Investigative Activity An affidavit stands alone and will be included in the official case file as is. It is not necessary to prepare a Memorandum of Investigative Activity in addition to the affidavit, except when:

- An interviewee refuses to sign a completed affidavit;
- An interviewee signs an affidavit and refuses to have the oath or affirmation administered, but verbally states that the information in the affidavit is true and accurate. The Special Agent should prepare the Memorandum of Investigative Activity containing a statement that the interviewee acknowledged that the information in the affidavit was true and accurate, but he/she refused to sign it, or refused to have the oath administered;
- A record of descriptive information regarding the interviewee or observations made during the preparation of the affidavit that should otherwise be noted (e.g., the interviewee became ill); and/or,
- Information obtained during the interview is relevant to the investigation but not included in the affidavit.

When a Memorandum of Investigative Activity is prepared in conjunction with an affidavit, the Memorandum of Investigative Activity need not restate information already included in the affidavit.

n. Preparation of Separate Affidavits On occasion, an interviewee may furnish information concerning more than one individual, who is, or may likely become a subject of an investigation or be subject to agency administrative action. In these circumstances, unless a conspiracy is suspected or apparent, obtain separate affidavits from an affiant relating to the specific involvement of each actual or potential subject. This will simplify the release of information and preparation of cases for judicial or administrative action. If, however, the interviewee is only willing to provide additional information, but not additional affidavits, the Special Agent will prepare a Memorandum of Investigative Activity.

o. Problems and Special Procedures At times, an interviewee has some infirmity or language barrier that requires the application of special techniques. When it is necessary to obtain an affidavit under such conditions, the following guidelines should be observed and a Memorandum of Investigative Activity will be prepared to reflect the special circumstances:

(1) Affiant is Unable to Read When an affiant is unable to read, have the affidavit read aloud by another person (i.e., someone other than the Special Agent), if available. This other person will sign as a witness with the Special Agent. In addition to a reference

that the affidavit was prepared with the assistance of another person, the last paragraph of the affidavit will be substantially as follows:

"The foregoing statement, consisting of \_\_\_\_\_ pages, has been read to me by (name of the Special Agent or witness). I fully understand this statement and it is true, accurate, and complete to the best of my knowledge and belief. I have made this statement freely and voluntarily, without any threats or rewards, or promises of reward, having been made to me in return for it. I have initialed each page and all corrections."

(2) Affiant Can Neither Read Nor Sign His/Her Name If an affiant can neither read nor sign his/her name, the affiant's signature on the affidavit will be in the form of a mark, such as an "X". In such cases, have the entire affidavit (including the opening paragraph, the text, and the closing paragraph) read aloud by another person who will also sign the affidavit as a witness. The Special Agent will, in the presence of the witness, ask the affiant whether (1) he/she fully understands the information read to him/her; (2) the information read to him/her reflects his/her statement; and (3) the information read to him/her is true, complete and accurate. If the affiant replies to these questions in the affirmative, the Special Agent will ask the affiant to place his/her mark on the line for the affiant's signature, and administer the oath. The closing paragraph in this situation will be similar to the one used for affiants who are unable to read but able to sign their name.

The person who reads the affidavit in this situation will state the following in a separate affidavit:

"On \_\_\_\_\_ (date), I read the affidavit of (name of other affiant), dated on \_\_\_\_\_ and consisting of \_\_\_\_\_ pages, to (name of other affiant), who stated that he/she understood it, that it was his/her statement, and that it was true, complete, and accurate to the best of his/her knowledge and belief. His/her affidavit was prepared at the request of Special Agent \_\_\_\_\_, Office of IG, U.S. Department of Energy."

(3) Affiant Does Not Understand English When an affiant does not understand English, the interview will be conducted through an interpreter. The interpreter can prepare an affidavit in the affiant's foreign language. After the affiant reads the affidavit, or after the interpreter reads the affidavit to the affiant, the affiant will sign the affidavit, and the oath will be administered through the interpreter. In such cases, the Special Agent will obtain a separate affidavit from the interpreter which details the procedure used in obtaining the affidavit from the affiant. The interpreter will also be asked to furnish an English translation of the affiant's affidavit.

As an alternative, the Special Agent may prepare an affidavit in English, and have the translator read and explain the affidavit to the affiant in the affiant's language. In this event, the interpreter will execute an affidavit that states substantially as follows:

"On \_\_\_\_\_ (date), I read the English language affidavit of (name of other affiant), dated \_\_\_\_\_ and consisting of \_\_\_\_\_ pages, to (name of other affiant) in (name of foreign language)."

He/she stated to me that he/she understood it, that it was his/her statement, and that it was true, complete, and accurate to the best of his/her knowledge and belief."

(4) Witnessing Affidavit of Affiant Unable to Write

Name When an affiant signs an affidavit by mark other than a signature, the signature should be witnessed by two persons, in addition to the Special Agent. The other persons will sign the affidavit as witnesses in the presence of each other.

2. Question and Answer Statements The Question and Answer Statement is a complete transcript of the questions, answers, and statements made by each participant at an interview. It may be prepared from the recorder's notes or from a mechanical or electronic recording device when no stenographer is available and when the express advance consent of all parties to the conversation has been obtained. Question and answer statements may be used when the information to be obtained during an interview is relatively technical, refers to a large number of documents or exhibits, and/or can be better understood in the form of specific questions and answers. Exhibit B (IM07EXB.DOC) is an example that sets forth the general requirements of a question and answer statement.

a. Preservation of Recording The source materials or recordings used to prepare the transcript should be preserved in the official case file, or referenced in the file as a bulky exhibit, for possible future use in court to establish what was said.

b. Format of Transcript The transcript should be prepared on standard size (8 1/2" x 11") bond paper with each question consecutively numbered and the transcript containing the following:

- Time and place where the testimony was given;
- Name and address of the person giving the testimony;
- The matter the testimony relates to;
- Name and title of the person(s) asking questions and giving answers;
- Names and titles of all persons present;
- Advisement of rights given to the witness or subject;
- Administration of the oath or affirmation;
- Questions and answers establishing that the statement was made freely and voluntarily, without duress, and that no promises were made by the Special Agent in return for the statement;
- Jurat completed by the officer administering the oath or affirmation; and,

- The signature and certificate of the person preparing the transcript.

Off the record discussions should be avoided, if possible, particularly during a question and answer interview of the subject of the investigation. The fact that an off the record discussion occurred during the interview should be noted in the transcript (although the details of such discussions should not be reflected).

Upon request, a copy of the transcript will be provided to the witness (interviewee) within a reasonable time, unless the prosecutor deems circumstances require the temporary withholding of the statement.

3. Memorandum of Investigative Activity The Memorandum of Investigative Activity is an instrument that records the Special Agent's activity pertaining to a specific investigation. It is informal document recording information that the person preparing it desires to fix in memory by the aid of a written record. Preparation of a Memorandum of Investigative Activity generally follows:

- An interview;
- Receipt and/or review of pertinent records and documents such as contract files, Department regulations, personnel folders, and other materials;
- Use of specialized investigative techniques such as surveillances, consensual monitoring, etc.; and/or,
- Contact with prosecuting attorneys and others that should be duly noted.

a. Format of the Memorandum of Investigative Activity A Memorandum of Investigative Activity should be prepared in the format set forth in Exhibit C (IM07EXC.DOC), which contains sample language.

b. Content of the Memorandum of Investigative Activity The Memorandum of Investigative Activity should be confined to the facts developed during an interview or review of records and should avoid opinions, conclusions, and other extraneous matters. They should not be used to record discussions between the Special Agent and supervisors, OIG auditors, or inspectors.

It is important that a Memorandum of Investigative Activity accurately reflect the information and testimony provided during an interview since the Memorandum of Investigative Activity may be used later in court or an administrative proceeding to support the Special Agent's testimony or to impeach the testimony of a witness. In addition, since a person being interviewed may be a Government witness in a criminal trial, the Special Agent should bear in mind that Title 18, U.S.C., Section 3500 (the Jencks Act), provides for defense inspection of any pretrial statements about the subject matter in which the witness has testified to on direct examination.

The body of the Memorandum of Investigative Activity should contain the following information:

- The date of the investigative activity;
- The identity of the participants, including the Special Agent, the interviewee, the person contacted, etc.;
- Where appropriate, background information on the interviewee, witness, person contacted, etc.;
- Notation of the Special Agents' identification of selves as Special Agents through the display of credentials (see sample Memorandum of Investigative Activity);
- The nature of the activity--whether it was an interview, receipt of records, review of records, surveillance log, contact with an AUSA, etc.;
- The purpose of the activity--such as "The interview was conducted in furtherance of an official OIG investigation into alleged false claims";
- Notation of OIG procedural compliance (e.g., advisement of warnings and assurances);
- Notation concerning pledges of confidence;
- The text of the interview or results of the investigative activity; and,
- Other information deemed relevant to the investigative activity.

The closing footer, as depicted in Exhibit C, should contain the following information:

- Activity Line: the nature of the investigative activity;
- Date Prepared line: the date the Special Agent completed the first draft for supervisory review;
- Location line: location of the investigative activity;
- By line: printed name and signature of the Special Agent conducting the investigative activity and preparing the Memorandum of Investigative Activity;
- Case Number line: the case file number under which the activity was performed; and,
- The statement "This document contains neither recommendations nor conclusions of the Department of Energy, Office of IG. It is the property of the IG and neither the document nor its contents should be disseminated without prior IG authorization."

c. Receipt of Documents In the event a witness provides documents to an interviewing Special Agent and a review and analysis of these documents in the near future is not feasible, the Special Agent should prepare a Memorandum of Investigative Activity to record the receipt of the documents. The Memorandum of Investigative Activity should contain a notation that a review and analysis will occur, if necessary, at a later time and that an appropriate Memorandum of Investigative Activity will be completed to record the review and enter the documents into the official case file.

d. Management Review of the Memorandum of Investigative Activity After preparing a Memorandum of Investigative Activity, the Special Agent should carefully review it for accuracy of content and typographical errors. Special Agents have 5 workdays from the date of the activity to draft a Memorandum of Investigative Activity. The Memorandum of Investigative Activity should be finalized in a timely manner. All Special Agents who participated in the activity outlined in the Memorandum of Investigative Activity will initial the Memorandum of Investigative Activity. The original Memorandum of Investigative Activity should be placed in the official case file.

In the event the interviewee requests to review the Memorandum of Investigative Activity, the Special Agent should confer with the Special Agent-in-Charge (SAC). If it is determined that a review by the interviewee is appropriate, the interviewee will be given a copy and an opportunity to review the Memorandum of Investigative Activity in the presence of the Special Agent. The interviewee may be permitted to correct typographical errors; however, he/she may never be permitted to alter the record or to delete any of his/her testimony. At the conclusion of the interviewee's review, the Memorandum of Investigative Activity will be returned to the Special Agent. The interviewee will not be permitted to retain a copy. The witness may provide a separate statement or give further testimony modifying the original information in the original Memorandum of Investigative Activity. This testimony should be written up in a separate Memorandum of Investigative Activity.

**Note:** No files or related documents, including Memorandums of Investigative Activity, may be discarded on cases with an open Freedom of Information Act (FOIA) request.

e. Joint Agency Interviews When an interview is conducted jointly with a Special Agent from another law enforcement agency, only one Memorandum of Investigative Activity will be prepared. The decision as to which Special Agent will prepare the Memorandum of Investigative Activity will be made by the respective Special Agents or by the interested prosecutor. If the Memorandum of Investigative Activity is prepared by a Special Agent outside of the OIG, the Memorandum of Investigative Activity will be handled as though it had been prepared internally.

f. Notation of Grand Jury Information Any material, documentation, or information obtained through the Grand Jury must be protected in accordance to the provisions of Rule 6(e) of the Federal Rules of Criminal Procedure. See Section H, Chapter 8, for further Federal Grand Jury guidelines.

Any use of Rule 6(e) information recorded in the Memorandum of Investigative Activity should be protected as Grand Jury information especially if the Memorandum of Investigative Activity will be included in a Report of Investigation and provided to the U.S. Attorney's Office.

The Special Agent will prepare the Memorandum of Investigative Activity and then stamp or write the warning "GRAND JURY MATERIAL - DISSEMINATE ONLY PURSUANT TO RULE 6(e)(A), FEDERAL RULES OF CRIMINAL PROCEDURE" on the first and last page of the document. The Memorandum of Investigative Activity will then be placed in an envelope that will be stamped with the same warning as above. The envelope containing the Memorandum of Investigative Activity will be maintained with the Rule 6(e) evidence pertaining to the case. (see Chapter 8, Section H.)

4. Interview Notes The handwritten notes made by a Special Agent during an interview are used as the basis for a more detailed Memorandum or report. Interview notes need not be verbatim, but they should be comprehensive, accurate, and legible. They should contain all relevant information provided by the interviewee, and observations made during the interview. Agents should be aware that notes may be subject to discovery by the defense.

a. Method of Taking Notes The methods employed in taking notes vary from Special Agent to Special Agent. Regardless of which method is used, however, certain basic principles apply. For example, notes should be recorded on paper, but the writing of the notes should be done in a manner that does not interfere with the dialogue between the Special Agent and the interviewee. A good procedure is to (1) ask a question, (2) listen to the answer, while observing the interviewee's reactions and body language, (3) state the answer back to the witness for confirmation, and (4) record the answer on paper. The Special Agent should also record any relevant observations about the interviewee's reactions and/or body language in response to a question or while giving an answer.

b. Retention of Notes The Circuit Courts are divided on the issue of requiring the preservation of notes. As a result, it is OIG policy that all notes will be retained during the course of a criminal, civil, or administrative investigation. The notes will be kept in an envelope or folder as discussed in Chapter 6. However, at the closing of a case, only notes that may be subject to inspection by a court should be preserved and retained in the official case file. They will be retained until the likelihood of criminal prosecution/civil action, or time for appeal of any judicial action, has expired. Notes utilized in the preparation of a Memorandum of Investigative Activity in a non-criminal administrative matter need not be retained, or forwarded to Headquarters, at case closing.

**Note:** No files or related documents, including notes, may be discarded on cases with an open FOIA request.

See section D of chapter 6 for further guidance on notes.

5. Use of Mechanical Recording Devices OIG policy generally limits the use of tape recorders to record interviews. However, interviews may be recorded with prior ASAC approval in the normal interview process or through the question and answer format discussed

earlier. Interviews may also be recorded when taking depositions or when an AUSA is conducting the interview and/or has approved use of the recording device.

In addition, in rare instances, the interviewee may insist that an interview be recorded. The Special Agent needs to decide whether (1) the information from the interviewee is critical to the investigation, (2) the lack of the information would hinder continued investigative activity, and (3) the Special Agent is sufficiently prepared for the interview so that specific questions can be asked to elicit information that will not jeopardize the investigation.

If an interview is recorded, the Special Agent will maintain custody and control of the original tape. The original tape and a transcript will be placed in the official case file. Generally, a copy of the tape or transcript will be provided to the interviewee. However, if a case has been referred to an AUSA, any requests for a copy of the tape or transcript should be referred to the AUSA for approval.

#### D. CONFIDENTIALITY

Departmental regulations promulgated pursuant to subsection (j)(2) of the Privacy Act prohibit a person from gaining access to information about him/her which is in the possession of the Department, if the information pertains to the enforcement of criminal law, as defined in subsection (j)(2) of the Privacy Act.

Departmental regulations promulgated pursuant to subsection (k)(2) of the Privacy Act also prevent a person from gaining access to information about him/her which is in the possession of the Department, if the material is investigatory material compiled for law enforcement purposes other than the enforcement of criminal law, "...Provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence..." (quotation from subsection (k)(2) of the Privacy Act, emphasis added). Chapter 4 contains further discussion of Privacy Act requirements.

1. Pledges of Confidentiality DOE employees who come forward with information to the OIG do not require special pledges of confidentiality. Confidentiality is established by Section 7(b) of the IG Act, which prevents the IG from disclosing the identity of a DOE employee who reports an allegation or provides information, without the employee's consent, unless the IG determines that disclosure is unavoidable during the course of the investigation. In practice, the OIG applies this provision to DOE employees and DOE contractor employees. OIG Directive IG-920A - Identity Protection, also provides policy and procedural guidelines to protect DOE employees and others who bring the OIG information.

If the interviewee is an employee contacted by the OIG for information as a result of, or about, his official capacity or duties,



the information he/she provides, including his/her identity, will not be protected.

Subjects of criminal investigations may never be given pledges of confidentiality.

Special Agents should make every effort to obtain information regarding potential criminal and administrative violations without giving pledges of confidentiality to interviewees. In doing so, Special Agents may discuss with interviewees the need to maintain public confidence in Government operations and programs, the need to obtain all facts, the desirability of open testimony, etc.

If the Special Agent believes that a pledge of confidentiality is necessary to obtain important information, the Special Agent may, when appropriate, tell an interviewee that his/her identity may be protected. The Special Agent will not, however, ask the interviewee to request a pledge of confidentiality. If necessary, interviewees to whom pledges of confidentiality have been given may be contacted at a later date, to determine whether they will waive the pledge and allow their identity to be disclosed. See section E, chapter 8, for a further discussion of confidential sources and identity protection.

a. Pledge of Confidentiality in a Criminal/Civil Investigation If, during an investigation of potential criminal violations, the interviewee (DOE or non-DOE) specifically requests that his/her identity not be disclosed, the Special Agent may tell the interviewee that, to the maximum extent possible, the interviewee's identity will be protected. The Special Agent will, in all cases, tell the witness:

- A pledge of confidence applies only to the interviewee's identity, not to the information furnished;
- The person may later consent to the release of his/her identity;
- The person's identity may be disclosed by the OIG if the IG determines that such disclosure is unavoidable during the course of an investigation (i.e., confidentiality is not absolute, the interviewee may be required to testify in some legal proceeding which would require their identity to be known, their identity may be disclosed to prosecutors and other law enforcement officials, etc.);
- His/her identity will be included in OIG files, memoranda, records, etc. (i.e., pledges of confidence apply to the protection of his/her identity from outside the OIG);
- The Special Agent should further advise the interviewee that the OIG cannot control the extent to which other persons to whom he/she reports his/her allegations or information (e.g., friends, family members, etc.) protect his/her identity; and,

- Given the nature of the information provided by the interviewee, others (e.g., coworkers, supervisor, etc.) may deduce or infer the source of the information.

The Special Agent will then highlight in his/her notes that the interviewee requested their identity be protected and the reasons why, if provided by the interviewee. The Special Agent should determine from the interviewee whether the information is available from alternative means or sources before pledging confidentiality. The Memorandum of Investigative Activity should clearly reflect that confidentiality was requested by the interviewee. In addition, the Memorandum of Investigative Activity will have a statement immediately after the interviewee's name that states (PROTECT IDENTITY BY REQUEST). The same notation should be included in the Executive Brief and Indices in Energy IG Project Tracking (EIGPT).

b. Pledge of Confidentiality in an Administrative Investigation Generally, the results of an administrative investigation are reported to Department officials or third party interests. The use of the information developed during the OIG administrative investigation is necessary to:

- Determine whether there have been any violations of Federal law, rules, or regulations in the programs and operations administered or financed by the Department;
- Prevent and detect fraud, waste, and abuse in such programs and operations; and/or,
- Fulfill official responsibilities by providing to third parties, as necessary, and to other agencies in accordance with the routine uses published in the Federal Register.

If, during an employee misconduct or administrative investigation, the interviewee requests that his/her identity not be disclosed, the Special Agent may tell the interviewee that, to the maximum extent possible, the interviewee's identity will be protected. However, he/she should be further informed that the IG has the authority to release the interviewee's name, without the interviewee's prior consent, in order to fulfill official responsibilities. The interviewee will be further advised as follows:

- A pledge of confidence applies only to the interviewee's identity, not to the information furnished;
- The person may later consent to the release of his/her identity;
- The person's identity may be disclosed by the OIG if the IG determines that such disclosure is unavoidable during the course of an investigation (i.e., confidentiality is not absolute, the interviewee may be required to testify in some legal proceeding which would require their identity to be known, their identity may be disclosed to prosecutors and other law enforcement officials, etc.);

- His/her identity will be included in OIG files, memoranda, records, etc. (i.e., pledges of confidence apply to the protection of his/her identity from outside the OIG);
- The Special Agent should further advise the interviewee that the OIG cannot control the extent to which other persons to whom he reports his/her allegations or information (e.g., friends, family members, etc.) protect his/her identity; and,
- Given the nature of the information provided by the interviewee, others (e.g., coworkers, supervisor, etc.) may deduce or infer the source of the information.

The Special Agent will then highlight in his/her notes that the interviewee requested their identity be protected and the reasons why, if provided by the Interviewee. The Special Agent should determine from the interviewee whether the information is available from alternative means or sources before pledging confidentiality. The Memorandum of Investigative Activity should clearly reflect that confidentiality was requested by the interviewee. In addition, the Memorandum of Investigative Activity will have a statement immediately after the interviewee's name that states (PROTECT IDENTITY BY REQUEST). The same notation should be included in the Executive Brief and Indices in EIGPT.

2. Confidential Source A confidential source is a person who provides information to the OIG and is given a unique numerical identifier to protect his/her identity. The identity of a confidential source is known to the IG, thus he/she will not be referred to as "anonymous." When a person is granted confidential source status, the Memorandum of Investigative Activity entered into the official case file will reflect the confidential source number, not the interviewee's identity.

If the Special Agent believes that a pledge of confidential source status is necessary to obtain important information from the source of an allegation, the Special Agent may, when appropriate, tell an interviewee that his/her identity may be protected in the manner described above. The Special Agent will not, however, ask the interviewee to request confidential source status. In addition, Special Agents should make every effort to obtain information regarding potential violations without offering confidential source status. In doing so, Special Agents may discuss with interviewees the need to maintain public confidence in Government operations and programs, the need to obtain all facts, the desirability of open testimony, etc.

If, during an investigation, an interviewee requests confidential source status, the Special Agent may tell the interviewee that, to the maximum extent possible, the interviewee's identity will be protected. The Special Agent will also inform the interviewee of the advisements above under Pledge of Confidentiality in a Criminal/Civil Investigation (Section D.1.a) and Pledge of Confidentiality in an Administrative Investigation (Section D.1.b), except for the information concerning the recording of his/her identity. The Special Agent will inform the

interviewee that a confidential source number will be assigned and his/her identity will be sealed in an envelope maintained in the official case file by OIG management and that OIG officials may be given access to the person's identity on a need-to-know basis.

Special care must be exercised when dealing with confidential sources that have provided misleading or inaccurate information in the past.

a. Documenting the Interview The Memorandum of Investigative Activity for a confidential source will be prepared as follows:

- The interviewing Special Agent will prepare a Memorandum of Investigative Activity reflecting all pertinent information provided by the source, including details of the allegation(s) and full identifying information (it is important that the Special Agent obtain sufficient identifying information--such as full name, home and work addresses, home and work telephone numbers, date of birth, social security number, etc.);
- This Memorandum of Investigative Activity will contain a reference to the confidential source number to be assigned to the source. Each confidential source in a case will be given a number specific to that case. For instance, the first confidential source will be numbered confidential source-1 (CS-1), the second confidential source will be numbered confidential source-2 (CS-2), and so forth;
- After the Memorandum of Investigative Activity has been processed, as described in section C of this chapter, it will be placed in an envelope. Notes and other identifying documents will also be stored in this envelope. The outside of the envelope will be labeled/stamped "U.S. Department of Energy, Office of IG, and Office of Investigations." In addition, the case file number and case title will appear on the front and back of the envelope, with the notation: "This envelope contains identifying information regarding confidential source, confidential source-1 (CS-1)" (or 2, 3, etc.);
- The envelope containing the original Memorandum of Investigative Activity and related documents will be sealed and the agent will initial over the seal. In addition, the agent will indicate, near the seal, the date the envelope was sealed. Any future openings of the envelope will be indicated with the person's signature, date opened and date resealed. This envelope will be maintained in the official case file under TAB F. Access to the contents of the envelope will be on a need-to-know basis; and,
- A "sanitized" Memorandum of Investigative Activity will then be prepared by the agent. The agent will remove all identifying information, and all other information that

may tend to identify the interviewee, from the original Memorandum of Investigative Activity. After this second Memorandum of Investigative Activity has been processed, as described in section C of this chapter, it will be placed in the official case file under TAB F (not sealed).

b. Supervisor Notification Upon the assignment of a confidential source number to a source, the Special Agent will forward a copy of the original Memorandum of Investigative Activity to his/her immediate supervisor. The copy forwarded to the supervisor will be sealed in an envelope, which will contain the same information as outlined in the paragraph (D2a) above. The envelope will then be sealed in a second envelope addressed to the Special Agent's supervisor. This envelope will not contain any reference to its contents, particularly if it will not be hand-delivered (e.g., sent via U.S. Mail or Federal Express).

Upon receipt, the supervisor will open both envelopes and review the contents. He/she will reseal the envelopes, initial the seal, and store them in a locked file cabinet or other secure container. The supervisor will dispose of the envelopes at case closing.

**Note:** No files or related documents, including source files, may be discarded on cases with an open FOIA request.

E. WARNINGS AND ASSURANCES-INTERVIEWS OF THE SUBJECT(S) OF A CRIMINAL INVESTIGATION

The subject(s) of a criminal investigation may be entitled to receive certain warnings prior to being questioned. Any such warnings must be given, where appropriate, in order to protect the admissibility of any evidence provided by the subject.

1. Custodial Interviews According to the 5th Amendment to the U.S. Constitution, no person shall be compelled to answer questions, make statements, or provide documents and/or information that could be used against them in a criminal proceeding. Any statements or other information, deemed by the trial court to have been obtained by means of coercion, would be inadmissible in a criminal prosecution.

a. Specific Warnings and Assurances To Subject(s) of a Criminal Investigation - Custodial Interviews The U.S. Supreme Court held in Miranda v. Arizona that the prosecution may not use statements stemming from "custodial interrogation" of a subject unless, prior to questioning, the subject was informed:

- Of his/her right to remain silent;
- Of his/her right to have an attorney present during questioning;
- Of his/her right to have an attorney appointed, before being questioned, if he/she could not afford an attorney; and,

- That any statement made could be used as evidence against him/her.

Failure to so inform the subject (give the so-called "Miranda warning"), when legally required to do so, could result in the exclusion of the evidence provided by the subject, and any additional evidence obtained as a result of the information furnished by the subject.

Special Agents generally do not conduct "custodial interrogations" and, therefore, are generally not required to give Miranda warnings. However, Special Agents must give such warnings if certain conditions exist. Advisement of rights will be given when the subject/interviewee:

- Has been arrested and/or is in custody;
- Is not under arrest, but an arrest is clearly intended, either during or at the conclusion of the interview;
- Is significantly restricted in his/her freedom of action;
- Whether in custody or not, has been previously arrested, or otherwise formally charged, and prosecution is pending, when the subject matter of the interview concerns the pending Federal charge or related Federal offense;
- Is under court order or subpoena requiring his/her appearance for the interview; and/or,
- Is the "target" of a criminal investigation, and the prosecutor has advised the Special Agent(s) to give the full Miranda warnings.

In determining whether an individual is "in custody" for purposes of Miranda, the courts do not consider the intent of the law enforcement officer. They apply, instead, a "reasonable person" test (i.e., whether a person in the subject's position would have had a reasonable basis to believe that he/she was in custody).

Factors to be considered in determinations of custody include:

- The language used by the Special Agent to summon the person;
- The physical surroundings of the interview/interrogation; and,
- The pressure exerted to detain the interviewee.

The courts have stated that if a person believes that he/she is not free to leave there is "custody" and Miranda warnings are required. Special Agents must be familiar with, and sensitive to, the factors that are indicative of custody. When Special Agents conduct non-custodial interviews of subjects, they must be cognizant of the items above and make it clear to the interviewee and in the Memorandum of Investigative Activity that the interview is non-custodial.

b. Procedures for Formal Advisement in a Custodial Situation Once the decision has been made to provide the individual a Miranda warning, the Special Agent will, at the outset of the interview, prior to any questioning:

- Identify himself/herself as a Special Agent with the U.S. Department of Energy, Office of IG, Office of Investigations;
- Display his/her credentials to the subject and give the subject the opportunity to examine them;
- State to the subject: "My function as a Special Agent is to investigate possible criminal violations of Federal law;" and,
- Advise the subject of his/her rights in accordance with the applicable situation listed below:

(1) If the Subject is Not a Federal Employee The Special Agent will give the subject a copy of Advice and Waiver of Rights, Exhibit D (IM07EXD.DOC). The Special Agent will read the warnings to the subject and will ask the subject if he/she understands his/her rights. The Special Agent will ask the subject to read and sign the form.

(2) If the Subject Is a Federal Employee The Special Agent will give the subject a copy of Custodial Warnings and Assurances for Federal Employees, Exhibit E (IM07EXE.DOC). The Special Agent will read the warning to the subject and will ask the subject if he/she understands his/her rights. The Special Agent will ask the subject to read and sign the form. A Federal employee must be advised that exercising his/her right to remain silent will not, by itself, be a basis for discharging the employee.

c. Special Situations The following procedures are applicable to unique situations that arise in either of the above situations.

- Although the Special Agent is not required to explain the rules of evidence or criminal laws and procedures to the subject, if the interviewee expresses confusion about his/her rights, or has a hearing problem, the Special Agent may repeat all or part(s) of the advisement.
- If the subject reads the waiver form, refuses to sign it, but says that he/she will answer questions, the interview may continue. The Special Agent will place a statement in the interview notes that the person read the form, refused to sign it, but said that he/she would answer questions. Include this information, in detail, in the Memorandum of Investigative Activity. Also, the Special Agent may date and sign the waiver form and make a notation on the form that the subject read but refused to

sign the form; however, he/she agreed to answer questions.

- If, after receiving the warning, the subject indicates that he/she is unwilling to answer questions, or that he/she wishes to talk to an attorney, the interview will be terminated.
- If, after receiving the warning and signing the waiver, the subject indicates a willingness to answer questions, the Special Agent may proceed with the interview.

d. Readvisement of Formal Rights Before each interview, the formal advisement of rights will be conducted, regardless of any previous explanation given the subject, or their declaration of understanding of their rights. No advisement is required following a short break or temporary recess during an interview. However, if an interview is to be continued the next day, the Special Agent should refresh the advisements and so note in the Memorandum of Investigative Activity.

2. Non-Custodial Interviews Warnings are not required to be given to subjects in non-custodial criminal investigation interviews unless:

- The subject is a Federal Government employee (this does not include contractors); and/or
- The prosecutor to whom the matter has been referred directs that a warning be given.

a. Procedures for Advisement in a Non-Custodial Situation In non-custodial interviews a subject, or his/her attorney, may ask whether the subject is required to answer questions. For Federal and non-Federal employees, the Special Agent will verbally tell the subject that his/her answering of questions is strictly on a voluntary basis and that he/she may terminate the interview at any time. For Federal employee subjects (or Federal employees who the Special Agent has reason to believe may become subjects), the Special Agent will provide the interviewee a copy of Federal Employee Warnings and Assurances - Voluntary Disclosure, Exhibit F (IM07EXF.DOC). [Note: It should be noted that the form need not be given to non-subjects or routine fact witnesses]. The Special Agent will read the warning to the subject and will ask the subject to read and sign the form.

If the subject reads the waiver form, refuses to sign it, but says that he/she will answer questions, the interview may continue. The Special Agent will place a statement in the interview notes that the person read the form, refused to sign it, but said that he/she would answer questions. Include this information, in detail, in the Memorandum of Investigative Activity. The Special Agent may also sign and date the form and make a notation that the subject read but refused to sign the form; however, he/she agreed to answer questions.



If, after receiving the warning, the subject indicates that he/she is unwilling to answer questions, or that he/she wishes to talk to a lawyer, the interview will be terminated.

If, after receiving the warning and signing the waiver, the subject indicates a willingness to answer questions, the Special Agent may proceed with the interview.

b. Warning Given at Direction of Prosecutor Warnings given by Special Agents assisting prosecutors, either during Grand Jury investigations or after a case has been accepted for prosecution, must conform to directions given by the prosecutor, even if the directions are not in accordance with the guidelines in this chapter. In these situations, Special Agents must obtain clarification from the prosecutor regarding the warning(s), if any, appropriate to a particular interview.

F. WARNINGS AND ASSURANCES - INTERVIEWS OF THE SUBJECT(S) OF ADMINISTRATIVE/MISCONDUCT INVESTIGATIONS

A Federal Government employee, who is the subject of a criminal investigation, may also be the subject of an administrative misconduct investigation. In situations of this type, the Special Agents who interview the employee will give the employee the proper warning, to ensure that any evidence provided by the employee is admissible in any subsequent criminal prosecution. Any such evidence also becomes a part of the parallel misconduct investigation.

1. Absence of a Foreseeable Criminal Prosecution Situations may arise in which an administrative or other misconduct investigation is conducted without a current parallel criminal investigation. In these situations (when the administrative case has not been declined for criminal prosecution) a Federal Government employee interviewed as the subject must be given the same warnings as in a criminal investigation. This action must be taken to ensure that any evidence obtained from the employee/subject, in connection with the misconduct investigation, is also admissible in any subsequent criminal prosecution that might be undertaken.

In a situation involving an administrative investigation, information provided by the employee/subject concerning job-related misconduct would be considered "compelled" for Fifth Amendment purposes, although the information emanated from a non-custodial interview. As a result, the information and its evidentiary leads would not be admissible as evidence in a subsequent criminal prosecution of the employee [Garritty v. New Jersey, 385 U.S. 493 (1967)].

The Supreme Court has held that a termination may not be predicated solely upon a refusal to answer questions through an assertion of the Fifth Amendment privilege [Gardner v. Broderick, 392 U.S. 273 (1968)]. However, an employee may be dismissed for refusing to answer specific, direct, and narrow questions relating to the performance of official duties, if doing so will not deprive him/her of his/her Fifth Amendment rights.

The Special Agent must administer a warning prior to questioning or taking a statement from the employee/subject. The Special Agent will give the employee/subject a copy of the Federal Employee Warnings and

Assurances - Voluntary Disclosure (Exhibit F), read the warning to him/her, and ask him/her to read and sign the waiver. If, after receiving the warning, the employee/subject indicates that he/she is unwilling to answer questions, the interview will be terminated.

If, after receiving the warning, the employee/subject indicates that he/she wishes to talk to an attorney before responding to questions, the interview will be terminated. The warning contains no reference to the employee/subject's right to consult an attorney. However, if the evidence provided by the employee/subject may be needed for a criminal proceeding, it must be provided voluntarily. If the Special Agent conducting the interview refuses to allow the employee/subject to consult an attorney, the evidence subsequently provided by the employee/subject could be deemed to have been coerced and therefore subject to suppression at a criminal trial.

If, after receiving the warning and executing the waiver, the subject indicates a willingness to answer questions, the Special Agent may proceed with the interview.

2. Federal Employee/Subject Compelled to Answer Questions On occasion, information to be obtained from a Federal Government employee is deemed to be sufficiently essential that the employee should be required to answer questions concerning his/her job-related misconduct, or face dismissal for not cooperating.

By means of the Kalkines warning, as depicted in Exhibit G (IM07EXG.DOC), Warnings and Assurances to Employees Required to Provide Information, an employee is advised that, among other things, his/her answers to questions may not be used in any subsequent criminal proceeding. This eliminates any Fifth Amendment privilege on the part of the employee, as it pertains to answering questions during the interview. The Kalkines warning will be given to an employee only when:

- The appropriate AUSA has declined criminal prosecution of the specific matters about which the employee is to be questioned; and,
- The interview is solely for the purpose of obtaining information for administrative use by management.

a. U.S. Attorney Concurrence Regarding Use of Kalkines If a Special Agent is considering the use of the Kalkines warning, he/she will consult with his/her SAC before proceeding. The Special Agent will advise the appropriate AUSA that he/she is considering the use of the Kalkines warning in connection with an interview of a subject of an administrative investigation. The Special Agent will also discuss with the AUSA, if he/she has not done so already, the evidence pertaining to the subject/employee's alleged wrongdoing and the AUSA's interest in criminal prosecution. If the case is declined for criminal prosecution, the Special Agent will ask the AUSA to concur with the use of Kalkines. Whenever possible, the Special Agent should attempt to obtain the AUSA's opinion in writing. However, AUSA policy and time constraints may dictate that the Special Agent send a confirmation letter to the AUSA outlining the declination and the oral concurrence regarding the use of Kalkines. (Prior to the employee/subject interview, the Special Agent

should have a reasonable assurance that the AUSA has received the letter and has no objection to the advisement (Email or documented telephone call).

If the Special Agent has obtained additional evidence concerning a subject after an original declination was made, he/she will present the entire matter to the AUSA again before proceeding with an interview of the subject. If the matter is still declined, the procedures outlined in the preceding paragraph should be followed.

b. Procedures When Interviewing Compelled Federal Employee

The matters about which the employee/subject is to be questioned must be specific and consistent with the issues that resulted in the declination by the AUSA. The Special Agent must ensure that the questions posed to the employee/subject do not go beyond the scope of the matters encompassed by the AUSA's declination.

When the Federal employee/subject is interviewed, prior to any questioning, the Special Agent will provide the employee a copy of Warnings and Assurances to Employees Required to Provide Information (Exhibit G). The Special Agent will read the warning to the employee and ask the employee to read and sign the form. If, either before or after reading and signing the acknowledgment form, the employee refuses to answer questions, the Special Agent will remind the employee that he/she has a duty to answer questions, and failure to do so may subject him/her to dismissal. If the employee continues to refuse to answer questions the interview will be terminated. The Special Agent will then talk to his/her supervisor about the pursuit of administrative remedies for compelling cooperation (e.g. contacting employee's supervisor).

If, during the interview, the employee volunteers information pertaining to his/her involvement in possible criminal offenses, other than those declined by the AUSA, the Special Agent will make specific note of such information. The Special Agent is under no obligation to stop the employee from volunteering information, but the Special Agent will not ask any follow-up questions about the "volunteered information." When finished asking questions pertaining to the original issues and objectives of the interview the Special Agent will administer the appropriate warnings regarding subjects of criminal investigations, ask the employee to execute the appropriate waiver, and, if the employee agrees to answer questions, interview the employee about the information previously volunteered.

G. RIGHTS OF REPRESENTATION

Subjects and witnesses being interviewed by OIG Special Agents have certain constitutional and statutory rights that must be considered during the course of any investigation.

1. Right to Counsel If any interviewee indicates, either before or during the interview, that he/she wishes to consult an attorney, the Special Agent will terminate the interview until the interviewee has consulted an attorney. Extreme care must be taken, after the interviewee invokes his/her right to counsel, to avoid discussions of any matters other than arrangements for the interviewee to consult with counsel.

a. Subjects of an Investigation A subject's right to the presence and/or advice of counsel during an interview will be respected in every instance. If the subject says that he/she wants to consult an attorney, or have an attorney present during the interview, the interview must cease immediately. The interview must not be continued until the interviewee has consulted with and/or made arrangements for the presence of his/her attorney.

If the subject's attorney is present during the interview, the Special Agent will direct his/her questions to the subject. The attorney may advise the subject whether or not to answer a question, but the attorney will not be permitted to answer questions for the subject.

If, after being instructed not to do so, an attorney persists in answering questions for the subject, the Special Agent should ask the attorney (1) if he/she desires that the interview be terminated, or (2) if he/she wishes to furnish an affidavit containing his/her answers to the questions asked of the subject. A Special Agent should terminate an interview if he/she determines that it is impossible to continue because of the actions of the subject's attorney.

b. Witnesses Witnesses do not have an absolute right to have an attorney represent them during an interview. However, they do have the right to refuse to answer questions. Therefore, if a witness requests the presence of an attorney to represent him/her during an interview, the decision that the Special Agent and SAC must make is whether to (1) conduct the interview with the attorney present, or (2) not conduct the interview at all. The Special Agent may want to ask the witness why they feel counsel must be present. This may clear up any misunderstanding with the witness as to why the Special Agent is conducting the interview or may clarify that the witness is not a subject.

c. Representation of Indigent Individual An individual who cannot afford the services of an attorney has the right to have appointed counsel present during questioning. Special Agents are not responsible for obtaining counsel for anyone. However, before Special Agents interview an indigent subject, they may want to consult the appropriate AUSA or other prosecutor to determine what court, magistrate, etc., can provide free counsel should the issue arise during an interview.

d. Representation of Employee in Kalkines Interview If an employee requests the presence of an attorney to represent him/her during a Kalkines interview; the Special Agent has the discretion to consent to, or deny, the employee's request, and may require that the employee participate without an attorney. Prior to the interview, the Special Agent will decide, in consultation with his/her SAC, whether counsel will be allowed during the interview.

e. Presence of Corporate Attorney or DOE Counsel The interviewee has a right to counsel of his/her choice to represent him/her. The interviewee is to make the choice of counsel.

On occasion, a company attorney or DOE Legal Counsel may request to be present during an interview, either as an observer or to advise an employee. These situations normally put the attorney in an inherent

conflict situation between the interests of the interviewee and the interests of the Department or the company. The Special Agent will discuss such requests with his/her supervisor.

If the interviewee expresses his/her desire to have a company attorney or DOE counsel present during the interview, the request must not be denied. However, the Special Agent and SAC may determine that the presence of the attorney could/would be so detrimental to the investigation that the interview should not be conducted at all.

If the Special Agent and SAC determine that the interview will be conducted with the company or DOE counsel present, the Special Agent will ensure that the interviewee understands (1) his/her right to privacy, (2) his/her right to counsel of his/her personal choice, (3) his/her right to have counsel who represents only his/her interests, and (4) the possible conflicts of interest involved in having counsel present.

f. Interviews of Represented Defendants Unless the attorney consents in advance, Special Agents will not interview a person formally charged with a crime without his/her counsel present, except when:

- The represented defendant seeks out the investigator or prosecutor and insists on communicating without the knowledge of his/her attorney, particularly if the defendant fears that his/her life, or the life of another, may be jeopardized if the attorney, who may represent others involved in the alleged crime(s), is aware of the nature of the communications which the defendant wishes to make to the Government. In these circumstances, the defendant should be advised of his/her right to retain separate counsel, and that the Government will aid him/her in seeking the appointment of separate counsel. Once this advice is given, communications may proceed, as long as the defendant makes a clear, knowing, and intelligent waiver of his/her right to counsel. The waiver should be in writing.
- The represented defendant continues to engage in criminal conduct other than that for which he/she was indicted or otherwise charged. In such cases, Government undercover agents or informants may communicate with the represented defendant in order to gather evidence of the subsequent offenses. The fact that a defendant has been indicted for or charged with one crime cannot serve to immunize him/her from the use of ordinary investigative techniques with respect to other criminal activity in which he/she may be involved. However, undercover agents and informants must be instructed (1) not to deliberately elicit from such defendants statements concerning pending charges, and (2) to minimize any such communications which may occur.
- The Government is seeking information from a represented defendant that is critical to the safety of life and limb, and there is substantial reason to believe that the

presence of counsel would delay or impede the flow of the needed information.

- Some other extenuating circumstances exist, such as defense counsel's involvement in the criminal offense or other serious conflict of interest. In that event, the represented defendant may be interviewed without the permission of his/her attorney, but only if an AUSA or other appropriate DOJ official specifically authorizes the contact.

In all of the above situations, the subject has been charged with a crime and, therefore, the advice of rights must be given as required.

2. Right to Union Representation Title 5, U.S.C., Section 7114 (a) (1) states, in part, that a labor organization, which has been accorded exclusive recognition, is the exclusive representative of the employees in the unit it represents. Subsection (a) (2) of the statute provides, in part, that this labor organization shall be given the opportunity to be represented at any examination of the employee by an agency representative in connection with an investigation, if an employee in the unit reasonably believes that the examination may result in disciplinary action against the employee, and the employee requests representation.

Based on prior Federal sector decisions, OIG officials--including Special Agents--are considered to be "representatives of the agency" as the term is used in the statute. The statute requires that the Department provide an annual notice to employees of their rights to union representation. However, the statute does not require that Special Agents advise an employee of their right to union representation prior to questioning.

The following items should also be kept in mind for interviews involving union representation:

- The interviewee is entitled to union representation, but not to a particular representative.
- The employee's right to union representation may be waived by either the employee or the union.
- If the employee requests union representation, the investigation may continue without interviewing the employee, and agency management may act on information obtained from other sources.

Some negotiated union agreements give employees certain rights in addition to those set forth in Title 5, U.S.C., Section 7114, such as requiring "management" to give an employee a 48-hour notice prior to an investigatory interview.

When a Federal employee is compelled to answer questions, as in a Kalkines interview, the employee is entitled to union representation if he/she requests union representation. The request may be general, and need not specifically refer to a union representative in order to

effectively place the agency on notice. For instance, an employee statement, "I would like someone to explain what is happening," was deemed a valid request for union representation. If the employee requests representation, the interview must cease immediately.

3. Non-Attorney Representation A witness or a subject may request that another person, such as a co-worker, friend, spouse, parent, supervisor, etc., be present during an interview (the other person/representative could be called as a witness in future court proceedings). A witness or subject does not have an absolute right to have such a person present. However, if a request of this type is denied (1) a witness may refuse to provide any information or answer questions, and (2) a subject may assert that he/she was pressured and/or coerced into providing information without having a representative of his/her choice present during an interview. Special Agents should discuss such requests with their supervisor.

Requests of this type will be denied if the other person/representative is a subject or a witness in the investigation. Such requests may be denied if the other person has a possible/probable conflict of interest or position. If the Special Agent denies this type of request, the Special Agent should tell the interviewee, in general terms, the reason for denying the request.

If the interviewee is adamant about having a particular person present, and the Special Agent believes that the presence of the person will be detrimental to the investigation, the Special Agent has no alternative but to refuse to conduct the interview with the other person present.

#### H. COLLATERAL INVESTIGATIVE LEADS

The conduct of an investigation may extend beyond the geographic responsibility (i.e., Region) of an OIG field office and, therefore, foster the need for a collateral request to another office to obtain additional information.

1. Use of Collateral Requests An ASAC may authorize a case agent to travel to another region to pursue investigative leads. As a courtesy, the ASAC will notify the ASAC of the other region of such plans. Collateral requests for investigative assistance, however, are sometimes more efficient and cost-effective for completing investigative tasks. Collateral requests will be used in situations where investigative work is necessary in a Region different from where the case is assigned, and it is more efficient and/or cost-effective to have a local Special Agent perform the task(s) rather than have the case agent travel. Collateral requests are also used to arrange technical and/or investigative assistance from the Technology Crimes Section.

2. Preparing Collateral Requests Collateral requests are prepared on a Department Memorandum Form (DOE F 1325.8). The requestor must provide sufficient background information and guidance so that the assisting Special Agent(s) may obtain the desired information/evidence. The case agent's ASAC will send the memorandum directly to the ASAC in the region where the work will be performed. It is recommended that ASACs engage in preliminary discussions about the request before sending the memorandum.

Collaterals should include, at a minimum, the following:

- Case title, case number, and case agent name;
- Brief summary of the case;
- Listing of requested activities or services (e.g., interview, records review, technical support, etc.);
- Appropriate identifying information (e.g., location of records; names, addresses, and telephone numbers [if known] of persons to be interviewed);
- Pertinent questions to be answered or information to be sought;
- Copies of any documents which will aid the assisting Special Agents(s) in performing the requested tasks (e.g., complaint form, Memorandum of Investigative Activity, etc.); and,
- The priority level of the case and requested completion date for the collateral.

3. Responding to Collateral Requests Before initiating any collateral activity, the assisting Special Agent will contact the assigned case agent (via telephone). The assisting ASAC and Special Agent will ensure that all activities are completed by the requested completion date. All activities performed will be documented pursuant to the Memorandum of Investigative Activity requirements of Chapter 7 (i.e., each interview, record review, electronic media analysis, etc., will result in a Memorandum of Investigative Activity). Additionally, all activities will be charged to the appropriate case number on the assisting Special Agent's Workhour Report Form.

All Memorandums of Investigative Activity and other appropriate documentation will be forwarded to the requesting ASAC and case agent. A transmittal memorandum is not required, but may be used at the discretion of the assisting ASAC.

If a collateral request cannot be completed by the requested completion date, or within 30 days if no date is specified, the assisting ASAC will (1) notify the requesting ASAC that the collateral lead cannot be completed within the established time parameters, (2) outline the reasons for the delay, and (3) provide an estimated completion date.

#### I. SOURCES OF INFORMATION

Numerous sources of information are available to Special Agents during the course of an investigation. The availability of certain types of information is subject to a range of restrictions imposed by regulations, statutes, and court decisions. In the sections that follow, several broad categories of sources of information are discussed, with emphasis on the IG's statutory authority to obtain such



information, and the legal restrictions and exemptions pertaining to access to such information.

1. Federal Agencies Section 6(a)(1) of the IG Act of 1978, as amended, authorizes the IG "to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that IG has responsibilities under this Act." Section 6(a)(3) further authorizes the IG "to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State or local Government agency or unit thereof." Section 6(b)(1) of the Act provides that, "Upon request of an IG for information or assistance the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such IG or to an authorized designee, such information or assistance." Most pertinent information maintained by Federal agencies may be obtained under these authorities.

Records that are subject to the Privacy Act may generally be provided under an agency's "routine uses" provision. If not, the custodian of such records may have on record or furnish a special waiver form, executed by the person who is the subject of the document(s), which Special Agents may use to obtain the information. Special Agents may obtain a release from an individual, as illustrated in Exhibit H (IM07EXH.DOC), which will authorize the custodian to release the desired information about that individual.

a. Federal Bureau of Investigation Records The Records Branch at the FBI Headquarters maintains two separate indices: a security index and a criminal index. These indices contain an alphabetical listing of the names of persons and organizations found in FBI investigative files. The FBI Criminal Justice Information Services Division maintains fingerprint cards in two categories: criminal and civil. The criminal files consist of fingerprints taken in connection with an arrest by law enforcement agencies. The civil files contain fingerprints of aliens, Federal employees, military personnel, miscellaneous applicants, and fingerprints submitted for personal identification purposes. Special Agents may contact their local FBI office for any indices checks, review of the FBI investigative files, etc., based on the Memorandum of Understanding between the FBI and the OIG dated June 1982 (see Chapters 2 and 3).

b. National Crime Information Center (NCIC)/National Law Enforcement Telecommunication System (NLETS) NCIC is a nation-wide computerized information system established as a service to all criminal justice agencies--local, state, and Federal. NLETS is a state-based computerized high-speed message switching system created for, and dedicated to, the criminal justice community.

The NCIC system contains the following categories of information:

- Article File - Records for stolen articles for any item having a unique manufacturer-assigned serial number (SER) and/or owner-applied number (OAN) valued at \$500 or more; having a unique manufacturer-assigned SER and/or OAN,

regardless of value, if aggregate value of all property taken in one theft exceeds \$5,000; or any item having a unique manufacturer-assigned SER and/or OAN, regardless of value, if interstate movement is indicated, or the stolen item is a lead in a more serious crime;

- Boat File - Records for stolen boats, boat trailers, or boat parts;
- Convicted Sexual Offender Registry File - Records for a person who has been convicted of a criminal offense against a minor, a person who has been convicted of a sexually violent offense, or a person who is a sexually violent predator;
- Deported Felon File - Records for criminal aliens who have been deported for drug or firearms trafficking and/or serious violent crimes. The reentry of these criminal aliens into the U.S. violates Title 8, U.S.C., Section 1326;
- Foreign Fugitive File - Records for persons wanted by another country for a crime that would be a felony if it were committed in the U.S. Wanting country must be a signatory to an extradition treaty or convention with the U.S.;
- Gun File - Records for serially-numbered stolen weapons (if a theft report was made); recovered (abandoned, seized, or found) weapons for which the owner is not known; or lost or missing weapons if the entering agency has supporting documentation;
- License Plate File - Records for uniquely-numbered stolen license plates;
- Missing Person File - Records for persons of any age who are missing and have proven physical/mental disability or are senile, missing under circumstances indicating that they may be in physical danger or their disappearance may not have been voluntary;
- Protection Order File - Records of individuals who are subject to an injunction or any other order that restrains them from committing violent or threatening acts or harassment against another person, including temporary and final orders issued by civil or criminal courts;
- Securities File - Records for serially-numbered stolen, embezzled, used for ransom, or counterfeited securities, i.e., currency and documents or certificates that are considered evidence of debt or ownership of property, or documents that represent subscription rights. Also, warehouse receipts, money orders, travelers checks,

savings certificates, and interest coupons on stocks and bonds;

- Vehicle File - Records for stolen vehicles, vehicles involved in the commission of a crime (felony vehicle), or stolen component parts;
- Violent Gang and Terrorist Organization File - Records for violent gangs or terrorist organizations and their members;
- Wanted Person File - Records for individuals for whom a Federal warrant is outstanding or who are probation or parole violators; and,
- Computerized Criminal History - Identifiable descriptions and notations of arrests, detentions, indictments, information or other formal criminal charges and dispositions arising from sentencing, correctional supervision, and release. Excluded are arrests for minor charges such as drunkenness, vagrancy, disturbing the peace, etc.

The NLETS system contains the following:

- Vehicle Registration - All states;
- Driver's License - All states;
- Driver's History - Most states;
- Criminal Histories - All states;
- Road/Weather Info - Most states;
- Hazardous Material - NLETS/DOT;
- Aircraft Tracking - U.S. Customs/FAA;
- Aircraft Registration - U.S. Customs/FAA;
- Boat Registration - Some states;
- Snowmobile Registration - Some states;
- Parole/Probation/Corrections - Some states;
- Sex Offender Registration - Some states;
- Firearms Trace Request - ATF/National Tracing Center;
- Commercial Vehicle Carrier Status - AAMVAnet (American Association of Motor Vehicle Administrators; and,

- Commercial Vehicle Status - AAAMVAnet.

(1) Procedures Special Agents, with ASAC approval, who have taken the Department of Justice, Justice Telecommunications System (JUST) training on NCIC/NLETS and have access to a JUST terminal will have authorization to conduct queries for both their investigations and other investigations as requested by other Special Agents. The Special Agent will document the request in accordance with DOJ requirements. The results of the queries will be filed in the official case file (see chapter 6, section D). If a Special Agent has not received the JUST training and does not have a JUST terminal, he/she will prepare an NCIC Request form, as depicted in Exhibit I (IM07EXT.DOC). The form will be forwarded to a Special Agent with JUST access. Inquiries may also be made through any Federal, State, or local criminal justice agency that is connected with the NCIC via computer terminal. The request form (Exhibit I) will be filed in the case file (TAB C), however, the NCIC report print out is not to be filled permanently, discard at case closure.

c. Other Offices of IG Information pertinent to investigations may be requested from the Offices of IG at other Federal agencies. As previously discussed, if the records are subject to the Privacy Act, they may be released under the "routine use" provisions of the Act if a permissible "routine use" exists.

d. U.S. Postal Service U.S. Postal Service regulations authorize disclosure of names, addresses, and telephone numbers of post office box holders; forwarding address information; and information on (or photocopies of) postal money orders. The Postal Service will also carry out mail covers to obtain information in the interest of national security, to locate a fugitive, or to obtain evidence of the commission or attempted commission of a felony. Procedures for obtaining such information are detailed in section J, chapter 8.

e. Internal Revenue Service (IRS) The law regarding the confidentiality and disclosure of tax returns and return information is set forth in Title 26, U.S.C., Section 6103 (U.S. Internal Revenue Code).

(1) Requests for Returns and Return Information Section 6103(i) states that any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate judge be open to inspection by/disclosure to Federal officers and employees who are engaged in (1) preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (2) any investigation which may result in such a proceedings, or (3) any Grand Jury proceeding pertaining to enforcement of such a criminal statute. The application for the ex parte order must be authorized by the Federal prosecuting attorney. If the case develops to the stage that this information is needed, the case agent should work with the prosecuting attorney to obtain the information. Once the information is obtained, the rules governing the privacy/protection of the information (i.e., storage, handling, disposal upon completion) will be dictated by the prosecuting office.

Another avenue to obtain information from the IRS is if the case is a joint investigation with the IRS. The protection of any information obtained through this procedure will be dictated by the IRS.

(2) Other Return Information Taxpayer "return information" is basically return information filed with the IRS by or on behalf of the taxpayer. The IG may submit a written request directly to the Secretary of the Treasury for return information other than taxpayer return information for use in criminal investigations or other proceedings shown in the above section. Information pertaining to whether a specific taxpayer filed or failed to file a return is an example of return information other than taxpayer return information.

The IG's request meets the requirements for release of return information other than taxpayer return information if the request is in writing and sets forth (1) the name and address of the taxpayer; (2) the taxable period or periods to which such return information relates; (3) the statutory authority under which the proceeding or investigation is being conducted; and (4) the specific reason or reasons why such disclosure is, or may be, relevant to such proceeding or investigation.

The Secretary of the Treasury may disclose, in writing, return information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility of enforcing such law. A taxpayer may voluntarily furnish a written consent to release his/her return or return information to a person designated in the written document (26 CFR 301.6103(c)-1).

(3) Emergency Circumstances Under circumstances involving an imminent danger of death or physical injury to any individual, the Secretary of the Treasury may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal or state law enforcement agency of such circumstances. Also, under circumstances involving the imminent flight of any individual from Federal prosecution, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal law enforcement agency of such circumstances.

(4) Procedures Background information to justify requests under preceding sections should be submitted in writing to the SAC for review and final consideration, except where a Justice Department official desires to obtain the information under his/her own authority (e.g., OIG case is before a Grand Jury). The SAC will prepare the request for the signature of the IG.

2. State and Local Government Agencies Section 6(a)(3) of the IG Act authorizes the IG to request information from state and local Government agencies. If the information is not provided, the IG Act's subpoena power may be invoked (see Chapter 8).

3. Financial Institutions An important component of many investigations is the collection and analysis of information about the financial transactions of an individual or a business organization. The following paragraphs highlight the significant statutory requirements

associated with such records. Section G of Chapter 8 discusses OIG subpoenas to financial institutions.

a. Records Retention and Reporting Requirements The Financial Record Keeping and Currency and Foreign Transactions Reporting Act of 1970, P.L. 91-508, establishes the records retention requirements for financial institutions. The regulations implementing this Act require the institutions to maintain an original, a microfilm, or other reproduction of the following records associated with checking and/or savings accounts for a period of 5 years:

- Signature cards;
- Statements or other records that disclose account transactions; and,
- Copies of checks, drafts, money orders, and cashier's checks drawn on, or payable by, the financial institution.

For a period of 2 years, financial institutions must retain whatever records are needed to reconstruct a customer's checking account. This includes producing copies of deposit slips and a description of any check deposited in a customer's account. Transactions of more than \$10,000 must be reported by the institution to the IRS within 45 days, using a Currency Transaction Report (Form 4789). Records of international transactions over \$10,000 must be retained for a period of 5 years.

b. Corporations and Large Partnerships Financial institutions are generally reluctant to supply financial information about their business customers. In the absence of a formal release given by an officer of the company whose records are sought, the financial institution will usually require that a subpoena be obtained before they disclose information about their customer's transactions. In these situations, a Special Agent should seek written consent from the customer, or obtain an IG or judicial subpoena (see Chapter 8).

c. Individuals and Small Partnerships The Right to Financial Privacy Act of 1978 (Title 12, U.S.C., Section 3401) generally prohibits the disclosure to the Government of the "financial records" of the customers of "financial institutions" except when Government access is required in connection with a legitimate "law enforcement inquiry" or other purpose authorized by the statute. The Right to Financial Privacy Act defines these terms as follows:

- The term "financial institution" means any office of a bank, savings bank, card issuer as defined in section 1602(n) of Title 15, industrial loan company, trust company, savings and loan, building and loan or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any state or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

- The term "customer" means any person or authorized representative of that person who utilized, or is utilizing, any service of a financial institution, or for whom a financial institution is acting, or has acted, as a fiduciary, in relation to an account maintained in the person's name;
- The term "person" means an individual or a partnership of five or fewer individuals;
- The term "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution; and,
- The term "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

The Right to Financial Privacy Act expressly exempts any record or information not identifiable with a particular customer. The Act, therefore, does not protect records pertaining to a person that appear in the account of another customer (e.g., endorsements), or items drawn by an individual and deposited into the account of a corporation if the item is obtained through a search of the corporation's account. The Right to Financial Privacy Act does not pertain to customer records of corporations, associations, large partnerships, or other legal entities.

d. Access to Records Under The Right To Financial Privacy Act Unless the records fall within one of the enumerated exceptions to the Right to Financial Privacy Act, access may be obtained only by:

- Customer Authorization - A customer may authorize access to identified financial records by giving approval in writing which: (1) authorizes disclosure for a period not in excess of three months; (2) states that the customer may revoke such authorization at any time before the financial records are disclosed; (3) identifies the financial records which are authorized to be disclosed; (4) states the purpose for which, and the authority by which, such records may be disclosed; (5) states the customer's rights under the Act; and (6) identifies the agency or agencies to which disclosure may be made. The authorization should be obtained and delivered to the financial institution on behalf of the customer. See Exhibit J (IM07EXJ.DOC) for a copy of the Customer Consent and Authorization for Access to Financial Records form to be used by OIG personnel. A Statement of Customer Rights Under the Right to Financial Privacy Act of 1978 form, Exhibit K (IM07EXK.DOC), must also be provided to the customer, who will acknowledge having read and understood his/her, rights by signing the Consent and Authorization form. Both will be provided to

the financial institution in custody of the records being sought. Copies will also be forwarded for inclusion in the official case file;

- Search Warrant;
- Administrative Summons or Subpoena - If the need arises to use an IG subpoena to obtain a customer's records which are subject to the Act, this issue should be clearly pointed out when submitting a request for the subpoena, so that the IG's Counsel can ensure that the necessary documentation is prepared, and proper guidance is obtained;
- Judicial Subpoena; and,
- Formal Written Request (available only to agencies that do not have administrative subpoena authority).

The latter methods require that the Government authority seeking access provide the customer with advance written notification that access is being sought. However, in certain circumstances, the Government can apply for a court order delaying customer notification. The court must find that the Government is conducting a lawful investigation; that records sought are relevant to a legitimate law enforcement inquiry; and that there is reason to believe that prompt customer notification will result in (1) endangering life or physical safety of any person; (2) flight from prosecution; (3) destruction of or tampering with evidence; (4) intimidation of potential witnesses; or (5) otherwise seriously jeopardizing an investigation or official proceeding.

Any court order delaying notice not only relieves the Government of its immediate notification responsibility, but also expressly prohibits the financial institution from disclosure during the delay period. When notification is made, the customer has 10 days in which to give consent or challenge Government access (14 days if service was by mail).

A financial institution is prohibited from disclosing a customer's records until it also has been given a written certification that the Government has fully complied with the applicable provisions of the Act. This relieves the financial institution of any possible liability to the customer in connection with disclosure of the financial records. The access provisions of the Act do not apply in certain instances; however, a Certificate of Compliance must still be provided:

- When an investigation is directed against a financial institution and uses all customer records in the course of the review a blanket Certificate of Compliance, encompassing the use of all customer records of the financial institution in the investigation or audit, is sufficient. Individual customers or their records need not be listed separately unless the financial institution insists in order to comply with its record keeping responsibilities under the Act.



- Absent a Grand Jury Subpoena for Bank Records, in most cases Special Agents will have to obtain a customer authorization or an IG Subpoena before accessing records covered by the Right to Financial Privacy Act. Costs incurred by financial institutions for searching and reproducing financial records will be paid by the OIG. Advance approval must be given by the Assistant IG for Investigations (AIGI) before such costs are incurred. Submit all requests for advance approvals and reimbursements to OIG Headquarters for processing.

**Note:** In some judicial districts, the U.S. Attorney's Office requesting the Grand Jury Subpoena may require that the IG pay for the costs associated with requests for financial records. The case agent should determine this prior to the request and follow the above procedure.

e. Transfer of Records The Act contains special restrictions on the Government's transfer of any records originally obtained under the Act. Such records may be transferred to "another agency or department" only if an official of the transferring agency certifies, in writing, that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. This includes information provided to an AUSA. Additionally, the customer must be provided a notice of any such transfer, within 14 days, unless the Government first obtains a court order delaying such notice. The Act's proscription of uncertified transfer to "another agency or department" applies only to interagency transfers within the Federal Government; transfers to state or local agencies are not prohibited, and would, therefore, be subject only to any applicable restrictions found in the Privacy Act of 1974.

f. Large Currency and Foreign Transactions Certain information relating to large currency transactions, movements of currency or instruments into or out of the United States, and financial interests in foreign financial accounts or institutions, must be reported to the Treasury Department. Copies of the forms on which the information is reported are described below.

- Currency Transaction Report (IRS Form 4789) - As previously noted, banks and other financial institutions are required to file a report with the IRS of each deposit, withdrawal, or other transaction which involves more than \$10,000 in currency.
- Report of International Transportation of Currency or Monetary Instruments (Customs Form 4790) - Each person who physically transports, mails, ships, or causes to be physically transported, mailed, or shipped into or out of the United States, currency or other monetary instruments in excess of \$5,000 on any one occasion, is required to file a report with the Customs Service.
- Report of Foreign Bank and Financial Accounts (Treasury Department Form 90-22.1) - Each resident of the United

States who has a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country must report that relationship each calendar year to the Treasury Department.

Requests for information contained in the cited forms will be forwarded to OIG Headquarters. The Special Agent will prepare the request for the approval of the SAC. With the SAC's approval, the request will be forwarded to the Deputy Assistant IG for Investigations (DAIGI), for signature of the AIGI. The request, at a minimum, will contain the following:

- A certification that (1) the information requested about an individual or class of individuals identified in the request, and (2) the information is relevant to an investigation or proceeding by the OIG;
- A certification as to the specific nature or purpose of the investigation, or the violation(s) of Federal law (e.g., whether it is a criminal or regulatory investigation), or other inquiry in connection with which the information is sought; and,
- A statement containing sufficient identification of the individual(s) named in the request to permit a valid examination of available files. Identification information should be as specific as possible--such as the full name, address, date and place of birth, and social security number of the person--to help ensure the legitimacy and accuracy of the information selected for dissemination.

Information obtained as a result of a specific request is to be used only in an official investigation, inquiry, or proceeding involving the identified individual(s), or where the information is evidentiary of violations by others. If the information is to be turned over to a Departmental component or other Federal agency, it must first be determined that it is to be used or maintained in conjunction with other materials in an authorized investigation or proceeding. Documenting the chain of custody for information obtained that is considered evidence in an investigation is discussed in Chapter 9.

g. Reimbursement to Financial Institutions for Costs Incurred Title 12, U.S.C., Section 3415, of the Right to Financial Privacy Act requires that a Government authority shall pay the financial institution assembling or providing financial records pertaining to a customer a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. An exception to this rule is when the disclosure is pursuant to a legitimate law enforcement inquiry respecting name, address, account number, and type of account of particular customers, or disclosure pursuant to lawful proceeding, investigation, etc., directed at a financial institution or legal entity

of consideration or administration respecting Government loan guarantees, etc.

When an exception applies and we are requesting financial records from a financial institution, the request for records should clearly state that payment is not required pursuant to the legitimate exceptions set forth in the Right to Financial Privacy Act. A law enforcement inquiry includes a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto. The section that should be cited for the exception for law enforcement inquiry is Title 12, U.S.C., Section 3413(g).

**Note:** If the financial institution still refuses to be responsible for the costs associated with the request, the DOJ/U.S. Attorney's Office may reimburse the financial institution.

4. Consumer Credit Information Occasionally, the OIG needs to obtain financial data on individuals who work for, or have a business relationship with, the Department. Access to financial information may be beneficial in many situations. For example, such information may be used in deciding whether to promote, reassign, or retain an employee. It also may be required by Departmental officials before making a grant award to a nonprofit association, before providing a loan to a closely held corporation, prior to awarding a contract to a sole proprietorship, or collecting debts owed to the Department.

a. Fair Credit Reporting Act The Fair Credit Reporting Act (Title 15, U.S.C., Section 1681), enacted in 1970, and administered by the Federal Trade Commission, regulates reports prepared by consumer

reporting agencies for employment purposes, or for the extension of credit or insurance to individuals.

b. Definitions The following definitions are provided to facilitate understanding of the provisions of the Fair Credit Reporting Act:

- Consumer Reporting Agency - Any person or entity which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. A credit bureau is a consumer-reporting agency, but the definition is broad enough to include any business that discloses any credit information on a consumer other than information relating to its own dealings with that consumer. For example, a department store may provide information concerning its dealings with a consumer, without being considered a consumer-reporting agency, but if it discloses any information in its files relating to the consumer's credit transactions with another individual(s) or business (es), it becomes a consumer-reporting agency. If the store complies with the Fair Credit Reporting Act

governing consumer agencies, then it is free to disclose financial information concerning the consumer and third parties.

- Consumer Report - A consumer report is any written, oral, or other communication of any information by a consumer-reporting agency bearing on a consumer's credit worthiness, credit standing or capacity, character, general reputation, personal characteristics, or mode of living, which is used, or expected to be used or collected, in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for personal credit or insurance, employment, or other authorized purposes. Any report containing information solely relating to transactions or experiences between the consumer and the person making the report is not a consumer report under the law.
- Consumer - An individual.
- Employment Purposes - The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

c. Permissible Uses of Consumer Reports Section 1681b of the Fair Credit Reporting Act governs the circumstances under which a consumer reporting agency may legally release consumer reports. This section is quoted as follows:

"A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

- (1) In response to the order of a court having jurisdiction to issue such an order.
- (2) In accordance with the written instructions of the consumer to whom it relates.
- (3) To a person which it has reason to believe:
  - (a) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of, an account of the consumer;
  - (b) intends to use the information for employment purposes;
  - (c) intends to use the information in connection with the underwriting of insurance involving the consumer;
  - (d) intends to use the information in connection with a determination of the consumer's eligibility for a license or other

benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(e) otherwise has legitimate business need for the information in connection with a business transaction involving the consumer."

d. Other Information Available to the OIG From Consumer Reporting Agencies In addition to the release of consumer reports under the circumstances outlined above, a consumer-reporting agency may release the following information to the OIG:

- Identifying Data - Section 1681f of the Fair Credit Reporting Act specifically authorizes consumer-reporting agencies to release to any governmental agency a consumer's name, address, former addresses, places of employment, and former places of employment. There are no restrictions on the release of this identifying data to the OIG.
- Credit Reports on Businesses - Any type of credit report, including investigative reports, on any kind of business may be released without restriction. The term "business" includes a proprietorship, partnership, corporation, trust, estate, cooperative, association, or other entity. It includes persons who are in business by themselves, but the report would be limited to their business transactions.

e. Obtaining Consumer Credit Information Consumer credit information should be obtained only under the following circumstances which are enumerated in the Fair Credit Reporting Act, at Title 15, U.S.C., Section 1681b:

(1) By Court Order Although a Federal District Court may order access to a consumer report, such a situation would be rare.

(2) With Written Consent of the Consumer No matter what the consumer report will be used for, a consumer-reporting agency is authorized to release a consumer report with the consumer's written permission. In any investigation in which a consumer report would be helpful, but it cannot legally be obtained without the consumer's permission, the Special Agent should request the individual concerned to execute a written release if it would not jeopardize the security of the investigation. A sample release follows:

Release Authority for Consumer Reporting Agency

(Date) \_\_\_\_\_  
(Place) \_\_\_\_\_

I, \_\_\_\_\_, hereby authorize and request any and all credit bureaus or other consumer reporting agencies providing consumer reports or any business establishment having data concerning business and other transactions to furnish them to any Special Agent of the Office of IG, U.S. Department of Energy, who presents this authorization. This authorization specifically

includes authority to release for examination and reproduction, without legal process, all of my consumer credit information.

(Signature) \_\_\_\_\_  
(Address) \_\_\_\_\_

Witness:

(Name) \_\_\_\_\_  
Special Agent  
Office of IG  
U.S. Department of Energy

(3) For Use in Connection With Credit Involving the Consumer If the Department has established an account receivable, i.e., a debt, a credit check on the debtor may be run. Examples include obtaining information on (1) a convicted felon who has been ordered to make restitution to the Department for submitting false invoices; or (2) a former employee who owes the Department money.

(4) For Employment Purposes If a consumer report will be used in evaluating whether to employ, promote, reassign, or retain an individual on the Department's payroll, a credit check may be run. Obtaining a credit report on a former employee cannot be justified in this manner.

(5) For Business Need If the Department has a legitimate business need for credit information in connection with a business transaction involving the consumer, a credit report may be obtained. For instance, if an individual is under contract to the Department, a credit check might be appropriate to ensure the continued financial integrity of the contractor. However, the following criteria must be met (1) a legitimate business need for the information must exist, (2) the credit report must be obtained in connection with a business transaction; and (3) the business transaction must involve the consumer. In a court case involving possible embezzlement by a former employee, a Federal District Court held that a company could not justify its request for a consumer report under this provision. The court reasoned that even if the company had a legitimate business need for the information, there was no showing that it had requested the report in connection with a business transaction involving the former employee. Similarly, the company could not justify its request under the provision dealing with employment purposes, because it no longer employed the individual involved. Russell v. Shelter Financial Services, 604 F. Supp. 201 (W.D. Mo. 1984).

f. OIG Headquarters Evaluation If, during the course of an investigation, a question arises concerning the propriety of requesting a consumer report, a summary of the information should be provided to the Director of Policy, Plans, and Programs (DIP<sup>3</sup>).

g. Penalties for Violation of the Fair Credit Reporting Act  
- The following penalties apply to violations of the Act:

(1) Civil Liability for Willful Noncompliance Under Section 1681(n), any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this

section with respect to any consumer is liable to that consumer in an amount equal to the sum of (1) any actual damages sustained by the consumer as a result of the failure; (2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(2) Civil Liability for Negligent Noncompliance Under Section 1681(o), any consumer-reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of (1) any actual damages sustained by the consumer as a result of the failure; and (2) the costs of the action together with reasonable attorney's fees as determined by the court.

(3) Criminal Liability for Obtaining Information Under False Pretenses Under Section 1681(q), any person who knowingly and willfully obtains information on a consumer from a consumer-reporting agency under false pretenses shall be fined up to \$5,000 or imprisoned up to 1 year, or both.

5. Education Records Education records are excluded from access by Federal investigators or law enforcement agencies, except by subpoena or judicial order pursuant to Title 20, U.S.C., Section 1232g, Family Educational Rights and Privacy Act of 1974, P.L. 93-380. In essence, a student's official scholastic activities or disciplinary records cannot be obtained without subpoena or judicial order except by a written release of the student concerned, provided he/she has reached 18 years of age. If the student has not reached 18, his/her parents must provide the written authorization. A release is not usually required to obtain information from a school's "public information system," which typically includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, dates of attendance, and degrees and awards received. Each institution may have its own form of release that must be used. The Authorization for Release of Information, Exhibit H, may also be used.

6. Personnel Security Files Personnel security files are maintained by the Department's Office of Safeguards and Security. These records concern the security investigations regarding Department and contractor employees who have Q or L security clearances. Check of an employee's security file is beneficial for identifying the employee's social security number, family members, employment history, and any derogatory information including criminal history, was disclosed during the security investigation. The information obtained from the review of the personnel security file can only be used for background information in furtherance of a criminal investigation.

Prior to the review of a personnel security file, the Special Agent will submit a Memorandum to the ASAC outlining (1) the identity of the person whose file will be reviewed, (2) the person's current position, and (3) the reason for the need to access the file. The ASAC will approve or disapprove the request.

7. Dun & Bradstreet Reports The following Dun & Bradstreet reports that provide business-related information, are available to Special Agents:

Business Information Report	Government Activity Report
Principal Search	Family Tree Report
Duns Legal Search	
Duns Financial Profile	
Environmental Map Report	
Archival Report	

To obtain reports, the Special Agent will prepare a Request for Dun & Bradstreet Search, Exhibit L (IM07EXL.DOC), and forward the request to the DIP<sup>3</sup> for action. Special Agents may also request reports from local field office personnel.

8. Financial Crimes Enforcement Network Financial Crimes Enforcement Network (FinCen) searches may be requested by the Special Agent by completing the appropriate forms required by FinCen. The Special Agent may submit this form directly to FinCen, following ASAC review.

9. Official Personnel Files OPFs contain information related to hire and promotion dates, supervisor, and other identifying data. These files are available for review after proper identification. After review of the OPF, the Special Agent should place a Memorandum of Investigative Activity in the file documenting the review and any pertinent information noted.

10. Informational Database An on-line tool which allow Special Agents to retrieve case-related information such as individuals' current or previous addresses and identify assets, relatives, and neighbors. Additionally, this database provides information that includes, but is not limited to, Social Security Numbers, bankruptcies, liens and judgments, corporations and limited partnership records, FAA Aircraft ownership records, national death locator, people tracker, real property, reverse directory, motor vehicles, professional licensing, etc. The case agent will be assigned a User ID and a password that allows access to the online database.



U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

AFFIDAVIT FORMAT  
(Example in Bold)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

DATE \_\_\_\_\_

I, Jon Doe, Social Security Number 123-12-1234, hereby make the following statement freely and voluntarily to Ignacious Trustworthy, who has identified himself/herself to me as a Special Agent of the Office of Inspector General, U.S. Department of Energy, knowing that this statement may be used as evidence in any future criminal, civil and/or administrative proceedings.

I have been advised of my rights as set forth in the attached form. My home address is 1000 Independence Avenue, Washington DC. My Tennessee driver's license number is DCL1234567. I am the Vice President of XYZ Corporation, which is a manufacturing business that sells electrical components. I am also the accountant for the company and have been employed in this capacity since January 1983.

All accounting records of XYZ Corporation are prepared by employees of the company whom I supervise.

At my direction....

TEXT OF AFFIDAVIT

## TEXT OF AFFIDAVIT (continued)

I have read the foregoing statement consisting of 2 pages, each of which I have initialed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I have made this statement freely and voluntarily, without any threats or rewards, or promises of reward having been made to me in return for it.

---

(Signature of Affiant)

Subscribed and sworn to before me  
this 8th day of April, 1994 at  
Albuquerque, New Mexico

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Signature of Official/Title

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Witness Signature

**U.S. DEPARTMENT OF ENERGY**  
**OFFICE OF INSPECTOR GENERAL**

## QUESTION AND ANSWER STATEMENT FORMAT

Testimony of \_\_\_\_\_, \_\_\_\_\_  
(name) (street)

\_\_\_\_\_, \_\_\_\_\_, given at \_\_\_\_\_  
(city) (state - zip)

(location)

at \_\_\_\_\_ .m., on \_\_\_\_\_ , \_\_\_\_\_ , 20\_\_\_\_\_  
(time) (day) (month) (date) (year)

Present:

(Questions were asked by Special Agent \_\_\_\_\_, and answers were given by \_\_\_\_\_, unless otherwise specified.)

1. Q. \_\_\_\_\_, this interview is being mechanically recorded, as we previously agreed, by means of the tape recorder on the table in front of us. Will you please acknowledge for the record that you consent to the tape recording?
2. Q. \_\_\_\_\_, you were requested to appear at this office to answer questions concerning \_\_\_\_\_.
- \_\_\_\_\_  
(state the general nature of the matter)

First, I advise you ...[Insert any appropriate advisement of rights. For administrative investigations, provide Privacy Act Notification.]

Do you fully understand your rights?

3. Q. Please stand and raise your right hand [THE SPECIAL AGENT ALSO STANDS WHILE ADMINISTERING THE OATH].

Do you, \_\_\_\_\_, solemnly swear that the answers you are about to give to the questions asked will be true, accurate and complete to the best of your knowledge and belief?

4. Q. \_\_\_\_\_, have I, or has any other Federal agent, threatened or intimidated you in any manner?

5. Q. Have I, or has any other Federal agent, offered you any rewards, or promises of reward or immunity, in return for this statement?
6. Q. \_\_\_\_\_, please state your full name, date of birth and place of birth for the record.

(INSERT CASE-PERTINENT QUESTIONS HERE)

--END QUESTION AND ANSWER STATEMENTS WITH THE FOLLOWING QUESTIONS--

326. Q. Have you given this statement freely and voluntarily?
327. Q. Is there anything further you care to add for the record?
328. Q. After this statement has been transcribed, you will be given an opportunity to read the transcription, compare it to the tape if necessary, correct any typographical errors, and sign the transcription. You will then be provided with a photocopy of it. This testimony is concluded. The time is\_\_\_\_\_m.

[THE FOLLOWING WILL BE TYPED IMMEDIATELY AFTER, AND ON THE SAME PAGE AS THE ANSWER TO THE LAST QUESTION IN THE STATEMENT:]

I have carefully read the foregoing statement consisting of pages 1 to \_\_\_\_\_ inclusive, which is a correct transcript of my answers to the questions asked me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. I hereby certify that the foregoing answers are true, accurate and complete. I have made the corrections shown, I have placed my initials opposite each correction, and I have initialed each page of the statement.

\_\_\_\_\_  
JOHN J. DOE

Subscribed and sworn to before me at \_\_\_\_\_ .m., this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_

\_\_\_\_\_  
Special Agent

\_\_\_\_\_  
Witness

**U.S. DEPARTMENT OF ENERGY**  
**OFFICE OF INSPECTOR GENERAL**

**MEMORANDUM OF INVESTIGATIVE ACTIVITY**

*(INITIAL PARAGRAPH: THIS PARAGRAPH PROVIDES AN INTRODUCTION TO THE ACTIVITY PERFORMED. IT WILL DIFFER SLIGHTLY DEPENDING ON THE NATURE OF THE ACTIVITY SUCH AS AN INTERVIEW, RECORD REVIEW, RECEIPT OF RECORDS, SURVEILLANCE, ETC.. EXAMPLES FOLLOW.)*

*Example:*

On January 1, 2000, Special Agent Tom G. Mann, Office of Inspector General (OIG), U.S. Department of Energy (DOE), interviewed Ms. Joanne H. Doe, Supervisor, Fossil Energy Division, Oak Ridge Operations Office, DOE. Special Agent Mann identified himself by displaying his DOE OIG credentials. Special Agent Mann advised Ms. Doe that the interview was being conducted in connection with an official OIG investigation into allegations of mischarging by ABC, Inc. *[It may be appropriate in certain circumstances to include a sentence that states the interviewee was advised that his/her cooperation in the interview is voluntary and that he/she may end it at any time. If this occurs, indicate whether or not the interviewee understood and agreed to this advisement. Additionally, use of Mr., Mrs., Ms., etc. is not mandatory after a person is initially introduced in a MOIA. ASACs may use their own discretion in this area.]*

*Example:*

On January 1, 2000, Special Agent Tom G. Mann, Office of Inspector General (OIG), U.S. Department of Energy (DOE), obtained contract documents from Ms. Joanne H. Doe, Supervisor, Fossil Energy Division, Oak Ridge Operations Office, DOE. Special Agent Mann identified himself by displaying his DOE OIG credentials and informed Ms. Doe that the documents were being obtained in furtherance of an official OIG investigation.

Specifically, the documents included *[insert a list or description.]*

*Example:*

On January 1, 2000, Special Agent Tom G. Mann, Office of Inspector General (OIG), U.S. Department of Energy (DOE), reviewed the Financial Disclosure File of Ms. Joanne H. Doe, Supervisor, Fossil Energy Division, Oak Ridge Operations Office, DOE. The

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Activity: \_\_\_\_\_ Date Prepared: *[date of initial draft]* Location: \_\_\_\_\_

By: \_\_\_\_\_ Case No.: I00XX111

**MEMORANDUM OF INVESTIGATIVE ACTIVITY****Date:** *[insert Date of Interview or Activity]***Case File No.:** I00XX111

file was provided by Mr. David Smith, Records Custodian, Room 5A-235, Forrestal Building, DOE.

A review of the Financial Disclosure File disclosed the following:

*(BACKGROUND OR PERSONAL DATA: PROVIDE RELEVANT INFORMATION ABOUT INTERVIEWEES, WHERE APPROPRIATE)*

*Example:*

Ms. Doe has been employed with DOE for 20 years. She has been the supervisor of the Fossil Energy Division since October 7, 1995, and the Contracting Officer's Technical Representative (COTR) on the ABC contract since 1997. Her supervisor is Mr. Joseph H. Puff, telephone number (615) 555-2121.

or

Employer: Department of Energy; DOB: 5/26/52; POB: Brawley, CA;  
SSN: 422-xx-1234; Home phone: (615) 555-1212; ETC....

*(TEXT: INSERT RELEVANT DATA ABOUT, OR RESULTS OF, THE INVESTIGATIVE ACTIVITY, SUCH AS AN INTERVIEWEE'S TESTIMONY, SUMMARY OF DOCUMENT REVIEW, ETC.)*

*Example*

In response to questions, Mr. Doe voluntarily provided the following information:

[Indent and insert information provided by the interviewee. With the above lead-in, use of "Mr. Doe" and pronouns are discretionary provided it is clear to the reader that "Mr. Doe" furnished the information. However, words like stated, said, advised, etc. should be used if clarification and/or emphasis are needed.]

*(AGENT'S NOTE: SPECIAL AGENTS MAY INCLUDE AN "AGENT'S NOTE:" AT THE END OF A MOIAs TO PROVIDE CLARIFICATION OR SUPPLEMENTAL INFORMATION. AGENT NOTES WILL BE VOID OF PERSONAL OPINION.)*

*Example*

[Agent's Note: Due to the volume of documents obtained from Ms. Doe, they will be filed in a bulky exhibit and not attached to this MOIA.]

I07MEXC

Exhibit C

**MEMORANDUM OF INVESTIGATIVE ACTIVITY**

**Date:** *[insert Date of Interview or Activity]*

**Case File No.:** 100XX111

[Agent's Note: During the course of this interview, Ms. Doe reported an allegation/complaint unrelated to this case. Ms. Doe's complaint will be predicated and processed in accordance with OIG procedures.]

*(THE "HEADER" ABOVE WILL APPEAR AT THE TOP OF EACH PAGE)*

*(THE "FOOTER" AT THE END OF PAGE ONE MUST APPEAR END OF THE FIRST PAGE OF EVERY MOIA; ALL OTHER PAGES WILL CONTAIN ONLY A PAGE NUMBER AT THE BOTTOM)*

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

ADVICE AND WAIVER OF RIGHTS

**Advice of Rights:**

Before we ask you any questions or you make any statement, you must understand your rights.

- \* You have the right to remain silent and refuse to answer any questions at any time.
- \* Anything you say or do can be used against you in a court of law or other proceedings.
- \* You have the right to talk to an attorney for advice before answering any questions and to have an attorney with you during any questioning now or in the future.
- \* If you cannot afford an attorney, one will be provided for you without cost.
- \* If you decide to answer questions now, you have the right to stop answering questions at any time you desire.

**Waiver of Rights:**

I have read or have had read to me the above statements as to my rights. I understand what my rights are. I am willing to make a statement and answer questions. I understand and know what I am doing. No promises have been made to me, no threats have been made against me, and no pressure or coercion of any kind has been used against me.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Witness

\_\_\_\_\_  
Special Agent  
Office of Inspector General

\_\_\_\_\_  
Date/Time



U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

ADVICE AND WAIVER OF RIGHTS

**Advice of Rights:**

Before we ask you any questions or you make any statement, you must understand your rights.

- \* You have the right to remain silent and refuse to answer any questions at any time.
- \* Anything you say or do can be used against you in a court of law or other proceedings.
- \* You have the right to talk to an attorney for advice before answering any questions and to have an attorney with you during any questioning now or in the future.
- \* If you cannot afford an attorney, one will be provided for you without cost.
- \* If you decide to answer questions now, you have the right to stop answering questions at any time you desire.

**Waiver of Rights:**

I have read or have had read to me the above statements as to my rights. I understand what my rights are. I am willing to make a statement and answer questions. I understand and know what I am doing. No promises have been made to me, no threats have been made against me, and no pressure or coercion of any kind has been used against me.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Witness

\_\_\_\_\_  
Special Agent  
Office of Inspector General

\_\_\_\_\_  
Date/Time

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

CUSTODIAL WARNINGS AND ASSURANCES  
FOR FEDERAL EMPLOYEES

Before we ask you any questions or you make any statement, you must understand your rights which are:

- \* You have the right to remain silent and refuse to answer any questions at any time.
- \* Anything you say or do can be used against you in a court of law or other proceedings.
- \* You have the right to talk to a lawyer for advice before answering any questions and to have a lawyer with you during any questioning now or in the future.
- \* If you cannot afford an attorney, one will be provided for you without cost.
- \* If you decide to answer questions now, you have the right to stop answering questions at any time you desire.
- \* If you refuse to answer the questions posed to you on the grounds that the answers may tend to incriminate you, you cannot be discharged solely for remaining silent.

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I understand and know what I am doing. No promises have been made to me, no threats have been made against me, and no pressure or coercion of any kind has been used against me.

---

Employee Signature

Date

---

Employee Agency

Witness:

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Special Agent

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

FEDERAL EMPLOYEE WARNINGS AND ASSURANCES  
VOLUNTARY DISCLOSURE

You are being contacted to solicit your cooperation in an inquiry regarding misconduct or improper performance of official duties. In accordance with the Privacy Act of 1974, you are advised that the authority to conduct this interview is contained in the Inspector General Act of 1978, as amended.

The matter under investigation could also constitute a violation of law which could result in criminal prosecution of responsible individuals. Before we ask you any questions or you make a statement, you must understand the following warnings and assurances.

- \* This interview is voluntary.
- \* You have the right to remain silent and refuse to answer any questions that may incriminate you. If you refuse to answer questions posed to you on the grounds that the answer may tend to incriminate you, you cannot be discharged solely for remaining silent.
- \* Anything you say may be used as evidence in any future administrative, civil, and/or criminal proceeding.

**Waiver:**

I understand the warnings and assurances stated above. I am willing to make a statement and answer questions. No promises have been made to me, no threats have been made against me, and no pressure or coercion of any kind has been used against me.

---

Employee's Signature

Date

Location

---

Signature of Office of  
Inspector General Official

Witness:

---

Special Agent

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

WARNINGS AND ASSURANCES TO EMPLOYEES REQUIRED  
TO PROVIDE INFORMATION

This is an official administrative inquiry regarding misconduct or improper performance of official duties. In accordance with the Privacy Act of 1974, you are advised that the authority to conduct this interview is contained in the Inspector General Act of 1978, as amended.

The purpose of this interview is to obtain information which will assist in the determination of whether administrative action is warranted.

You are going to be asked a number of specific questions regarding the performance of your official duties.

You have a duty to reply to these questions and agency disciplinary action, including dismissal, may be undertaken if you refuse to answer or fail to reply fully and truthfully. Neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal proceeding, except that if you knowingly and willfully provide false statements or information in your answers, you may be criminally prosecuted for that action. The answers you furnish and any information or evidence there from may be used in the course of civil or administrative proceedings which could result in disciplinary action, including dismissal.

ACKNOWLEDGMENT

I have read and understand my rights and obligations as set forth above.

---

Employee's Signature

Date

---

Signature of Office of  
Inspector General Official

Witness:

---

Special Agent

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

AUTHORIZATION FOR RELEASE OF INFORMATION

To Whom It May Concern:

I hereby authorize any Special Agent of the U.S. Department of Energy, Office of Inspector General, to obtain any information relating to my background and/or activities from schools, residential management agents, employers, criminal justice agencies, retail business establishments, individuals, or other sources of information.

This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, personal history, disciplinary, employment history, and criminal history record information.

I hereby direct custodians of records and sources of information pertaining to me to release any such information upon request of the Special Agent authorized above, regardless of any previous agreement to the contrary.

I understand that the information released by records custodians and sources of information is for official use by the Office of Inspector General, and, pursuant to the Inspector General Act of 1978 (Public Law 95-452), may be disclosed to such third parties as necessary for the fulfillment of responsibilities of the Office of Inspector General.

Copies of this authorization, which show my signature, are as valid as the original release signed by me. This authorization is valid for 1 year from the date signed.

If you have questions pertaining to the validity of this release, please contact me as indicated below.

Signature (Full Name): \_\_\_\_\_

Full Name (Printed): \_\_\_\_\_

Other Names Used: \_\_\_\_\_

Social Security No.: \_\_\_\_\_

Date: \_\_\_\_\_

Current Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

U.S. Department of Energy  
Office of Inspector General  
**National Crime Information Center Search**

Date \_\_\_\_\_

Name of Subject \_\_\_\_\_

Social Security Number \_\_\_\_\_

Date of Birth \_\_\_\_\_

Race \_\_\_\_\_

Sex \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Telephone Number (if known) \_\_\_\_\_

Specify other identifying info: \_\_\_\_\_

Check the box in front of the search(es) requested:

☐ **NCIC Search (DOJ/FBI Records):**

- ☐ Criminal History Inquiry  
☐ Wanted Person Inquiry  
☐ Gang/Terrorist Activity Inquiry  
Other: \_\_\_\_\_

☐ **NLETS Search (State/County):**

Specify State(s): \_\_\_\_\_  
County or Canadian Province: \_\_\_\_\_

☐ **Driver's License History:**

Specify state(s): \_\_\_\_\_  
Driver's License Number (if known): \_\_\_\_\_

☐ **License Plate/Vehicle Query:**

Specify state: \_\_\_\_\_  
License Plate Number \_\_\_\_\_  
VIN Number \_\_\_\_\_

☐ **Boat Query:**

Registration Number \_\_\_\_\_  
Boat Hull Number \_\_\_\_\_

☐ **Gun Query:**

Serial Number \_\_\_\_\_  
Make \_\_\_\_\_  
Caliber \_\_\_\_\_

☐ **NCIC Stolen/Missing Article Query:**

Article Type (Describe article--i.e., computer,  
typewriter, compressor, etc): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Serial Number \_\_\_\_\_

Requested By: \_\_\_\_\_ Office: \_\_\_\_\_

Case File No.: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Date: \_\_\_\_\_

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

CUSTOMER CONSENT AND AUTHORIZATION FOR ACCESS TO FINANCIAL RECORDS

I, \_\_\_\_\_, have read the  
explanation of my rights which is attached to this form.

I hereby authorize the \_\_\_\_\_  
(Name and City of Financial Institution)

to disclose the following records:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL

STATEMENT OF CUSTOMER RIGHTS  
UNDER THE  
RIGHT TO FINANCIAL PRIVACY ACT OF 1978

Federal law protects the privacy of your financial records. Before banks, savings and loan associations, credit unions, credit card issuers, or other financial institutions may give financial information about you to a Federal agency, certain procedures must be followed.

Consent to Disclosure of Financial Records

You may be asked to consent to make your financial records available to the Government. You may withhold your consent, and your consent is not required as a condition of doing business with any financial institution. If you give your consent, it can be revoked in writing at any time before your records are disclosed. Furthermore, any consent you give is effective for only 3 months, and your financial institution must keep a record of the instances in which it discloses your financial information.

Without Your Consent

Without your consent, a Federal agency that wants to see your financial records may do so ordinarily only by means of a lawful subpoena, summons, formal written request, or search warrant for that purpose.

Generally, the Federal agency must give you advance notice of its request for your records, explain why the information is being sought, and tell you how to object in court. The Federal agency must also send you copies of court documents to be prepared by you, with instructions for filling them out. While these procedures will be kept as simple as possible, you may want to consult an attorney before making a challenge to a Federal agency's request.

Exceptions

In some circumstances, a Federal agency may obtain financial information about you without advance notice or your consent. In most of these cases, the Federal agency will be required to go to court to get permission to obtain your records without giving you notice beforehand. In these instances, the court will make the Government show that its investigation and request for your records are proper. When the reason for the delay of notice no longer exists, you will usually be notified that your records were obtained.



Transfer of Information

Generally, a Federal agency which obtains your financial records is prohibited from transferring them to another Federal agency unless it certifies in writing that the transfer is proper, and sends a notice to you that your records have been sent to another agency.

Penalties

If a Federal agency or financial institution violates the Right to Financial Privacy Act, you may sue for damages or to seek compliance with the law. If you win, you may be repaid your attorney's fees and costs.

Additional Information

If you have any questions about your rights under this law, or about how to consent to release your financial records, please call the official whose name and telephone number appears below:

---

Name

---

Title

---

Address

---

Telephone

U. S. Department of Energy  
Office of Inspector General**Request for Dun & Bradstreet Search**

Date: \_\_\_\_\_

Principal Name \_\_\_\_\_

Company Name \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Company Telephone Number \_\_\_\_\_

Dunn &amp; Bradstreet No. (if available): \_\_\_\_\_

***Please check the box in front of the search(es) requested:***

- ☐ **Business Information Report** (Company Overview)  
☐ Phone Number Search ☐ Address Unknown Search

- ☐ **Principal Search** (Other businesses the individual may be associated with)

List any additional names: \_\_\_\_\_

- ☐ **Duns Legal Search** (Public Record Search on Name/Business)  
☐ All Records ☐ Business Registrations ☐ Suits, Liens, Judgments  
☐ Bankruptcy ☐ UCC Filings

- ☐ **Family Tree Report** (Corporate Affiliations)

- ☐ **Government Activity Report** (Previous Government Activity)

- ☐ **Duns Financial Profile** (Financial Analysis vs. Industry)

- ☐ **Environmental Map Report** (Environmental Liability)

- ☐ **Archival Report** (Last Business Info Report Available from D&B archives)

Other \_\_\_\_\_

Requested By: \_\_\_\_\_ Office: \_\_\_\_\_

Case File No.: \_\_\_\_\_ Phone No.: \_\_\_\_\_



## Document Number 22



## CHAPTER 8

### SPECIALIZED INVESTIGATIVE PROCEDURES

#### I. SCOPE OF CHAPTER

This chapter provides policies and procedures governing various specialized investigative matters. Subjects addressed include: consensual monitoring, surveillance and electronic tracking devices, confidential informants, victim and witness assistance guidelines, Office of Inspector General (OIG) subpoenas, Federal Grand Jury guidelines, obtaining U.S. Postal Service information (e.g., mail covers), polygraphs and questioned documents.

**Note:** Specialized investigative procedures, as outlined above, are often performed in joint or task force investigations. In these situations, administrative requirements for a specific activity will be defined by the agency that has the lead on the specific activity. For example, if Department of Energy (DOE) OIG is the lead agency on an investigation but the Federal Bureau of Investigation (FBI) takes the lead in performing a consensual monitoring activity, the FBI consensual monitoring policy/administrative requirements will be followed. DOE OIG's participation in that specific activity will be documented in the case file by a Memorandum of Investigative Activity. Conversely, if the FBI is the lead agency and DOE OIG takes the lead on a specific activity, DOE OIG's policy/administrative requirements will be followed.

#### II. CONSENSUAL MONITORING

Title III of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law No. 90-351, Section 211(a)(2)(c), codified at Title 5, U.S.C., Section 2511(2)(c), authorizes consensual monitoring by Federal law enforcement officers.

##### A. Definitions

The following definitions are pertinent to the discussion of consensual monitoring:

1. Consensual: The use of an electronic, mechanical or other monitoring device, including the use of a telephone extension, to secretly listen to or record private conversations with the knowledge and consent of at least one of the participants.
2. Targets: The individuals whose communications are expected to be monitored without their knowledge or consent.
3. Approval: OIG consent to use consensual monitoring.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

4. Authorization: Department of Justice (DOJ) consent to use consensual monitoring.
5. Emergency Consensual Monitoring: Consensual monitoring of conversations where circumstances require monitoring and established authorization and approval procedures cannot be followed due to potential imminent loss of essential evidence, or a threat to the safety of a Special Agent, employee, witness or confidential informant. OIG approval of an emergency consensual monitoring can be granted *only during the non-duty hours* of the DOJ attorney who would have otherwise been contacted for authorization.

### B. OIG Policy

Consensual monitoring of conversations will be used as an investigative technique in official OIG criminal investigations only under the following conditions:

1. When necessary to ensure the safety of any Special Agent, employee, witness, or confidential informant;
2. When necessary to counteract any possible future claims of entrapment; and/or
3. When evidence cannot be obtained or corroborated as effectively through other means.

Consensual monitoring will be conducted in accordance with the provisions of this Manual and the procedures established in the Attorney General's Memorandum dated May 30, 2002 (2002 Attorney General Memorandum). The 2002 Attorney General Memorandum supersedes Attorney General memorandums dated January 1998 and November 1983 on the "Procedures for Lawful, Warrantless Interceptions of Verbal Communications," (See 2002 Attorney General Memorandum, *Procedures for Lawful, Warrantless Monitoring of Verbal Communications* – Chapter 8, Exhibit A).

The interception device must be under the control of the Government or the consenting party at all times. The consenting party must be present at all times when the device is operating.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

### C. Obtaining Approval for Consensual Monitoring

#### 1. OIG Approval

Special Agent-in-Charge (SAC) approval is required for consensual monitoring of conversations. Except in emergencies, approval will not be granted until proper DOJ authorization is obtained by the SAC or designee. If it is anticipated that consensual monitoring of conversations will take place in more than one judicial district, it is only necessary to obtain the concurrence of a DOJ attorney in one judicial district – normally that should be where the case is most likely to be prosecuted. After obtaining DOJ verbal approval, a request for authorization to use electronic equipment for consensual monitoring will be completed (See Request for Authorization to Use Electronic Equipment for Consensual Monitoring Form – Chapter 8, Exhibit B). Section #19 of the form requires a narrative which must include the following:

- a. A synopsis of case activities, findings, and outcomes to date, including the predication and focus of the investigation (i.e., a "snap shot" of the case). The synopsis should not be a simple sequential listing of dates, events, and activities;
- b. A justification for the request and a statement identifying if it is an initial, renewal, or emergency request; and
- c. An explanation as to the danger to the consenting party, if any, when the interception is for protection purposes. If there is no particular danger, the request must state that no danger to the consenting party is known at the time of the request.

#### 2. DOJ Approval

DOJ verbal authorization is required for all consensual monitoring actions. DOJ advanced written authorization is required for the following six categories of consensual monitoring actions:

- a. Monitoring that relates to an 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 serviced in such a capacity within the previous two years;
- b. Monitoring that relates to an investigation of a governor, lieutenant governor, attorney general of any state or territory, or a judge;
- c. Monitoring in which any party to the communication is a member of the diplomatic corps or a foreign country;
- d. Monitoring in which any party to the communication is or has been a member of the Witness Security Program and the fact that the person is a member of the Witness Security Program is known by the OIG;

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

- e. Monitoring in which the consenting or non-consenting party is in the custody of the Bureau of Prisons or the United States Marshals Service; and
- f. Monitoring in which the Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorney General, or the U.S. Attorney in the district in which the investigation is being conducted has requested that prior written consent be obtained on a specific investigation.

### 3. Consent Affidavit

In addition to the above requirements, an affidavit or written statement expressing consent will be obtained from each party to the monitoring (See Consensual Monitoring Consent Affidavit Form – Chapter 8, Exhibit C).

**Note:** DOE OIG investigators and other Federal law enforcement personnel who are consenting parties and whose conversations will be monitored are exempt from submitting an affidavit. All consenting parties who are not Federal law enforcement investigators or officers (including DOE employees and DOE contractors) are required to express such consent in writing.

### 4. Emergency Approval

The SAC or designee may authorize monitoring in sensitive or non-sensitive cases where the need for monitoring arises outside of DOJ normal duty hours. In such cases, all of the information required in a non-emergency situation must be provided to the SAC or designee to facilitate a decision. Where emergency authorization is granted, the Assistant IG for Investigations (AIGI) must notify the DOJ's Office of Enforcement Operations of such action within three workdays.

### 5. Scope of Approval

An approval for consensual monitoring is limited to communications involving the targets identified in the official request. However, if additional targets with a clear connection to the existing investigation are identified, then the consensual monitoring approval can be used to monitor communications involving the additional targets. Such use of a consensual monitoring approval to monitor communications with additional targets must be documented in the case file. The additional targets also must be specifically identified on consensual monitoring renewal requests. If consensual monitoring of non-telephone communications with additional targets involves individuals or cases in any of the six categories noted in Section II, C, 2 above, which ordinarily require advance written authorization from DOJ, then the appropriate DOJ



## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

officials must be contacted immediately for guidance. Under no circumstances will communications be monitored involving individuals who are not specifically identified in the consensual monitoring approval or who do not have a clear relationship to the matter under investigation.

### 6. Equipment Approval

In the event that the OIG has a need for specialized monitoring devices, which are not maintained by the OIG, coordination will be established with a Federal law enforcement or law enforcement support agency (i.e., Rocky Mountain Information Network), which maintains such devices. Approval for use of loaned devices must meet the same requirements as OIG-owned equipment.

**Note:** Digital cameras, video recorders, etc., and other similar technical equipment—*when used for activities other than consensual monitoring*—do not require supervisory approval. However, supervisors may establish regional expectations.

### D. Control and Maintenance of Consensual Monitoring and Other Specialized Technical Equipment

The SAC or designee has sole responsibility for the control of consensual monitoring and specialized technical equipment and is responsible for the maintenance of such equipment used by the Office of Investigations (OI). The SAC will use regional equipment custodians to carry out control and maintenance responsibilities.

#### 1. Primary Technical Equipment Custodians and Alternates

The SAC will designate primary and alternate equipment custodians for equipment in the field offices. Primary equipment custodians and alternates are responsible for the issuance, inventory and maintenance of all consensual monitoring and other investigative and technical related equipment within their jurisdictions.

#### 2. Storage of Technical Equipment

When consensual monitoring and specialized technical equipment are not in use, they will be stored in a secure container controlled by the primary equipment custodian or the designated alternate custodian. Access to the container is restricted to supervisors and custodians. Custodians will ensure that the equipment is provided the same degree of protection as documentary evidence.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

### 3. Inventory of Technical Equipment

The SAC or SAC-designated alternate custodian will maintain a Technical Equipment Log, on each piece of equipment (See Technical Equipment Log – Chapter 8, Exhibit D). Special Agents must sign the log book when removing/returning the equipment from/to the restricted storage area. The log book, which is maintained in the same secured room as the equipment, must include descriptive data pertaining to the equipment, including name and serial number, Special Agent's printed name and initials, issue and return dates, case number and custodian's initials.

Additionally, the local equipment custodian will maintain a Technical Equipment Inventory (See Technical Equipment Inventory Form – Chapter 8, Exhibit E). Part I of this log will be completed whenever consensual monitoring and/or specialized technical investigative equipment is acquired or disposed of by the regional office. This includes listening devices, audio recorders, cameras, video recorders/players, etc., as well as permanent and temporary (loaner) equipment. Technical equipment custodians are also responsible for conducting annual inventories on technical equipment. This will be accomplished by comparing the items listed on Part I of the log with the actual equipment on hand. Part II will be completed following the inventory check. An inventory review will also be completed upon reassignment of equipment custodian duties.

### E. Consensual Monitoring Reports

The Attorney General guidelines outlining "Procedures for Lawful, Warrantless Interceptions of Verbal Communications" rescinded all previous reporting requirements for agency heads or designees to provide formal reports to the Director of the Office of Enforcement Operations, Criminal Division, DOJ. However, the guidelines do mandate that appropriate records be maintained by the involved agency to ensure the availability of information concerning the use of consensual monitoring.

#### 1. Centralized Report

A Memorandum of Investigative Activity will be used to document consensual monitoring activities in each investigative case file. In addition, all consensual monitoring activity will be tracked in the Energy Inspector General Project Tracking (EIGPT) system. The Operations Officers will run annual reports from EIGPT on the total number of consensual monitoring activities and will report the information, as required, to outside organizations (e.g., Attorney General).

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

### 2. Consensual Monitoring Requests and Actions

The SAC maintains a control file consisting of copies of all requests and approvals/disapprovals for *consensual monitoring*, as well as copies of all documents concerning completed consensual monitoring activities. The file is maintained in a secured cabinet in the SAC's office. Each record in the file is cross-referenced to the appropriate investigative file. Access to the file is limited to the Inspector General, Deputy Inspector General for Investigations, AIGI, SAC, and their formally designated representatives. The official case file will contain the original documentation.

### F. Consensual Monitoring Staff Responsibilities

SACs, Assistant Special Agents-in-Charge (ASACs), Technical Equipment Custodians and Special Agents are key individuals involved in the management of technical equipment. Their responsibilities and certain operating procedures are discussed as follows:

#### 1. SAC Responsibilities

The SAC is responsible for:

- a. Ensuring consensual monitoring requests are properly submitted using the Request for Authorization to use Electronic Equipment for Consensual Monitoring form (See Request for Authorization to Use Electronic Equipment for Consensual Monitoring Form – Chapter 8, Exhibit B).
- b. Approving consensual monitoring requests for periods of 90 calendar days.
- c. Monitoring 90-day extension requests.
- d. Coordinating all consensual monitoring related issues at the Headquarters level.
- e. Maintaining a control file consisting of all original requests and approvals/disapprovals for consensual monitoring, as well as copies of all documents concerning completed consensual monitoring activities.
- f. Designating a local OIG staff person as the region's Technical Equipment Custodian.
- g. Ensuring annual inventories are conducted on consensual monitoring and specialized technical equipment.
- h. Retaining Records pertaining to consensual monitoring for a period of 5 years.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

### 2. ASAC Responsibilities

The ASAC is responsible for:

- a. Granting authorization and approval for emergency consensual monitoring requests by signing a completed Request for Authorization to use Electronic Equipment for Consensual Monitoring form and explaining the emergency in Section 19 (See Request for Authorization to Use Electronic Equipment for Consensual Monitoring Form – Chapter 8, Exhibit B). Emergency authorizations are valid for 24 hours or until regular authorizing and approving officials can be reached during duty hours. If additional consensual monitoring is required, a renewal request must be submitted to the SAC.
- b. Ensuring that the SAC is furnished with all relevant documents pertaining to consensual monitoring and that all appropriate EIGPT entries are made.
- c. Working with local equipment custodians to ensure annual inventories are conducted on consensual monitoring and specialized technical equipment.

### 3. Regional Technical Equipment Custodian Responsibilities

The Custodian is appointed by the SAC and is responsible for:

- a. Ensuring that consensual monitoring and other investigative-related equipment is stored in a safe, cabinet, closet or room secured by a high quality locking device and that an inventory is maintained of all monitoring devices.
- b. Maintaining a local Technical Equipment Inventory (See Technical Equipment Inventory Form – Chapter 8, Exhibit E).
- c. Conducting annual inventories on consensual monitoring and specialized technical equipment.

### 4. Special Agent's Responsibilities

The Special Agent is responsible for:

- a. Obtaining the required consent prior to any consensual monitoring activity.
- b. Preparing, signing and submitting a request to the SAC through his/her ASAC a Request for Authorization to Use Electronic Equipment form (See Request for Authorization to Use Electronic Equipment for Consensual Monitoring Form – Chapter 8, Exhibit B).

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

- c. Following all Attorney General Guidelines pertaining to consensual monitoring.
- d. Participating, if appropriate, in consensual monitoring activities. In preparation for conducting consensual monitoring activity, the Special Agent can refer to the "Consensual Monitoring Preamble Template" form (See Consensual Monitoring Preamble Template Form, Chapter 8, Exhibit F).
- e. Documenting consensual monitoring activities, including communication with additional targets, in a Memorandum of Investigative Activity.
- f. Coordinating the use of technical equipment with the Regional Technical Equipment Custodian and ensuring the required logs are completed.
- g. Ensuring that, upon completion of all legal and administrative actions, all original tape recordings are stored in the official case file or discarded per instructions from the Assistant United States Attorney (AUSA).
- h. Documenting the disposal of any consensual monitoring recordings in the case file.

### III. SURVEILLANCE AND ELECTRONIC TRACKING DEVICES

#### A. Surveillance

##### 1. Definition

Surveillance is the physical observation of an individual or group of individuals. Normally, Special Agents conducting surveillances do not assume identities other than their own; on occasion, however, a Special Agent may have to conceal his/her identity during the surveillance by assuming a temporary identity. Generally, surveillances are used to:

- a. Obtain evidence of a crime;
- b. Locate persons;
- c. Obtain information about a subject's activities;
- d. Check on the reliability of confidential informants;
- e. Locate hidden property;
- f. Obtain probable cause for obtaining search warrants;
- g. Obtain information for use in investigative interviews;
- h. Develop leads and information received from other sources;
- i. Determine the whereabouts of an individual; and/or
- j. Obtain admissible evidence for use in court.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

### 2. Approval

The conduct and supervision of surveillance activity is a field office responsibility. All surveillances with or without electronic equipment or other visual aids must be coordinated with the ASAC beforehand. If such surveillance is performed on an impromptu or unforeseen basis, the ASAC must be notified as soon as feasible following the activity.

### 3. Reporting

A Memorandum of Investigative Activity and daily Surveillance Log will be maintained in the Special Agent's case file for each surveillance (See Surveillance Log – Chapter 8, Exhibit G).

### 4. Planning

Special Agents, in consultation with the ASAC, may want to consider using an Operational Plan for their surveillance activity (See Operational Plan – Chapter 4, Exhibit CC).

**Note:** Surveillance provisions outlined herein do not abrogate a Special Agent's responsibility to follow appropriate DOE regulations regarding electronic equipment in certain security areas in the DOE complex.

## B. Electronic Tracking Devices (ETD)

Surveillance with ETDs, such as Global Positioning System devices, is an effective tool that can be used to assist law enforcement officers in collecting evidence to be utilized in the course of their investigations.

### 1. OIG Policy

The installation and use of tracking devices is covered under Rule 41 of the Federal Rules of Criminal Procedure and specifically pursuant to Title 18, U.S.C., Section 3117, Mobile Tracking Devices. The following applies to the use of tracking devices:

- a. Use of an ETD requires appropriate legal and managerial approvals.
- b. Special Agents will utilize ETDs in such a manner that will not knowingly violate a person's Reasonable Expectation of Privacy (REP) in vehicles. Currently, ETD installations that violate a persons' REP include installations that rely on any connection to a vehicle's electrical system to power the unit or intrude into the passenger compartment or trunk,

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

and/or installing the device while the vehicle is parked in and where the owner/operator has a REP.

- c. If ETDs that provide real-time monitoring are employed, the devices may require programming the ETD to avoid transmitting data when the operator/vehicle enters an REP area. Special Agents must discuss the specific legal requirements of the proposed installation and monitoring approach with an AUSA or local prosecutor prior to utilizing this technique and seek a search warrant or court order if the owner/operator's REP will be violated.

### 2. OIG Approved Tracking Devices

The OIG currently utilizes only Global Positioning System (GPS) tracking devices in support of field investigations. GPS devices employ satellite telemetry and mapping software to locate the precise longitude and latitude of vehicles or packages in both historical and real-time perspectives.

### 3. ETD Authorization for Surreptitious Use

When the Special Agent determines that the use of ETDs in support of an investigation is warranted, the agent will:

- a. Discuss the use of ETDs with the ASAC as well as with an AUSA or local prosecutor. The case agent is responsible for complying with all legal requirements deemed necessary by the assigned prosecutor (i.e., search warrant returns, evidence vouchers, etc.). This includes, for instance, determining whether a Title I court order is necessary for use of a GPS tracking device that is capable of audio and video recording or transmission.
- b. Complete the Request for Authorization to Use Electronic Tracking Equipment form (See Request for Authorization to Use Electronic Tracking Equipment Form – Chapter 8, Exhibit H).
- c. Obtain final approval for the use of ETDs from the SAC, which is documented in the Request for Authorization to Use Electronic Tracking Equipment form and maintained in the case file.
- d. Obtain approval from the SAC if the duration of surveillance extends beyond 30 days from initial approval and document the approval on the Request for Authorization to Use Electronic Tracking Equipment form.
- e. Submit a new Request for Authorization to Use Electronic Tracking Equipment form if the surveillance extends beyond 180 days from the initial approval.
- f. Maintain all Request for Authorization to Use Electronic Tracking Equipment forms in the case file.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

- g. Preserve all tapes, computer disks or other electronic data produced by the GPS mapping software as evidence.
- h. Maintain appropriate surveillance logs in the case file.

**Note:** The Special Agent must obtain SAC approval at 30 day intervals and submit new Request for Authorization to Use Electronic Tracking Equipment forms at 180 day intervals.

### 4. ETD Authorizations for Consensual Use

In cases where the property owner has given permission for the installation of an ETD, Special Agents will:

- a. Follow all the requirements for requesting approval as noted above in Section III, B, 3.
- b. Document the owner's consent in writing and ensure that the consenting party is lawfully authorized to give consent.
- c. Consult with the appropriate AUSA or local prosecutor prior to installing a tracking device on a Government Owned Vehicle since it may involve issues related to REP.
- d. Consider using a tracking device on undercover vehicles for safety and protection. This is considered a consensual use of an ETD and requires no court order.

### 5. DOE Security Regulations

Special Agent's must consider DOE regulations regarding electronic equipment in certain security areas in the DOE complex and plan ETD surveillance activities accordingly so as not to violate any security regulations.

### 6. Storage & Inventory Requirements

Regional Technical Equipment Custodians will ensure that ETDs are maintained with other technical investigative equipment and stored in a safe, cabinet, closet, or secured room and that the ETD equipment is inventoried using the Technical Equipment Inventory (See Technical Equipment Inventory Form – Chapter 8, Exhibit E).



## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

### IV. CONFIDENTIAL INFORMANTS<sup>1</sup>

OIG regulations concerning the use of Confidential Informants are set forth pursuant to the Attorney General Guidelines Regarding the use of Confidential Informants, dated May 22, 2002, and the Guidelines on Undercover Operations from the Council of Inspectors General on Integrity and Efficiency (CIGIE) dated February 23, 2010. As such, this chapter is designed to set forth guidance specifically dealing with confidential informants that will perform significant work for or provide ongoing and meaningful information to the DOE OIG, and not just persons requesting the protection of their identity or keeping their name confidential while providing information during a one or two time contact. See Chapter 7 of this Manual and DOE OIG Directive IG-920C, Identity Protection, (located on the IONet under Policy/OIG) for information regarding pledges of confidentiality and protecting the identity of individuals who bring complaints or information to the OIG.

Cultivating sources of confidential information can greatly enhance and be effective tools in the OIG's law enforcement mission. It is important to note that while Confidential Informants may be valuable resources, their use is a sensitive area and can, if not properly controlled and managed, be a potential threat to the integrity of investigations and to the safety of all personnel involved. Therefore, it is critical that Special Agents, ASACs and SACs recognize these risks and carefully conduct and monitor investigations to minimize any adverse impacts.

#### A. National Confidential Informant Coordinator

The National Confidential Informant Coordinator (Coordinator) oversees and monitors the OIG Confidential Informant program. The AIGI designates one of the Headquarters Operations Officers as the Coordinator. The Coordinator ensures that there are no conflicts or overlaps of informants and helps to avoid multiple OIG Investigations offices unknowingly using the same Confidential Informant.

##### 1. Index of Confidential Informants

The Coordinator maintains a secure central index of registered confidential assets containing the Confidential Informant number, the registering investigations office, informant status (i.e. active/deactivated) and full name of each Confidential Informant. Confidential Informant numbers are provided to ASACs and SACs as needed.

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<sup>1</sup> To be consistent with the Attorney General and Council of Inspectors General on Integrity and Efficiency (CIGIE) guidelines, Confidential Informant is used instead of Confidential Source.

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### 2. Confidential Informant Numbers

Upon registration, the ASAC or SAC contacts the Coordinator to obtain a unique Confidential Informant number. The unique number identifies the fiscal year (FY) of registration and the Confidential Informant number. For instance, the first two Confidential Informants registered in FY 2011 would be numbered CI-11-001 and CI-11-002.

### B. Use of a Confidential Informant

Confidential Informants are used by the OIG in law enforcement activities. The use of a Confidential Informant must be discussed with the responsible ASAC and SAC prior to vetting and registering a Confidential Informant. If a Special Agent plans to utilize a Confidential Informant in an undercover operation, the agent should also refer to Chapter 4 for additional guidance. A Confidential Informant used by the OIG, must be registered with the OIG. In certain circumstances, a Confidential Informant may be engaged for assistance on more than one investigation or in a series of related investigations. Regardless of how the Confidential Informant is engaged, the relationship with a Confidential Informant requires the utmost discretion. It demands the highest degree of honesty, integrity and tact from the responsible Special Agent, who must control the Confidential Informant on behalf of the OIG.

**Note:** Because of the potential negative impact on an investigation, special care must be exercised when dealing with Confidential Informants who have provided misleading or inaccurate information in the past. Prudent efforts to corroborate and validate the information provided must be attempted and documented appropriately.

### C. Motivations of a Confidential Informant

Special Agents must be aware of what motivates people to become Confidential Informants. Examples of motivations include but are not limited to: money; revenge against co-workers; business competitors; romantic interests; desire to be a law enforcement officer (LEO), to feel important, or to establish a bond with LEOs for personal gain; desire for prosecutorial or judicial leniency; and/or desire to perform a public service by assisting law enforcement agencies (LEAs).

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### D. Confidential Informant Vetting

After discussing the use of a Confidential Informant with the ASAC and SAC, and the ASAC and SAC have approved the vetting of the potential Confidential Informant, Special Agents will determine a Confidential Informant's identity and complete background information prior to being allowed to register the Confidential Informant. This process should include a standard query of EIGPT to determine if the person is indexed in any DOE OIG cases.

#### 1. Suitability Determination and Recommendation

The suitability of the individual to become a registered Confidential Informant must be determined. The Special Agent shall complete and sign the Confidential Informant Initial Suitability Report and Recommendation form and submit it to the responsible ASAC and SAC for review (See Confidential Informant Initial Suitability Report and Recommendation Form – Chapter 8, Exhibit I).

In completing the Confidential Informant Initial Suitability Report and Recommendation form, the Special Agent must address the following factors (or indicate that a particular factor is not applicable):

- a. The person's name and date of birth;
- b. The person's citizenship/alien status;
- c. Whether the person is a DOE employee, contractor or subcontractor; public official; law enforcement officer; union official; employee of a financial institution or school; member of the military services; a representative or affiliate of the media; or a party to, or in a position to be a party to, privileged communications (e.g., a member of the clergy, a physician, or a lawyer);
- d. The extent to which the person would make use of his or her affiliations with legitimate organizations in order to provide information or assistance to the law enforcement agency, and the ability of the law enforcement agency to ensure that the person's information or assistance is limited to criminal matters;
- e. The extent to which the person's information or assistance would be relevant to a present or potential investigation or prosecution and the importance of such investigation or prosecution;
- f. The nature of any relationship between the Confidential Informant and the subject or target of an existing or potential investigation or prosecution, including but not limited to a current or former spousal relationship or other family tie, and any current or former employment or financial relationship;

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- g. The person's motivation in providing information or assistance, including any consideration sought from the government for this assistance;
- h. The risk that the person might adversely affect a present or potential investigation or prosecution;
- i. The extent to which the person's information or assistance can be corroborated;
- j. The person's reliability and truthfulness;
- k. The person's prior record as a witness in any proceeding;
- l. Whether the person has a criminal history, is reasonably believed to be the subject or target of a pending criminal investigation, is under arrest, or has been charged in a pending prosecution;
- m. Whether the person is reasonably believed to pose a danger to the public or other criminal threat, or is reasonably believed to pose a risk of flight;
- n. Whether the person is a substance abuser or has a history of substance abuse;
- o. Whether the person is a relative of an employee of any law enforcement agency;
- p. The risk of physical harm or other possible retaliation (especially if the Confidential Informant is a DOE employee, contractor, or subcontractor) that may occur to the person or her/his immediate family or close associates as a result of providing information or assistance to the OIG; and
- q. The record of the OIG, National Confidential Informant Coordinator and the record of any other law enforcement agency (if available to the OIG) regarding the person's prior or current service as a registered Confidential Informant, cooperating defendant/witness, or source of information, including, but not limited to, any information regarding whether the person was at any time terminated for cause.

### 2. Timeframe for Suitability Determination

Unless extended by the SAC, a suitability inquiry must be completed within 90 days of initiating the inquiry. The SAC may permit limited use of the Confidential Informant during the suitability inquiry provided items a. through e. identified in Section IV, F, 1 of this chapter have been documented on Confidential Informant Initial Suitability Report and Recommendation form (See Confidential Informant Initial Suitability Report and Recommendation Form – Chapter 8, Exhibit I).

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### 3. Subsequent Information Impacting a Suitability Determination

At any point following the completion of a Confidential Informant Initial Suitability Report and Recommendation form, if the OIG becomes aware of any information that might materially alter a prior suitability determination the controlling agent must promptly notify the ASAC and SAC. Potentially material information includes, but is not limited to, illegal activity by the Confidential Informant. Upon receipt of such information, the ASAC and SAC shall ensure that the information is memorialized in the Confidential Informant's file.

### 4. Continuing Suitability Review

At least annually, the ASAC and SAC must complete a continuing suitability review for each Confidential Informant assigned to his/her regions. To initiate this process, the controlling agent will complete a memorandum that addresses the factors outlined in Section IV. F. 1 of this chapter. The memorandum must also explain the length of time the individual has been registered as a Confidential Informant as well as the identity of agents who have been assigned as a controlling agent(s) (including time periods) for the Confidential Informant. Three years after the completion of the Suitability Inquiry and if the Confidential Informant continues to perform substantial work for the OIG, the SAC will consult with AIGI for continued use of the Confidential Informant.

## E. Approval for Use of a Confidential Informant

### 1. Submission of Form

The proposing agent shall attach the completed Confidential Informant Initial Suitability Report and Recommendation form to a memorandum addressed to their ASAC and SAC requesting approval to enroll the individual as an OIG Confidential Informant (See Confidential Informant Initial Suitability Report and Recommendation Form – Chapter 8, Exhibit I).

### 2. Review of Form

The ASAC and SAC will review the Confidential Informant Initial Suitability Report and Recommendation form, the attached memorandum and discuss with the requesting Special Agent the potential Confidential Informant. They will determine if the person is suitable for use as an OIG Confidential Informant. Consideration should be given to all factors for potential risks and impact, with particular attention being given to the person's motivation(s), criminal history, ability to verify information, and the danger to themselves or the public. The ASAC and SAC will initial and date the requesting memorandum

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as approved or disapproved and relay the decision to the requesting Special Agent.

### 3. Confidential Informant Registration

If the ASAC and SAC approve the use of an individual as a Confidential Informant, the individual will be registered as an OIG Confidential Informant. Confidential Informants are not to be indexed in EIGPT unless they are the complainant. In such instances, an assigned code will be used, for example "CI-11-001." Care must be taken that any information included in EIGPT does not identify the Confidential Informant. In registering the Confidential Informant, the controlling agent must complete a DOE OIG Confidential Informant Registration Form and document the following in the form (See Confidential Informant Registration Form, Chapter 8, Exhibit J):

- a. Name
- b. Alias(s)
- c. Social Security Number(s)
- d. Driver's license number and State of issue
- e. Date and place of birth
- f. Ethnicity
- g. Gender
- h. Height
- i. Weight
- j. Eye and hair color
- k. Identifying marks (i.e. scars/tattoos etc., if applicable or pertinent)
- l. Address
- m. Telephone number(s)
- n. Emergency contact information
- o. Employment
- p. Motivation(s) to the extent known by the OIG
- q. Type of information the Confidential Informant can provide
- r. Citizenship and alien status
- s. Photograph of the Confidential Informant
- t. Full Set of fingerprints.

### 4. Confidential Informant Statement of Understanding

In registering a Confidential Informant, the controlling agent, along with one additional Special Agent or law enforcement official, shall witness and review the Confidential Informant's written instructions via a Statement of Understanding form (See Statement of Understanding Form – Chapter 8, Exhibit K). The Statement of Understanding form must indicate that the Confidential Informant:

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- a. Understands that the OIG will strive to protect the informant's identity but cannot guarantee that it will not be divulged;
- b. Understands that the OIG may, at its discretion and without prior approval, disclose the informant's identity to other law enforcement personnel and prosecutors;
- c. Will provide truthful, complete and accurate information to the DOE OIG;
- d. Agrees that any false oral or written statements provided to the DOE OIG can be used against the informant;
- e. Understands the DOE OIG on its own cannot promise or agree to any immunity from prosecution in exchange for cooperation;
- f. Is not an employee of the DOE OIG and may not represent themselves as such;
- g. Will abide by the instructions of the DOE OIG and will not take any independent action;
- h. Cannot enter into any contract or incur any obligation on behalf of the DOE OIG, except as specifically instructed by the DOE OIG;
- i. Has been advised that the act of inducing a person to commit a crime not otherwise contemplated by him or her, for the purpose of instituting a criminal prosecution against the person, is entrapment and is not allowed;
- j. Will not initiate any plans to commit criminal acts;
- k. Will not violate any law while working for the OIG (i.e. speeding, theft, illegal drug use, etc.).
- l. Will immediately report any violations of Federal, state, local laws or any DOE regulation to the DOE OIG;
- m. Cannot reveal this special relationship with the DOE OIG to anyone without the specific authorization of the DOE OIG;
- n. Will immediately report any threats or any adverse circumstances that occur as a result of the special relationship with the DOE OIG;
- o. Has not received any threats or promises by representatives of the DOE OIG to obtain the informant's cooperation;
- p. Understands that the DOE OIG cannot guarantee any rewards, payments or other compensation;
- q. Understands that in the event the informant receives a reward, payment, or other compensation from the DOE OIG, the informant is liable for any taxes that may be owed;
- r. Is fully accountable for any monetary instruments, property, etc., provided for the use in DOE OIG operations and will promptly return all unused and obtained monetary instruments, property, etc., to the DOE OIG; and
- s. May be requested to submit to a polygraph examination for verifying the informant's adherence to the above conditions.

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The content and meaning of each of the foregoing instructional points must be clearly conveyed to the Confidential Informant via the Statement of Understanding form. Immediately after these instructions have been given, the agent(s) shall require the Confidential Informant to acknowledge his or her receipt and understanding of the instructions by signing the Statement of Understanding Form. The agent and the other law enforcement official will document that the instructions were reviewed with the Confidential Informant and that the Confidential Informant acknowledged the instructions and his/her understanding of them by signing the Statement of Understanding. As soon as practicable thereafter, an ASAC and SAC shall review the Statement of Understanding form to ensure it is complete. A copy of the signed Statement of Understanding form will be kept with the Confidential Informant's file as outlined below.

The instruction and registration procedures must be repeated every 12 months or whenever it appears necessary or prudent to do so.

### F. Identity of a Confidential Informant

The OIG will protect the identity and confidentiality of all Confidential Informants in accordance with the IG Act of 1978, Section 7(b) and DOE OIG Directive IG-920C, Identity Protection. Additionally, disclosure of a Confidential Informant's identity may be made when authorized by the Confidential Informant. Release of a registered Confidential Informant's identity must be recorded in the Confidential Informant file. Release of a Confidential Informant's identity to other law enforcement agencies will not be made without prior approval of the appropriate SAC or ASAC. Coordination with the AUSA must also be undertaken when the disclosure of a Confidential Informants' identity is possible.

**Note:** When writing Memoranda of Investigative Activity, Confidential Informants will only be referred to by their Confidential Informant number and no other potentially identifying information. Agents writing reports and supervisors reviewing reports should consider that brevity and concise writing, which reflects only necessary details, may best conceal the identity of a Confidential Informant. Additionally, agents should not create fictional scenarios in reports attempting to conceal the Confidential Informant's identity.

### G. Confidential Informant Management

#### 1. Controlling Agent

A Special Agent responsible for managing an individual Confidential Informant is referred to as the "controlling agent." During the period a Confidential Informant is working with the OIG, more than one agent can be a controlling



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agent for a single Confidential Informant but not at the same time. SACs and ASACs are not permitted to serve in this capacity. However, SACs and ASACs are responsible for the oversight of Special Agents to ensure the proper use and control of Confidential Informants. When a controlling agent is promoted to the level of SAC or ASAC, his/her documented Confidential Informants will be transferred to another case-carrying agent or agents.

### 2. Direction of Confidential Informant

OIG management (i.e., SACs, AIGI), not individual controlling Special Agents, reserve the right to direct and decide all matters related to Confidential Informants.

### 3. Direction of Investigation

Operationally, Special Agents must make certain that it is the Special Agents, and not the Confidential Informant, that directs the investigation.

### 4. Interaction with a Confidential Informant

Depending upon the circumstances, a Special Agent should attempt to be in the company of another law enforcement official when working with or interviewing a Confidential Informant, especially if the Confidential Informant is of the opposite gender. Special Agent contacts with a Confidential Informant of the opposite gender should be at locations that will not reflect adversely on the personal reputation or credibility of either party. Special Agents must not become personally involved with any Confidential Informant. All contacts with Confidential Informants will be strictly professional to preclude any actual or perceived conflicts of interest. Special Agents will not engage in private business relationships with Confidential Informants. Under no circumstances will Special Agents loan anything of value to, or borrow anything of value from, a Confidential Informant. Any financial transaction with a Confidential Informant, such as payment for services or expenses, will always be performed by two agents (discussed below) unless the AIGI, due to extraordinary circumstance, waives this requirement in advance.

Special Agents should ensure that a Confidential Informant's knowledge of DOE and OIG facilities, operations, activities and personnel, learned from the agents, is kept to a minimum.

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### 5. Debriefing

After the registration and documentation of instructions to the Confidential Informant have occurred, the Confidential Informant will be fully debriefed concerning his or her knowledge of criminal or other unlawful activity. In general, Confidential Informants should be debriefed of information as soon as possible after the Confidential Informant obtains it. Every investigative avenue should be pursued during the debriefing to ensure that information provided by a Confidential Informant is reliable. Agents should be alert for dishonesty or false statements.

### 6. Criminal Activity Outside OIG Responsibility

When the Confidential Informant provides information concerning planned criminal activities not within the enforcement responsibility of the DOE OIG the information will be brought to the attention of the ASAC and SAC and a determination will be made as to the means and manner of notification to the appropriate agency. If the planned criminal activity is of a violent or life threatening nature, proper notifications will be immediate, if needed to prevent the activity, and performed by the ASAC and SAC only if they are immediately available.

### 7. Legal Claim of Privilege

When a Confidential Informant is likely to provide information that is subject to a legal claim of privilege the OIG will ensure there is prior coordination with the appropriate prosecuting attorney.

### 8. Adverse Activity by the Confidential Informant

When it appears that an active Confidential Informant shows indications of emotional instability or unreliability, has willfully furnished materially false information, or if a Confidential Informant is arrested or believed to have engaged in unlawful conduct other than a petty crime or a minor traffic offense, the ASAC and SAC of the affected office will be advised immediately. Depending upon the significance of the issue and its impact upon the investigation, the ASAC and SAC, along with the DAIGI, will make a determination jointly as to the continued use of the Confidential Informant. If a prosecutor is involved with the case, the prosecutor will be promptly consulted.

Under no circumstances should a Special Agent knowingly take any action or refrain from taking any action with the purpose of concealing the commission of a crime by a Confidential Informant.

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### 9. Coordination with other Entities

Special Agents must consider the following when working with other entities when using a Confidential Informant:

- a. If more than one Federal law enforcement agency is involved in an investigation using a Confidential Informant, efforts at coordination among all of the relevant agencies Senior Field Managers (e.g., GS-15s, if possible) should occur.
- b. In situations where a prosecutor is either participating in the underlying investigation using the Confidential Informant or working with the Confidential Informant in connection with a prosecution, the OIG must immediately inform the prosecutor if the Confidential Informant is arrested or accused of a crime. The OIG will provide the prosecutor the details of the arrest or nature and extent of the alleged unauthorized unlawful conduct.

When the circumstances are appropriate, agents may bring to the attention of the prosecutor and/or the court the nature and significance of assistance rendered by the Confidential Informant. However, agents may not make promises or give assurances to Confidential Informants of a reduced sentence, immunity from prosecution, dismissal of charges or other matters not within their authority.

### H. Deactivation of Confidential Informants

#### 1. Productivity Review

During the progress of a case, the controlling agent, in discussion with the ASAC and SAC, will review each active registered Confidential Informant's file annually to evaluate productivity. An active registered Confidential Informant who has not provided any meaningful information during the year should be considered for deactivation.

#### 2. Closed Cases

SACs/ASACs may deactivate a Confidential Informant when the corresponding case is closed. If the Confidential Informant is a source for multiple cases, the Confidential Informant will remain active until the final case is closed, or until the Confidential Informant is no longer providing useful information to the DOE OIG.

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### 3. Termination Memorandum

At the time of deactivation, the controlling agent will prepare a termination memorandum. The memorandum will explain the reason(s) for termination and include a statement by the controlling agent that the registered Confidential Informant has been personally notified of the termination and date of the notification. The controlling agent will provide a written explanation if unusual circumstances preclude such notification. The controlling agent should provide a brief analysis as to the value and reliability of the Confidential Informant in order to provide insight for an agent who may need to use the Confidential Informant in the future. The deactivation memorandum will be included in the Confidential Informant file.

### I. Confidential Informant File

#### 1. File Creation

The outside of the folder will be labeled with the case number, U.S. Department of Energy, Office of Inspector General, Office of Investigations and the Confidential Informant number.

#### 2. File Contents

At a minimum, the following will be documented and/or included in a Confidential Informant's file:

- a. Efforts to establish the Confidential Informant's true identity;
- b. The results of a criminal history check(s) of the Confidential Informant;
- c. The Initial Suitability Report and Recommendation form;
- d. The DOE-OIG Confidential Informant Registration form;
- e. The Statement of Understanding form;
- f. Any promises or benefits, and the terms of such promises or benefits, that are given a Confidential Informant by any Federal Prosecuting Officer or any state or local prosecuting office (if available); and
- g. Other pertinent documentation pertaining to the control and handling of the Confidential Informant.

#### 3. File Maintenance

The ASAC and SAC should keep the Confidential Informant file inside of a secure container or have other appropriate safeguards in place to prevent the disclosure of the Confidential Informant's identity.

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### 4. File Closure

Upon case closure the Confidential Informant file will be forwarded to Headquarters for final retention. For final retention, the Confidential Informant file will be retained with the original investigative case file, akin to a bulky exhibit. Prior to sending the Confidential Informant file to Headquarters, notes and duplicative material in the Confidential Informant file that no longer serve a law enforcement purpose should be discarded. Confidential Informant files will be sent to Headquarters via a traceable method (i.e. FedEx or USPS registered mail) and will be double wrapped and labeled "To Be Opened by Addressee Only." Headquarters and field supervisor or designee will coordinate to confirm sending and receipt of the files.

In rare instances a Confidential Informant will be deactivated after the registering investigative case has been closed. In these instances, the Confidential Informant file will be forwarded to Headquarters for final retention with the registering investigative case file.

**Note:** No files or related documents, including Informant files, may be discarded on priority, special interest or cases with an open FOIA request.

### J. Confidential Funds

Using Confidential Funds (C-Funds) may be a valuable resource in the development and furtherance of the OIG's investigative mission. Every effort must be undertaken to ensure that C-Funds are managed effectively and that established monitoring and reporting of C-Fund expenditures are followed. Under no circumstances will C-Funds be intermingled with private, unofficial or other imprest funds, or with law enforcement equipment or case evidence. Generally, C-Funds are requested, used, and accounted for on a case-specific basis.

#### 1. Use of C-Funds

In general, C-Funds are used in connection with operational law enforcement actions and are used for a Confidential Informant or undercover operation. If a Special Agent plans to use C-Funds in connection with law enforcement actions relating to an undercover operation, the agent should also refer to Chapter 4 for additional guidance. The reasons a Confidential Informant may need access to funds include, but are not limited to, making controlled buys of contraband or stolen Government property, reimbursement for legitimate expenses incurred by the Confidential Informant that were operationally approved and/or for monetary reward. C-Funds will not be used to make routine purchases or obtain supplies, equipment or other operational necessities that

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are more appropriately procured using a Government purchase card or through emergency reimbursement procedures.

### 2. Requesting C-Funds

C-Funds are requested on a case-by-case basis. The SAC should discuss the request for C-Funds with the DAIGI and the AIGI. If preliminary approval is granted by the AIGI, the SAC will submit a memorandum through the DAIGI to the AIGI formally requesting C-Funds. The requesting memorandum to the AIGI will include the following information:

- a. Case number;
- b. Synopsis of investigation, to include pertinent facts;
- c. Description of the proposed use of requested funds;
- d. Amount requested;
- e. Anticipated benefits derived from the use of the funds;
- f. Name of the Confidential Fund Cashier(s) that will be in charge of the funds;
- g. Anticipated length of time the requesting office will possess the funds; and
- h. Name of the financial institution to which the funds should be electronically transferred including: address, telephone number, point of contact, ABA number and account number.

The AIGI will evaluate the request and, working with the Director, Office of Policy, Plans and Programs (P3), determine the availability of funds in the budget.

**Note:** At the AIGI's discretion, and with funds permitting, non-case specific C-Funds may be provided to OIG Investigations field managers to be used in the development of Confidential Informants and confidential information.

### 3. C-Fund Cashier

The SAC, in consultation with the ASAC, will designate a Special Agent as the Primary C-Fund Cashier for a region or office. The C-Fund Cashier is responsible for the full accounting of all the C-Funds in their area of responsibility, which includes receiving, safeguarding, recording, depositing, and disbursing C-Funds on a timely basis and for keeping the required records and accounts. As such, the C-Fund Cashier is personally liable for all monies coming into their possession and is obligated to faithfully perform their duties with the utmost trust, integrity, honesty and confidence. The SAC may also designate a Secondary C-Fund Cashier to assist in the Primary Cashier's absence.

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For those situations in which C-Funds cash are required at OI satellite locations (i.e., where an ASAC or SAC is not physically located), procedures will be employed to ensure that the C-Fund Cashier at that office location can adequately secure limited access to the C-funds.

A C-Fund Cashier cannot provide funds from C-Funds to any party without the advance approval from the ASAC and SAC of the region, or other appropriate OI approving official.

### 4. C-Funds Account

The C-Funds must be stored in a lock box or in a bank account. The SAC and C-Fund Cashier may consider opening a bank account using his/her true identity. Preferably, the account should not earn interest and should not require reporting of interest to the IRS. The C-Fund account will only contain funds specifically designated by the AIGI. The account will only contain C-Funds to support the investigation and will not be intermingled with other funds. The account will receive monthly paper statements. The C-Fund Cashier, Secondary C-Fund Cashier (if any), ASAC and SAC will each review and maintain the monthly statements. Any fees paid to the bank will be charged against the C-Funds of the investigation. The account will be closed when no longer required by the investigation.

Some investigations may require the establishment and use of an undercover bank account to use with the C-Funds. An undercover bank account may be opened after coordinating with the SAC, the DAIGI and the AIGI. Undercover bank accounts will be established, overseen and used in accordance with the CIGIE Guidelines on Undercover Operations dated on or after February 23, 2010.

### 5. C-Funds Accountability

- a. **Access** – C-Funds cash and checkbook (if applicable) are to be “double” secured and have limited access. As such, C-Fund cash must be secured by the C-Fund Cashier in a container with a key or combination lock. The combination and/or key to this container will only be in the possession of the Primary and/or Secondary C-Fund Cashier. The container will then be secured within the ASAC’s fire-resistant safe, to which only the SAC and ASAC will have access.
- b. **Accounting** – The C-Fund Cashier will promptly and properly record all C-Funds transactions on the Transaction Log for Confidential Funds (See Transaction Log for Confidential Funds Form, Chapter 8, Exhibit L). The Transaction Log for Confidential Funds will allow the C-Fund Cashier to account for both debits and credits of C-Funds, to include dates of

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transaction(s) and maintenance of a running balance. If the C-Fund Cashier is maintaining C-Funds for more than one case/operation, the funds will be secured in the same lock-box container but separate transaction logs will be maintained.

- c. *Providing Funds* – The C-Fund Cashier cannot be the requestor or provider of funds for a Confidential Informant on a case where the C-Fund Cashier is the lead investigator. If this situation arises, the Secondary C-Fund Cashier will oversee the dispersal of C-Funds for that case.
- d. *Review of Funds* – To ensure compliance with DOE internal control programs for imprest funds, ASACs will perform unannounced quarterly verifications and report the status of the C-Funds to the appropriate SAC and P3 Director. SACs will annually perform an audit of C-Funds for their offices. A log of the verifications/audits will be maintained with the funds. Further, a proper segregation of duties by all parties involved will be maintained to minimize the risk of loss from theft, fraud and error. If a bank account is open to support the C-Funds, the ASAC will verify the balance of the account, on an unannounced basis, directly with the bank and at least once a quarter.

### 6. Types of C-Fund Disbursements

- a. *Regular Disbursements* – Upon issuance of C-Funds from Headquarters to a field office, the SAC and ASACs are authorized to approve a single payment of up to \$2,000 per expenditure. A single payment in excess of \$2,000, but below \$5,000, will be made only with the authorization of the SAC. Payments in excess of \$5,000 must be approved by the AIGI, who is authorized to approve all confidential expenditures without limitation. Except as described below, these authorities may not be delegated except during periods someone is serving in an acting capacity (e.g., DAIGI is Acting AIGI). Agents serving in an acting capacity must coordinate C-Fund expenditures with the appropriate next level supervisor not in an acting capacity prior to making C-Fund disbursements.
- b. *Emergency Disbursements* – Operational requirements may present situations where the controlling agent needs to perform limited emergency or unforeseen purchases directly related to the Confidential Informant or in furtherance of the immediate operation involving a Confidential Informant. These types of emergency or unforeseen expenditures must be directly related to the operation and required for the furtherance of the investigation. These types of purchases may include, but are not limited to: food, beverages (including alcoholic beverages if necessary to continue the undercover operation), cover charges, parking, tolls, rental of a hotel room to maintain the Confidential



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Informant safety, and clothing to conceal electronic monitoring equipment. In these emergency instances, approval from the SAC or ASAC is not practical and C-Funds may be used. The SAC or ASAC must be notified of the use of C-Funds as soon as it is practicable but no later than 48 hours after use of the funds.

**Note:** C-Funds may never be used to make routine purchases or obtain supplies, equipment or other operational necessities (i.e., materials to secure evidence during a search warrant) that are more appropriately procured using the Headquarters Government purchase card or emergency reimbursement procedures. Additionally, C-Funds issued for a particular case may not be used for any other case or purpose without the express written consent of the AIGI.

- c. *Limited Delegated Authority Disbursement* – To address immediate needs specifically involving the Confidential Informant or an operation directly involving the Confidential Informant, the SAC may delegate authority to the lead investigator to spend up to \$100 per expenditure, up to a maximum of \$250 per calendar year. The SAC should discuss the possibility of immediate expenditures with the controlling agent upon beginning an operation involving a Confidential Informant. The decision to delegate this authority is at the sole discretion of the SAC.

Exercising the authority delegated above shall be in accordance with all applicable statutes and regulations and other OIG instructions and procedures as may be applicable.

### 7. C-Fund Payments to Confidential Informants

As stated above, C-Funds are provided to Confidential Informants for a variety of reasons that include, but are not limited to, making controlled buys of contraband or stolen Government property, information, evidence, reimbursement for legitimate expenses operationally approved and incurred by the Confidential Informant, and/or for monetary reward.

- a. *Payment of C-Funds by a Controlling Agent* – Controlling agents will make all payments to Confidential Informants in a manner which avoids even the appearance of impropriety. Agents are required to make any payments to Confidential Informants in the presence of at least one other law enforcement official. C-Funds will be paid directly to a Confidential Informant rather than through any intermediaries.

Monies paid to Confidential Informants in the form of fees and rewards will be commensurate with the value and accuracy of the information

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provided as well as the reliability of the Confidential Informant and/or the assistance rendered. Under no circumstances will any payments to a Confidential Informant be contingent upon the conviction or punishment of any individual.

- b. *Receipt C-Funds by a Confidential Informant* – At the time of registration, the controlling agent shall advise the Confidential Informant that the monies, except those representing payments of documented expenses (such as sustenance payments), are taxable income and must be reported to appropriate Federal, State and local tax authorities. Individuals who receive payment must be registered as an OIG Confidential Informant. The Confidential Informant should be told that the relationship between the Confidential Informant and the OIG is confidential and the OIG will not report to the IRS payments made by the OIG to the Confidential Informant. The Confidential Informant should consult his/her tax advisor if s/he needs guidance on how to report receipt of C-funds from the OIG.
- c. *Reimbursement of Expenses* – Reimbursement of expenses incurred by a Confidential Informant shall be based upon the actual expenses incurred. A Confidential Informant may not be reimbursed for an expense that was incurred without the OIG's prior knowledge and approval. Whenever practical, the controlling agent will obtain receipts from the Confidential Informant to support reimbursement claims.
- d. *Coordination of Payment with other Entities* – In situations where a prosecutor (Federal, state or local) is either participating in the conduct of the underlying investigation utilizing the Confidential Informant or working with the Confidential Informant in connection with a separate matter, payments to the Confidential Informant shall be coordinated with the prosecutor prior to the payment being made.

Agents shall not act as intermediaries between other LEAs and Confidential Informants for the purpose of delivering money furnished to the Confidential Informant by other LEAs. If other LEAs desire to pay an OIG Confidential Informant for information or services rendered, agents are not precluded from arranging necessary contacts between the Confidential Informant and the other law enforcement agency, but the actual exchange of monies will be made directly between the Confidential Informant and the respective law enforcement agency.

### 8. Documentation of C-Fund Payments

- a. *C-Fund Cashier Documentation* – The controlling agent must receive ASAC or SAC approval to make a payment. If payment is approved, the ASAC will notify the C-Fund Cashier in writing that the proposed expenditure is approved and authorize the C-Fund Cashier to begin the process to disperse the appropriate funds to the requesting controlling agent.

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- b. *Controlling Agent Documentation* – When C-Funds are provided to a controlling agent for disbursement to a Confidential Informant, a signed Voucher for Confidential Expenditure Form documenting the disbursement of funds must be prepared (See Voucher for Confidential Expenditure Form – Chapter 8, Exhibit M). This receipt is counted as cash when verifying/auditing the C-Fund account.

**Note:** Controlling agents are required to promptly return any unused monies to the Confidential Fund Cashier for safekeeping.

- c. *Confidential Informant Documentation* – At the time payments are made to a Confidential Informant, a Receipt of Confidential Funds form must be completed (See Receipt of Confidential Funds Form – Chapter 8, Exhibit N). The receipt must contain at a minimum the following information:
  - i. Date of transaction;
  - ii. Name and signature of the payee (Confidential Informant);
  - iii. Name and signature of controlling agent dispersing the funds;
  - iv. Name and signature of another Law Enforcement Officer as a witness;
  - v. Dollar amount of funds received; and
  - vi. Reason for dispersal.
- d. *Maintaining Documentation* – Once the controlling agent completes the transaction, the completed Receipt of Confidential Funds form, along with any other associated documentation and receipts provided by the Confidential Informant, will be provided to the C-Fund Cashier along with any unspent funds (See Receipt of Confidential Funds Form – Chapter 8, Exhibit N). The Receipt of Confidential Funds and any associated receipts will be stapled to the Voucher for Confidential Expenditure form and secured with the C-Funds. Upon return of the funds and/or vouchers, the cashier should note on the Voucher for Confidential Expenditure form that the funds were returned, the amount of funds returned and the date of the return (See Voucher for Confidential Expenditure Form – Chapter 8, Exhibit M). Copies of all payment documentation for the affected Confidential Informant will also be kept in the Confidential Informant's file for retention.

### 9. C-Fund Dissolution

When the C-Funds requested for a specific case/operation are no longer needed, the SAC will coordinate with the P3 Director, DAIGI and AIGI on dissolution of the C-Fund account. In general, the C-Fund account for that case will be reconciled, audited by the ASAC and SAC, closed out, and excess funds returned to Headquarters. In the event that interest is earned from C-Fund accounts, the interest must be accounted for and returned to Headquarters.

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At no time will cash be sent or returned to Headquarters. C-Funds that were converted to cash will not be returned to Headquarters as cash. Cash C-funds will be converted to a cashier's check or deposited and returned to Headquarters via an Electronic Funds Transfer. Any fees incurred to obtain a cashier's check or to return C-Funds via Electronic Funds Transfer will be deducted from the C-Funds. A receipt for any fees incurred will be provided to Headquarters along with the returned C-Funds.

The original copies of the C-Fund documentation will be forwarded to Headquarters along with the funds. The funds will then be returned to OIG's Office of Management and Administration and the original copies of the documentation will be retained by the P3 Director. Copies of the documentation will be retained with the case file in accordance with OIG case file maintenance and disposition requirements.

### V. VICTIM AND WITNESS ASSISTANCE GUIDELINES

#### A. Background

The Victim and Witness Protection Act of 1982 (Public Law 97-291), was enacted to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process, ensure that the Federal Government does all that is possible within the limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendants, and provide a model for state and local governments. The Victim and Witness Protection Act required the establishment of Federal guidelines for the fair treatment of crime victims and witnesses in the criminal justice system and placed the statutory authority on the Attorney General to ensure that all Federal law enforcement agencies outside DOJ adopt similar guidelines. The DOJ considers OIG Offices of Investigations to be subject to the requirements of the Victim and Witness Protection Act.

The Victims of Crime Act of 1984, as amended, created the position of the Director of the Office of Victims of Crime within DOJ, and charged the Director with the responsibility of "monitoring compliance with guidelines for fair treatment of victims and witnesses issued under Section 6 of the Victim and Witness Protection Act of 1982, and for reporting this information to the President and Congress."

The Victims' Rights and Restitution Act of 1990 created a Federal Victims of Crime Bill of Rights and codifies services that shall be available to victims of Federal crimes. The Act provides that officers and employees of DOJ and other departments and agencies of the United States engaged in the detection, investigation, or prosecution

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of crime shall make their best efforts to see that victims of crime are accorded the rights described in the Act.

The Crime Control Act of 1990 (Public Law 101-647), mandates that DOJ and other Federal agencies engaged in the detection, investigation and prosecution of crime ensure that victims are treated with fairness and respect. The Victims of Child Abuse Act of 1990, amends the criminal code affecting the treatment of child victims and child witnesses by the Federal criminal justice system.

These guidelines set forth procedures to be followed in responding to the needs of crime victims and witnesses and are intended to be supportive of those victims and witnesses, understanding that without their cooperation and assistance, the criminal justice system would be unable to function. They assist victims in recovering from their injuries and losses to the fullest extent possible consistent with available resources.

The guidelines are intended to apply to all cases in which individual victims are adversely affected by criminal conduct or in which witnesses are abused for having provided information regarding criminal activity. The guidelines do not apply to individuals involved or reasonably believed to have been involved in the criminal offense.

### B. Definitions

While the Office of Investigations does investigate allegations of violations of Federal criminal law, the type of investigative activities relating to DOE programs and operations do not generally involve victims of crime as defined in relevant statutes. The following Office of Attorney General definitions will apply in determining the applicability of the Victim and Witness Protection Act to investigations conducted by the Office of Investigations:

#### 1. Victim

A "victim" is generally someone who suffers direct or threatened physical, emotional, or financial harm as a result of the commission of a crime. The term "victim" also includes the immediate family of a minor or a homicide victim. Federal departments and agencies shall not be considered "victims" for purposes of these guidelines.

It should be noted that, because of the nature of Federal criminal cases, it may often be difficult to identify the victim or victims of the offense. In some cases, there may be multiple victims. Victim assistance should not be denied solely because there are multiple victims of an offense. The provision of assistance in such circumstances must be determined on a case-by-case basis. Sound

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judgment, therefore, must be exercised to determine the degree of victim services and assistance to be provided. As a general rule, however, agency personnel should always err on the side of providing rather than withholding assistance.

### 2. Witness

A "witness" is someone who has information or evidence concerning a crime and makes that information available to a law enforcement agency. When the witness is a minor, the term "witness" includes an appropriate family member or legal guardian. The term "witness" does not include defense witnesses or those individuals involved in the crime as perpetrators or accomplices.

### 3. Serious Crime

A "serious crime" is a criminal offense that involves personal violence, attempted or threatened personal violence, or significant property loss.

## C. Policy

The provisions of the Victim and Witness Protection Act of 1982, the 1991 Attorney General Guidelines for Victim and Witness Assistance and procedures set forth in this Manual will be followed when dealing with matters relating to victims and witnesses involved in OIG investigations. Efforts will be made to:

1. Identify the victims;
2. Inform the victim of their right to receive victim services;
3. Inform the victim of the name, title, business address, and telephone number of the Victim Witness Coordinator in the US Attorney's Office to address their request; and
4. At the earliest opportunity after detection of a crime, efforts will be made to inform crime victims and witnesses of the following:
  - a. Emergency medical and/or social services available to the victim;
  - b. Agencies or individuals from which the victim can obtain information regarding compensation or restitution to which the victim may be lawfully entitled, and the manner in which such relief may be obtained;
  - c. The existence of public and private programs which provide counseling, treatment, and other support; and
  - d. Notification that the victim's property will be returned promptly unless there is a compelling reason to retain it (e.g., evidentiary purposes).

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### D. Legal Status of Guidelines

These guidelines provide only internal guidance. They may not be relied upon to create any rights, substantive or procedural, enforceable by law by any person in any matter, civil or criminal. Nor are limitations hereby placed on otherwise lawful prerogatives of the Department. Rather, these guidelines are intended to ensure that responsible officials, in the exercise of their discretion, treat victims and witnesses fairly and with understanding.

### E. Procedures and Individual Responsibility

1. Director, Policy, Plans and Programs (P3) will:
  - a. Maintain copies of all Victim/Witness Information forms submitted by the SACs (See Victim/Witness Information Form – Chapter 8, Exhibit O); and
  - b. Compile data, as necessary, to respond to the Director of the Office of Victims of Crime within DOJ, Congress or other official inquiries concerning assistance provided victims/witnesses under the Victim and Witness Protection Act.
2. The SACs will:
  - a. Establish contact with Victim Witness Coordinators in each U.S. Attorney's Office in the respective regions and determine Victim Witness Coordinator policy to be followed in each Federal District insofar as referral, information, and consultation services offered to victims/witnesses are concerned;
  - b. Designate a Primary Contact Person for providing assistance and ensure proper training;
  - c. Establish internal procedures to ensure the proper oversight of services to be rendered to victims/witnesses;
  - d. Prepare and maintain a Victim/Witness Information Form to be used as a system for tracking and recording procedures used to provide assistance to victims/witnesses in individual cases (See Victim/Witness Information Form – Chapter 8 Exhibit O). This form will be maintained as a perpetual log covering the preceding three years. A copy of the completed form will also be placed in the official case file;
  - e. Submit a copy of the Victim/Witness Form to the P3 Director at the close of the fiscal year;
  - f. Ensure that the designated Primary Contact Person is notified of any situation in which provisions of the Victim and Witness Protection Act might be invoked; and

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- g. Ensure that information in the case file that is pertinent to the defendant's sentence is brought to the attention of either the U.S. Attorney or the U.S. Probation Office. This information is needed to assist in the preparation of the victim impact statement in the U.S. Probation Office's pre-sentence report to the presiding judge.
- 3. The Primary Contact Person will:
  - a. Maintain the Victim/Witness Information forms;
  - b. Ensure that the property of any victim/witness is returned promptly to the victim unless there is a compelling reason to retain it;
  - c. Immediately inform the U.S. Attorney, involved with the prosecution of the case, and the Federal agency (e.g., U.S. Marshals Service) having enforcement responsibility, in the event of actual intimidation or harassment of a victim/witness; and
  - d. Ensure, upon request of a victim/witness, and after coordinating with the Victim Witness Coordinator, that notification is made to the employer of a victim/witness of the cause of his/her absence from work.
- 4. The Special Agent will:
  - a. Notify the Primary Contact Person of any situation in which the provisions of the Victim Witness Protection Act could be invoked;
  - b. Immediately notify the SAC concerning actual instances of intimidation or harassment of any victim or witness;
  - c. Provide either the U.S. Attorney or the U.S. Probation Office any information that will assist in the preparation of the Victim Impact Statement; and
  - d. Upon request of a victim or witness, and after coordinating with the U.S. Attorney, explain to employers and others the status of the individual as a victim/witness.

### VI. OIG SUBPOENAS

The IG Act of 1978, as amended, enables the IG to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned to the IG by this Act. OIG Directive IG-916 sets forth the procedures to be utilized when issuing IG subpoenas. OIG Directive IG-916 can be found on the IGSNet under Policy. The following provides general guidelines for OI staff when requesting and issuing IG subpoenas.



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### A. Types of Records Obtained Through Subpoena

Generally, subpoenas issued under this authority can be used to obtain four basic types of records that are maintained in any medium<sup>2</sup>:

#### 1. Business Records

The Act enables the IG to require production of any business record, even those that are not normally made available under the audit clause of a contract. Furthermore, records may be obtained from corporations and subcontractors who may not be subject to the audit clause provisions of a particular contract.

#### 2. Personal Records

An individual can be required to produce any records within his personal possession including tax returns, bank statements and employment records. For example, personal records of a corporate officer can be obtained in addition to business records of the corporation.

#### 3. Financial Institution Records

Banks, savings institutions, credit unions, loan companies and credit card companies can be required to produce their records and those of their customers. It should be noted, however, that provisions of the Right to Financial Privacy Act may apply in such instances, and, if so, must be strictly followed.

#### 4. Governmental Records

A State, municipal, or quasi- governmental body or agency can be required to produce relevant documents. However, the subpoena power is not available to obtain records and information from other Federal agencies.

### B. Policy

#### 1. Appropriate Consideration

Under normal circumstances, a subpoena will be issued only after appropriate consideration has been given to other available methods of obtaining the desired information or records. For example, if a record is available under the

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<sup>2</sup> The Inspector General Reform Act of 2008 clarifies this as "including electronically stored information, as well as any tangible thing."

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audit clause of a contract, such as in the Department's management and operating contracts or if an individual has a contractual obligation to provide certain documents, consideration should be given to obtaining the record through such means. Ordinarily, a subpoena will not be issued until relevant information secured by other means has been examined and analyzed. By proceeding in such a manner, records and documents necessary to complement existing information can be identified with reasonable precision.

### 2. Appropriate Circumstances

Circumstances may justify the issuance of a subpoena at any stage of an audit, inspection or investigation. Such circumstances may include an immediate need to obtain records to prevent their loss, alteration or destruction. Additionally, complex investigations may require the issuance of numerous subpoenas, at various stages, in order to develop a case fully.

### 3. Consultation

When a situation arises which may require the use of a subpoena, the Special Agent should consult with his/her ASAC. Then, the Special Agent and/or the ASAC can coordinate with a Headquarters Operations Officer, who, in turn, will consult with IG Counsel to assess the situation. All field communication with IG Counsel on subpoena matters will be handled by an Operations Officer.

### C. Procedures for Requesting Subpoenas

If a determination is made that a subpoena is warranted to further a particular investigation, the ASAC must submit a memorandum to the AIGI requesting an OIG subpoena. All such memoranda should be forwarded to an Operations Officer for coordination with the AIGI. Recently approved subpoena requests are a good resource during the drafting process.

**Note:** While emergency subpoenas will be necessary in certain cases, all efforts should be made to avoid emergency requests. ASACs and case agents should be aware of future needs for a subpoena and avoid, where possible, last-minute requests.

The following information should generally be included in each memorandum requesting the issuance of an OIG subpoena:

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### 1. Opening Paragraph

Include an opening statement that introduces the purpose of the memorandum (e.g., "This memorandum requests the issuance of a Department of Energy, Office of Inspector General, subpoena to ABC Company, Attention: Jane Doe, 123 Anywhere Street, Washington, D.C., 20585").

### 2. Potential Violations

This section will identify the potential violations (e.g., "This subpoena request is made in conjunction with an ongoing investigation which involves potential violations of Title 18, U.S.C., Section 287 (False Claims)."

### 3. Background of Investigation

This section will set forth pertinent case information and will be written in deductive prose. It must provide the reader with a clear understanding of the predication and focus of the case and activities and findings to date. A detailed, point-by-point narrative is unnecessary. In cases where multiple allegations are under investigation, an overview of all allegations should be provided but a detailed narrative for each is unnecessary. The core focus of the request should be the allegation(s) for which the subpoena applies. All known agencies which may be conducting a similar investigation or working jointly with the OIG should be identified in the request.

### 4. Justification

This section serves to outline the following two points:

- a. Why the items to be obtained by the subpoena are important to resolve the issues under investigation (i.e., what the documents may reveal); and
- b. Why these documents are being sought through a subpoena rather than by voluntary cooperation, contract provisions that require production or other means. When applicable, particular emphasis should be placed upon any lack of cooperation, if any, by the party under investigation and any exigent circumstances, such as the potential destruction of the documents and/or electronic data.

**Note:** In requiring the production of documents and information by subpoena, the OIG is not required to determine that there is probable cause to believe that a violation of criminal or civil statute or administrative regulation has been committed. Instead, it need only be determined that the items sought are reasonably necessary to further a legitimate investigation.

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### 5. Description of Items

This section will precisely describe those items (e.g., documents, files, electronic data, etc.) that are to be obtained by the subpoena. While individual documents need not be identified, documents should be divided into certain categories (e.g., payroll records, payment invoices, bank statements) and should be identified as completely as possible by date and party. In some cases, certain individual documents should be identified. In the case of electronic data, a comprehensive list should be compiled as not to mistakenly omit important information. Special Agents should confer with their ASACS and coordinate the request of electronic data with the OIG Technology Crimes Section.

### 6. Recipient of Subpoena

This section will identify the name, title, and address of the recipient of the subpoena. If the documents are to be obtained from a corporation, a corporate officer should be set forth as the recipient. A subpoena of partnership records should be directed to a partner. A subpoena for the records of a financial institution should be directed to either the president or a senior officer. If the records are sought from a state or municipal agency, the head of the agency should be identified.

### 7. Return of Service

This section will recommend an appropriate time and location for the return of service. Although the offices of the IG would normally be appropriate locations for return of service, the selected location should be within a reasonable distance of the records. Where return of service at IG offices is impractical, arrangements may be made to allow return of service at another Federal facility. In unusual circumstances (e.g., a request involving voluminous documents), it is possible to allow a return on the premises of the recipient of the subpoena. The Special Agent is to provide the recipient of the subpoena with a suspense date to have the items at the destination. Recipients must include a detailed inventory of the documents provided.

## D. Approval and Issuance of Subpoenas

### 1. Required Approvals

The AIGI must review and approve all subpoena requests. If the AIGI approves the subpoena request, an Operations Officer forwards the request to IG Counsel who will review it for completeness, legality and validity. The IG

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Counsel may identify further areas of inquiry that should be undertaken before the subpoena can be justified or may require additional information in support of the request.

### 2. Documentation Required for Approved Subpoenas

Upon determination by the IG Counsel that issuance of a subpoena is appropriate, Counsel's Office prepares the following documents:

- a. The subpoena;
- b. Attachments to the subpoena describing the records sought;
- c. Privacy Act Notice;
- d. Correspondence to the recipient of the subpoena;
- e. A memorandum to the AIGI from IG Counsel recommending approval of the subpoena; and
- f. The appropriate notice to the customer where the Right to Financial Privacy Act of 1978 is involved.

### 3. Issuance of Subpoena

Subpoenas are issued once the documentation has been prepared and the AIGI (or designee) has signed the letter to the recipient of the subpoena. A copy of the subpoena is provided to the requesting agent for inclusion in the investigative file. A copy of the subpoena is also provided to an Operations Officer.

## E. Service of Subpoenas

### 1. Method of Service

The Special Agent, in consultation with an Operations Officer, determines the most appropriate method for service to be accomplished - either personal service at the place of business or private dwelling, or by registered or certified mail. The Operations Officer will consult with IG Counsel to ensure that the method chosen is the most expedient.

- a. *Personal Service* – In almost all cases, the Special Agent should attempt to serve the subpoena personally. This will give the Special Agent the opportunity to personally observe the facility and records and immediately interview the record custodian or other witnesses, if necessary. If personal service is chosen, the subpoena is sent to the requesting Special Agent to serve. The Special Agent delivers the subpoena, with attachments, to the addressee as expeditiously as possible.

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- b. *Mail Service* – If service is done by mail, either an Operations Officer or the field office coordinates the mailing of the subpoena, with attachments, to the parties concerned.
- c. *Service to a Corporation* – Service upon a corporation is made during business hours and to the addressee. If the addressee is unavailable, a corporate officer or registered agent for service of process will suffice. If an individual other than the addressee receives the subpoena, the Special Agent will obtain a receipt, setting forth the recipient's name and position. The Special Agent maintains the remaining portions of the Certificate of Return of Service in the official case file (See Certificate of Return of Service – Chapter 8, Exhibit P).

### 2. Compliance Date

The Special Agent, Operations Officer, and IG Counsel will determine a date for compliance with the subpoena. In most instances, this date is at least 10 calendar days after the date of service.

### 3. Modifications

With the exception of return dates, any other modifications of the subpoena sought by the subpoenaed party or any dealings where the party is represented by counsel are referred to the IG Counsel. In all cases involving a subpoena, close coordination and consultation between the Special Agent, the ASAC, the Operations Officers, and IG Counsel will be maintained. Modifications in the scope and location of return of the subpoena may be accomplished by mutual agreement between the recipient and the OIG. Prior to the date of return, the Special Agent may be asked to examine the documents on the premises of the recipient to verify the existence and volume of the documents sought.

Authorization to extend the date of return may be made by the SAC (or designee) and must be documented in the official case file.

### F. Processing the Return of Service

In many instances, the production of documents is a relatively simple matter. The subpoenaed party produces the documents, indicates his/her capacity to certify the documents and a sworn statement is made indicating that the records are accurate, complete and in full compliance with the subpoena.

The following provides guidance on processing the return of service:

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### 1. Time Frame to Process Return of Service

The requesting Special Agent should be prepared to receive the documents on the date set by the subpoena and have adequate personnel resources available to begin complete examination. While no precise time limits can be set for the completion of the examination of the records, the requester will proceed as expeditiously as possible to examine and analyze all records.

### 2. Certified Copies

The subpoenaed party may provide certified copies in lieu of originals. However, the original records must be made available for verification if required. In this regard, originals ordinarily are obtained unless the respondent can effectively demonstrate that the absence of the original documents will act as a major impediment to the operation of his/her business. In such cases, the Special Agent can accept certified copies. Any questions concerning this area are to be coordinated with the ASAC, and referred to the Operations Officer, who will consult with IG Counsel.

### 3. Index of Documents

The cover letter to the issued subpoena may direct the recipient to prepare an index of the documents provided. While this index is helpful to the Special Agent, the respondent cannot be compelled to prepare it.

### 4. Documents Not in Full Compliance

The Special Agent has the responsibility of ensuring that the subpoena has been complied with in full. If the Special Agent believes that the documents are not complete or in full compliance with the subpoena, the respondent is placed under oath and questioned. Any questions must be limited to an inquiry as to the accuracy, validity and completeness of the records produced. It is imperative that the questioning establish whether:

- a. The respondent is an official empowered to certify the records;
- b. The records are kept in the normal course of business; and
- c. The records are complete and unaltered and constitute full compliance with the subpoena (or specifies areas in which compliance is not complete).

Upon completion of the examination, the Special Agent will record the results of the examination.

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### 5. Parameters on Questioning

Limitations upon questioning are imposed by the statutory language of the subpoena power. While some subpoenas, such as those returnable before a Grand Jury, can require personal appearance for the purpose of providing testimony, an OIG subpoena is for the purpose of production of records and documents, not testimony. Upon the completion of the subpoena return questioning, the Special Agent may seek to question the respondent about any matter under investigation. However, the subpoenaed party must be fully informed that the response to these questions is completely voluntary and that this subsequent inquiry is separate and apart from the verification process of the subpoena return. It is desirable to separate the two by formally ending the subpoena-related questioning and beginning a new record for other questioning. This distinction is made clearly and unambiguously to protect against any subsequent admission by the respondent being ruled inadmissible in a later judicial proceeding.

### 6. Fifth Amendment Privilege

The limitations imposed upon questions associated with an OIG subpoena decrease the likelihood of improperly obtaining an incriminating statement from a respondent of rights against self-incrimination. Sole proprietorships do have an extension of privilege. However, a corporation does not have a Fifth Amendment privilege against self-incrimination. Therefore, when dealing with a corporation, questions concerning the personal records or actions of the respondent could lead to an element of self-incrimination. If, at any time during the proceeding, the Special Agent believes that a question, properly within the scope of the subpoena questioning, could lead to an improperly compelled self-incrimination of the respondent, an appropriate warning will be given immediately.

### 7. Representation of Respondent

The subpoenaed party has the right to be represented by an attorney when being questioned by the Special Agent. Any objection by the attorney to any questions concerning subpoena compliance is noted in the record. If the party refuses to answer any questions, a similar notation is made in the record.



## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

### G. Handling Documents

#### 1. Chain of Custody

In utilizing subpoenaed records, the Special Agent must be aware of the need to maintain a chain of custody. Subpoena activities must be documented in the case file. An accurate Subpoena Return Log will be compiled based on the records produced (See Subpoena Return Log – Chapter 8, Exhibit Q). At the outset of any examination of the documents, it may be difficult to determine which, if any, of the documents will be used as evidence in a subsequent civil, criminal or administrative proceeding. Therefore, evidentiary control is maintained over all documents and access to the documents is controlled carefully in accordance with standard evidentiary custodial procedures.

#### 2. Retention of Documents

Upon completion of the examination, the Special Agent determines which documents are kept for later use and which documents may be returned to the respondent. A receipt is obtained for all documents returned to the respondent. Any document that may serve as evidence in a subsequent criminal, civil or administrative proceeding is retained until all proceedings have been exhausted. Documents referred to another agency are accounted for as evidence.

#### 3. Case Closure

Materials subpoenaed during the course of an investigation will be examined during the case closure process for possible disposal. Any original or copied materials subpoenaed that are no longer needed will be returned to the subpoenaed party, returned to the prosecuting attorney or disposed of as the AUSA directs (criminal and civil cases). All actions regarding disposal of subpoenaed records—originals or copies—must be coordinated with the AUSA (criminal and civil cases) and documented on the Case Closure Checklist contained in Chapter 12. ASACs will use their discretion regarding use of a Memorandum of Investigative Activity to document the action.

### H. Failure to Comply

When a subpoenaed party refuses to comply, fails to appear or fails to provide documents as required by the subpoena, the Special Agent consults with his/her ASAC and immediately notifies the Operations Officers. The Operations Officers will immediately notify the IG Counsel. IG Counsel is responsible for resolving such cases and for initiating subpoena enforcement actions, where necessary.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

### I. Subpoenas to Financial Institutions

Subpoenas directed to financial institutions calling for production of financial records of their customers necessitate strict compliance with the Right to Financial Privacy Act of 1978, Title 12, U.S.C., Sections 3401-3422 (RFPA).

#### 1. Financial Records of a Customer

RFPA requires prior or contemporaneous written notice to the customer that his/her financial records have been subpoenaed, thereby affording the customer an opportunity to challenge the subpoena in court. RFPA gives a customer 10 days following personal service of notice and 14 days following mail service of notice within which to file a court challenge to government access. These time requirements are interpreted as calendar days except where the last day for filing falls on a weekend or court holiday in which case the filing deadline is extended to the close of business for the next court day.

Prior or contemporaneous written notice is not required in those circumstances in which secrecy or surprise is essential. As a practical matter, secrecy or surprise can be achieved only when the delayed notice provisions of Section 3409 of the RFPA are utilized. Under this section, if an appropriate court finds that prior notice to the customer will seriously jeopardize the investigation, or that there is reason to believe that other specified events will occur, the court may issue an ex parte order delaying up to 90 days the service of notice upon the customer and prohibiting the financial institution from informing the customer that financial records have been subpoenaed.

#### 2. Financial Records of a Business

RFPA has no application where the financial records sought are those of a corporation, business trust, or partnership comprised of six or more individuals. Because of the burdens imposed by RFPA and the sanctions that may be levied for violations, subpoena requests involving financial records from financial institutions must document fully the precise nature of the business entity involved. Appropriate public records, contracts, and other documents are examined to confirm a business entity's status as a corporation, proprietorship, general or limited partnership, or joint venture.

#### 3. Transfer of Financial Records

The RFPA imposes significant restriction upon interagency transfers of financial records obtained under its provisions and requires written notice to the customer of such transfers.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

**Note:** OIG Directive, IG-916, "Issuance of IG Subpoenas," provides further specific guidance and information on the RFPA.

### VII. FEDERAL GRAND JURY GUIDELINES

In most Federal criminal prosecutions, the Grand Jury is utilized. Under Rule 6(e) of the Federal Rules of Criminal Procedure, all matters occurring before a Grand Jury are required to be secret.

#### A. Rule 6(e)

Rule 6(e) of the Federal Rules of Criminal Procedure governs the secrecy aspects of Grand Jury proceedings to which every Special Agent assisting in a Grand Jury investigation/inquiry is bound.

##### 1. Obligation of Secrecy

A Grand Juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes testimony, an attorney for the Government, or any person to whom disclosure is made under 3(a)(ii) of this subdivision (which authorizes Government personnel, such as investigators, to assist a prosecutor in his/her duty to enforce Federal criminal law) shall not disclose matters occurring before the Grand Jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punishable as a contempt of court.

##### 2. Reasons for Secrecy

There are many reasons for the long established rule of Grand Jury secrecy. Secrecy protects the Grand Jurors from outside influences and intimidation. It helps prevent the escape of prospective defendants by providing no forewarning to them of an investigation in progress. Secrecy encourages truthful testimony by witnesses without fear of retaliation and also prevents tampering with witnesses by targets of the investigation. Finally, the secrecy of Grand Jury proceedings protects the innocent by shielding them from embarrassment, invasions of privacy, or injuries to reputation should the Grand Jurors find that the accusations against those under investigation are false.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

### B. Breaches of Grand Jury Secrecy

If the secrecy provisions of Rule 6(e) are breached, the effects can be devastating. Rule 6(e) provides that a knowing violation may be punished as a contempt of court. Breaches of Grand Jury secrecy may also result in motions to dismiss indictments against defendants. Finally, breaches of Grand Jury secrecy committed by OIG personnel can result in agency disciplinary action against the offending employees, up to and including removal from Federal Service.

### C. Matters Occurring before a Grand Jury

The Rule 6(e) secrecy provision applies only to "matters occurring before the Grand Jury." What exactly constitutes "matters occurring before the Grand Jury" varies from judicial district to judicial district. It is extremely important for Special Agents to check with the AUSA handling the case to find out what is considered to be "matters occurring before the Grand Jury" in the district they are in (e.g., copies of subpoenas, etc).

The following are examples of items generally considered as "matters occurring before the Grand Jury." They are provided for illustration but Special Agents should always seek specific guidance from the Government attorney handling the matter:

1. A list of persons who will be called to testify before a Grand Jury;
2. When a Grand Jury will issue an indictment;
3. A declination of an invitation to testify before a Grand Jury;
4. Transcripts of witness' testimony, documents outlining probable testimony of future witnesses;
5. Memoranda summarizing testimony already given to the Grand Jury; and
6. Documents obtained via a Grand Jury subpoena.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

### D. Matters Not Occurring Before a Grand Jury

The following items have been generally held to *not* constitute "matters occurring before a Grand Jury":

1. A list of sources obtained independently of Grand Jury proceedings (e.g., sources cultivated by a prior Government investigation);
2. Prior agency investigations;
3. Opinions on the potential criminal liability of putative defendants, even if based upon Grand Jury proceedings, so long as the information upon which the opinion is based is not divulged;
4. Drafts of indictments which do not disclose the Grand Jury information on which they might be asked; and
5. A prosecutor's statement that an indictment is being sought against a particular individual.

Whenever disclosure issues arise, seek the advice of the Government attorney handling the matter.

### E. Agents of Grand Juries

Special Agent assisting a Grand Jury investigation must be aware of the following:

#### 1. Rule 6(e) Responsibilities

A Special Agent assisting a Grand Jury investigation should:

- a. Coordinate with the Government attorney handling the case to ensure the Special Agent's name has been placed on the court filed 6(e) list that sets forth the names of all persons to whom disclosure of Grand Jury material can be made;
- b. Request that the name of the Special Agent's immediate supervisor and the name(s) of those working at OIG Headquarters, who may have access to the information or documents, be placed on the 6(e) list;
- c. Identify other OIG personnel who may need access to Grand Jury material and request those individuals be placed on the 6(e) list;
- d. Ensure they are aware of the Grand Jury-related policies and procedures for the judicial district, including:
  - i. Understanding what is considered "matters occurring before a Grand Jury"

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- ii. The procedures to be used in working with documents subpoenaed by the Grand Jury
- iii. The procedures to be used in discussing Grand Jury documents with auditors and/or witnesses who are interviewed about the underlying information in the documents
- iv. Understanding whether the Grand Jury documents can be shared with others and under what procedures.

### 2. Disclosure

OIG personnel, who see or use Grand Jury information, must be certain not to disclose such information to any unauthorized person. This includes any information concerning testimony before the Grand Jury, the nature of documents or witnesses that were subpoenaed by the Grand Jury, and information acquired from leads arising from Grand Jury information. Therefore, in most cases, any OIG Special Agent to whom Grand Jury information is disclosed may not be authorized to be involved, directly or indirectly, in any subsequent civil action. Such a person is considered "exposed" or "tainted" by his contact with the Grand Jury. A Special Agent who has been exposed to Grand jury secrecy information would have to get clearance to participate in any civil or administrative action. This would be done if the AUSA can show, and the judge agrees, there is a "particularized need" to release Grand Jury materials for use in a civil proceeding.

### 3. Determination of Disclosure

The determination whether a Special Agent has been exposed or tainted has to be made on a case-by-case basis because the decision depends on the particular situation. There are no specific rules to make this determination. The mere fact that a Special Agent's name is on a list of Grand Jury agents by itself would not necessarily cause him/her to be tainted. While this is one factor to take into consideration, the more important factors relate to the precise contact the Special Agent actually had with Grand Jury material. The important questions in determining whether a person is tainted are:

- a. What contact has the Special Agent had with the Grand Jury proceeding;
- b. Has the Special Agent talked to the prosecutor about the Grand Jury proceeding;
- c. Has the Special Agent seen any documents obtained by Grand Jury process;
- d. Has the Special Agent read Grand Jury transcripts; and
- e. Has the Special Agent done any investigation at the request of the Grand Jury.

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If the answer to any of these questions is yes, generally the Special Agent will be tainted. If, however, the Special Agent completes the investigation before the Grand Jury becomes involved, the mere fact that the Special Agent testifies before the Grand Jury about the investigation will not taint him/her. In addition, if the Special Agent's contact with the Grand Jury involved only issues that are discreet and separate and which will not in any way be a part of the civil proceedings, he or she may not be tainted.

**Example:** Consider the following illustration of this point – A Special Agent develops a criminal case involving a contractor submitting false claims, independent of the Grand Jury. The Special Agent then presents the relevant documents to the Grand Jury, and testifies as to his/her investigation. The Grand Jury decides to look at the contractor's bank records, which the Special Agent had not previously seen, and the Special Agent reviews those records for the Grand Jury. The records prove to have no relationship or relevance to the criminal activity or to any subsequent civil proceeding. The Special Agent should not be tainted in this case, despite having reviewed documents for the Grand Jury. The Grand Jury documents (the bank records) disclosed information that is readily segregated, and that would not be used in any way in the civil case. The Special Agent completed that part of the investigation that would form the basis for a civil proceeding before s/he had any interaction with the Grand Jury; the fact that s/he testified about the investigation would not taint him/her. Therefore, s/he should be able to participate in the civil case.

### 4. Participation in Civil and Administrative Proceedings

Once a Special Agent becomes exposed to Grand Jury protected information, s/he may only participate, directly or indirectly, in a related civil proceeding, after an AUSA has successfully petitioned the court to release Grand Jury materials for use in the civil proceeding and/or given authorization for the Special Agent to do so. Special Agents should refer to Section H below for information on how to preserve the Government's ability to pursue civil and administrative proceedings in light of Grand Jury involvement.

### F. Service of Grand Jury Subpoenas

Special Agents should follow the procedures of the District Court for serving subpoenas. The following are general guidelines:

1. The AUSA will provide the Special Agent with the original and a copy of the Grand Jury subpoena.

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2. The Special Agent is responsible for delivering a copy of the subpoena to the entities subpoenaed.
3. The subpoena is to be personally served unless otherwise directed by the AUSA.
4. At the time of service, the Special Agent will complete the Return of Service on the back of the original subpoena and return the original to the AUSA.
5. An additional copy of the subpoena with the signed return of service will also need to be placed in the official case file.
6. In many judicial districts, any records subpoenaed are returned to the Grand Jury to be logged in before the Special Agent begins review of the material. The Grand Jury will then turn the records over to the AUSA or Special Agent. However, this process varies from judicial district to judicial district. Therefore, the Special Agent should consult with their respective AUSA for direction on handling the return of service.

Any questions concerning the subpoena should be directed to the AUSA. Upon the direction of an AUSA, or when expected to be used as evidence, Grand Jury materials will be handled in accordance with Chapter 9 (Evidence).

### G. Handling Grand Jury Materials

It is very important to prevent the unauthorized disclosure of information protected by Grand Jury secrecy rules. The following controls need to be established to prevent unauthorized disclosure of Grand Jury materials:

#### 1. Brief Employees on Grand Jury Rules

All employees should be thoroughly briefed on security procedures and instructions requiring their awareness and compliance. Supervisors will advise their employees at least annually of the Rule 6(e) provisions which make unauthorized disclosure of Grand Jury material punishable by contempt of court. Employees should also be advised of the other adverse consequences associated with breaches of Grand Jury secrecy, including possible dismissal of an indictment.



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### 2. Access to Grand Jury Material

Grand Jury material should be handled in such a manner that it does not become misplaced or available to unauthorized personnel. Access should be strictly limited to those who have been authorized access by being placed on the Grand Jury list. Documents covered by Grand Jury secrecy rules should be identified with a Grand Jury Cover Sheet, and should, after coordination with the AUSA, be stamped with Grand Jury markings (See Grand Jury Cover Sheet – Chapter 8, Exhibit R).

### 3. Security of Area Where Grand Jury Information is Stored

Physical security must be strict. Only authorized personnel may have access to the area, which should be located so as to avoid unnecessary traffic. Cleaning services should be performed in the presence of an assigned employee if files and safes are unlocked. The files area should not contain coffee or lounge facilities that might be used by unauthorized personnel. Sign-in/sign-out registers should be maintained. Keys to the files area should be issued only to persons authorized to enter the area.

### 4. Security of Grand Jury Materials After Working Hours

During non-duty hours, all areas where Grand Jury material is present should be locked. Materials, to the extent practical, should be placed in locked containers.

### 5. Transmitting Grand Jury Materials

On official travel, Grand Jury information should be hand carried. Shipments of Grand Jury materials must be carefully monitored and acknowledged by using a mail service which requires a signature upon receipt. The Grand Jury material should be placed in two opaque envelopes. The inner envelope will contain the address of the sender and addressees authorized access to the Grand Jury material. The inner envelope should be conspicuously marked, "Grand Jury Information: To Be Opened By Addressee Only." The outer envelope must be sealed, be addressed (to include a return address) and bear no indication the envelope contains Grand Jury materials. When the size, weight or nature of the Grand Jury material precludes the use of envelopes or standard packaging, the material used for packaging should be of sufficient strength and durability to protect the information from unauthorized disclosure or accidental exposure. The Grand Jury materials inside the package(s) should be appropriately wrapped and conspicuously marked, "Grand Jury Information: To Be Opened By Addressee Only."

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### 6. Disposal of Information Subpoenaed for Use by a Grand Jury

Upon closing a case, the Special Agent shall consult with the AUSA to obtain approval for disposal of Grand Jury documents and to determine how to dispose of original Grand Jury documents. Any original or copied materials subpoenaed by a Grand Jury that are no longer needed will be returned to the subpoenaed party, returned to the prosecuting attorney, or disposed of as the AUSA directs. An appropriate notation will be made on the case closeout checklist.

### 7. Disposal of Grand Jury Financial Account Records

In cases in which a Grand Jury subpoena was employed to obtain financial account records of an individual or partnership covered by the RFP, Section 3420(d) requires that no records or the description of the contents of such records be maintained unless such records were used in the prosecution of a crime for which the Grand Jury issued an indictment or for a purpose authorized by Rule 6(e). Therefore, if no indictment was returned, all of the financial account records obtained by Grand Jury subpoena must be returned or destroyed.

### 8. Maintenance of Grand Jury Records

Careful consideration will be given to the decision to maintain Grand Jury materials in the case file and it should only be done with approval from the assigned Government attorney. If it is deemed necessary to maintain Grand Jury material with the closed case file, the material will be handled as follows:

- a. The Grand Jury material should be placed in an opaque envelope, and handled and marked as a "Bulky Exhibit."
- b. The envelope should be conspicuously marked, "Grand Jury Information: To Be Opened By Authorized Personnel Only."
- c. If the Grand Jury materials must be maintained in boxes, the Grand Jury Material inside the boxes should be appropriately wrapped and conspicuously marked, "Grand Jury Information: To Be Opened By Authorized individuals only."
- d. A listing of who is authorized access on the 6(e) list should be included in Tab A of the case file. This will allow for others who may have to access the case file in the future an ability to know who could be used to review the Grand Jury material if needed.
- e. Whether the Grand Jury material is maintained in envelopes or boxes, the material will be handled in accordance with the policies established in Chapter 6 – Planning and Conducting an Investigation.

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- f. Care should be taken to properly segregate and mark the materials subject to Grand Jury secrecy and not to mark the entire case file with Grand Jury markings and cover sheets, which would effectively preclude anyone not on the 6(e) list from seeing any part of the case file.

**Note:** Generally, the labeling and protective measures outlined above do not apply to Grand Jury subpoenas. Case files, and/or bulky exhibit folders, with copies of Grand Jury subpoenas, need not be labeled and handled in the same manner as actual records, unless it is required in a specific judicial district. Agents are responsible for determining if their particular districts have special handling regulations for subpoenas.

In summary, all actions regarding disposition of Grand Jury records—originals or copies, analyses or summaries—must be coordinated with the AUSA and documented on the Case Closure Checklist contained in Chapter 12.

### H. Grand Jury Documents and Civil and Administrative Proceedings

Only under narrowly defined exceptions may matters occurring before the Grand Jury be disclosed to third parties who were not actually involved in the Grand Jury proceeding itself. Therefore, Special Agents should build their cases independent of the Grand Jury whenever practicable.

#### 1. Grand Jury Documents Available for Civil Proceedings

Rule 6(e) of the Federal Rules of Criminal Procedure provides that matters occurring before the Grand Jury may not be disclosed or used for civil purposes. Therefore, Special Agents must always contact the appropriate AUSA for dissemination instructions in a Grand Jury case before giving out any information. Grand Jury witness testimony and Grand Jury deliberations are "matters occurring before the Grand Jury" and should be considered permanently unavailable to the Special Agent for civil purposes, absent special exceptions granted by a judge in the case upon showing of a "particularized need." Saving the Government the time and money associated with reinvestigating the case does not constitute "particularized need." Documents may or may not be considered "matters occurring before the Grand Jury." Generally, the following types of documents are available for use in civil proceedings, even if they have been presented to the Grand Jury:

- a. Documents obtained prior to the date the Grand Jury becomes involved in the case;
- b. Documents obtained by means other than by Grand Jury subpoena;

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- c. Documents subpoenaed by the Grand Jury that were created for an independent purpose (e.g., business records) and to which the agency has an independent right (e.g., by agency subpoena); however, such documents are not obtainable directly from the Grand Jury, but copies may be obtained (by OIG subpoena, if necessary) from the owner of the documents; and
- d. Documents subpoenaed by the Grand Jury which are later disclosed in a public hearing related to the criminal case, such as a preliminary hearing or trial.

**Note:** Special Agents are cautioned, whenever possible, to use OIG subpoenas in lieu of Grand Jury subpoenas and to build their cases without recourse to the Grand Jury.

### 2. Ensuring Documentation is Available for Civil Proceedings

The OIG might conduct an investigation prior to any Grand Jury activity, during which time it acquires documents either voluntarily or through OIG subpoena authority. Even if these documents are later presented to the Grand Jury, the Special Agent will be able to use the documents in a future civil case if the Special Agent maintains a record of the source of the documents and the date they were received, documenting that they were acquired independently of the Grand Jury. Therefore, in order to ensure that such documents remain available, the Special Agent should take the following certain steps before a case is sent to the Grand Jury:

- a. Consider assigning a second agent to work on the case, who will not be allowed access to information subject to Grand Jury secrecy;
- b. Photocopy all documents and reports being sent to the Grand Jury (or to an AUSA) since it may be impossible to obtain copies later; and
- c. Prepare a memorandum listing all the documents or other information being sent to the Grand Jury or to the AUSA that identifies when the documents were acquired, from whom they were acquired, and by what authority they were acquired (e.g., OIG subpoena, voluntary productions). Such a memorandum will be necessary to show that Grand Jury secrecy was not compromised.

**Note:** Because investigative case files are very useful for civil cases, the Special Agent should do as much work as possible before the case is referred to the Grand Jury. Even after such a referral, any work done with non-Grand Jury documents should be kept separate.

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### 3. Availability of Interview Note and Investigative Reports for Civil Proceedings

Interview notes and investigative reports prepared by a Special Agent prior to his or her contact with the Grand Jury may be admissible in civil monetary proceedings (despite their being hearsay). However, once that Special Agent participates in Grand Jury proceedings, the Special Agent may not be able to be a witness in the civil monetary penalty case, except to the extent of authenticating the interview notes or reports.

### 4. Availability of Grand Jury Material for Administrative Proceedings

Court interpretations of Rule 6(e) have made Grand Jury materials impossible to obtain for use in administrative actions (such as adverse personnel proceedings against employees) and very difficult to obtain in civil fraud litigation, such as false claims lawsuits. However, the AUSA can petition the court to release Grand Jury materials for use in a civil proceeding if it finds there is a "particularized need."

**Note:** The policies just discussed apply only to cases involving Federal Grand Juries. However, many states also use Grand Juries and some of these states have rules governing Grand Jury secrecy similar to the Federal rules. Before acquiring information and documents for a civil case related to state criminal investigations, it is important to find out the State's limitations for use of such materials for civil purposes.

## VIII. OBTAINING U.S. POSTAL SERVICE INFORMATION

### A. Obtaining Information on Post Office Box Holders

U.S. Postal Service Regulations authorize disclosure of names, addresses, and telephone numbers of post office box holders to recognized law enforcement agencies. Requests for this information must be in writing; be signed by the Special Agent; directed to the Postal Inspector-in-Charge of the particular area; and state that the information is necessary for law enforcement purposes. Originals and photocopies of applications for post office boxes can be obtained from the U.S. Postal Service only with a court order.

### B. Obtaining Forwarding Addresses

#### 1. Disclosure of Forwarding Addresses

U.S. Postal Service Regulations authorize disclosure of forwarding address information to law enforcement agencies. Such disclosure can be made verbally, by letter or by providing copies of change of address cards. Original

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copies of change of address cards can be obtained from the U.S. Postal Service only with a court order. The disclosure of a business' forwarding address can be made verbally by the Postmaster upon receipt of a valid written request. The disclosure of an individual's forwarding address can be made verbally by a Postal Inspector-in-Charge or by a written response from the Postmaster that is sent via mail to the agency's address.

### 2. Requests for Forwarding Addresses

Requests for forwarding address information will be made using the Address Information Request form (See Address Information Request Form – Chapter 8, Exhibit S). The request must:

- a. Be made in writing on the agency's letterhead and signed by the Special Agent;
- b. Be directed to the Postmaster of the particular area; and
- c. Include a statement that the forwarding address is required for law enforcement purposes or the information is required for official business, and all other known sources for obtaining the address have been exhausted.

**Note:** If the request involves forwarding address information filed at numerous post offices throughout the country, it is to be directed to the Postal Inspector in the key district. He/she coordinates all actions necessary to provide the Special Agent with the requested information.

### C. Obtaining Information on or Copies of Postal Money Orders

If during an investigation it becomes necessary to obtain information on and/or copies or certified copies of money orders the Special Agent will prepare a request for such information/copies for the signature of the SAC, and send the request to the local U.S. Postal Inspection Service Office.

### D. OIG Policy on Mail Covers

Requests for mail covers are made only to locate a fugitive or when there is good reason to believe that a felony has either been committed or attempted. A mail cover is never requested in a case involving a misdemeanor violation. When such a case has been elevated to a felony, case management records must be updated to support any subsequent request for a mail cover. Except in the case of a fourth or subsequent renewal request, all requests for mail covers are signed by the SAC or ASAC and sent directly to the U.S. Postal Service, Criminal Investigations Service Center (CISC) Manager. A copy of the request is to be included in the case file.

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### 1. Obtaining Mail Covers

A mail cover is the process by which the U.S. Postal Service records any data appearing on the outside of any class of mail matter and checks the contents of second, third, or fourth class mail matter. The purpose of a mail cover is to obtain information in the interest of protecting the national security, locating a fugitive, or obtaining evidence of commission or attempted commission of a crime. Through appropriate discovery procedures in a legal proceeding, the U.S. Postal Service may subsequently provide mail cover data to the mail cover subject.

U.S. Postal Service Regulations, which constitute the sole authority for initiating, processing, placing, and using mail covers are set forth in: Title 39, CFR Section 233.3; and Part 233.3, Postal Service Manual. The U.S. Postal Service Regulations use and define the terms "fugitive" and "crime." A fugitive is any person who has fled from the United States or any state, territory, the District of Columbia, or possession of the United States, to avoid prosecution for a crime, to avoid punishment for a crime, or to avoid giving testimony in a criminal proceeding. A felony crime is any commission of an act, or the attempted commission of any act, that is punishable by law by imprisonment for a term exceeding one year.

Requests for mail covers are to be made in writing, usually targeted to a stated individual or concern at a given address, and limited to not more than a 30-day period, to request a mail cover, the Special Agent will complete all sections of the External Law Enforcement Agency Request for Mail Cover Form (See External Law Enforcement Agency Request for Mail Cover Form– Chapter 8, Exhibit T). This form will be attached to a cover letter signed by the ASAC or SAC (See Request for Mail Cover Sample Letter – Chapter 8, Exhibit U).

If the mail cover is authorized and the subject is indicted for any cause during the mail cover period, the CISC Manager will be immediately notified (if the subject is under investigation for further criminal violations, a new mail cover must be requested).

### 2. Canceling and Renewing Requests for Mail Covers

Requests for mail covers are canceled if the information sought is obtained from other sources prior to the approved mail order period. Cancellation notices are sent by the SAC or ASAC to the CISC Manager.

Requests for mail covers may be renewed by using the same procedures as for an original request. In cases where it is necessary to extend a mail cover beyond 120 days (three renewals), the SAC submits the fourth and all

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subsequent renewal requests to the AIGI for signature, along with a memorandum explaining the need to continue the mail cover.

### 3. Reproducing and Returning Mail Cover Information

Mail cover documents are the property of the U.S. Postal Service and are loaned with the understanding that they will be treated confidentially. Reproduction of mail cover documents is prohibited.

All Postal Inspection Service Forms 2009, Reporting Mail Cover Information, must be returned within 60 days to the CISC Manager from whom they were received. This will be documented with a Memorandum of Investigative Activity.

### 4. Use of Mail Cover Information

Mail covers are designed as investigative tools only and should not be used as evidence in court, nor should references be made to the use of mail covers in criminal or administrative actions.

## IX. POLYGRAPH EXAMINATIONS

It is the policy of the Office of Investigations that polygraphs are generally not used. However, polygraphs will be considered on a case-by-case basis and must be approved beforehand by the SAC and coordinated with the appropriate Operations Officer. All polygraph activities will be documented in the case file.

## X. QUESTIONED DOCUMENTS

A questioned document is one that has been questioned in whole or in part with respect to its authenticity, identity or origin. It may involve handwriting or typewriting comparisons, determination of the age of documents and inks, and examination of erasures, obliterations, and over-writings. The identification and analysis of handwritings and typewritings are important for identifying who was responsible for generating questioned documents and signatures.

### A. Standards for Comparison of Questioned Documents

Writing, typewriting, or any object, material or substance related to a document, which may be used as a basis for determination of authorship, identity, or relationship, or for discovery of any information whatever by close comparison with a questioned object, is a standard for comparison. The most important feature of a standard is that it be susceptible to independent proof.



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Federal law (Title 28, U.S.C., Section 1731) provides for comparison of handwriting standards and stipulates that "The admitted or proved handwriting of any person shall be admissible, for purpose of comparison, to determine genuineness of other handwriting attributed to such person."

### B. Handwriting Exemplars

A handwriting exemplar is merely an identifying physical characteristic. Whenever the authenticity or origin of a document may be questioned, the Special Agent should attempt to obtain handwriting exemplars of any parties involved. The Special Agent should secure and submit as many known samples of the handwriting of the suspected person or the typewriting of the suspected machines, as may be needed for comparison purposes in addition to the questioned document. Some general rules regarding handwriting exemplars are as follows:

1. The Special Agent should not allow the subject to view the original or true copy of the questioned document;
2. The more numerous and lengthy the specimens, the greater the opportunity for accurate comparison, and the less likely the possibility that the subject will succeed in disguising his writing if inclined to do so;
3. Whenever possible, obtain specimens over a period of days and include some of the more common words and expressions used in the questioned documents;
4. For the best effect, the exemplars should duplicate the questioned document. It should be made with similar writing instruments, similar paper and the full content or text of the questioned writing if possible;
5. The Special Agent should be alert to the possibility of disguises in handwriting. The most used forms of disguise are writing unusually large or small, writing extremely fast or with painstaking slowness, backhand or other extreme changes in slant and complicated embellishments or greatly simplified forms in a disconnected printing style;
6. Requesting the subject to write at normal speed from dictation may be effective for elimination of disguise; and
7. Obtain from appropriate persons samples of writing, printing, and numerals which would provide an adequate basis for comparison of handwriting, printing, or numerals that appear on books and records if necessary.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

**Note:** Special Agents should consult with the examiner they intend to use prior to deciding upon the method and requirements for obtaining handwriting, typewriting, or other exemplars. Practices and techniques will vary from laboratory to laboratory, and sometimes even within a laboratory different technicians will have different requirements.

### C. Typewriting Exemplars

Various manufacturers of typewriters have aimed at certain individuality in their machines and from time to time have made changes in the design, size, and proportions of the type and spacing. These serve to identify the make of the machine used and to determine whether its serial number falls within a certain series. Although the statutes do not cover comparison of typewriting standards, it would follow logically that any rule respecting handwriting standards would cover typewriting standards as well, and that known specimens would be admissible for such purposes. Exemplars should be made with the ribbon found on the machine and should repeat the complete text of the questioned matter. If the text is extensive, enough of it should be repeated to provide samples of the important letters, figures, ribbon adjustment, and impressions of type, etc.

### D. Other Exemplars

Exemplars have on occasion been used to aid in the determination of the age of documents. Standards for comparison include documents allegedly existing at the time of the questioned document. Comparison of inks, water marks, conditions of paper and other characteristics provide clues to the age of the questioned documents. Although pencil notations cannot ordinarily be examined for age, the condition of the material upon which the notations were made might indicate the time of writing. The examining laboratory can resolve many questions about a document through the use of infrared light technique, microscopes, ultraviolet light, and chemicals. Exemplars ordinarily are not involved in proving erasures, alterations, overwriting, blotter impressions, or determining the age of a questioned writing or document.

### E. Office Copiers and Computer Printers

The use of office copy machines and computer printers have made the job of the Special Agent and examiner more difficult. Often times it is impossible to tell a copy from the original (each "copy" may, in fact, be an original). These machines are, however, still subject to identification through the process of mechanical wear, platen/glass damage, and misalignment, which may produce individual characteristics. Exemplars from these machines, when compared to the questioned document, may still provide the evidence needed to make a positive identification.

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

When obtaining exemplars from copy machines first produce at least ten copies using a clean white sheet of paper as the original. If the machine has an automatic feed, make an equal number of copies using both the manual and automatic feed mode. Then produce ten copies by opening the cover and allowing the machine to run without an original. Also reproduce the questioned document ten times, using the "original" whenever possible. If the questioned document is small, move it around to various positions on the glass plate each time a copy is run.

Computer printer exemplars should be obtained in a manner similar to the manual/electric typewriter exemplars. If possible, reproduce the questioned document using the original computer program.

Always take the same precautions, as with other evidence, to protect the integrity and chain of custody of the exemplars. Enclose the exemplars in suitable containers, such as document protectors, and mark the evidence for identification. If the actual evidence cannot be marked, then all appropriate information should be placed on the container.

### F. Identifying Exemplars and Questioned Documents

The Special Agent should initial and date the necessary numbers and kinds of exemplars on the back for identification at a trial. The Special Agent should secure, properly care for, transmit and maintain the chain of custody of the questioned document along with the exemplars for the expert until they are produced in court. Examiners of questioned documents make examinations and analyses of documents to give assurance of the following:

1. Genuineness;
2. Detection of erasure of evidence;
3. Alteration;
4. Forgery of signature;
5. Identification of handwriting and typewriting; and
6. Development of information concerning ink, paper, writing instrument, and other materials involved.

Examiners prepare reports of their observations and conclusions, and give testimony in court as expert witnesses. Whenever possible, therefore, a Special Agent desiring examination and analysis of a document should provide the original document to

## CHAPTER 8 – SPECIALIZED INVESTIGATIVE PROCEDURES

make sure that the examiner can properly analyze the writing, the instrument used, and the paper upon which the document was written.

### G. Processing Questioned Documents

SACs may make arrangements locally with a Federal forensic laboratory and document examiners for the necessary processing of items of questioned documents or physical evidence. If no Federal facilities exist, state or local facilities may be used provided their expert testimony is accepted in the Federal District Court. If regional facilities are used, SACs should ascertain any expenses and any other costs in advance.

If local facilities are either inadequate or unavailable, questioned documents and/or physical evidence may be sent to the DAIGI to make arrangements for a Federal forensic laboratory in Washington, D.C., to examine the evidence. Documents should be double sealed and mailed to the examiner along with the chain of custody. Special Agents should also include a memorandum to the DAIGI detailing the desired analysis. This should identify:

1. Case name and number;
2. Details of the case through a short description;
3. What the document examiner/forensic analyst is asked to do; and
4. An inventory of the items submitted for analysis.

Items of documentary evidence to be analyzed should be protected in plastic covers and marked with a K (Known) and a sequential number. Questioned writings or documents should be protected and marked with a Q (Questionable) and a sequential number. All markings should be on the protective coverings of evidence submitted.



## Document Number 24

U.S. Department of Energy  
Office of Inspector General  
Office of Investigations



**Request for Authorization to Use  
Electronic Equipment for Consensual Monitoring**

1. Case Title	2. Case No.
3. Requesting Region: Office:	4. Type of Request (check one) <input type="checkbox"/> Initial <input type="checkbox"/> Extension/Renewal (See Block #19) <input type="checkbox"/> Emergency
5. Grand Jury Case? <input type="checkbox"/> Yes <input type="checkbox"/> No	6. Type of Intercept <input type="checkbox"/> Wire <input type="checkbox"/> Oral
7. Proposed Duration of Use: Begin Date: End Date: Days	8. Date(s) of Prior Authorization(s):
9. Equipment Installer(s): <u>Name(s)</u> <u>Title (s)</u>	10. Equipment User(s): <u>Name(s)</u> <u>Title (s)</u>
11. Manner/Method of Installation <input type="checkbox"/> Fixed Location <input type="checkbox"/> Other (Specify):	12. Type of Equipment to be Used <input type="checkbox"/> Microphone/Amplifier <input type="checkbox"/> Recorder <input type="checkbox"/> Other (Specify):
13. Location of Operation State: Locality: Judicial Jurisdiction:	14. Number of Telephones on which Monitoring Equipment will be Installed

15. Name of persons consenting to monitoring (see Consensual Monitoring Affidavit), or others identified during the course of the investigation that can contribute to the acquisition or corporation of evidence.	
16. Name of persons to be monitored (including identifying data)	
17. Purpose or Objective of Operation <input type="checkbox"/> Secure Evidence <input type="checkbox"/> Corroborate Evidence <input type="checkbox"/> Protection of Consenting Party <input type="checkbox"/> Other (Specify):	18. Alleged Offense(s) Being Investigated
19. Narrative [Initial Request: Provide a background of the case and a justification for the proposed use; Renewal Request: Provide a summary of the result(s) achieved to date, as well as justification for renewal; Emergency Request: Provide a background of the case and a justification for the proposed emergency use]	
20. Does the monitoring involve a protected witness or Federal prisoner?  <input type="checkbox"/> Yes <input type="checkbox"/> No	21. Known name of protected witness or Federal prisoner?  (Select one) <input type="checkbox"/> Protected Witness <input type="checkbox"/> Federal Prisoner Name of Authorizing Official:
22. Name of Approving Assistant United States Attorney and Date of Approval:	

23. In my judgment, this monitoring is warranted in the interest of effective law enforcement.

Case Agent Signature	Date
24. Approval	
Assistant Special Agent-in- Charge	Date
Special Agent-in-Charge	Date





**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Consensual Monitoring Consent Affidavit**

Today's Date

Location

I, \_\_\_\_\_, hereby authorize \_\_\_\_\_, Special Agent(s) of the U.S. Department of Energy, Office of Inspector General, to

☐ Record my telephonic communications

and/or place a

☐ Body Recorder on my person for the purpose of recording any

☐ Transmitter on my person for the purpose of recording any

conversations with \_\_\_\_\_ which I may have on or about Date Here.

I have given this written permission to the above-named Special Agents freely and voluntarily and without threats or promises of any kind.

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Technical Equipment Log**

**Fiscal Year:**

<b>Date/Time Withdrawn</b>	<b>Equipment and Serial Number</b>	<b>Special Agent Name &amp; Initials</b>	<b>Date/Time Returned</b>	<b>Custodian Initials</b>



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

Part I: Technical Equipment Inventory

Coordinator:

Office Location:

Equipment Type & Quantity	Model Name & No.	Serial No.	Date Acquired	Date Disposed	How/Where Disposed	Disposal Initials

**Part II: Technical Equipment Annual Inventory Review**

Conducted By (Print Name)	Signature	Date Completed	Notes & Comments



## U.S. Department of Energy

Office of Inspector General  
Office of Investigations

### Consensual Monitored Conversation Preamble Template

#### Monitored Telephone Conversations

This is Special Agent \_\_\_\_\_ with the U.S. Department of Energy, Office of Inspector General.

Today's date is \_\_\_\_\_ and the time is now \_\_\_\_\_ (AM/PM).

The following will be a consensually monitored telephone conversation between \_\_\_\_\_ and \_\_\_\_\_.

The call is being placed from telephone number \_\_\_\_\_ to \_\_\_\_\_.

The call is being conducted in reference to case file number \_\_\_\_\_.

For voice identification, \_\_\_\_\_ please state your full name.

Do we have permission to record the following telephone conversation between you and \_\_\_\_\_?

Closing: This concludes the monitored conversation. The time is now \_\_\_\_\_ (AM/PM).

#### Monitored Conversations (e.g. Body Wire)

This is Special Agent \_\_\_\_\_ with the U.S. Department of Energy, Office of Inspector General.

Today's date is \_\_\_\_\_ and the time is now \_\_\_\_\_ (AM/PM).

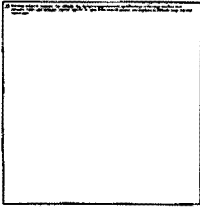
The following will be a consensually monitored conversation between \_\_\_\_\_ and \_\_\_\_\_.

This consensually monitored conversation is being conducted in reference to case file number \_\_\_\_\_.

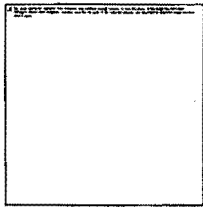
For voice identification, \_\_\_\_\_ please state your full name.

Do we have permission to record the following conversation between you and \_\_\_\_\_?

Closing: This concludes the monitored conversation. The time is now \_\_\_\_\_ (AM/PM).

**U.S. Department of Energy**Office of Inspector General  
Office of Investigations**Surveillance Log****Case Number:****Date:****Location:****Person(s):****Location/Vicinity:**

Time	Initials	Observation(s)



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Lautenberg Certification Initial Qualification Inquiry Form**

As a candidate, and/or a Special Agent for the U.S. Department of Energy, Office of Inspector General (OIG), you are required to complete this Qualification Inquiry. In completing this form, you are advised:

- The purpose is to obtain information that will assist in the determination of whether you are suitable for law enforcement or other positions requiring the use or handling of a firearm.
- Completion of this form is voluntary; however, failure to complete this form will disqualify you from consideration for an OIG law enforcement position. Agency disciplinary action, including dismissal, may be undertaken if you fail to reply fully and truthfully.
- Neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal prosecution for a violation of Title 18, United States Code (U.S.C.), Section 922(g)(9). However, the answers you furnish and any information or evidence resulting from your answers may be used against you in a prosecution for knowingly and willfully providing false statements or information, and in the course of agency disciplinary proceedings.

**Qualification Inquiry**

1. Are you the subject of a court order that restrains you from harassing, stalking, or threatening an intimate partner, a child of such intimate partner or your child, or from engaging in any other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner, child of the partner, or your child:

Yes ☐ No ☐ Initial \_\_\_\_\_ Date \_\_\_\_\_

2. Have you ever been convicted of any felony or a misdemeanor crime of domestic violence within the meaning of the Gun Control Act of 1968, as amended by the Lautenberg Amendment to the Omnibus Consolidated Appropriations Act of 1997?

Yes ☐ No ☐ Initial \_\_\_\_\_ Date \_\_\_\_\_

If you are not sure of the outcome of a past incident, initial here \_\_\_\_\_ and contact the OIG Headquarters Security Officer on (202) 586-4138, to discuss the incident.

3. If you answer YES to either question, provide the following information with respect to the court order and/or conviction:

Court/Jurisdiction: \_\_\_\_\_

Docket/Case Number: \_\_\_\_\_

Statute/Charge: \_\_\_\_\_

Date of Sentence: \_\_\_\_\_

I hereby certify that, to the best of my knowledge and belief, all of the information provided by me is true, correct, complete, and made in good faith. I understand that false or fraudulent information provided may be grounds for adverse action, up to and including removal, and is also criminally punishable pursuant to Federal law, including Title 18, U.S.C., Section 1001.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date





## Department of Energy

Office of Inspector General

Office of Investigations

**Confidential Informant  
Initial Suitability Report and Recommendation**

Field Office:		Case Number:	
Case Agent:		Co-Case Agent:	
Date Completed:		Signature of Agent Completing Form:	

**Biographical Information**

Full Name:		DOB:	Month:	Day:	Year:
Citizenship:	United States				
Highest Level of Education Achieved:		Occupation:			
		SSN:			
List of all known affiliations (i.e. DOE employee, contractor/ subcontractor, clergy, etc.):		Is CI a relative of an employee of any LEA? (Select one only)			
		Yes <input type="checkbox"/>	No <input type="checkbox"/>	Unknown <input type="checkbox"/>	
Extent these affiliations will assist CI in provide information:		Extent to which the CI's information is relevant to the investigation/ potential investigation:			

## Tactical Considerations

Adverse risk if CI is used:		The extent information can be corroborated (Select one only)		
		Yes <input type="checkbox"/>	No <input type="checkbox"/>	Unknown <input type="checkbox"/>
Assessment of CI's reliability and truthfulness:		CI's prior record as witness in any proceeding		
Does CI have a criminal history?		If yes, explain:		
Is CI currently a subject of an investigation? (Select one only)		Does CI pose a danger to the public or to LEOs? (Select one only)		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Unknown <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Does the CI pose a flight risk (Select one only)			Is CI a substance abuser or have history of abuse? (Select one only)	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Unknown <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
What is the risk that CI may be physically harmed by assisting LEA?			What is the risk of physical harm to CI's immediate family or close associates?	
Has CI Provided Previous Assistance to LEA? (Select one only)		If yes, describe previous record of assistance; was CI a Registered Confidential Informant; was CI terminated for cause?		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Unknown <input type="checkbox"/>		
Describe in detail how CI will provide assistance in ongoing investigations or in potential investigations:				

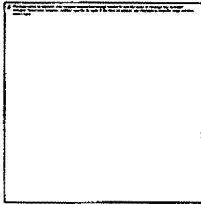


## Department of Energy

Office of Inspector General  
Office of Investigations

## DOE OIG Confidential Informant Registration Form

Primary Confidential Informant (CI) Control Agent:				Alternate CI Control Agent:			
<input type="text"/>				<input type="text"/>			
Registered CI Number:		Case Number:		Field Office:			
<input type="text"/>		<input type="text"/>		<input type="text"/>			
Confidential Informant's Name (Last, First, Middle):				Alias:			
<input type="text"/>				<input type="text"/>			
Social Security Number:		DOB:	Month:	Day:	Year:	City and State of Birth:	
<input type="text"/>		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Race:	Sex:	Height:	Weight:	Hair Color:	Eye Color:		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>		
Primary Residence Address:				Home Phone:		Cell Phone:	
<input type="text"/>				<input type="text"/>		<input type="text"/>	
				Business Phone:		Email Address:	
				<input type="text"/>		<input type="text"/>	
Primary Vehicle Information (Make, model, year, color):					Driver's License Number/ State:		
<input type="text"/>					<input type="text"/>		
Occupation:		Employment (Include location):					
<input type="text"/>		<input type="text"/>					
Identifying Characteristics (Tattoos, marks, physical traits):							
<input type="text"/>							
Motivation:				Type of Information CI Can Provide:			
<input type="text"/>				<input type="text"/>			
Photo:	Emergency Contact Person:			Emergency Contact Phone Number:			
	<input type="text"/>			<input type="text"/>			
	Printed Name of CI:						
	<input type="text"/>						
	Signature of CI:			Left Thumb Print:		Right Thumb Print:	
<input type="text"/>			<input type="text"/>		<input type="text"/>		
Date:							
<input type="text"/>							



## U.S. Department of Energy

Office of Inspector General  
Office of Investigations

### Statement of Understanding

I voluntarily agree to assist the U.S. Department of Energy (Department), Office of Inspector General (OIG), in collection of information or evidence concerning any criminal activity that comes to my attention. I understand that assisting the Department OIG does not grant me any special privileges or empower me with any special authority. I further understand the following:

- The Department OIG will strive to protect my identity but cannot guarantee that it will not be divulged.
- The Department OIG may, at its discretion and without prior approval, disclose your identity to other law enforcement personnel and prosecutors.
- I will provide truthful, complete and accurate information to the Department OIG.
- I agree that any false oral or written statements I provide to the Department OIG can be used against me.
- I understand the Department OIG on its own cannot promise or agree to any immunity from prosecution in exchange for my cooperation.
- I am not an employee of the Department OIG and may not represent myself as such.
- I will abide by the instructions of the Department OIG and will not take any independent action.
- I cannot enter into any contract or incur any obligation on behalf of the Department OIG, except as specifically instructed by the Department OIG.
- I have been advised that the act of inducing a person to commit a crime not otherwise contemplated by him or her, for instituting a criminal prosecution against the person, is entrapment and is not allowed.
- I will not initiate any plans to commit criminal acts.
- I will not violate any law while working for the OIG (i.e. speeding, theft, illegal drug use, etc.).

- I will immediately report any violations of federal, state, local laws or any Department regulation to the Department OIG.
- I cannot reveal this special relationship with the Department OIG to anyone without the specific authorization of the Department OIG.
- I will immediately report any threats or any adverse circumstances that occur as a result of my special relationship with the Department OIG.
- No threats or promises have been made to me by representatives of the Department OIG to obtain my cooperation.
- I understand that the Department OIG cannot guarantee me any rewards, payments or other compensation.
- In the event I receive a reward, payment, or other compensation from the Department OIG, I understand I am liable for any taxes that may be owed.
- I am fully accountable for any monetary instruments, property, etc. provided to me for the use in Department OIG operations and I will promptly return all unused and obtained monetary instruments, property, etc. to the Department OIG.
- I may be requested to submit to a polygraph examination for verifying my adherence to the above conditions or information I provided.

---

Name (Print)

---

Signature

---

Date

---

Witness Signature/Title

---

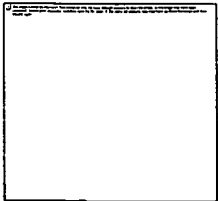
Date

---

Witness Signature/Title

---

Date



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

Transaction Log for Confidential Funds

Case Number:

Date	Withdrawal	Deposit	Balance	Voucher Date	Voucher #	Purpose	Fund Control Officer	Witness	Witness 2

**Department of Energy**Office of Inspector General  
Office of Investigations**Voucher for Confidential Expenditure**

1. Voucher Number:	2. Date:	3. Amount:	4. Case Number:
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
5. Description of Expenditure (i.e. List Confidential Informant Number, payee name and/or explain activity for fund expenditure):			
<input type="text"/>			
6. Authorizing Official:	7. Authorizing Official Signature:	Date:	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
8. Funds Withdrawn by (Cashier):	9. Cashier Signature:	Date:	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
10. Funds Provided To:	11. Recipient Signature:	Date:	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
12. Recipient Certification: I certify that I have received the amount listed in block 3 (in U.S. dollars, or the equivalent in another currency). If funds received are for the purchase of evidence or contraband, or other authorized use, I certify any unused funds shall be promptly returned to the Government.			
13. Witnessed By:	14. Witness Signature:	Date:	
<input type="text"/>	<input type="text"/>	<input type="text"/>	



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Receipt of Confidential Funds**

Date: \_\_\_\_\_

I, \_\_\_\_\_, received from  
(Print Name)

Special Agent \_\_\_\_\_, the total amount of \$ \_\_\_\_\_.  
(Print Name)

The purpose of received funds is: \_\_\_\_\_.

\_\_\_\_\_  
Signature of Recipient of Funds

\_\_\_\_\_  
Signature of Disbursing Special Agent

\_\_\_\_\_  
Name of Witness (Special Agent)

\_\_\_\_\_  
Signature of Witness (Special Agent)





Department of Energy  
Office of Inspector General  
Office of Investigations

Chapter 8, Exhibit O

**Victim/Witness Information Form**

Name of Victim/Witness:		<input type="checkbox"/> Victim
		<input type="checkbox"/> Witness

**Contact Information**

Cell Phone Number:	Home Phone Number:	Email Address:
Other:		

**Information**

Case Number:	Case Agent:	
Type of Assistance Rendered:		Date Assistance Rendered:
Identity of Victim/Witness Coordinator:		
Event of Intimidation or Harassment:		
Reported To:	Date Reported:	Time Reported:
Interim Measures Taken:		
Results:		



Department of Energy  
Office of Inspector General  
Office of Investigations

**Certificate of Return of Service**

I hereby certify that on \_\_\_\_\_, at \_\_\_\_\_  
Date Location

I received the attached subpoena. I further certify that on \_\_\_\_\_  
Date

at or about \_\_\_\_\_ at \_\_\_\_\_  
Time Location

I personally served the subpoena upon \_\_\_\_\_  
Name and Position/Title

By: \_\_\_\_\_  
Name of Server

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Date: \_\_\_\_\_



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Subpoena Return Log**

<b>Place:</b>	
<b>Time and Date:</b>	
<b>Parties:</b>	
<b>Exhibit</b>	<b>Description</b>

\_\_\_\_\_  
Special Agent Name

\_\_\_\_\_  
Signature

Page \_\_\_\_ of \_\_\_\_



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

Grand Jury Cover Sheet

Case File Number: \_\_\_\_\_

**EXERCISE DUE CAUTION**  
**THE ATTACHED MATERIAL IS**  
**GRAND JURY MATERIAL**

AND MAY NOT BE DISCLOSED  
EXCEPT IN ACCORDANCE WITH THE  
PROVISIONS OF RULE 6,  
FEDERAL RULES OF CRIMINAL  
PROCEDURE FOR THE UNITED  
STATES DISTRICT COURTS

\_\_\_\_\_  
Special Agent

\_\_\_\_\_  
Date



## Department of Energy

Office of Inspector General  
Office of Investigations

### Address Information Request

To:

Agency Control No.

Address of  
Postmaster:

Date:

#### ADDRESS INFORMATION REQUEST

PLEASE FURNISH THIS AGENCY WITH THE NEW ADDRESS, IF AVAILABLE, FOR THE FOLLOWING INDIVIDUAL OR VERIFY WHETHER OR NOT THE ADDRESS GIVEN BELOW IS ONE AT WHICH MAIL FOR THIS INDIVIDUAL IS CURRENTLY BEING DELIVERED. IF THE FOLLOWING ADDRESS IS A POST OFFICE BOX, PLEASE FURNISH THE STREET ADDRESS AS RECORDED ON THE BOX HOLDER'S APPLICATION (PS 1093).

Name:

Address:

I certify that the address information for this individual is required for the performance of this agency's official duties and all other known sources for obtaining the address have been exhausted.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

#### For Post Office Use Only

- ☐ Mail is delivered to address given
- ☐ Not known at address given
- ☐ Moved, left no forwarding address
- ☐ No such address
- ☐ Other (Specify) \_\_\_\_\_

New Address:

ENTER AGENCY RETURN IN SPACE BELOW. ATTENTION LINE MUST BE FIRST OR SECOND OF ADDRESS -- DO NOT ENTER TO LEFT OR BELOW AGENCY RETURN LINE

Postmark/Date Stamp



External Law Enforcement Agency  
**REQUEST FOR MAIL COVER**

Complete all sections of the mail cover template below and attach a cover letter on your agency letterhead with an original signature by your immediate supervisor. These should be placed in an envelope endorsed **RESTRICTED INFORMATION**. Seal the request in the envelope, place it in a second envelope, and mail to the CISC. The mail cover request should be addressed as follows:

CISC Manager  
Attn: MC Specialist  
222 South Riverside Plaza, Suite 1265  
Chicago, IL 60606-6117

For further instructions on mail cover requests submitted by external law enforcement agencies, please see Publication 55, USPS Procedures for Mail Cover Requests. This publication may be requested by contacting our Mail Covers Unit at 312-669-5673.

1. <u>DATE OF REQUEST</u> 4/21/2011	2. <u>TYPE OF REQUEST:</u> New Request <input type="checkbox"/> Extension: <input type="checkbox"/> (Complete <u>only</u> Item 13) Fugitive: <input type="checkbox"/> (Refer to Item 7) Forfeiture: <input type="checkbox"/> (Refer to Item 8)	3. <u>NUMBER OF DAYS:</u> Indicate the number of days requested: 30 days <input type="checkbox"/> <b>Fugitive only:</b> 30 days <input type="checkbox"/> 60 days <input type="checkbox"/>
--	--	--

4. SUBJECT OF MAIL COVER NAME & ADDRESS: Only one subject address may be requested on each mail cover template. Identify the individual(s) or business(es) to be covered by indicating full name(s), address, and ZIP+4 Code:

Name(s): Mr. Bad Felon

Address: 698 High Crime Street

City: Gotham City

State & Zip+4: TN 55555-5555

If coverage of "All Other Names" receiving mail at the subject address listed above is needed, provide justification. Also, indicate any names that should be excluded from this request.

All Names at Subject Address: ☐ Yes (provide justification below) ☐ No

Justification:

a) Is the subject of the mail cover an attorney? ☐ Yes ☐ No

b) If the subject of the mail cover is an attorney, are they a judicial officer (e.g. judge, magistrate, etc.)? ☐ Yes ☐ No

5. INDICTMENT: Has the subject been formally charged, i.e. indictment or information with the offense that is the basis of this mail cover request? ☐ Yes ☐ No

External Law Enforcement Agency  
Request for Mail Cover Form

Chapter 8, Exhibit T

6. <u>ATTORNEY:</u>		
a) Does the subject(s) of the investigation have a known attorney? If so, state the attorney's name and address.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b) If this request involves a fugitive, does the fugitive have a known attorney? If so, state the attorney's name and address.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. <u>FUGITIVE:</u> If the cover involves a fugitive, state the fugitive's name, aliases, and any relationship between the fugitive and the mail cover subject.		
8. <u>FORFEITURE:</u> If the only purpose of the mail cover is to identify property for forfeiture, state the legal basis for the forfeiture investigation, including the applicable forfeiture statute.		
9. <u>VIOLATION:</u> State the applicable violation description, statute number, and penalty. If this involves a fugitive and the statute for the warrant is Unlawful Flight or Failure to Appear, also state the original charge.  Violation Description, e.g. <i>Wire Fraud</i> : Bribery/Gratuities Statute, e.g. <i>Title 18 USC 1343</i> : 18 U.S.C. 201 Penalty, e.g. <i>Ten Years</i> : Fifteen Years Is this violation a felony with imprisonment more than one year? <input type="checkbox"/> Yes <input type="checkbox"/> No		
10. <u>REASONABLE GROUNDS:</u>		
a) Basis - How has the mail cover subject violated, or is suspected of violating, the criminal statute? Make a definite statement that an official investigation into the possible violation of this criminal statute, fugitive search, or asset forfeiture is being conducted and cite the applicable section(s) of the United States Code or applicable State or Local law. Explain in detail your justification.  Bad Felon, a Department of Energy employee, was allegedly involved in procurement fraud involving multiple contracts and the acceptance of bribes. Felon conspired with several Dept. of Energy contractors to receive money and gifts in exchange for favourable selection and funding of Dept. of Energy contracts. The possible criminal violations include: gratuities/bribery (18 U.S.C. 201), conspiracy (18 U.S.C. 371), theft (18 U.S.C. 641), false statements (18 U.S.C. 1001), and conflict of interests (18 U.S.C. 208 & 209).		
b) Purpose - What information do you expect to obtain from the mail cover? How will the mail cover facilitate the investigation, including the location of property or assets for forfeiture, or the location of a fugitive, e.g. banking information, co-conspirators, etc.?  This mail cover will assist in locating financial institutions, co-conspirators, and assets of the subject.		

External Law Enforcement Agency  
Request for Mail Cover Form

Chapter 8, Exhibit T

- c) Connection - If the mail cover subject is not the subject of the investigation, describe the affiliation of the mail cover subject to the subject of the investigation.

11. CLASS OF MAIL: Indicate the class of mail requested. Justification must be included for other than First Class.

- ☐ First-Class Mail (Personal or business correspondence: Includes Priority Mail [generally over 11 oz.] and Express Mail)
- ☐ Package Services (Parcel Post, bound printed materials, media mail and library mail)
- ☐ International Mail

Provide further justification for these classes of mail:

- ☐ Standard Mail (Bulk Business Mail)  
Justification:
- ☐ Periodicals (Magazines, newspapers)  
Justification:

12. SPECIAL INSTRUCTIONS: State any special instructions or concerns about this particular request.

13. REQUEST FOR EXTENSION: (For an extension request, complete only the section below.)

*At the expiration of the mail cover period, or prior thereto, the requesting authority may request and be granted additional 30-day periods (60-day periods for fugitives). To ensure there is no gap in the mail cover, the extension request should be submitted a minimum of 10 days prior to the end of the mail cover. The requesting authority must provide a statement of the investigative benefits of the mail cover and the anticipated benefits to be derived from its extension. The request for an extension must state whether the subject has been indicted or an information filed and if the subject is represented by an attorney.*

*Per Postal Regulations, no mail cover shall remain in force longer than 120 continuous days unless personally approved for further extension by the Chief Postal Inspector.*

(a) MAIL COVER REFERENCE NO.:

(b) State, in detail, how the results of the prior mail cover assisted, or did not assist, the investigation.



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(c) Describe the anticipated benefits to be derived from this mail cover extension.

(d) Regarding the violation under investigation, has the subject's indictment status changed since the previous mail cover approval? ☐ Yes ☐ No

(e) Has the subject's legal representation status changed since the last mail cover approval? If so, state the nature of the change, including attorney's name and address. ☐ Yes ☐ No

**Mail covers are issued only to law enforcement agencies empowered by statute or regulation to conduct criminal investigations and are strictly controlled to assure proper use.**

**Mail covers are an investigative tool, and are not to be used as an initial investigative step.**

14. AGENCY NAME, REQUESTOR NAME, ADDRESS WHERE MAIL COVER RESULTS SHOULD BE MAILED (with Zip +4 code), TELEPHONE NUMBER, FAX NUMBER AND E-MAIL ADDRESS:

**In order to process this request, all fields below are required to be completed (fax and e-mail are optional fields)**

Agency Name: U.S. Department of Energy – Office of Inspector General

Is this a law enforcement agency? ☒ Yes ☐ No

Requestor's First Name: Sonny

Requestor's Last Name: Crockett

Requestor's Title: Special Agent

Address: P.O. Box 6318

City/State/Zip+4: Oak Ridge, TN 37831-3882

Telephone Number: 865-555-1234

Fax Number: 865-555-2345

E-Mail Address: crocketts@oro.doe.gov

15. NAME, TITLE, AND SIGNATURE OF SUPERVISOR AUTHORIZING MAIL COVER REQUEST:

Supervisor's First Name: Ricardo

Supervisor's Last Name: Tubbs

Supervisor's Title: Special Agent-in-Charge

Supervisor's Address: P.O. Box 6318

Supervisor's City/State/Zip+4: Oak Ridge, TN 37831-3882

Supervisor's Telephone Number: 865-555-6789

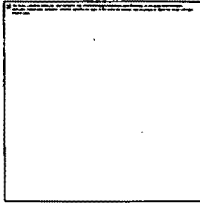
Supervisor's Signature and Date: \_\_\_\_\_

**AN ELECTRONIC VERSION OF THIS FORM IS AVAILABLE UPON REQUEST BY CONTACTING THE MAIL COVERS UNIT AT 312-669-5673.**

**AS INFORMATION, ALL COMPLETED MAIL COVER REQUESTS WILL NEED TO BE SENT VIA THE UNITED STATES MAIL TO THE CRIMINAL INVESTIGATIONS SERVICE CENTER PER INSTRUCTIONS AT THE TOP OF THE FIRST PAGE OF THIS TEMPLATE.**

*(For CISC Internal Use Only)*

Reviewer's Initials & Date: \_\_\_\_\_



**U.S. Department of Energy**

Office of Inspector General  
Office of Investigations

**Request for Mail Cover Sample Letter**

April 29, 2011

Inspector/Manager  
Postal Inspection Service  
Criminal Investigations Service Center (CISC)-Chicago  
222 S. Riverside Plaza Suite 1250  
Chicago, IL 60606-6100

Case #: I11OR999  
Attention: Diana Morgan

RESTRICTED INFORMATION

The U.S. Department of Energy, Office of Inspector General is currently conducting an official investigation which involves the obtaining of evidence of the commission of Bribery/Illegal Gratuities which is a felony. The investigation shows that Bad Felon, Contracting Officer, Office of Government Money, 698 High Crime Street, Gotham City, TN, 55555-5555, has been involved in a possible bribery/illegal gratuities scheme involving Department of Energy contractors. A mail cover for 30 days is requested for all first class mail. A mail cover is deemed necessary to attempt to identify additional individuals and businesses involved in the possible illegal activities and to establish connections between certain individuals.

Subject of mail cover:

Bad Felon  
698 High Crime Street  
Gotham City, TN 55555-5555

This investigation involves possible violations of the following criminal law:

Bribery/Illegal Gratuities - 18 U.S.C. §201  
Conspiracy - 18 U.S.C. §371  
Theft - 18 U.S.C. §641  
False Statements - 18 U.S.C. §1001  
Conflict of Interests - 18 U.S.C. § 208 & § 209

The individual is not known to be represented by attorneys nor are they known to be under indictment. If, during the period of the mail cover, the name and address of an attorney is obtained by the mail cover, such information will promptly be furnished.

We understand the results of the mail cover and PS Forms 2009 are the property of the U.S. Postal Inspection Service and they can be retained and maintained in the appropriate agent's office as an investigative tool for a period of 60 days. Then they must be returned to:

Inspector/Manager  
Postal Inspection Service  
Criminal Investigations Service Center (CISC)-Chicago  
222 S. Riverside Plaza Suite 1250  
Chicago, IL 60606-6100

It is acknowledged that any information gained from this mail cover will be for official use only.

Please forward the mail cover data on a bi-weekly basis. Please send all information to the attention of SA Sonny Crockett, P.O. Box 6318, Oak Ridge, TN 37831, telephone (865) 555-1234.

I have enclosed the "External Law Enforcement Agency Request for Mail Cover" for this request.

Thank you for your cooperation in this matter.

Ricardo Tubbs  
Special Agent-in-Charge  
Central Investigations Operations

Enclosure as Stated

This document, including any attachment, is the property of the Office of Inspector General and is for ~~OFFICIAL USE ONLY~~. Appropriate safeguards should be provided. Public disclosure is determined by the Freedom of Information Act, Title 5, U.S.C. 522, and the Privacy Act, Title 5, U.S.C. 522a.



**U.S. Department of Energy**  
Office of Inspector General

February 11, 2013

**MEMORANDUM FOR SPECIAL AGENTS IN CHARGE**

**FROM:** Michael S. Milner *Michael S. Milner*  
Assistant Inspector General for Investigations

**SUBJECT:** Presidential Directive Regarding Firearms Tracing

This memorandum summarizes a January 16, 2013, directive issued by the President and provides supplemental policy guidance for the Office of Investigations to ensure our compliance with the directive.

The directive states, "Federal law enforcement agencies shall ensure that all firearms recovered after the date of this memorandum in the course of criminal investigations and taken into Federal custody are traced through ATF at the earliest time practicable. Federal law enforcement agencies, as well as other executive departments and agencies, are encouraged, to the extent practicable, to take steps to ensure that firearms recovered prior to the date of this memorandum in the course of criminal investigations and taken into Federal custody are traced through ATF." The directive also stipulates that "Within 90 days of the date of this memorandum, each Federal law enforcement agency shall submit a report to the Attorney General affirming that its operational protocols reflect the requirements set forth in this memorandum."

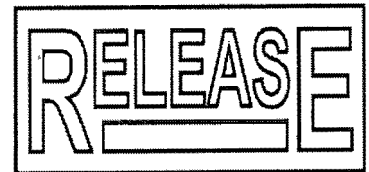
As a result of this Presidential directive, effective immediately, each investigative office will ensure the following:

1. Every firearm taken into OIG custody in the course of a criminal investigation will be traced through ATF within five working days of receipt of the firearm. Documentation of this trace request and the results of the request will be maintained as part of the case file. ATF trace request forms are available online at <http://www.atf.gov/forms/download/atf-f-3312-1.pdf> and should be submitted via fax to the ATF National Tracing Center.
2. A review of evidence currently in OIG custody will be conducted and all firearms currently in our possession will be traced through ATF within 30 calendar days. Written confirmation that this review has been completed and the results of the review, including certification that tracing requests have been submitted, shall be submitted to Dustin Wright by March 8, 2013.

If you have any questions please contact Policy, Plans and Programs Director Dustin Wright at (202) 586-1947.



## Document Number 25



CHAPTER 9

EVIDENCE

A. SCOPE OF CHAPTER

This section provides policy and procedures for handling, storing, and preserving physical evidence obtained during OIG investigations. DOE OIG Special Agents must be prepared to properly collect and preserve various forms of evidence in the conduct of their official duties.

B. GENERAL

Evidence aids in resolving issues, connecting subjects with offenses, and establishing facts. This section will focus on the Federal Rules of Evidence, based, in large part, on the provisions of Title 28 of the United States Code Annotated. When presenting a case in state court, a Special Agent should seek guidance on the admissibility of evidence from the local prosecutor. The courts make the final decision on the admissibility of evidence.

Special Agents must have a thorough understanding of these rules in order to:

- Know what evidence is admissible in court.
- Know how to obtain and maintain evidence in such a manner that it retains its admissibility.

C. BASIC RULES OF EVIDENCE

The Federal Rules of Evidence consist of (1) rules of exclusion, which are designed to allow the jury to hear only certain types of information, and (2) rules which prescribe how evidence may be presented in court. In general, evidence is admissible only if it is relevant, material, and competent.

1. Relevant Evidence - Relevant evidence is evidence which has any tendency to make the existence of any fact that is of consequence to the determination of the action, more probable or less probable than it would be without the evidence (Federal Rules of Evidence Rule 401). All relevant evidence is admissible, except as otherwise provided by the U.S. Constitution, by Act of Congress, by the Federal Rules of Evidence, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence that is not relevant is not admissible (Federal Rules of Evidence Rule 402). Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence (Federal Rules of Evidence Rule 403).



2. Material Evidence - Material evidence is relevant, and goes to the substantial matters in dispute, or has a legitimate and effective influence or bearing on the decision of the case.

3. Competent Evidence - Competent means duly qualified, answering all requirements; having sufficient ability or authority, and possessing the requisite natural or legal qualifications. A competent witness is legally fit and qualified to give testimony in court. This concept is applied, in the same sense, to documents or other forms of evidence.

D. FORMS OF EVIDENCE

This section discusses and illustrates the various types of evidence that the Special Agent may obtain during the course of an investigation.

1. Oral or Testimonial Evidence - Oral or testimonial evidence is taken under oath from a witness in a trial or hearing. It is the most common form of evidence. Generally, a witness will be allowed to testify only about things that agent actually observed, heard, felt, or experienced. A witness must personally appear and testify, with few exceptions, so that agent is subject to cross-examination. The purpose of a personal appearance is to:

- Develop the whole truth regarding the issue about which the witness testified;
- Explain the relevance of documentary or physical evidence; and,
- Test the credibility of the witness.

2. Documentary Evidence - Documentary evidence includes any paper with writing on it that is offered into evidence. Examples of documentary evidence are contracts, letters, memoranda, receipts, messages, etc. Documents in electronic media form are considered to be physical evidence.

The identity and authenticity of a document must be reasonably established as a prerequisite to its admission into evidence. For example, a document might be authenticated in court by the testimony of a witness who saw the accused sign a loan application. Sufficient evidence must be presented to support a finding that the document in question is what its proponent claims it is. The method used to authenticate a document will depend upon the type of document it is.

3. Physical Evidence - Physical evidence is a physical item or object which is presented for examination in court, or a hearing, to help prove or disprove a fact at issue. Examples of physical evidence are fingerprints, weapons, computer hardware and media, and bloodstains.

4. Demonstrative Evidence - Demonstrative evidence is evidence which shows the appearance and/or condition of physical things material to the

issues, or which illustrates, simplifies, and/or explains other evidence that has been admitted previously. The contents of voluminous writings, records, or photographs that cannot be conveniently examined in court may be presented in the form of a chart, summary, or calculation. The records on which the chart or summary is based should be made available for examination or copying, or both, by other parties, at a reasonable time and place. The court may order the production of the originals in court (Federal Rules of Evidence Rule 1006). Examples of demonstrative evidence are:

a. Charts and Maps - A chart which presents in concise form a summary of voluminous records (i.e., checks, invoices, purchase orders) may be used to make other evidence more intelligible. A map is of value to illustrate the relative position of objects.

b. Photographs - A photograph may be used to show the appearance, condition, location, etc., of a particular person, place, or thing.

5. Electronic Evidence - Any data of evidentiary value contained on a multitude of data storage devices including, but not limited to, cell phones, pagers, personal digital assistants, digital voice recorders, magnetic/optical media, and non-volatile digital storage. A DOE OIG Technology Crimes Section (TCS) Special Agent should be consulted as to the proper methods for handling, storing, and preserving electronic evidence prior to the collection of such evidence. [See the Technology Crimes Section Handbook for further instructions.]

6. Grand Jury Evidence - Grand Jury evidence must be sealed and the envelope or package must have red stamped printing, which designates it as Grand Jury Material-Restricted Access. Grand Jury material will be kept segregated from other evidence. [See chapter 8, section H, for a more detailed discussion of the proper methods for handling Grand Jury information.]

7. Classified Evidence - Classified evidence may come into the possession of OIG Special Agents. Special Agents located in the Washington, D.C., Metropolitan area should protect and control classified evidence in accordance with IG Directive 908G "Office of IG Security," dated April 12, 2002. Special Agents in remaining OIG sites should comply with certain portions of this plan, where applicable, in addition to the security policies and procedures of the host DOE sites.

8. Potentially Hazardous Evidence - Special Agents should request assistance from qualified Federal, state, or local officials prior to the collection, storage, and/or maintenance of potentially hazardous materials, including chemicals and infectious materials, when such evidence is required in furtherance of an OIG investigation.

E. COLLECTING, HANDLING, AND CARE OF EVIDENCE

This section prescribes proper methods of collecting, identifying, authenticating, receipting, and preserving evidence. It also discusses actions to be taken when contraband, guns, and cash having evidentiary value are obtained during the conduct of an investigation.

1. Collecting Evidence - When collecting evidence, note the location where the evidence was discovered (e.g., in the top right drawer of the credenza located directly behind the desk in the contracting officer's office). Special Agents should attempt to obtain original documents. Exceptions to this rule might include original contracts, records, and papers in the custody and control of the Government, because these documents should be available when required as proof. Another exception could be private business records when the owner refuses to release original documents and the records are not being collected pursuant to a search warrant, Grand Jury subpoena, or IG subpoena.

When an original essential document is not obtained, ask the custodian or owner to preserve it carefully since he/she might be called upon later to produce it in court. In your report, accurately describe the document and name the person who had custody of it so that a subpoena can later be issued for the person and the document. Show in your report that the person was asked to preserve the document(s) as evidence. Also obtain a photocopy and, when feasible, ask the owner or custodian to examine and compare the copy with the original and attest to its accuracy by initialing on the reverse side of the copy.

In most cases, Special Agents will be required to provide a receipt for items seized as evidence. This is potentially necessary for certain circumstance such as the execution of a search warrant. Special Agents will provide either the carbon copy of the evidence tag, Exhibit A (IM09XA.DOC), or provide a copy of the Property/Document Receipt, Exhibit B1 (IM09XB1.DOC), to the person from whom the evidence was seized.

In some cases, OIG Agents will take items from persons that although are not evidence, the owner still requires some form of a receipt. This is especially true for items like contracts. OIG Agents provide a photocopy of the Property/Document Receipt, Exhibit B1 (IM09XB1.DOC), to the owner, and keep the original receipt with the items taken. There is no need to log items taken on receipt (non-evidence) into an evidence log. If, after review, the item taken does become evidence, the item should be logged into the evidence log on the date that decision is made. Special Agents should keep a proper chain of custody for all items, to include those non-evidentiary items listed on the Property/Document Receipt because such items sometimes do become evidence as an investigation progresses.

2. Identifying Evidence - Identifying evidence means marking an item to permit a Special Agent to testify at a later date that it is the same item he/she obtained at a certain place on a certain date.

When appropriate, mark evidence when it is received or mark its sealed container so it can be positively identified later. Consider the following when marking evidence:

- Mark evidence with the initials or other distinctive mark of the Special Agent receiving or finding the evidence and, if possible, also the date.
- Do not place the identification mark on a surface that may be processed for other evidence or where it will destroy or detract from the value of the item.
- Use a sharp-pointed instrument, such as a stylus, to mark hard objects like metal and hardwood.
- Use pen and ink to mark absorbent articles, such as paper and cloth.

When evidence possesses its own individual markings, such as a serial number on a notebook computer, Special Agents should enter the identification data on the evidence form used.

For all evidence collection activity, Special Agents should document in the appropriate report (Memorandum of Investigative Activity (MOIA), notes, etc.) the items taken, date taken, location, and from whom the evidence was seized. The original evidence tag/receipt and chain of custody form will be maintained with the seized property/document.

3. Authenticating Evidence - A document or writing is authenticated by the following: testimony of the maker; testimony of persons who witnessed the making; or out of court admissions by persons against whom it is offered as evidence.

4. Preserving Evidence - Special Agents should not alter evidence by punching, blocking, stamping, stapling, or tearing it. Special Agents should not write on documentary evidence except to place identification markings on the reverse side. Evidence should be protected from exposure to anything that will deteriorate it, such as liquids, materials that leave marks, moisture, prolonged heat, magnetic fields, etc. Agents should handle evidence as little as possible.

5. Contraband and Guns - While serving a search warrant, OIG Special Agents might encounter contraband (drugs, child pornography, or counterfeit money), or large sums of cash which one would associate with sales of contraband. The Special Agents should immediately secure the search area and contact the cognizant Assistant United States Attorney (AUSA) for further advice. If firearms are located during the search, they will be secured. If firearms are found in the possession of a convicted felon during the service of a search warrant, the weapons should be seized and held for further instructions from the cognizant AUSA.

6. Cash Having Evidentiary Value - Cash that has evidentiary value is cash that serves a significant independent, tangible, evidentiary purpose. For example, the presence of fingerprints or packaging that is done in an incriminating fashion gives it evidentiary value. Cash that is used as a bribery payment (see Title 18, U.S.C., Section 3666), or cash containing writing or other evidence of the offense being investigated should also be considered as cash having evidentiary value. Cash having evidentiary value will be retained as evidence.

F. DOCUMENTING THE CHAIN OF CUSTODY

Occasionally, it is necessary for evidence to pass through several hands before being produced in court. Law enforcement agents affix tags to evidence for two simple purposes - to (1) identify the item at a later date, and (2) provide a legal account for the chain of custody from the time it is seized as evidence until it is released for final disposition. Maintaining a chain of custody of evidence will permit proof, when required, that the evidence is the same as when obtained; if changed, the changes can be accounted for through testimony of those who made them.

The DOE OIG makes use of three forms for this purpose; namely, (1) an evidence tag as depicted in Exhibit A (IM09XA.DOC), (2) a Property/Document receipt as depicted Exhibit B1 (IM09XB1.DOC), and (3) a Chain of Custody form as depicted Exhibit B2 (IM09XB2.DOC). OIG Special Agents may use either the evidence tag or receipt to best suit the seizure purpose.

1. Selection of Proper Evidence Form - The Property/Document Receipt provides the Special Agent with more writing space and is suited well for large volumes of documentary evidence. The receipt is also provided to persons when non-evidentiary items are collected for analysis (see Chapter 9, Section E.1). Some items, especially large amounts of computer related media, personal computers, laptop computers, and other electronic and physical evidence lend themselves to using the evidence tag.

**Note:** For simplicity, the term "tag" will be used throughout the rest of Chapter 9 to describe any chain of custody form related to a piece of evidence. It does not matter whether the chain of custody is recorded on the property/document receipt or the evidence tag.

2. Documenting Procedures - DOE OIG approved evidence forms are the key to establishing a chain of custody for any item of evidence. The importance of properly filling out the evidence tags cannot be overemphasized, because the tag itself may be entered as evidence during an administrative or judicial proceeding. All applicable blocks on the evidence tag should be filled out as soon as the evidence is collected.

When filling out evidence tags, Special Agents should:

- Make entries in ink.

- Leave blocks blank that do not apply.
- Not let the person who has provided the evidence sign or initial the evidence tag. If the property may be returned to that individual, give a copy of the tag to the individual. This serves as the individual's receipt for the property taken.
- Describe the evidence. The primary purpose of describing the evidence on the tag is to enable a Special Agent to positively identify the evidence at a later date. The description should include any unique characteristics or markings that distinguish the item from other similar items (i.e., any significant damage, unusual wear or tear, the owner's estimate of value for private property).

Some examples of possible evidence descriptions are:

- a. Contraband Items: (counterfeit bills, child pornography, drugs, guns, etc.)
  - One 3.5" Sony brand floppy computer disk with the title "kid pics" written on the label, initialed and dated by OIG Special Agent John Doe.
  - One suspected counterfeit \$20 Federal Reserve Note, B523153108B.
  - One Western Digital Caviar 10 Gigabyte Hard drive, serial number 9873129487, initialed and dated by OIG Special Agent Jane Smith.
- b. Government Owned Items - (documents to include original progress payment reports, receipts, Standard Forms (SF), etc.; equipment to include cell phones, laptop computers, machinery parts, etc.)
  - One piece of gym equipment, "Hammer Strength" bench press machine, item initialed and dated by OIG Special Agent John Jones underneath the bench.
  - One SF Form 1351-2, Travel Voucher, No. 1103824, signed by Mr. John Brown, initialed and dated by OIG Special Agent Jane Doe.
  - One General Electric brand desk lamp, marked MWR #9, bulb missing, initialed and dated by DOE Special Agent John Smith.
- c. Privately Owned Items: (clothing, electronic equipment, jewelry, etc.)

- One wristwatch, Seiko 5, automatic with gold band, Serial Number 18727, crystal broken, used. Owner estimates value at \$500.
- One DOE OSS ball cap, size 5 7/8", badly soiled and stained. Initialed and dated by OIG Special Agent Jane Brown.
- One Gateway P6 personal computer, mid-tower, serial number 987KL098GH labeled in the back; initialed and dated by DOE OIG Special Agent John Smith; estimated value \$2000.

3. Procedures for Handling and Transferring Evidence - As previously stated, it is occasionally necessary for evidence to pass through several hands before being produced in court. As such, Special Agents should adhere to the following guidelines when handling and/or transferring evidence in order to retain the admissibility of an item(s):

- Complete the "Chain of Custody" section Exhibit B2 (IM09XB2.DOC) of the evidence form every time evidence changes custody.
- If the space for the chain of custody is filled, use a second evidence form. The evidence custodian will complete all appropriate blocks in ink copying the information from the original tag. In the description block, write "This is a continuation of Item # (XX), and was completed by (evidence custodian's name)." Attach the second tag to the original form.
- Use a separate evidence form when a representative sample of an item of evidence is separated and forwarded to a laboratory for analysis. [See Chapter 9, Section K, for additional information regarding the use of crime laboratories.]
- The evidence custodian will complete the second form as noted above with the following addition: The item number will be the same as the original but will be followed by the letter A. In the description block add: "This sample, consisting of (description of what the sample actually consists of) was removed from Item # (XX) for purposes of laboratory analysis."
- Attach the second form/tag to the sample being forwarded to the laboratory. When the sample is returned from the lab, maintain it and any evidence recovered from it according to normal evidence handling procedures.

- Record final disposition of evidence in the purpose/reason block of the evidence form.
- When evidence, such as child pornography, is destroyed, the destroying official and witness sign in the "Released by" and "Accepted/Received by" sections, respectively.

When mailing evidence to a crime laboratory or other OIG Agents, double wrap evidence and corresponding Chain of Custody Forms with the caption "To Be Opened by Evidence Custodian Only" marked on the inner wrapping. Show no indication on the outer wrapping that the package contains evidence. Attach a plain envelope marked "invoice" to the inner wrapping. Place an OIG Memorandum in the envelope identifying the evidence included in the package.

Special Agents should make arrangements to have the person accepting the evidence sign the Chain of Custody Form when receiving the package. To maintain the chain of custody, the Special Agent will send the item(s) by registered mail, return receipt requested, or with a carrier that offers signature service and tracking availability. When available, the return receipt should be retained for use in court if necessary.

When mailing evidence, enter either the approved mail service tracking number or the U.S. Postal Service (USPS) registration number in the purpose/reason block of the evidence form. When receiving evidence, enter the USPS registry or tracking number in the purpose/reason block if the releasing unit did not.

#### G. EVIDENCE CUSTODIAN(S)

ASACs will designate a primary Evidence Custodian and alternate Evidence Custodians. This designation will be in writing and a copy will be displayed in the evidence room. Evidence Custodians can be either administrative personnel or Special Agents. Consideration should be given to the fact that administrative personnel are less frequently on travel status than Special Agents. In the event that the primary Evidence Custodian is not available, the alternate will assume his/her duties. Evidence Custodians will be responsible for the storage and handling of evidence in the office. Evidence Custodians will also maintain the Evidence Log, which will document the receipt of evidence into storage and its release from the evidence storage area. In the one and two person offices, each agent will function as an Evidence Custodian (although one should be primary and one alternate). There is no limit to the number of alternate custodians that may be appointed by the ASAC. As noted above, the ASAC should consider the day-to-day availability of Special Agents and the need for Special Agents to have access to the evidence. If an ASAC has a need to have unescorted access to the evidence room he/she may appoint himself or herself as a custodian.



H. EVIDENCE LOG

An Evidence Log will be maintained in all offices where evidence is maintained. The Log will be kept in a bound book from which pages cannot be removed. All pages will be pre-numbered in sequence. The Evidence Log will be secured in the evidence storage area at all times, and accessible only to the Evidence Custodians. Only Evidence Custodians will make entries in the Evidence Log. The recommended item to be used as an Evidence Log is the Federal Service Supply Record Book, Number 7530-290-5028.

1. Evidence Log Maintenance - The Evidence Custodian makes an entry in the Log for each item of evidence taken into his/her custody. If an item is transferred to the custody of a Special Agent, the Log will be documented to reflect that transfer. The Special Agent taking custody of the item may keep the item for as long as it is needed. A new entry will be made if the item is again entrusted to the Evidence Custodian for storage. Evidence transaction and purpose will be recorded in the corresponding official OIG case file via a Memo to File, MOIA, or other form of written communication.

The Log will have 9 columns, beginning on page 7 (the first six pages are reserved for inventory results (see Chapter 9, Section G.2), covering the two opposing pages in the Log, and shall bear the headings identified below. Only Evidence Custodians will make entries in the Log. A brief explanation describing the contents of each column is provided. Only two items of evidence will be entered on each page of the log--one on the upper half of the two opposing pages, and one on the bottom half. As a result, all transactions relating to a particular item of evidence can be viewed in one location instead of in a chronological fashion throughout the Log. In the event an item of evidence requires more space in the Log, a second (or third, etc.) half-page of the Log will be dedicated to the item. These additional half-pages will all be cross-referenced to one another. See Exhibit C (IM09XC.DOC) for an illustration of the Evidence Log.

<u>Column No.</u>	<u>Column Heading</u>
1	<i>Date Received By OIG</i>  Enter the date the OIG obtained/received the evidence.
2	<i>File Number</i>  Case File Number
3	<i>Item Number</i>  This number is sequentially assigned by the Evidence Custodian. Begin with number 1, and number as many as needed for each separate case

file number. **Note:** The evidence custodian will make corresponding entries on associated Property and Document Receipt Forms.

4            *Seized/Obtained From*

List the name of the person from whom the evidence was obtained, and where the individual was located, employed, or resided.

5            *Seized/Obtained By*

List the name of the Evidence Custodian or alternate completing the Evidence Log entry for a specific item(s).

6            *Evidence Description*

Provide descriptive information summarized from the Property and Document Receipt. The sole reason for this block is so the Evidence Custodian can distinguish one piece of evidence from another.

7            *Location in Evidence Room*

List the shelf, bin, drawer, etc., where the evidence is located within the evidence room.

8            *Transaction Date*

The date the log entry was made.

9            *Transaction*

Brief explanation of what action was taken concerning the evidence.

No erasures will be permitted in the Evidence Log. Make all entries in ink. If corrections are to be made, the Evidence Custodian will line through the entry to be corrected, and he/she will initial the correction.

2. Evidence Inventory - The primary and alternate Evidence Custodians will conduct an inventory of evidence on hand semi-annually (within a 30 day window), and report the results of the inventory to the ASAC. Custodians will compare log entries with evidence and corresponding Evidence Receipt Forms to ensure accuracy and accountability. Custodians will ensure facilities are secure and contain only authorized items. Inspect evidence for pest damage and environmental change. The primary custodian will be assisted by any other OIG Agent or administrative personnel within the Office of Investigations. The inventory assistant may not conduct two consecutive inventories.

Whenever the primary Evidence Custodian is replaced, an inventory will be conducted by the incoming and outgoing primary Evidence Custodians. Former custodians sign over Chain of Custody Forms to new custodians for evidence they received. Annotate the Inventory Record with the names of both custodians.

An inventory is not required when there is a change of alternate custodians. Former alternates must sign over evidence to primary custodians for evidence they received. Annotate the Log with the name of the custodian receiving the evidence.

All evidence inventories will be recorded in the Evidence Log Inventory Record, located in the first six pages of the Evidence Log. The following headings shall be used, covering the two opposing pages of the Log for these pages Exhibit C (IM09XC.DOC):

<u>Column No.</u>	<u>Column Heading</u>
1	<i>Date</i>  Enter the date the evidence inventory is conducted.
2	<i>Inventory Person/Witness Printer Names and Signatures</i>  Enter the printed names and signatures of the person conducting and the individual witnessing the inventory.
3	<i>Title/Status</i>  Enter the position title of the person conducting and the individual witnessing the inventory.
4	<i>Remarks</i>  Enter the results of the evidence inventory to include accountability for all items, explanations for discrepancies, etc.
5	<i>Reason for Inventory</i>  Cite the purpose for the inventory to include semi-annual requirement, changes in custodians, etc.

Storage areas within OIG evidence rooms or containers shall be labeled so that evidence can be easily located during inventories, inspections, etc. Specifically, shelving (or other available storage

devices - bins, drawers, etc.) in the evidence room should be labeled in such a manner that it can be easily cross-referenced in the evidence log.

#### I. EVIDENCE STORAGE

If it is not possible to obtain a separate secure room to be used exclusively for the storage of evidence, other forms of storage containers may be used. A safe or filing cabinet suitable for the storage of classified material (approved security container) may be used for the storage of evidence. Whatever means of storage is used, it must be secure, and access must be limited to only the Evidence Custodians. The recommended evidence storage facility should follow the following guidelines:

1. Evidence Storage Facilities - Evidence storage facilities must be sufficient to prevent theft and unauthorized entry. The Special agent and evidence custodian must be able to testify that evidence obtained during an investigation was kept secure and was not tampered with. Consider use of high security measures such as barred windows, welded door hinges, and heavy-duty hasps and locks for evidence room or vaults. If the DOE facility has on-site facility support, use the locks provided by that facility. At a minimum, walls of the evidence facility should be floor to ceiling, and windows should be avoided unless barred.

Secure containers should be of sufficient size and weight to prevent easy removal from an office. Neither evidence rooms nor evidence containers should be marked in such a way as to be easily identifiable to outside parties.

2. Access Control to Evidence Facilities - Because the Evidence Custodian and alternate Evidence Custodians have sole control over evidence facilities, they are the only persons authorized to have the combination or keys to evidence storage facilities. The primary or alternate Evidence Custodian must escort any DOE OIG personnel permitted access to evidence storage facilities. Combination and/or keyed locks must be changed upon the departure of primary or alternate Evidence Custodians.

#### J. EVIDENCE DISPOSITION

Evidence which is no longer needed must be disposed of properly. Evidence may be returned to the original source from which it was obtained, released to another applicable source or agency, or destroyed.

Prior to disposing of evidence in a case that is being prosecuted, the Special Agent will obtain written concurrence from the knowledgeable prosecutor. Privately owned items collected as evidence are returned to the owner unless the original source no longer wants the item(s). In those instances when the source of the evidence is no longer available, the evidence will be returned to an appropriate person or entity.

If the evidence is to be returned to the source, the OIG Special Agent should have the source sign and date the bottom of the original Property and Document Receipt Form--see Exhibit B1 (IM09XB1.DOC). If the evidence tag was used, the owner should sign the back of the form entitled "Return of Property Receipt"--see Exhibit A (IM09XA.DOC). If the item returned is not evidence, and it was recorded on the property/document receipt, the owner would sign the front of the receipt as having received the item(s).

The final disposition of all evidence collected during an investigation will be recorded in the corresponding official OIG case file via a Memo to File, a MOIA, or other form of written communication.

**Note:** When the Office of Investigations is apprised of a FOIA on an open investigation, the Director of Policy, Plans, and Programs (DIP3) will immediately notify the ASAC and case agent via electronic mail. No files or case file documents may be discarded or disposed of until further notice (including, but not limited to, investigator notes, bulky exhibits, reference materials, and evidence). Additionally, all investigative records on high profile and/or particularly sensitive cases--regardless of whether or not there is an open FOIA request--will be retained and sent to Headquarters at case closure. Such cases include, for instance, "Special Inquiries" conducted at the request of Congress or the Secretary of Energy.

If evidence is to be destroyed, the Evidence Custodian and a witness will witness the destruction of the evidence. In a one-person office, the case agent will destroy evidence only when another OIG Special Agent is present. The final disposition of evidence will be noted in the Evidence Log and on the appropriate evidence form in the chain of custody. Under no circumstance will any OIG employee convert an item of evidence to personal use.

#### K. USE OF CRIME LABORATORIES

If evidence is to be analyzed and/or examined, Federal facilities should be given first consideration, although many non-Federal crime laboratories, located near regional offices, are available for evidence analysis and examination.

As a general rule, any such laboratory may be used as long as it meets all of the following requirements:

- It must be adequate for the particular examination required.
- The laboratory work must be done at no cost to the OIG.
- Laboratory personnel must be capable of providing expert testimony in Federal court if the venue is Federal.

- Expert testimony must be at no cost to the OIG. If no-cost expert testimony is not available, coordinate with your management concerning the possibility of payment for expert testimony or specialty lab work. This will be reviewed on a case-by-case basis.

[PAGE INTENTIONALLY LEFT BLANK]

Due to its format the Evidence Tag is distributed separately from the Manual



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

**Property and Document Receipt**

File No. \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_ received/seized the below listed  
(Date) (Acquiring Agent/Case Agent)

item(s) from the following individual or company:

Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_

To Be Returned? \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_ Non-evidentiary items

\_\_\_\_ General Evidence

\_\_\_\_ Valuable Evidence: Value \_\_\_\_\_ (as stated by owner) Condition \_\_\_\_\_

\_\_\_\_ Special Handling Required (i.e., perishable evidence such as fingerprints or computer media)

<i>Complete Address</i>	<i>Room</i>	<i>Location of Evidence When Obtained (desk, cabinet, etc.)</i>	<i>Exact Location of Evidence When Obtained (left drawer, top shelf, etc.)</i>

(This section to be used, as needed, during search warrants, consents to search, seizures, etc.)

Item Number \_\_\_\_\_ (Assigned by Evidence Custodian)

Description of Item(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Received By: \_\_\_\_\_ Received From: \_\_\_\_\_  
(Signature) (Date) (Signature) (Date)

Released By: \_\_\_\_\_ Released To: \_\_\_\_\_  
(Signature) (Date) (Signature) (Date)



**OIG Property and Document Receipt (Continuation Form)**This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

**Chain of Custody**

File No. \_\_\_\_\_

Item No. \_\_\_\_\_

<i>Transaction</i>	<i>Date</i>
Accepted By: Reason:	
Accepted By: Reason:	
Accepted By: Reason:	
Accepted By: Reason:	
Accepted By: Reason:	
Accepted By: Reason:	
Accepted By: Reason:	
Accepted By: Reason:	
Accepted By: Reason:	
Accepted By: Reason:	
Remarks/Notes:	
(Page _____ of _____) (Annotate page numbers when additional Chain of Custody Forms are necessary)	

**Final Disposition Action****Final Disposal Authority**

Name	Position/Title	Organization
_____	_____	_____

**Person(s) Receiving Items/Witnessing Disposal Action**

Name	Organization	Signature/Date
1. _____	_____	_____
2. _____	_____	_____

**EVIDENCE LOG BOOK**

<b>INVENTORY RECORD</b>				
<i>Date</i>	<i>Inventory Person/Witness Printed Names and Signatures</i>	<i>Title/Status</i>	<i>Remarks</i>	<i>Reason for Inventory</i>
2/21/01	John Q. Agent Mary Q. Agent	Custodian Alternate Custodian	All evidence accounted for	Semi-annual
4/12/01	John Q. Agent Joan Q. Agent	Custodian Incoming Primary Custodian	All evidence accounted for	Change of Primary Custodian
9/5/01	Joan Q. Agent Alice I. Thorough	Custodian Inspector	All evidence accounted for, no discrepancies	Unit Inspection

(Evidence Log, Pages 1 through 6)

<b>EVIDENCE LOG ENTRIES</b>								
<i>Date Received By OIG</i>	<i>File Number</i>	<i>Item No.</i>	<i>Seized/ Obtained From</i>	<i>Seized/ Obtained By</i>	<i>Evidence Description</i>	<i>Loc., Evid. Rm</i>	<i>Transaction Date</i>	<i>Transaction</i>
8/1/01	10XX005	1	Joe W. Smith, Records Clerk, UT-Battelle, Oak Ridge TN	SA Tom Star	Invoice # 56877, dtd. 11/13/00, Dell Computer, Serial # 50098567	Shelf 3, Bin 4	8/1/01	Received by Evidence Custodian
							12/3/01	Released to Case Agent for Trial
							12/14/01	Received from Case Agent
							12/21/01	Final Disposition: Returned to owner I.A.W. AUSA ltr. dtd. 12/19/01
8/2/01	10XX005	2	Marti Johnson Technician, UT- Battelle, Oak Ridge TN	SA Tom Star	Dell Computer, Serial # 50098567	Shelf 3, Bin 5	8/2/01	Received by Evidence Custodian
							8/3/01	Sent to OIG TCS for forensic analysis via FedEx, tracking #XX
							8/15/01	Received from OIG TCS, FedEx tracking #XX
							12/21/01	Final Disposition: Returned to owner I.A.W. AUSA ltr. dtd. 12/19/01

(Evidence Log, Pages 7 through last)



## Document Number 26



## CHAPTER 10 -- GENERAL REPORTING POLICIES

IM10.DOC

### CHAPTER 10

#### GENERAL REPORTING POLICIES

##### A. SCOPE OF CHAPTER

This chapter provides guidance on editorial style to be employed in writing investigative reports and identifies those officials designated to sign such reports. It also discusses professional writing standards of the Office of Investigations to ensure quality written products. Also see chapter 6 for additional information on quality control procedures and chapter 11 for additional information on reporting the results of investigations.

##### B. GENERAL REPORTING POLICY

The policy of the Office of Investigations is to prepare high quality reports on each investigation undertaken that satisfy the legitimate needs and expectations of customers. Supplementing the general reporting policies contained in this chapter are the more specific presentation guidelines on investigative written products contained in chapters 11 and 12.

##### C. EDITORIAL STYLE

If specific guidance is not available in the cited resources, the U.S. Government Printing Office Style Manual should be followed. The following style preferences will be adhered to for all reports.

1. Writing Style - As reports are written, the Special Agent will keep in mind that people in varied positions, such as Department managers, prosecutors, and others (reports are subject to disclosure pursuant to the FOIA), are potential readers. Because our audience is diverse, readers may not be familiar with the details of the investigation; therefore, results must be explained carefully. In general, investigative reports should be written in the deductive style. The deductive structure is a prose form that is best suited for the presentation of an analysis. Characteristics include topic or overview material placed at the beginning or near the beginning of a report section. This overview material is followed by relevant supporting data. Paragraphs within the section should contain topic sentences, and the detailed support should flow from the topic sentences.

The Special Agent will write sentences and paragraphs that are clear and concise. These writers should strive to use the active voice whenever possible because this voice is stronger, clearer, and produces more concise sentences. The passive voice, in contrast, tends to leave out important information. Investigative reports will be written in plain English and will avoid overly formal bureaucratic writing that is difficult to read and understand. The writer should

choose words that can be understood by those not closely associated with the Department. Finally, reports must be objective, factual, and void of personal opinion. Information must be supportable fact that is traceable to a document in the official case file, with no opinions or conclusions.

2. Acronyms - Acronyms may be used (but should not be overused) when referring to particular organizations, programs, functions, or documents. However, only readily identifiable acronyms should be used, such as DOE, OIG, ES&H, etc. An acronym must be identified clearly or explained and will be used only when it will be used again in the report. The full name or title of the organization, etc., must be written out fully the first time it is used, and the acronym must follow in parentheses (e.g., Department of Energy [DOE]).

It is important to remember that shortened names, rather than acronyms, can frequently facilitate ease of reading. "Matrix," for instance, is preferred for Matrix Construction Company over "MCC."

3. Visual Aids - Visual aids can be effective devices in capturing readers' attention and convincing them that corrective action must be taken. Pictures, charts, graphs, and other visual aids may be used in investigation reports if they enhance the effectiveness of the presentation. When visual aids are used, the text just before them must tell the reader what to expect. Generally, graphics or photographs will not be printed in color in OIG reports, unless such reports are being mass produced on a color printer/copier or the color of the chart is material to its message.

4. Highlighting - In general, the use of highlighting (such as **boldface** print, *italics*, or underscoring) should be reasonable, consistent, and appropriate. Such highlighting may be used, for instance, to set apart headings. Highlighting should not be used when it potentially adds a subjective flavor to a word or words (e.g., Mr. Jones failed to adequately account for his time charges).

5. Indexing/Referencing - All reports are subject to the indexing/referencing requirements of Chapters 6 and 11.

#### D. SIGNATURE AUTHORITY

An authorized signature on an investigative report indicates that a delegated Office of Investigations official has reviewed and approved the report. The signature provides assurances that the report was prepared in accordance with applicable professional standards and satisfies existing investigative policy.

The following individuals are authorized to sign investigative reports (adjustments may be made on a case-by-case basis as circumstances warrant):

SIGNATURE OF INVESTIGATIVE REPORTS	
<u>Official</u>	<u>Signature Authority</u>
IG	Reports directed to the Secretary, Deputy Secretary, or Undersecretary of Energy
AIGI	Reports as designated by the AIGI (generally reports to the Assistant Secretary level or above)
SACs	High-Profile ROIs, IRMs, & Closing Memoranda
ASACs	Routine ROIs, IRMs, & Closing Memoranda

E. WRITING ASSESSMENT PROGRAM

To ensure that all Special Agents in the GS-1811 and GS-1810 series become competent and confident professional writers, the Office of Investigations may periodically activate a professional Writing Assessment Program. The primary objective of this Program is to have Special Agents at all levels progress through a series of four required writing courses—or, if needed, personalized instruction. Participants will build writing "portfolios" after completing the first course. The portfolios must demonstrate that the Special Agent has mastered the Office of Investigations professional writing standards, including the deductive prose writing style. The portfolio approach serves to produce high-quality written products, and does so in a constructive and nonthreatening manner. Knowing that portfolios will ultimately be judged should motivate employees to give greater attention to the quality of their written products. Writing courses will also be offered for other professional personnel and support staff in the Office of Investigations. However, the submission of portfolios will not be required.

Specific procedures and requirements will be announced at times when the assessment program is activated.





Document Number 27



CHAPTER 11

REPORTING RESULTS OF INVESTIGATIONS

A. SCOPE OF CHAPTER

This chapter provides guidance on reporting the results of investigations, including format, content, and distribution policies.

B. TYPES OF REPORTS

Results of investigations are reported using three types of reports: Report of Investigation (also known as a ROI), Investigative Report to Management (also known as an IRM), and Closing Memorandum. A Report of Investigation is used to report investigative results for criminal and/or civil prosecution, and an Investigative Report to Management is used to report investigative results to Department of Energy (DOE) management. The closing Memorandum is a multi-purpose document that provides a complete summary of the investigation and articulates the justification for closing the case.

C. REPORTING THE RESULTS OF INVESTIGATIONS IN REPORTS OF INVESTIGATION AND INVESTIGATIVE REPORTS TO MANAGEMENT

This section discusses issues that a Report of Investigation and an Investigative Report to Management have in common.

1. General Policy When reporting the results of investigations, Special Agents will keep in mind the needs and expectations of two primary customers: DOE management and prosecutors. Investigative reports will be written and formatted in such a way as to ensure the customer clearly understands the issues, findings, and recommendations, if appropriate, which the Special Agent wishes to communicate. The report should be logical and clear with nothing superfluous included. In drafting the investigative report, a Special Agent should ask, "Why am I giving the customer this information?" "What does the customer need to know to take appropriate action?" "Will supplying this information to the customer enhance the chances of achieving a successful outcome?"

Special Agents should be especially mindful of the requirements and expectations of prosecutors when developing and formatting a Report of Investigation. Special Agents should discuss Reports of Investigation formatting issues with cognizant prosecutors to obtain practical and experienced guidance to use in creating effective documents. Additionally, cognizant prosecutors should be consulted about the contents of Reports of Investigation to ensure that information vital to prosecution is included and properly presented.

The writer of an Investigative Report to Management must bear in mind that the purpose of the report is to support DOE management's efforts to improve management controls, make programs and operations more effective

and efficient, streamline policies and procedures, or take appropriate administrative action. Minor changes from the requirements of this chapter are acceptable in an Investigative Report to Management when they are reasonable under the circumstances and can be seen to facilitate positive change.

Every issued Report of Investigation or Investigative Report to Management is an opportunity to enhance OIG performance measures by achieving a desired outcome. Investigative reports, no matter how well formatted or attractively packaged, are of little benefit unless they facilitate positive change through successful prosecutions or through support of management's efforts to improve the DOE's programs and operations.

2. Communicating with Prosecutors and DOE Management When drafting an investigative report, a Special Agent should communicate often with customers (DOE managers and prosecutors) about the customer's requirements. It is proper to ask customers early in the draft stage, "What information do you need to adequately address the issues raised in the investigation?"

a. Coordination with Prosecutors The Report of Investigation is a valuable tool for agents and supervisors to organize, assess, and present evidence. A Report of Investigation will be prepared for any investigation referred for a formal acceptance/declination decision. The timing of the report will be coordinated with the prosecutor. All Reports of Investigation will be entered into Energy Investigations General Project Tracking (EIGPT).

On occasion, prosecutors specifically request a written case summary and/or Memoranda of Investigative Activity as sufficient documentation. An agent is exempt from providing a Report of Investigation only when (a) the prosecutor specifically advises that a Report of Investigation is unnecessary, and (b) the case supervisor approves. Case agents shall not solicit prosecutor support for not completing a Report of Investigation, or utilize this exemption as a tool for avoiding of Investigation. A Report of Investigation need not be prepared for preliminary or informal consultations. Reports of Investigation are best produced in partnership with a prosecutor. Therefore, the cognizant prosecutor should be consulted whenever the Special Agent has questions about the format or content of a Report of Investigation. Also, the Special Agent's immediate supervisor should be kept informed of progress on a Report of Investigation, including changes that have been suggested or requested by a prosecutor.

Agents occasionally contact AUSAs in an attempt to ascertain or gauge the AUSA's potential interest in a matter. These are considered preliminary or informal consultations, not official referrals for a formal acceptance/declination decision. As such, such discussions will not be entered into EIGPT as a "referral"; however, the activity will be documented in the case file.

An official referral to a prosecutor for a formal acceptance/declination determination will be entered into the EIGPT Actions screen. All prosecutorial referrals and responses must be documented in writing and maintained in the case file. Whenever possible, the case agent should attempt to obtain a letter from the prosecutor documenting the decision. However, time constraints or other factors may dictate that the agent forward a confirmation letter to the prosecutor and/or enter a MOIA in the case file.

Primary consideration will be given to pursuing Federal prosecution. The case agent (in consultation with the case supervisor) will also consider presenting cases to State/Local prosecutors when circumstances warrant (e.g., the case involves a potential State/Local violation, the case is declined by a Federal prosecutor, the case does not meet Federal prosecutive thresholds, etc.). Participation in activities such as undercover operations, electronic surveillance, searches, or arrests will be conducted at the direction of the assigned Federal/State/Local prosecutor or in conjunction with appropriate Federal/State/Local law enforcement agencies.

[NOTE: See chapter 5 for guidelines on filing a "Notification of Conflict of Interest Referral" form (OGE Form 202) with the Office of Government Ethics when the DOJ is notified of a suspected criminal violation of Title 18, U.S.C., Section 203, 205, 207, 208, or 209.]

b. Coordination with DOE Management Investigative Reports to Management are best produced in a cooperative atmosphere with DOE management. Special Agents should consider discussing significant issues raised during the investigation with appropriate managers before and during the draft stage of an Investigative Report to Management. It is also proper to discuss potential findings and recommendations informally with the manager to whom the report will be sent for action--remembering that an Investigative Report to Management is, after all, for the customer's benefit. The prudent Special Agent ensures that the Investigative Report to Management contains no surprises for management. Although in the last analysis, managers may not agree with a Special Agent's findings and recommendations, managers generally should not be surprised by the contents of an Investigative Report to Management. Of course, a Special Agent is under no obligation to adopt management's suggestions if the Special Agent believes that the suggestions are not reasonable or that the evidence warrants a different course of action.

Total responsibility for the quality and effectiveness of an Investigative Report to Management always rests solely with the Special Agent and the ASAC. Also, the Special Agent's immediate supervisor should be kept informed of progress on an Investigative Report to Management, including significant changes that have been suggested or requested by DOE management.

**NOTE:** An Investigative Report to Management which is being sent to DOE management during an ongoing criminal or civil investigation should be closely coordinated with the cognizant prosecutor before issuance to ensure

that the content of the Investigative Report to Management does not adversely impact on potential criminal/civil prosecutions.

3. Reviewing Reports of Investigation and Investigative Reports to Management Each ASAC will establish procedures for reviewing the content of Reports of Investigation and Investigative Reports to Management before signature. As a minimum, the procedures will include cross-indexing and cross-referencing (peer review) per chapter 6. However, the procedures for each region will always emphasize speed, efficiency, conservation of staff hours in the review process, as well as Special Agent ability in report writing.

4. Cross-Indexing/Referencing for Quality Control All Reports of Investigation and Investigative Reports to Management will be cross-indexed and cross-referenced. See chapter 6, section E "Quality Control System," for specific guidelines.

5. Describing Investigative Techniques in Reports of Investigation and Investigative Reports to Management In most instances, information on investigative techniques used in an investigation will not be placed in a Report of Investigation or Investigative Report to Management. Also, memoranda between Special Agents and their supervisors--and other administrative or record keeping documentation such as records of visits--will not be discussed in, or included as attachments to, Reports of Investigation and Investigative Reports to Management.

6. Signing Reports of Investigation and Investigative Reports to Management Unless otherwise directed by the DAIGI or higher authority because of some unique aspect or sensitivity of a case, ASACs will sign Reports of Investigation and Investigative Reports to Management. Reports intended for the Assistant Secretary level or above will be signed by the SAC, and in some instances, the IG, AIGI, or DAIGI. SACs will consult with an Operations Officer for such reports.

7. Distribution of Reports of Investigation and Investigative Reports to Management Reports of Investigation are addressed to the cognizant prosecutor, with additional distribution to the case agent for inclusion in the official case file. Investigative Reports to Management are addressed to the cognizant DOE manager; that is, the manager who has responsibility and requisite authority for taking corrective action. Additional distribution of an Investigative Report to Management is made to the case agent for inclusion in the official case file. Distribution of the Investigative Report to Management is limited to DOE officials with a need to know or to others outside the DOE pursuant to a "routine use," in accordance with the Privacy Act. Because these reports are maintained in a Privacy Act system of records, a Privacy Act warning must be placed in the Investigative Report to Management (see section E of this chapter for more details). Blind copies of Investigative Reports to Management and management's responses should be sent to HQ, ATTN: DIP<sup>3</sup>.

8. Preparation, Review, and Distribution of Classified or Controlled/Sensitive Investigative Reports As a general rule, Reports of Investigation and Investigative Reports to Management should be devoid of classified or controlled/sensitive information. However, there may be occasions when the inclusion of such information is warranted in direct support of investigative findings and/or recommendations. When this occurs, the DAIGI will review, prior to issuance, Reports of Investigation and Investigative Reports to Management believed to contain controlled/sensitive or classified information - namely, information that would cause or potentially could cause damage to U.S. national security, citizens, or property. Examples of controlled/sensitive information would include, but not be limited to, detailed descriptions and locations of storage facilities for nuclear or other hazardous materials; vulnerabilities of hazardous materials to unauthorized access or destruction; and site-specific vulnerability assessments. Exhibit A (IM11EXA.DOC) is a checklist of information that investigators should use to determine if the report contains this type of information. Information pertaining to nuclear weapon design, fabrication, and utilization; radiological warfare, military nuclear reactors, etc. may be classified. Exhibit B (IM11EXB.DOC) is a checklist that should be used in determining what may be classified and needing closer scrutiny by a classifier. Reports of Investigation and Investigative Reports to Management believed to contain such information must be reviewed by a classifier before distribution to prosecutors, DOE officials, or others pursuant to a "routine use." Special Agents located in the Washington D.C. metropolitan area should protect, control, and process classified information in accordance with IG Directive 908G "Office of IG Security", dated April 12, 2002. Special Agents in remaining OIG sites should comply with certain portions of this plan, where applicable, in addition to the security policies and procedures of the host DOE sites. Keep in mind that information in the aggregate can be classified even if taken from unclassified sources. When in doubt, Special Agents and their supervisors should air on the side of caution when deciding whether certain information is classified or controlled. See chapter 4 for more details regarding this general subject.

9. "Need to Know" Release of Investigative Reports to Management Distribution of Investigative Reports to Management is limited to individuals with a "need-to-know," regardless of whether they are a Department of Energy employee, a contractor, an official with another agency, or a non-Government entity.

a. General DOE management does not need specific prior OIG approval to share an Investigative Report to Management with appropriate DOE personnel whose assistance may be necessary to address the report's findings and prepare a response to the OIG. They may not, however, share a report with contractor personnel--regardless of the circumstances--without prior OIG approval.

b. Release of an Investigative Report to Management to the Subject of an Investigation DOE employees who are subject to disciplinary action (e.g., termination, reprimand, suspension, etc.), and contractors who are

subject to adverse action such as suspension/debarment, may have a right to review documentation on which management relied to render its decision. However, DOE managers who wish to use an OIG Investigative Report to Management to support action against a DOE employee or contractor must obtain OIG permission prior to releasing the Investigative Report to Management to the subject employee or contractor.

If it becomes necessary for DOE management to provide a copy of an OIG Investigative Report to Management to the subject of an investigation-- a DOE employee or contractor--management must direct a written request to the cognizant ASAC. The request must identify to whom the report is to be released, and the reasons for the proposed disclosure. The ASAC and the case agent will evaluate the request to determine if it contains confidential or sensitive information that should be protected. Consultation with the IG Counsel's Office may be necessary. Generally, the ASAC may (1) authorize release of the report in its entirety, if it contains no confidential, sensitive or protected information; (2) redact the sensitive information similar to the Freedom of Information Act process; or (3) allow DOE management to prepare and release a sanitized written summary of the investigation, subject to Office of Investigations review. SACs, ASACs, Special Agents, and Secretaries must exercise caution not to improperly release, or allow the release of, Privacy Act information.

c. Release of an Investigative Report to Management to a Contractor OIG investigative records are maintained in a Privacy Act system of records. Their disclosure is governed by law with certain civil penalties available against the Government and individuals for wrongful disclosure.

A routine use exemption exists which allows for disclosure of investigative records to DOE contractors in certain specific circumstances. The Office of General Counsel has provided its opinion that this routine use ONLY applies when DOE has determined that it will require contractor action based on our investigative records.

Accordingly, investigative records may be provided to DOE contractors, but only through the Contracting Officer, and only when the Contracting Officer needs this information to compel some contractor action.

Case supervisors and investigators should assist Contracting Officers in determining what information may be necessary to support the DOE action. Office of Investigations also needs to focus on protecting confidential, privileged, or non-relevant information. Such a review may be necessary to protect confidential sources or information critical to ongoing criminal or civil enforcement.

The OIG will authorize release of an Investigative Report to Management to a contractor to pursue its own administrative or disciplinary action only after the DOE advises the OIG, in writing, that such release is necessary to require action pursuant to the contract (i.e., the DOE is compelling action by the contractor). Management must identify, in



writing, the action the Contracting Officer will direct the contractor to take. Careful OIG review of disclosure requests is necessary to ensure compliance with the Privacy Act, and to protect against the disclosure of protected information. As noted above, the ASAC may (1) authorize release of the report in its entirety, if it contains no confidential, sensitive, or other protected information; (2) redact the sensitive information similar to the Freedom of Information Act process, or (3) allow DOE management to prepare a written summary of the investigation, subject to Office of Investigations review.

d. Release of an Investigative Report to Management to Other Entities Release of OIG reports to other entities will be processed in accordance with guidelines outlined in chapter 6. Other entities include, but are not limited to, witnesses, the general public, the media, complainants, and others.

e. Advising DOE Management of Disclosure Restrictions Every Investigative Report to Management, or letter/memorandum that serves to transmit case file information or documents to a non- Office of Investigations entity or person, must contain a Privacy Act and related non-disclosure warning. Refer to Section E of this chapter for more details.

Generally, DOE managers to whom an Investigative Report to Management is addressed do not personally handle the response to the OIG. That responsibility is usually delegated to a subordinate office or person. It is recommended that the ASAC encourage the DOE manager to whom a report is addressed to use a transmittal letter if he/she will be delegating action on the report. See Exhibit C (IM11EXC.DOC) for an example transmittal letter that a manager may use. The transmittal letter must highlight the disclosure restrictions.

10. Photocopying of Reports of Investigation and Investigative Reports to Management Except in unusual circumstances where individual copies of a specific Report of Investigation or Investigative Report to Management are being controlled, there is no prohibition on photocopying Reports of Investigation and Investigative Reports to Management. The prohibition is on their unauthorized release.

11. Processing Management Responses to Investigative Reports to Management After the Office of Investigations receives and evaluates management's response to an Investigative Report to Management (or any type of administrative referral), the SAC or ASAC will contact the appropriate DOE manager to acknowledge the receipt and acceptability/non-acceptability of the response. Under most circumstances, a case is closed soon after management responds to an Investigative Report to Management; thus, the Office of Investigations may discuss management's response during case closing notification (see chapter 12). However, if it is anticipated that a case will remain open for an extended period of time after management's response is received and processed, the Office of Investigations must contact DOE management (verbally or in writing) within 30 days to acknowledge the receipt and acceptability/non-acceptability of the

Investigative Report to Management response. A written acknowledgment should be filed in Tab D of the official case file. A verbal acknowledgment must be noted in a memo to file, MOIA, case chronology, etc.

12. Public Release Reports of Investigation and Investigative Reports to Management are subject to disclosure pursuant to the Freedom of Information Act (FOIA) process. See chapter 6 for disclosure policies and procedures.

D. FORMAT AND CONTENTS OF REPORTS OF INVESTIGATION

This section provides general requirements for the development of Reports of Investigation and identifies information that must be included for various types of referrals. Exhibit D (IM11EXD.DOC) presents a suggested logical order of data to be placed in a Report of Investigation.

1. Formatting and Stylistic Requirements The Report of Investigation will be completed on letterhead paper using letter format (centered date under the letterhead, inside address of the prosecutor, subject line, paragraphs with a blank line between them, and signature block of the signer). Beyond that, considerable latitude is given for preferences of individual prosecutors. Special Agents should choose margins, typefaces (fonts), and special features (underlining, italics, bold type) with an eye toward simplicity, neatness, and readability.

2. Subject Line The subject line will be "Report of Investigation," followed by the case number. In no instance will the name of an individual being investigated be included in the subject line.

3. Paragraph Titles and Contents The following paragraphs should appear in the Report of Investigation. Within the broad guidelines presented below, the contents of each paragraph should meet the needs and expectations of the cognizant prosecutor.

a. Allegation(s) Each allegation should be stated in one or two concise sentences.

b. Statute or Regulatory Violation Cite each statute or regulation violated by the alleged activities. Each statute citation should include a narrative phrase that identifies the violation for the layperson, such as "submitting false statements," "theft of Government property," or "receiving stolen property." Cite all violations (criminal, civil, and administrative), identifying the relevant act where applicable, such as the False Claims Act. In the case of regulations, cite the specific regulation and state the clause that has been violated.

c. Investigative Findings Briefly describe the facts that the investigation uncovered, naming persons, places, dates, and documentary evidence. Everything in this section should be provable fact, with no opinions or conclusions. Examples of statements to be avoided include, "investigation developed probable cause to believe," "it is reasonable to

conclude that," and "despite the subject's denials, we found that." These statements deviate from an objective presentation of facts.

As a result of reading this section (generally one page or less), the prosecutor should conclude that the investigation was thorough and complete, with no unresolved issues that could trouble a prosecution. To that end, this paragraph should also clearly and briefly explain for the non-expert how the applicable DOE program or financial transaction works and how it was subverted or misused.

d. Estimate of Government's Loss State the total monetary loss to the Government caused by all of the subject's violations.

e. Witnesses Who Could Testify Name each person who could testify, or be compelled to testify, before a Grand Jury and at a trial, and include a brief statement of that to which he or she could testify.

f. Evidence List List each item of evidence that supports prosecution, giving the reason for the item's importance if it is not obvious.

g. Enclosed Pertinent Exhibits List each item of evidence that accompanies or is enclosed with the Report of Investigation. Enclosed exhibits should be strictly limited to a very few crucial documents, such as a critical interview, the actual false claim (or sample thereof), or a particularly pertinent program regulation.

h. Background of the Defendant Briefly state relevant information about the potential defendant, such as age, health, employment history, education, previous violations of the law, arrest record, family situation, or any other data which might be of use to prosecutors. If the defendant is a corporation or other entity, give useful prosecutorial information, such as previous violations of the law, names of cognizant corporate officers, contract numbers, and funding data.

i. Collectability State any evidence which is indicative of the subject's ability to make monetary restitution, such as debts, unemployment, financial account balances, or number of dependents in the subject's family.

j. Mitigating or Exculpatory Information Briefly give any data or evidence which might serve to mitigate, excuse, or refute the investigative findings. This paragraph should candidly assess any possible weakness in the proposed case. For example, a regulation may have been so ambiguous or so complex that the proposed defendant may have been honestly confused or simply mistaken.

k. Possible Defense Strategy Briefly state any likely strategy which the defendant might use under prosecution, but do not speculate. The likely strategy must come from evidence, from the Special Agent's experience and knowledge of the defendant, and from the circumstances of the case. This paragraph may be included/excluded at the discretion of the Special Agent and ASAC.

1. Possible Rebuttal to the Defense Strategy Briefly discuss evidence or information that could be used to counter any defense strategy presented in the paragraph above. This paragraph may be included/excluded at the discretion of the Special Agent and ASAC.

m. Referrals List all referrals being made. For example, if the Report of Investigation also is being referred to Federal civil prosecutors under DOJ's Affirmative Civil Enforcement Program, to State prosecutors, or to the DOE under the Program Fraud Civil Remedies Act, give the specifics in this paragraph, including the reason why the referral is being made. In particular, describe any prosecutions that are anticipated, underway, or concluded in this matter. Also state any declinations and the reasons for them.

n. Program Fraud and Civil Remedies Act Recommendation Unless circumstances indicate otherwise, the following statement should be entered as a separate paragraph in all Program Fraud Civil Remedies Act referrals: "The Office of IG recommends that the Department transmit to the Attorney General a notice of intent to issue a complaint pursuant to Title 31, U.S.C. Section 3803(b)(1)." NOTE: There should always be a Program Fraud Civil Remedies Act evaluation of an investigation even though most investigations will not be referred for Program Fraud Civil Remedies Act prosecution.

o. Point of Contact State the name, title, and telephone number of the individual (usually the Special Agent) who can answer questions regarding this Report of Investigation and all referrals.

#### E. FORMAT AND CONTENT OF INVESTIGATIVE REPORTS TO MANAGEMENT

This section outlines general requirements for the development of Investigative Reports to Management. Exhibit E (IM11EXE.DOC) presents a standardized format. Reasonable and minimal deviations are acceptable in extenuating circumstances. All sections will be in a narrative format (i.e., not a list or bullets). Additionally, all information in an Investigative Report to Management must be traceable to a "source" document in the official case file. Readers must be advised of any attachments.

All Investigative Reports to Management must be reviewed by a SAC prior to issuance. At a minimum, at least two such reviews should occur, preferably early in the process and the final draft. See chapter 6 for additional Quality Control procedures.

ASACs and case agents will endeavor to issue Investigative Reports to Management within 60 days of resolution of criminal and civil investigations. It is expected that 90% of all issued reports meet this standard.

**Note:** Performance goals and expectations are subject to change as the requirements of the OIG change.

1. Formatting and Stylistic Requirements The Investigative Report to Management will consist of (1) a cover page, (2) a brief cover Memorandum

to the recipient, and (3) a report which conveys the investigation's scope and findings, as well as recommendations. Generally, Investigative Reports to Management will be formatted with the Time New Roman 12 font. Special Agents should choose special features (outlines, underlining, italics, bold type) with an eye toward simplicity, neatness, and readability.

2. Content Exhibit E (IM11EXE.DOC) provides a standardized format for Investigative Reports to Management, and outlines the general requirements of each section.

3. Disclosure Advisements Insert the appropriate Privacy Act and FOIA notice on the cover page and final page of the Investigative Report to Management (see below). Care must be exercised to ensure the same statement appears in both places. Appropriate deviations to these statements may be made for special reports in limited circumstances--with HQ approval. [Note: One of the statements below must appear in every Investigative Report to Management or letter/memorandum that serves to transmit case file information or documents to a non-Office of Investigations entity or person (e.g., other law enforcement agency, prosecutor, etc.). The first statement allows for copying of the report, provided copies are uniquely numbered. The second statement precludes copying without the permission of the Office of IG (i.e., recipient may possess and maintain the report but not produce copies for distribution). The word "report" should be replaced with the word letter or memorandum, where appropriate. If attachments are included, refer to the "report and its attachments." In appropriate circumstances, Office of Investigations may request the return of all originals and copies. The Office of Investigations supervisor who signs the Investigative Report to Management will use agent discretion to determine whether a particular report is "sensitive" or "highly sensitive."

- "Sensitive" Reports

This report is the property of the Office of IG and is for **OFFICIAL USE ONLY**. Appropriate safeguards should be provided for the report and access should be limited to Department of Energy officials who have a need-to-know. Any copies of the report should be uniquely numbered and should be appropriately controlled and maintained. Public disclosure is determined by the Freedom of Information Act (Title 5, U.S.C., 552) and the Privacy Act (Title 5, U.S.C., 552a). The report may not be disclosed outside the Department of Energy without prior written approval of the Office of IG, including distribution to contactors.

- "Highly Sensitive" Reports

This report is the property of the Office of IG and is for **OFFICIAL USE ONLY**. Appropriate safeguards should be provided for the report, it should be appropriately controlled and maintained, and access should be limited to Department of Energy officials who have a need-to-know. This report may not be copied without the permission of the Office of IG.

Public disclosure is determined by the Freedom of Information Act (Title 5, U.S.C., 552) and the Privacy Act (Title 5, U.S.C., 552a). The report may not be disclosed outside the Department of Energy without prior written approval of the Office of IG, including distribution to contractors.

F. FORMAT AND CONTENT OF CLOSING MEMORANDUM

The Office of Investigations has general requirements for the development of a (1) closing notification Memorandum to DOE management, and (2) a closing memorandum for the official case file. Refer to Chapter 12 for a more detailed discussion of the use of closing memoranda.

If your investigations work or report deals with any of the following information, be sure to have your information reviewed by a classifier to ensure you are not inadvertently discussing Restricted Data or Formerly Restricted Data or any other level of classification. Information in the aggregate can be classified even if taken from unclassified sources.

<b>AIDS FOR REVIEW OF INFORMATION THAT MAY BE CLASSIFIED OR CONTROLLED</b>	<b>YES</b>	<b>NO</b>
Source or formula for Chemical/Biological Agents that has not been widely reported in open scientific literature		
Existence of a specific Chemical/Biological agent that is considered a threat to national security at a specified location within a government facility		
Statements that a specific Chemical/Biological agent considered a threat to national security cannot be detected by existing technology		
Information concerning significant technical advances and breakthroughs in Chemical/Biological agent detection, dissemination, or response technologies that could significantly assist an adversary		
Results or interpretation of research results from computer modeling that reveal specific operational deficiencies or vulnerabilities of a facility, infrastructure, or response plan which could be exploited or otherwise could materially aid an adversary in planning or conducting a Chemical/Biological attack		
Source term parameters (e.g. location, quantity, release rate, dispersal mechanisms, physical state, or particulate size distribution) of a Chemical/Biological agent <b>and</b> the airborne or surface concentrations resulting from dispersion modeling		
Specific dispersion mechanisms for specific chemical/Biological agents, including grinding techniques and pressurized systems, that would be effective for dispersion over a large area		
Details of operational scenarios either for intelligence, civilian, or military organizations which would reveal current vulnerabilities or lessen the effectiveness of the scenarios		
Information about deployment of a specific detector or response system that could be used to defeat or significantly reduce the effectiveness of that system or otherwise materially aid an adversary in planning or conducting an attack		

Descriptions of specific vulnerabilities of decontamination equipment or procedures that could be exploited to prevent or significantly reduce their ability to perform required functions or otherwise materially aid an adversary in planning or conducting a Chemical/Biological attack		
Descriptions of specific conditions (e.g., carrier for an agent or environmental condition) that could be exploited to reduced the effectiveness of standard decontaminants or decontamination procedures such that risks to unprotected personnel cannot be reduced to acceptable levels, or otherwise would aid an adversary in planning a Chemical/Biological attack.		
Nuclear weapon design, fabrication, and utilization		
Radiological warfare		
Radiological dispersal devices		
Inertial confinement fusion		
Military nuclear reactors (not necessary for civilian)		



**POTENTIALLY SENSITIVE INFORMATION**

The following table is a listing of information considered potentially sensitive. If the information is detailed to such an extent that it would cause or potentially could cause damage to U.S. national security, citizens, or property, it cannot be placed in our public reports. Therefore, when you prepare your reports be sure to check for this type of information.

CATEGORIES/TYPES OF INFORMATION	YES	NO
<b>Facilities</b>		
Detailed description and location of facilities to include maps, written directions, drawings, blue prints, photographs and the like		
Detailed descriptions and location of storage facilities for nuclear or other hazardous materials		
Detailed descriptions and location of personnel or facility support systems (e.g. water supply, electrical supply systems, communications systems, emergency response personnel equipment)		
Detailed descriptions and locations of computer systems used to process, store, and transmit sensitive information		
Environmental Impact Statements which provide the consequences for what is being studied		
Any detailed information pertaining to other sites that has not been reviewed/approved by the other site		
<b>Materials</b>		
Form and quantity of hazardous materials, (chemical, nuclear, biological)		
Vulnerabilities of materials to unauthorized access or destruction		
Consequences of release of hazardous materials		
Detailed transportation related information (routes, maps, shipping means, containers)		
<b>Security/Safety</b>		
Detailed plans, procedures, communications, reaction times, capabilities that would allow someone to determine vulnerabilities of the site		
Specific assessments, exercise results, evaluations for a particular site		
Specific personnel data identifying security/safety personnel		
Specific equipment and its potential uses		

**POTENTIALLY SENSITIVE INFORMATION**

<b>Assessments</b>		
Site specific vulnerability assessments		
Site specific safety assessments/analysis		
Site specific risk analyses		
Specific hazardous assessments (Dispersion models and analyses, accident analyses, or site hazards)		
<b>Personnel</b>		
Specific organization charts or phone lists identifying senior management/key personnel		
Specific personal data to include travel plans, meetings and the like		
Specific training materials that include sensitive information		
<b>Programs</b>		
Detailed information identifying sensitive programs, special projects, SAPs, WFO		
Reports detailing specific activities and/or results from programs and projects		
Information pertaining to specific programs at other facilities/sites that has not been cleared with the other sites for publication on a publicly accessible web site		

United States Government

Department of Energy

# memorandum

DATE:

REPLY TO:

SUBJECT:

TO:

Attached is an Office of Inspector General (OIG) investigative report regarding... *[topic]*.

You are requested to act as lead on this report and to coordinate with other *[field office location]* Operations and Headquarters organizations whose assistance may be necessary to address the findings and prepare a coordinated response. Final response to the OIG should include target dates for any actions taken or anticipated. The response to the OIG should be sent to *[Name of ASAC]*, Assistant Special Agent-in-Charge, *[Region]*, no later than the close of business on *[due date]*. Please provide a copy to *[insert name of any potential Operations Office recipients such as the Manager]*.

The attached report is the property of the OIG; it is for OFFICIAL USE ONLY; and disclosure to unauthorized persons is prohibited. Unless otherwise noted, the attached information may only be shared with Department of Energy (DOE) officials who have a need-to-know. This report may not be copied without the permission of the OIG. Public disclosure is determined by the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, Title 5, U.S.C. 552a. The report may not be disclosed without approval of the OIG.

Managers who wish to use OIG investigative reports to support administrative action against DOE employees must acquire OIG permission prior to releasing the report to the subject employee or others. Additionally, the attached report or a summary may not be disclosed to non-Department officials, including contractors, without OIG authorization. The OIG will authorize release to a DOE contractor only after DOE advises the OIG that such release is necessary to acquire action pursuant to the contract (i.e. DOE is compelling action by the contractor). OIG review of disclosure requests is necessary to ensure compliance with the Privacy Act and to protect against the disclosure of protected information.

If it is necessary for you to provide a copy of an OIG investigative report to a contractor or subject DOE employee, you must notify me at *[phone number]* and identify to whom you would like to release the report and the reasons for the proposed disclosure. If the proposed recipient is a DOE contractor, the request must outline the action DOE will direct the contractor to take. At that time, permission will be requested from the OIG to release a copy

of the report. Under no circumstances should a report, or summary of a report, be provided to a contractor or subject employee without OIG authorization.

Should you have any questions, please do not hesitate to call me at *[phone number]*.

*[Name]*  
*[Title]*  
*[Office]*

Attachment

cc (w/o attachment):

*[ASAC Name]*

United States Government

Department of Energy

# memorandum

DATE:

REPLY TO:

SUBJECT:

TO:

Attached is an Office of Inspector General (OIG) investigative report regarding... *[topic]*.

You are requested to act as lead on this report and to coordinate with other *[field office location]* Operations and Headquarters organizations whose assistance may be necessary to address the findings and prepare a coordinated response. Final response to the OIG should include target dates for any actions taken or anticipated. The response to the OIG should be sent to *[Name of ASAC]*, Assistant Special Agent-in-Charge, *[Region]*, no later than the close of business on *[due date]*. Please provide a copy to *[insert name of any potential Operations Office recipients such as the Manager]*.

The attached report is the property of the OIG; it is for OFFICIAL USE ONLY; and disclosure to unauthorized persons is prohibited. Unless otherwise noted, the attached information may only be shared with Department of Energy (DOE) officials who have a need-to-know. This report may not be copied without the permission of the OIG. Public disclosure is determined by the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, Title 5, U.S.C. 552a. The report may not be disclosed without approval of the OIG.

Managers who wish to use OIG investigative reports to support administrative action against DOE employees must acquire OIG permission prior to releasing the report to the subject employee or others. Additionally, the attached report or a summary may not be disclosed to non-Department officials, including contractors, without OIG authorization. The OIG will authorize release to a DOE contractor only after DOE advises the OIG that such release is necessary to acquire action pursuant to the contract (i.e. DOE is compelling action by the contractor). OIG review of disclosure requests is necessary to ensure compliance with the Privacy Act and to protect against the disclosure of protected information.

If it is necessary for you to provide a copy of an OIG investigative report to a contractor or subject DOE employee, you must notify me at *[phone number]* and identify to whom you would like to release the report and the reasons for the proposed disclosure. If the proposed recipient is a DOE contractor, the request must outline the action DOE will direct the contractor to take. At that time, permission will be requested from the OIG to release a copy

of the report. Under no circumstances should a report, or summary of a report, be provided to a contractor or subject employee without OIG authorization.

Should you have any questions, please do not hesitate to call me at *[phone number]*.

*[Name]*  
*[Title]*  
*[Office]*

Attachment

cc (w/o attachment):

*[ASAC Name]*

CONTENTS OF REPORTS OF INVESTIGATION

[This Exhibit provides a suggested logical order to the information that will be contained in a Report of Investigation. Content expectations for each of the paragraph headings listed below, as well as formatting and stylistic requirements, are discussed in Section D of Chapter 11.]

SUBJECT: Report of Investigation [followed by the case number]

ALLEGATION(S):

STATUTE OR REGULATORY VIOLATION:

INVESTIGATIVE FINDINGS:

ESTIMATE OF GOVERNMENT'S LOSS:

WITNESSES WHO COULD TESTIFY:

EVIDENCE LIST:

ENCLOSED PERTINENT EXHIBITS:

BACKGROUND OF THE DEFENDANT:

COLLECTABILITY:

MITIGATING OR EXCULPATORY INFORMATION:

POSSIBLE DEFENSE STRATEGY:

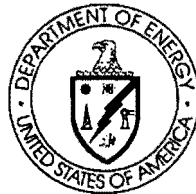
POSSIBLE REBUTTAL TO THE DEFENSE STRATEGY:

REFERRALS:

PROGRAM FRAUD CIVIL REMEDIES ACT RECOMMENDATION: (This paragraph should only appear in Report of Investigations which are being referred to the Department's Office of General Counsel under Program Fraud Civil Remedies Act.)

POINT OF CONTACT:

U.S. Department of Energy  
Office of Inspector General  
Office of Investigations  
Case No. 104HQXXX



**INVESTIGATIVE REPORT TO MANAGEMENT**

**December 1, 2005**

This report is the property of the Office of Inspector General and is for **OFFICIAL USE ONLY**. Appropriate safeguards should be provided for the report and access should be limited to Department of Energy officials who have a need-to-know. Any copies of the report should be uniquely numbered and should be appropriately controlled and maintained. Public disclosure is determined by the Freedom of Information Act, Title 5, U.S.C. 552, and the Privacy Act, Title 5, U.S.C. 552a. The report may not be disclosed outside the Department without prior written approval of the Office of Inspector General, including distribution to contractors.





**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

December 1, 2004

**MEMORANDUM FOR THE MANAGER, ALBUQUERQUE OPERATIONS OFFICE**

**FROM:** Linda A. Leader  
Assistant Special Agent-in-Charge  
Northwest Region Investigations Office

**SUBJECT:** Investigation of False Claims by an Employee of the Los Alamos  
National Laboratory (OIG Case No. IOIHQXXX)

[This memorandum will be used to transmit and introduce the Investigative Report to Management (IRM). Generally, the memo will provide a brief overview to senior Department of Energy (DOE) management. It should serve as an "executive summary" that provides a general sense of the origin, direction, and findings of the investigation. Under most circumstances, it will be less than one page. Suggested beginning text:

"This report serves to inform you of the results of an investigation by the U.S. Department of Energy (DOE), Office of Inspector General (OIG), Office of Investigations (Investigations). The investigation involved allegations of false claims by Mr. Joe Jones, General Engineer, Los Alamos National Laboratory (Los Alamos). Specifically, it was alleged that... In summary, the OIG found... The report makes ## recommendations for corrective action."

A detailed listing of the specific recommendations is unnecessary.

Close the cover memo by stating the name, title, and telephone number of the individual (usually the Assistant Special Agent-in-Charge or Special Agent) who can answer questions regarding this report and any referrals. The Assistant Special Agent-in-Charge will initial his/her name above on the "From" line.

Absent compelling circumstances, the Headquarters Lead Program Secretarial Office for the recipient will be included as a "cc" (e.g., include Environmental Management [EM-1] on a report involving Rocky Flats). A "bcc" or equivalent will be sent to DIP<sup>3</sup>.

The body of the IRM will contain the case number and page number in the "footer" (see next page). The cover page should be printed on a color printer to capture the blue font.]

## I. ALLEGATION (S)

[Provide a 1-2 paragraph concise description of the allegation(s) that are *addressed in the IRM*. This will serve to focus the reader and establish an understanding of what the report is about. This section should clearly define the parameters and focus of the investigation. As a general rule, the writer will *not* include allegations that were received at predication but not pursued during the investigation.

Use of acronyms should be held to a minimum. Excessive acronyms can be burdensome for a reader. Alternative examples: "Sandia" is preferred over "SNL"; "Acme" is recommended over "ACC" for "Acme Construction Company"; and "Agreement" is better than "CA" for a "Cooperative Agreement." Also, even if an acronym is first introduced in the cover letter, it must be re-introduced in the body of the IRM. This is done so the cover letter and IRM can server as stand-alone documents for the recipient.]

## II. POTENTIAL STATUTORY OR REGULATORY VIOLATION (S)

[Provide a *narrative* description of potential violations, including criminal, civil, regulatory, DOE Orders and Directives, contract provisions, and policies and procedures. For example, "This investigation focused on potential violations of...." Each citation should include a phrase that identifies the violation for the layperson, such as "false statements," "theft of Government property," or "bribery." For example, 18 U.S.C 1001 (False Statements).

This section should be consistent with the issues being reported to management. In other words, list only those statutes, regulations, contract provisions, etc., on which the Office of Investigations is reporting its findings. If the focus of a report, for instance, is a contractual violation, do not include potential criminal or civil violations. In this case, the report would cite appropriate DOE Orders, Directives, and/or contract clauses. It is acceptable, however, to clarify that an investigation *began* with a focus on 18 U.S.C. 1001 but has since been redirected to a non-criminal violation (e.g., contract clause).

Adding a Background Section after Potential Violations but prior to Investigative Findings is optional (e.g., III. Background).]

## III. INVESTIGATIVE FINDINGS

[Use deductive prose. Begin with an overview paragraph to summarize the findings. The reader should be aware of the bottom-line findings immediately. Create a road map. Follow with a detailed description and presentation of the facts. Use subheadings, where appropriate, to further clarify the issues for the reader. This section—along with the rest of the report—must be objective, factual, and void of personal opinion. Everything in this section should be supportable fact, with no opinions or conclusions. Examples of statements to be avoided include, "investigation developed probable cause to believe...", "it is reasonable to conclude that...", and "despite the subject's denials, we found that..." These statements deviate from an objective presentation of facts. Do not include extraneous information (i.e., information that does not contribute to the reader's assessment of the Office of Inspector General's findings). Objectivity and fairness dictate that relevant mitigating or

exculpatory data must be included. All data in this Investigative Section—and the rest of the report—must be supported by a document in the Official Case File.]

#### **IV. COORDINATION**

[Highlight any coordination the case agent may have done with prosecutors, DOE managers, debarment personnel, etc. This gives the reader a perspective on who else may have been, or is, involved in assessing and responding to the allegations.]

#### **V. RECOMMENDATION (S)**

[Recommendations are the cornerstones of an IRM. Recommendations facilitate positive change. List one or more recommendations for management to consider. Recommendations should be conceived and understood before the IRM is drafted. They must be based on, and fully supported by, facts included in the report. Special Agents are cautioned not to make sweeping recommendations based on a few samples or limited evidence.

The language used in recommendations is critical to the effectiveness of the IRM. It is in this area that the experience, judgment, and expertise of DOE managers will be most useful. Special Agents and Assistant Special Agents-in-Charge (ASAC) who consult with DOE management on intended recommendations before committing them to an IRM will be most likely to facilitate positive change. Examples of acceptable language include: (1) "Determine if administrative action is warranted with respect to..."; (2) "take appropriate disciplinary action against Mr. Jones, if warranted"; (3) "Determine if the costs highlighted in this report are unallowable and, if so, initiate appropriate action to recover such costs"; and (4) "Determine whether suspension and/or debarment action with respect to the activities of ABC Corporation and Mr. Jones is appropriate." Generally, if an IRM proposes disciplinary action against two individuals, each individual should be addressed in a separate recommendation. Avoid excessively indirect language such as "consider determining if administrative action is warranted." On the other hand, recommendations must not be so direct that management's discretion and/or options are limited. An explicit direction to "take action" eliminates management discretion and implies culpability and/or guilt. The investigator's goal is to present facts and leave the final decision making in the hands of management.

Recommendations should be concise and devoid of lengthy dialogue.

This section generally should not be used to request further management "investigation" of potential wrongdoing (e.g., avoid issuing an IRM that substantiates mischarging for FY 2000 but then recommends that management review prior year invoices for similar mischarging). If the ASAC or case agent has specific, substantive reason to believe further misconduct occurred, further investigation should be conducted rather than shifting responsibility to management.]

#### **VI. FOLLOW-UP REQUIREMENTS**

[This paragraph will clearly and briefly describe the process by which DOE will notify the Office of Inspector General about the progress and ultimate implementation of the IRM's recommendations.

Suggested text: "Please provide the Office of Inspector General with a written response within 30 days concerning any action(s) taken or anticipated in response to this report."

## **VII. PRIVACY ACT AND FREEDOM OF INFORMATION ACT NOTICE**

[Insert the appropriate Privacy Act and Freedom of Information Act notice—making sure it is consistent with the notice inserted on the cover page.]



Document Number 28



CHAPTER 12

CLOSING INVESTIGATIVE CASES

A. SCOPE OF CHAPTER

This chapter provides guidance regarding case closing criteria and procedures.

B. CLOSING INVESTIGATIVE CASES

Generally, a case may be closed at any time after the Special Agent, in coordination with the ASAC, has ensured that (1) all prudent and responsible investigative activity has been completed, (2) the investigative workplan has been fulfilled, (3) all prosecutive activity has occurred, and/or (4) no other remedy is available or necessary.

1. General Policy Throughout the conduct of an investigation, the Special Agent must decide if sufficient information/evidence has been developed to support continued investigative effort. Factors to consider when weighing a decision to close a case may include whether:

- The cost of continued investigative effort outweighs the potential benefits/recovery;
- A subject or potential subject can be developed;
- The administrative deficiencies preclude prosecution;
- There was a loss of Government money or property;
- The case does not meet the DOJ or OIG threshold for continued investigative effort (i.e., the dollar loss warrants a blanket declination; the case involves minor offenses of time and attendance abuse, employee misconduct, suspect bolts/ parts, etc.) and/or the Assistant United States Attorney (AUSA) declines prosecution; and
- All necessary investigative activity has been completed.

2. Closing Actions After the Special Agent has coordinated the investigative findings with the ASAC and concluded that no further investigative effort is necessary, a number of closing actions need to be taken.

a. Preliminary Review and Action Initial steps in closing investigative cases consist of:

- Having the Special Agent review the official case file to ensure that it is complete (all investigative activities have been documented in accordance with chapters 6 thru 9) and meets the administrative requirements of chapter 6.
- The Special Agent must ensure that all material in the case file belongs to that case file. All misfiles, inappropriate copies or documents, extraneous material such as routing slips, fax covers, etc., and duplicates should be removed. All other case related documents not otherwise meeting the requirements for inclusion in the case file should be discarded (e.g., NCIC reports may not be in the case file);
- Ensuring that all collateral requests have been satisfied. If outstanding requests remain, immediately call the SAC where the collateral investigation was needed and cancel it. Follow-up the telephone discussion with a Memorandum or fax for the record;
- Ensuring that all Energy Inspector General Project Tracking (EIGPT) system entries are accurate and complete. This includes the following screens: Predication, Assignment, Indices, Executive Brief, Actions, and File Review. Any changes that need to be made to the EIGPT system must be noted at this time. (Note: A case that had once been a "Priority" case that had been changed to a "Regular" case must be changed back at closure to a "Priority" status.)
- Having the Special Agent print the Indices (RDX) and Statistical Accomplishments (Actions) screens.
- Reviewing the case file for any Grand Jury information. Generally, such information should be removed from the file. Process Grand Jury information in accordance with chapter 8, section H.
- Returning all original evidence to the owner. Process the return of evidence in accordance with chapter 9.
- Processing bulky exhibits and investigator notes in accordance with chapters 6 and 7. No items should be discarded or returned prior to coordination with the ASAC.



**Note:** All investigative records (including investigator notes, bulky exhibits, reference materials and evidence) on high profile and/or particularly sensitive cases will be retained and sent to Headquarters at case closure. Such cases include but are not limited to "special inquiries" conducted at the request of Congress or the Secretary of Energy. If the case is already subject to a FOIA request, the same procedure applies; all investigative records will be maintained pending FOIA review. See Chapter 4 for more details on FOIA and the Privacy Act.

b. Electronic Media Documents such as letters, memoranda, spreadsheets, notes, and other written materials prepared or received during the course of an investigation and stored on electronic media (i.e., computer hard disk or floppy diskette) also need to be examined at case closing. When a document or file is maintained only in electronic form (i.e., no corresponding hard copy [print out] exists in the official case file), the Special Agent will forward the diskette containing these documents to Headquarters upon case closing, along with the rest of the official case file. Examples may include spreadsheets/data bases that were prepared to aid in the investigation, draft memoranda that were not issued, etc. The diskette will be placed in the envelope marked "Original Investigator Notes."

The agent need not include on the diskette the documents/files that have corresponding hard copies (print out) in the official case file. These documents may be deleted from the diskette.

c. Case Closure Checklist After the Special Agent has conducted the steps outlined above, agent must complete a Case Closure Checklist, as depicted in Exhibit A (IM12EXA.DOC). This self-explanatory checklist assists the Special Agent in ensuring that all administrative reporting and case file management requirements are met.

The Special Agent will submit the Case Closure Checklist to the ASAC. If the supervisor concurs with the closing of the case, agent will sign the concurrence line of the checklist. A case must be closed in the EIGPT system within 15 days of supervisory approval (signature) of the Case Closure Checklist.

d. Closing Notification to DOE Management Absent compelling circumstances, notification of case closing must be made to DOE management. This notification may be accomplished by one of two methods (described in further detail below): (1) a written closing notification Memorandum to DOE management; or (2) verbal notification to DOE management. The case supervisor will determine the best course of action. Notification of case closing should be given only to DOE managers with a need-to-know. The envelope containing written notification should be marked "eyes only." The Special Agent and ASAC should ensure that no confidential information and/or sensitive data are improperly disclosed during this process.

Closing notification must be made when an Investigative Report to Management (or other administrative referral) has been issued. Closing notification should also be made in the following circumstances: (1) the incoming allegation(s) had been referred to the OIG by DOE management; (2) management is aware of the investigation and has a legitimate interest in the outcome; and (iii) the matter under investigation is public knowledge (e.g., known by coworkers of the subject, etc.). Generally, a notification of case closing should not be forwarded to DOE management simply to advise management that the OIG received an allegation, conducted an investigation, did not substantiate the allegation, and is now closing the case - particularly when management is not aware of the allegation and/or investigation.

When an investigation involves an unfounded allegation, and the subject knows about the investigation, the ASAC should consider issuing a closing notification Memorandum to the subject's supervisor, with a recommendation that the subject be made aware of the findings. This would not only constitute fair treatment of the subject, but may reduce the likelihood of a future FOIA or Privacy Act request by the subject.

There may be circumstances when a closing notification (written or verbal) to management is not appropriate or feasible. If an ASAC believes that a particular case does not merit closing notification to management, he/she should discuss the matter with the SAC. However, the decision not to notify management of case closing should be made on a limited, case-by-case basis only (i.e., the exception not the rule). If a decision is made to not notify management, the decision must be reflected in the case file (i.e., a Memorandum to file, a notation on the Case Closure Checklist, etc.).

(1) Memorandum to DOE Management Written notification of case closing--via summary memorandum--may be made by the SAC or ASAC (depending on the level/position of the manager to be notified of the case closing). If this option is used, the memorandum should generally include the following information: (1) a subject line stating, "Closing Notification for OIG Case No. IO1XX999;" (2) an opening statement such as "The purpose of this Memorandum is to notify you of the completion and closing of Office of IG Case Number IO1XX999;" (3) a brief summary of the allegations, potential violations, and investigative findings; (4) a Privacy Act and FOIA notification paragraph; and (5) a signature block. If the closing notification follows the issuance of an Investigative Report to Management (or other administrative referral), the Memorandum must acknowledge the receipt and acceptability or non-acceptability of management's response. If used, the closing notification Memorandum will be filed in the official case file under Tab E.

All closing memos to management will be indexed and referenced. See chapter 6, section E "Quality Control System," for specific guidelines.

(2) Verbal Notification to DOE Management

Verbal notification of case closing may be made by the SAC, ASAC, or case agent (depending on the level/position of the manager to be contacted). Notification by the case agent requires supervisory approval. If this option is used, the Office of Investigations representative should generally discuss the investigative findings and the closing justification. If the closing notification follows the issuance of an Investigative Report to Management (or other administrative referral), the Office of Investigations representative must advise the manager of the receipt and acceptability or non-acceptability of management's response. This verbal notification must be documented in the official case file (e.g., memo to file, handwritten notation on final printout of case assignment screen (ICA), etc.) The recommended option is a notation in the closing Memorandum.

e. Closing Summary for the Official Case file It is important that each case file contains a written summary of the investigation's predication, activities, and findings. This is accomplished in many cases via Report of Investigation, Investigative Report to Management, or written closing notification to management. In cases where such a document had not been prepared and included in the file, a consolidated summary must be prepared at case closing. This may take the form of either a Closing Memorandum or a copy of the Executive Brief (IEB). The Closing Memorandum must include a brief summary of the allegations, investigative activities, and findings. If a copy of the IEB is the chosen option, the IEB must be reviewed for clarity, completeness, accuracy, and grammatical correctness prior to printing and placement in the case file. Closing memoranda and close-out IEBs will be filed in Tab E along with the Case Closure Checklist.

All closing memos will be indexed and referenced. See chapter 6, section E "Quality Control System," for specific guidelines.

f. Processing Case Closing Documents At a minimum, the following closing documents will be filed in Tab E of the official case file: a printout of the final case assignment screen from the EIGPT system; a completed Case Closure Checklist, with the final indexing and investigative actions screens from the EIGPT system attached; any written case closing notification to DOE management (see above); and a final case chronology, if used. The IEB should not be included except in the circumstance described in the preceding subsection.

g. Processing Closed Case Files Within 30 days after case closure, the entire official case file, including bulky exhibits and related case materials, will be mailed directly to the attention of the Office of Investigations Records Liaison Officer at Headquarters for storage. (See chapter 6, section E "Quality Control")

System," for further information on storage and maintenance of closed case files at Headquarters.)

C. CAPTURING STATISTICAL DATA FOR PERFORMANCE MEASUREMENT

All results and/or the outcome of investigative activity must be input into the EIGPT system. In general, statistical data enables the OIG to (1) measure the performance of the Special Agent, ASAC, SAC, region, and on an overall basis the Office of Investigations; (2) report results to fulfill responsibilities to third parties such as Congress or the Secretary of Energy; and (3) prepare the annual investigative workplan.

1. Statistical Data Entry For Prosecutive Actions The Special Agent will advise the ASAC of the results of prosecutive referral and action (i.e., indictments, convictions, nolo contendere, pretrial diversions, etc.) as soon as possible after notification that a referral or action has occurred. At a minimum, the Special Agent must query the EIGPT system Investigation Action screen to ensure the statistic has been entered, is accurate, and timely.

2. Statistical Data Entry For Administrative Actions Since the recommendations made to DOE managers usually result in corrective administrative actions, this statistical data is also captured in the EIGPT system Investigation Action screen. DOE managers generally respond to the OIG within 30 days, advising of the corrective action(s) taken.

D. USE OF PENDING CLOSURE STATUS FOR INVESTIGATIONS

Occasionally, results of prosecutive referrals are not reported in a timely manner or case closing is delayed while awaiting court action (e.g., sentencing). In addition, DOE managers cannot always provide timely responses to Investigative Reports to Management because of factors beyond their control. To permit a realistic assessment of available staff resources, inventories of open cases will not be maintained as "open" simply to capture the pending statistics. Rather, the ASAC will change the status of the investigation from "open" to "pending" in these circumstances.

Cases designated as "pending" within the EIGPT system will have a "P" within the status field in the Case Assignment screen. This will not close the investigation, per se, but will create a separate subcategory of "open" cases to enable continued monitoring of the case for statistical data entry and recording of actual accomplishment.

Tracking the actions for investigations "pending closure" will be conducted through the EIGPT System Action Screen. The ASAC will initiate the tickler for follow-up action. When the administrative action or result has been completed, the ASAC will input the statistical data and close the case.

## CASE CLOSURE CHECKLIST

Case File No.: \_\_\_\_\_ Date: \_\_\_\_\_

Case Agent: \_\_\_\_\_ Office: \_\_\_\_\_

[Enter initials or √ for completed items and N/A for non-applicable items]

## EIGPT SYSTEM

- \_\_\_\_\_ Index System--Complete and Accurate (RDX Attached)
- \_\_\_\_\_ Investigative Actions--Complete and Accurate (QAT Attached)
- \_\_\_\_\_ Executive Brief Clear, Complete, Concise, and Current (Do Not Attach)
- \_\_\_\_\_ Case Placed in "P" (Priority) Status in Case Assignment Screen (all cases that had been a "P" at any time during the investigation, must be placed in "P" status at closure)

## CASE FILE REVIEW

- \_\_\_\_\_ Opening Documentation Complete (Complaint Form, Predication, etc.)
- \_\_\_\_\_ All Appropriate MOIAs in File/No Duplicates/Misfiles
- \_\_\_\_\_ Documentation Serialized/Chronological Order
- \_\_\_\_\_ Table of Contents Complete
- \_\_\_\_\_ Agent Notes (If discarded per Chapt. 7, date & initials: \_\_\_\_\_)
- \_\_\_\_\_ All Volumes of Case File, Bulky Exhibits, and Other Folders Contain Appropriate Labels and Identifiers, per Chapter 6
- \_\_\_\_\_ Evidence and/or Subpoenaed Materials Disposed/Returned
- \_\_\_\_\_ Grand Jury Information Processed, per Chapter 8
- \_\_\_\_\_ Discard NCIC Criminal History Reports/Printouts (Date: \_\_\_\_\_)

## INVESTIGATIVE/REFERRAL ACTIONS

- \_\_\_\_\_ Criminal and Civil Referrals, Responses, and Results Documented in Case File
- \_\_\_\_\_ Administrative Referrals, Responses, and Results Documented in Case File
- \_\_\_\_\_ Other Administrative Referral(s) (e.g., RS/RR Type Letter)
- \_\_\_\_\_ Special Interest Response (e.g., Action Items closed out, etc.)
- \_\_\_\_\_ OIG Audit
- \_\_\_\_\_ OIG Inspections
- \_\_\_\_\_ Other: \_\_\_\_\_
- \_\_\_\_\_ Closing Notification to Department Manager(s):
  - Oral or Written: \_\_\_\_\_ Date: \_\_\_\_\_
  - Contacted by: S/A, ASAC, SAC \_\_\_\_\_
  - Person/Title Contacted: \_\_\_\_\_

## CLOSING STATEMENTS [Check or Initial All that Apply]

- \_\_\_\_\_ All Prudent Investigative Steps Have Been Taken
  - \_\_\_\_\_ All Investigative Activities Are Complete and Further Expenditure of Resources is Not Warranted
  - \_\_\_\_\_ Completion of Stage 2
  - \_\_\_\_\_ Other Applicable Reasons Why Case Should Be Closed (list below)
- \_\_\_\_\_
- \_\_\_\_\_

NOTES/COMMENTS:

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APPROVAL/CONCURRENCE:

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Case Agent	Date
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Case Supervisor	Date



## Document Number 29



CHAPTER 13OFFICE ADMINISTRATIONA. SCOPE OF CHAPTER

This chapter provides policies and procedures for various administrative activities, including time and attendance procedures; office correspondence and communication; administrative and/or recurring reporting requirements; and the office filing system.

B. TIME AND ATTENDANCE PROCEDURES

Policies and procedures for pay administration, hours of duty, time and attendance reporting, and leave administration are set forth in various Department of Energy (DOE) Orders and the Office of Inspector General's (OIG's) Personnel Policy and Procedures Manual. In addition, non-supervisory employees must input to the Energy Inspector General Project Tracking System (EIGPT) how all of their time was spent during the pay period, i.e., the specific investigations or other activities on which they worked. To ensure uniform implementation of these policies within the Office of Investigations, the SAC and ASAC are responsible for ensuring that these policies and procedures are followed by Office of Investigations personnel.

1. Time Reporting Office of Investigations employees are responsible for time reporting for pay purposes and for accounting for time spent on Office of Investigations projects.

- a. Pay Purposes Supervisors and employees are jointly responsible for ensuring that time and attendance is reported in accordance with all statutory and regulatory requirements. All Office of Investigations employees will prepare accurate bi-weekly timesheets for supervisory approval. SAC and ASAC are responsible for keeping informed as to the attendance or absence of employees for whom they are responsible and ensuring the accuracy of time and attendance reports.
- b. Time Spent on Office of Investigations Projects All non-supervisory employees are required to input their time into EIGPT. Accurate reflection of how time is spent is important for management purposes. When making entries into EIGPT, at least eighty hours must be accounted for during a pay period. All investigation related activities will be charged as "direct" time to a specific investigation number. All other time should be charged to one of the indirect project numbers provided by the OIG's Office of Resource Management (RM), Exhibit A (IM13EXA.DOC), "Indirect Job Codes." The time charges entered into EIGPT must be consistent with the bi-weekly time and attendance reports submitted for pay purposes.

2. Flexible Work Schedule Program with Credit Hours All non-1811 employees are eligible to participate in the Program. Employees may earn credit hours in one hour increments, with a maximum of two hours being accumulated per day. Employees may use credit hours in one hour increments. Employees must obtain prior supervisory approval to earn or use credit hours. For non-SES employees, the maximum number of credit hours that may be carried over into a subsequent pay period is twenty-four. SES members must use the earned credit hours in the same pay period that the credit hours are earned. GS-1811's are not eligible to earn credit hours.

3. Approving and Reporting Overtime and Compensatory Time Overtime work will be held to a minimum. It will be directed or approved only when essential work cannot be accomplished during regular work hours by careful planning of work and scheduling of leave and other absences. All overtime work should be approved in writing and in advance. Retroactive approval may be permitted when operational emergencies make it impractical to obtain prior approval. The justification for overtime must be recorded on the electronic authorization form recorded in the timekeeping system. It must be specific as to the tasks to be performed and the reason why the work cannot be accomplished during the regular workday. Supervisors must keep in mind that employees who are covered by the Fair Labor Standards Act--e.g., nonexempt employees--are entitled to receive overtime pay when authorized to perform overtime work. Generally, the policy of the OIG is not to authorize compensatory time.

Section 203 of the Federal Workforce Flexibility Act of 2004 (Public Law 108-411, October 30, 2004) authorized a new form of compensatory time off for time spent by an employee in a travel status away from the employee's official duty station when such time is not otherwise compensable. The Compensatory Time provision applies to an "employee" as defined in 5 U.S.C. 5541(2) who is employed in an "Executive Agency" as defined in 5 U.S.C. 105, without regard to whether the employee is exempt from or covered by the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended. The definition includes employees in senior-level and scientific or professional positions, but not members of the Senior Executive Service or prevailing rate employees.

To qualify for this purpose, travel must be officially authorized. In other words, travel must be for work purposes and must be approved by an authorized agency official or otherwise authorized under established agency policies. Travel status includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel.

Compensatory time off for travel is earned only for hours that are not otherwise compensable. The term "compensable" is defined in 5 CFR 550.1403 to include any hours of a type that are creditable under other compensation provisions, even if there are compensation caps that limit the payment of premium pay for those hours (e.g., the 25 percent cap on availability pay and the biweekly premium pay cap). For availability pay recipients, this means that hours of travel are not creditable as time in a travel status for compensatory time off purposes if the hours are (1) compensated by basic pay, (2) regularly scheduled overtime hours creditable under 5 U.S.C. 5542, or (3) "unscheduled duty hours" as described in 5 CFR 550.182(a), (c), and (d).

Compensatory time for travel can only be charged by a Special Agent once they have determined that the hourly requirement for availability pay is satisfied. The Special Agent or the timekeeper for the special agent should maintain an availability pay reconciliation that will monitor and ensure that availability hourly requirements are worked before comp time for travel is earned.

4. Annual Leave Administration Supervisors are responsible for scheduling annual leave, with appropriate consideration given to workload demands, the personal needs of employees, and the fact that leave lost at the end of the year can only be restored in cases where all legal and regulatory requirements are met, including timely written approval of the leave request. Additional guidance on leave administration is provided in DOE Order 322.1A, "Pay and Leave Administration and Hours of Duty," the OIG

Personnel Policy and Procedures Manual, Chapter 600, "Leave Administration," and the annual "Leave Usage Reminder" distributed by RM's Human Resource Division.

5. Sick Leave Sick leave is granted for illness or disability that incapacitates an employee from performing work, e.g., sickness, injury, pregnancy, or confinement; for receiving medical, dental, or optical examination or treatment; or for taking care of an immediate family member who is sick or requires medical treatment. When appropriate, a medical certificate should be furnished to the supervisor. For any sick leave in excess of three days, a medical certificate or a signed statement from the employee indicating why medical treatment was not obtained is required. Employees should notify their supervisor as soon as possible for unplanned sick leave. Employees should try to schedule planned sick leave around workload demands.

6. Absence of Senior Office of Investigations Staff The SAC and ASAC will keep the Assistant Inspector General for Investigations (AIGS) informed of their absence from the office and of who is acting in their absence. This is required so that senior staff, or whoever has been delegated to act for them in their absence, can be contacted quickly and in an orderly manner. If the SAC or ASAC is to be away from the office for an extended period, he or she should notify the AIG or the AIG's secretary by telephone or electronic mail. The notification to the AIG or the AIG's secretary should include the official's reason for being away from the office (annual leave, sick leave, official travel, etc.); the inclusive dates of expected absence; the name of the person acting during the absence; and, when reasonable, a telephone number where the SAC or ASAC can be reached during the absence. The SAC and ASAC are responsible for delegating their authority whenever they are going to be absent from the office for an extended period of time.

7. Reporting for Work During Hazardous Weather Employees should report for work at their scheduled starting time and assigned offices or temporary duty locations unless, due to hazardous weather conditions, they are instructed otherwise. A hazardous weather condition, e.g., snow, ice, or flood, is one that may prevent employees in significant numbers from reporting to work or necessitate early dismissal from work or the closing of Federal agencies in whole or in part.

- a. For Office of Investigations employees working in the Washington, D.C. area, decisions on closure of Federal offices or work-hour alterations are made by the Office of Personnel Management (OPM). Information on closure of Federal offices or work-hour alterations due to hazardous weather is routinely provided to television and radio stations and available on OPM's website at [www.opm.gov](http://www.opm.gov). If the Government is open, but the employee will not be reporting for duty that day or expects to delay arrival beyond the period dictated by OPM, he/she shall notify his/her SAC or ASAC in a timely manner.
- b. At other Office of Investigations work sites, ASAC are responsible for ensuring that employees are informed of procedures to be followed in case of hazardous weather. Normally, these sites will follow the policy established by the major DOE office at which the Office of Investigations personnel are located.

C. LAW ENFORCEMENT AVAILABILITY PAY

Availability pay is the twenty-five percent premium pay granted to criminal investigators by the Law Enforcement Availability Pay Act of 1994. It is paid to ensure that OIG Special Agents are available for unscheduled duty in excess of their forty hour basic workweek. The term "available" means that an investigator should be considered generally and reasonably accessible by the employing agency to perform unscheduled duty in excess of the forty hour basic workweek based on the needs of the agency. For the purpose of availability pay, "unscheduled duty" hours are those hours during which a criminal investigator performs work or is determined by the employing agency to be available for work. Unscheduled duty hours are neither (i) part of the forty hour basic workweek of the investigator, nor (ii) overtime hours scheduled in advance of the investigator's administrative workweek. The term "forty hour basic workweek" for the OIG refers to eight hours per day for Monday through Friday of each week. The words availability hours and unscheduled duty hours are interchangeable.

Availability pay is fully taxable and is considered a part of basic pay for the computation of retirement benefits, lump-sum annual leave payments, life insurance, and contributions to the Thrift Savings Plan, workers compensation, and severance pay. Availability payments to Office of Investigations Special Agents began on the first full day of the pay period beginning on July 9, 1995.

1. Eligibility Availability payments will be at the rate of twenty-five percent of basic pay (including any applicable locality pay) to Special Agents who certify annually that they expect to be "available" to perform unscheduled duty based on the needs of the Office of Investigations. Availability pay applies only to those GS-1811 Special Agents who meet the definition of "law enforcement officer." Title 5, U.S.C. Sections 5541 (3) and 5545a (2) define a law enforcement officer as one who is required to:

- possess knowledge of investigative techniques, laws of evidence, rules of criminal procedures, and precedent court decisions concerning admissibility of evidence, constitutional rights, search and seizure, and related issues;
- recognize, develop, and present evidence that reconstructs events, sequences, and time elements for presentation in various legal hearings and court proceedings;
- demonstrate skills in applying surveillance techniques, undercover work, and advising and assisting the U.S. Attorney in and out of court;
- demonstrate the ability to apply the full range of knowledge, skills, and abilities necessary for cases which are complex and would over a long period of time (as distinguished from certain other occupations that require the use of some investigative techniques in short-term situations that may end in arrest or detention);

- possess knowledge of criminal laws and Federal rules of procedure which apply to cases involving crimes against the United States including (i) knowledge of the elements of a crime, (ii) evidence required to prove the crime, (iii) decisions involving arrest authority, (iv) methods of criminal operations, and (v) availability of detection devices; and
- possess the ability to follow leads that indicate a crime will be committed rather than initiate the investigation after a crime has been committed.

All Office of Investigations 1811 Series Special Agents (GS-7 through GS-15) meet the above requirements and are eligible to receive availability pay. Individuals receiving availability pay are exempt from the minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act of 1938 as amended. SES members are not eligible to receive availability pay by Office of Personnel Management regulation.

- a. Availability Hours Availability pay is a guaranteed employee entitlement that the employing agency must provide if the required conditions are met. The words availability hours and unscheduled duty time are interchangeable. In determining whether a Special Agent qualifies for availability pay, the Office of Investigations must determine whether the investigator is expected to work or be available to work an annual average of two hours of unscheduled duty for those days that qualify as a "regular workday."

Although availability hours during which no work is performed may be used to justify entitlement to availability pay, it was the intent of Congress that the existence of this availability condition should not be interpreted by criminal investigators as license to reduce their actual Workhours. Moreover, the needs of the OIG require that each Special Agent receiving availability pay actually work the additional annual average of two hours per regular workday. Special Agents will be assigned tasks (investigations, administrative assignments, etc.) which will require unscheduled duty. Because of these assignments, they will experience erratic and irregular periods of work--the nature and required duration of which cannot be ascertained in advance.

Office of Investigations supervisory staff will ensure that all investigators receiving availability pay are performing actual unscheduled overtime work, as opposed to being merely available to perform such work. Special Agents are responsible for recognizing, without supervision, circumstances that require them to be on duty, or to be available for unscheduled duty as required by Office of Investigations management. To be considered to be performing work during unscheduled duty hours, a criminal investigator must be performing work as officially ordered and approved.

- b. Annual Certification of Availability Hours Before being placed on availability pay, all agents must certify that they meet the stipulated requirements for availability pay using the format specified in Exhibit B (IM13EXB.DOC). In addition, an annual review and certification of qualification for availability pay will be conducted by each Supervisor for their staff and reported to the AIGI through the DIP<sup>3</sup>.

After the initial certification, the Supervisor must specify that the agent has met and is expected to continue to meet the annual average of two hours per regular workday requirement for availability pay. To determine whether an agent has met the certification requirements, the number of "availability hours" worked (numerator) will be divided by the number of "regular workdays" (eligible days) actually worked (denominator). The annual certification will be made on a fiscal year basis and the report will be due to the DIP<sup>3</sup> by October twenty each year. A summary of availability hours reported for each individual in the EIGPT system for the completed fiscal year along with a memorandum signed by the Supervisor that certifies the eligibility for availability pay will be included in the submission. See Exhibit C (IM13EXC.DOC), Annual Certification of Availability Hours.

Special Agents who do not meet the annual requirement for availability pay, refuse unscheduled time, or exhibit poor performance will be removed from availability pay. The regulations provide that an agency may suspend payment of availability pay when the agency determines that an investigator has not been performing the required amount of unscheduled duty as assigned or reported. This reflects the intent of Congress that agencies would have the prerogative to stop availability pay if an investigator avoids work or availability. The regulations also provide that availability pay may be suspended if an investigator is in a duty status but unable to perform unscheduled duty for an extended period due to physical or health limitations. Any revocation of an originally valid certification will be on a prospective basis. An involuntary suspension of availability pay as a result of a denial or cancellation of an availability pay certification is an adverse personnel action.

2. General Rules The Office of Investigations has established certain guidelines to balance the flexibility in earning availability pay with appropriate internal controls and documentation. These internal controls and related documentation are needed to provide justification for the additional pay, support the need for resources, and measure the success of the program. The following general rules have been developed which lay the foundation for the internal controls and documentation requirements established.

- a. Availability Considerations The regular workdays (eligible days) used as the denominator in the annual average computation are defined in the regulations as

the days in the basic workweek (Monday through Friday) during which the Special Agent works at least four hours during his/her basic workday (i.e., core hours) excluding regularly scheduled overtime hours, training and travel hours, approved leave hours, and other excluded absence hours. Time charges for activities outside the basic work day/core work hours are not to be used for determining if a day is eligible. These time charges are availability hours.

Days that do not meet the "eligible" criteria will not be included in the denominator used in the annual average computation. In other words, Special Agents are required to work an average of two hours of unscheduled duty only for days that qualify as an eligible day. The exclusion of training, travel, approved leave, and excused absence hours reflects an interpretation of the term "works" as used in the statutory definition of "regular workday" and, at the same time, gives effect to another statutory provision requiring that an investigator be considered to be available when the investigator cannot reasonably and generally be accessible due to certain assignments controlled by the agency.

A Special Agent will be considered available on Federal holidays, during any eight hour period the Special Agent is attending sanctioned training, on approved sick leave (including maternity leave), annual leave, or other excused absences with pay (e.g. administrative leave, snow days, and/or relocation activities). If no work is performed during these times, these events will be recorded on the Workhour Report Form as excludable hours and will not be considered in arriving at the total number of eligible days in the denominator used to determine if the daily average of two hours of unscheduled duty hours has been met. For example, if a Special Agent is absent one day during a biweekly reporting period due to sanctioned training, the total number of days that requires an average of two hours of unscheduled duty is nine (the number of eligible days). The agent receives eight excludable hours for the day spent in training.

Conversely, unscheduled duty hours worked on days that are excludable days will be considered as part of the numerator used to determine whether the annual average of two hours of unscheduled duty per regular workday (eligible day) was met. For example, if a Special Agent works two hours of unscheduled duty at the end of a day after attending eight hours of sanctioned training or on a weekend day, the day will not be considered eligible but the two hours of unscheduled duty will be credited for availability pay purposes.

Investigators may work more or less than two availability hours on any given day as long as the average of two hours per eligible day is achieved.

- b. Recording Unscheduled Duty Hours The recording of unscheduled duty hours (availability hours) for annual

availability pay purposes will be accomplished by the accurate completion of a biweekly Workhour Report Form, the standardized form to be used by all Office of Investigations personnel required to prepare a timesheet and input time charges into the EIGPT system. Preparation instructions for the Workhour Report Form are provided in Exhibit D (IM13EXD.DOC).

Office of Investigations Supervisors are responsible for ensuring that reports of unscheduled duty hours worked or available are prepared accurately. Supervisors are also responsible for ensuring that time charges entered into the EIGPT system are consistent with those shown in the Workhour Report Forms. Special Agents are responsible for reporting the actual number of unscheduled duty hours worked or available at the request of management.

- c. Scheduled Overtime It is not expected that Special Agents receiving availability pay will normally be assigned regularly scheduled overtime. Availability pay is the sole compensation for any overtime Workhours that are the first two hours of overtime work on any day containing part of the employee's basic forty hour workweek (regardless of how these hours are scheduled.)
- d. Travel To and From Normal Duty Station Commuting time from one's residence to the normal duty station and return may not be claimed as unscheduled duty hours. This rule applies even in those instances where a Government car is used rather than a privately-owned vehicle. When a Special Agent spends time traveling directly between his/her residence and a local work assignment, the Special Agent must subtract the amount of time normally spent commuting when calculating unscheduled duty hours. As an example, assume an agent's normal commute is one hour, and the agent travels one and one half hours directly between his/her residence and a local work assignment to conduct an interview (e.g., subject's place of business). The agent would be permitted to claim one half hour of availability (i.e., the amount in excess of normal commuting time), provided the travel occurred outside the agent's core hours.
- e. Official Travel and Training Official travel or training outside the regular workday or basic work week would be included as hours of unscheduled duty (numerator) in the annual average computation. Thus, if a Special Agent traveled four hours on a Sunday evening, the travel time would be considered unscheduled duty and time actually spent in such travel status should be claimed as availability hours on the Workhour Report Form. However, if the same travel (or training) occurred within the regular workday times (i.e., core Workhours), no availability hours would be recorded for that activity; these hours would be considered "excludable" hours.

Newly appointed GS-1811 agents must successfully complete basic criminal investigator training at



FLETC prior to receiving Law Enforcement Availability Pay. This requirement, however, may be waived by the AIGI on a case-by-case or Fiscal Year basis. If a Special Agent is transferring in as a GS-1811 (or equivalent position) from another agency, he/she may receive availability pay immediately if he/she previously successfully completed an approved basic criminal investigator course.

Time actually spent traveling must be charged to the activity to which the travel is associated (e.g., travel on a specific investigation is charged to the case number). When, for reasons of personal convenience, a Special Agent is authorized to travel under the "constructive cost method," the amount of travel time that may be claimed is limited to the amount he/she would be allowed if he/she had used the carrier (airplane, train, etc.) upon which constructive transportation costs are determined.

- f. Work at Home (or other similar off-duty hours) Due to the nature of responsibilities of law enforcement officers, planned or unplanned work performed at home outside regular work hours does not qualify for unscheduled duty hours except in extenuating and unusual situations. Work at home may be claimed for unscheduled duty purposes only with supervisory approval and agents will not receive any direct compensation for such work (e.g., overtime pay, compensatory hours, etc.). Supervisory approval will be granted on a case-by-case basis; blanket approval to work at home (or during other similar off-duty hours) is not permitted. The circumstances must be noted on the Workhour Report Form in the "Remarks" section. Examples of extenuating and/or unusual situations include responding to an emergency telephone call from an AUSA; completing a high-priority project with significant time constraints (e.g., emergency after-hours request or need for a particular report, briefing paper, Memorandum of Investigative Activity (MOIA), etc.); and emergency telephone briefings to an ASAC or SAC on matters that cannot otherwise wait until the next work day. Completion of routine MOIAs, telephonic discussions on non-emergency matters, and completing administrative paperwork are not considered extenuating and unusual situations.
- g. Physical Training Physical training performed outside regular work hours qualifies for unscheduled duty hours only if performed immediately prior to or following core duty hours. In other words, an agent may not end his/her day at 5:00 p.m., participate in physical training at 8:00 p.m., and claim that time as "availability." Physical training requirements and restrictions are discussed further in Chapter 3.
- h. Excess Unscheduled Duty Hours Compensation or credit for unscheduled duty hours worked over the annual daily average requirement is not authorized. At the beginning of each fiscal year, an agent's balance will revert to

zero. Special Agents under availability pay are not allowed to also accumulate credit hours.

i. Shortfalls in Unscheduled Duty Hours A supervisory review of unscheduled duty hours worked by a Special Agent could indicate that the agent may not meet the annual daily average requirement. In such instances, the supervisor will examine the workload requirements of the agent and correct the situation by adjusting the distribution of work within the particular office. Additionally, agent's who are on pace during the year to not meet annual availability requirements may be notified by their supervisor(s) and counseled on availability requirements. Agents should be aware of the status of their availability hours throughout the year (i.e., number of hours over or under annual requirements).

j. Pay Limitation A law enforcement officer may be paid premium pay only to the extent that the payment does not cause the officer's aggregate rate of pay for any pay period to exceed (i) 150 percent of the minimum rate payable for GS-15 (Step one, including any applicable locality-based comparability payment), or (ii) the rate paid for Level V of the Executive Schedule.

k. Approval of Outside Employment/Other Paid Activities Requests for approval of outside employment or other activities for which a Special Agent receives compensation will be considered only where the Special Agent can show that such employment or activity will not interfere with his/her ability to be available. All previous authorizations for Special Agents to engage in outside employment or activities are canceled and withdrawn effective immediately. Any Special Agent who wishes to engage in outside employment or activities must submit a new request for authorization to do so. In addition, a new request must be submitted each time the hours or other terms of employment change. Such a request must include the following information:

- the identity of the employer;
- the nature of the employment or activity;
- an estimate of the number of hours per day and per week to be spent on the outside employment or activity; and
- a statement as to whether the hours to be spent are fixed or flexible. If fixed, precisely what the hours are; if flexible, when during the week the Special Agent expects to work the hours.

All requests to engage in outside employment or activities must be approved by the Supervisor, DAIGI, and the AIGI. Any authorization for a Special Agent to engage in outside employment or activities may be canceled at any time upon the determination of the

supervisor that the employment is not in the best interests of the OIG.

3. Voluntary Opt-Out Provisions A Special Agent who wishes to request temporary exclusion from availability pay on account of extreme hardship should make a written request for such exclusion when such hardship occurs. A voluntary request that availability pay be suspended under the voluntary opt-out provision does not trigger adverse action rights. The regulations provide that an employing agency, may at its discretion, approve a Special Agent's request that he or she generally not be assigned any overtime hours (including unscheduled duty) for a designated period based upon a personal or family hardship situation (e.g. the Special Agent needs to assist in caring for a chronically ill family member). In such cases, a written statement documenting this request should be directed to the investigator's immediate supervisor and should describe the hardship presented and the expected duration of the hardship. The statement should also stipulate that the request is made voluntarily and that the investigator understands that if the request is granted, the investigator will not receive availability pay during the designated period. The statement should be routed through the appropriate Supervisor to the DAIGI for AIGI action/approval. The voluntary opt-out provision is intended to apply to situations where the expected duration of the designated period is long enough that the investigator would likely be unable to satisfy the annual average hours requirement. The AIGI will approve such requests only in exceptional circumstances and only for a specific, limited period of time. A Special Agent who is granted temporary exclusion from availability pay may nevertheless be required to work scheduled overtime as directed by the Special Agent's supervisor.

4. Reporting Requirements Completion of the biweekly Workhour Report Form will be the only reporting requirement for Special Agent personnel regarding hours worked for availability pay.

5. Periodic Availability Hours Audits Confirmation of employee's eligibility for availability pay over short periods, such as a single pay period or even a month, would be a difficult and often inconclusive process. On the other hand, waiting until the end of a fiscal year to evaluate eligibility would not allow sufficient time to take corrective action. The Office of Investigations has, therefore, settled on a quarterly audit as a means of evaluating an employee's continued eligibility for availability pay.

- a. Quarterly Availability Hours Audits A quarterly audit of availability hours worked by individual Special Agents will be conducted by the immediate supervisor. It will compare the availability hours and eligible days during the period, generated from the EIGPT system, to determine if the two hour per day requirement is being met. Where it is shown that an employee did not meet the required daily two hour average minimum of unscheduled duty for that quarter, the individual should be advised that he/she is in danger of not meeting the annual qualification for availability pay. The supervisor and employee are responsible for establishing a course of action to ensure that the individual will meet the annual qualification.

- b. Reporting Results of Availability Audits Upon completion of the quarterly audit, the Supervisor will prepare a consolidated report for his/her office/region. The report should be completed by the 10<sup>th</sup> of the month following the close of each quarter (i.e., October 10, January 10, April 10, and July 10). The consolidated report will contain the unscheduled duty hours for each employee receiving availability pay as reflected in the EIGPT for that quarter. A sample report is shown at Exhibit E (IM13EXE.DOC). Reports will be maintained at the Regional level.

D. OFFICE CORRESPONDENCE AND COMMUNICATION

Requirements for preparing correspondence and using Government communication services are contained in various DOE Orders and OIG directives. Although most of these requirements are not repeated in this Manual, selected procedures for preparing correspondence and ensuring efficient use of Government communication services are provided below.

1. Preparing Correspondence In general, correspondence addressed to parties within DOE should be prepared on DOE memorandum paper, and DOE letterhead paper should be used for correspondence outside the Department. "Ladder" copies should be prepared and initialed by the originating employee and each reviewing official. Correspondence prepared for the signature of the Inspector General (IG) or Principal Deputy IG, such as staff papers to DOE principals, memoranda to counterparts within DOE, and congressional correspondence, will be submitted to the AIGS for review and approval before being forwarded to the IG or Principal Deputy IG.

2. Keeping Telephone Listings Up-to-date RM maintains an OIG-wide telephone listing. This listing includes telephone numbers, work locations, organization codes, and electronic mail addresses. Employees should keep RM informed of changes affecting the listing. Employees do not, however, need to inform RM of phone numbers at temporary duty locations.

3. Electronic Mail Offices of Investigations employees are encouraged to use the OIG's electronic mail capabilities for sending unclassified messages and computer data files. Employees should ensure that their electronic mail accounts are checked several times each day, including at the beginning of the workday.

4. Voice Mail Offices of Investigations employees are encouraged to use voice mail capabilities for receiving messages when not at their desk. An extended absence greeting should be used when employees expect to be away from the office for purposes of leave, training, or travel.

5. Mail Service In most instances, mail sent between DOE Headquarters and DOE field sites should be sent via DOE pouch service if possible. The DOE Telephone Directory contains a listing of sites to which this service is available. This service is limited to material not exceeding twenty-six inches in girth. Additional guidance on mail service is provided below:

- a. Use of U.S. Postal Service All mail sent via the U.S. Postal Service to DOE organizations should be addressed in the following format:

Name and/or Title  
Routing Symbol  
Building Code

U.S. Department of Energy  
City, State, Zip Code

- a. Use of Express Mail Requests for overnight air express service in the Washington, D.C. area must be approved by a Director or his/her designee. Personnel at other locations should follow local procedures for approving the use of express mail.
- b. Mailing Official Investigation Files Frequently, files need to be transferred between regional offices and Headquarters. When mailed, files should be sent via Certified Mail, with a return receipt requested. The files should be carefully wrapped to ensure that the packaging is not likely to come open or be damaged in transit.

E. ADMINISTRATIVE AND/OR RECURRING REPORTING REQUIREMENTS

In addition to its primary mission of conducting investigations and reporting the results, Office of Investigations has other reporting requirements that occur on a regular basis. Substantial resources are often needed to fully respond to these requirements. Knowing when these events are going to occur and planning for their timely completion should increase the quality of products and reduce problems associated with last minute starts.

1. Weekly Activity Reports The Assistant Inspector Generals submit a weekly activity report to the IG. These reports should address such items as final and draft reports issued, visibility issues, and other significant matters and should include statistics relevant to Freedom of Information/Privacy Act requests, the Hotline System, the Management Referral System, and investigations. The AIGI's secretary is responsible for coordinating and preparing the report for the Office of Investigations. Exhibit F (IM13EXF.DOC) contains the general format that will be followed. Headquarters will make periodic adjustments. Office of Investigations will also occasionally have the results of a priority investigation summarized in an Action Item Report, Exhibit G (IMEXG.DOC).

2. Program Planning and Budgeting Requirements The Office of Investigations planning process is primarily driven by budget and program policy issues. The SAC and ASAC are responsible for submitting necessary information for their respective offices and areas of responsibility to help develop OIG performance plans and OIG budgets. RM coordinates these efforts and typically establishes reporting requirements and due dates.

3. External Reporting Requirements Office of Investigations makes a substantial contribution to the OIG Semiannual Report to Congress and the President's Council on Integrity and Efficiency (PCIE) Annual Progress Report to the President. These reports are important because they demonstrate the OIG's major accomplishments for each reporting period.

- a. Point of Contact DIP<sup>3</sup> is the primary HQ point-of-contact for administrative matters involving the Semiannual Report. Operations Officers have the Headquarters lead on processing case narratives.
- b. Reporting Timeframes The required reporting timeframes will be set by RM. The input for the Semiannual Report and the PCIE Annual Progress Report to the President must be submitted in a timely manner so that the RM can complete its work.

- c. Semiannual Report Write-Ups Operations Officers will work with ASACs and case agents to ensure that summaries are prepared accurately for all investigation reports to be included in the semiannual report. See Exhibit H (IM13EXH.DOC) for the form that must be processed with a final narrative.
- d. Statistical Data SACs and ASACs are responsible for ensuring that statistical data to be incorporated into the semiannual report is validated for accuracy and completeness. DIP<sup>3</sup> will review at Headquarters.

F. OFFICE FILE SYSTEM

This section contains requirements for the Office of Investigations Office File System and procedures for file preparation, maintenance, retention, and disposition.

- 1. File Policy All papers, reports, correspondence, forms, documents, and other designated records, whether paper or electronic media, that are prepared, gathered, or received by Office of Investigations staff are subject to these provisions. Any waiver, exception, or modification to this policy must be approved by the AIGS.
- 2. Types of Files The Office of Investigations Office File System includes office files and individuals' files. These two categories of files may include administrative files and investigative related files (i.e., official investigative files and investigator' "working" investigation files).
  - a. Office Files These are the official Office of Investigations files, to include correspondence, memorandums, and official investigation files. The File Custodian, Office of Investigations secretaries, and designated investigators are responsible for these files and should follow the procedures established in DOE Order 200.1, "Information Management Program." For official correspondence prepared for IG or AIGS signature, an official file copy must be filed in the office chronological files.

An official investigation file is established for each investigation when the investigation is initiated. While the investigation is open, the official investigation file is maintained by the Lead Investigator in accordance with the requirements of this chapter and chapter 5, "Conducting the Investigation," and chapter 7, "Workpaper Support." Each SAC and ASAC is responsible for ensuring the accuracy and completeness of the official investigation files maintained or generated by his/her organization. All final official investigation files will be maintained at Headquarters and should be placed in the file room as soon as possible after issuance of the final report or, if no report is being issued, signature of the Closeout Memorandum. (See chapter 5 of this Manual for specific timelines.)

Classified materials may be gathered or generated during an investigation. These documents must be handled in accordance with DOE Order 5632.1C, "Protection and Control of Safeguards and Security Interests," and OIG Directive IG-908G, "Office

- of Inspector General (OIG) Security." The official investigation file should contain a note identifying the location of any classified documents.
- b. Individuals' Files Individuals' files are those files maintained by individual Office of Investigations staff members for reference and information purposes. These files must be labeled and maintained in logical order and filed according to alphabetical order, chronological order, or subject matter. (If by subject matter, the files must also be filed in alphabetical order.)
3. Retention and Disposition of Files Office of Investigations files are maintained in accordance with the OIG's Records Inventory and Disposition Schedule (RIDS) and DOE O 200.1. Employees should review the RIDS for retention and disposition instructions. At the end of each fiscal year, the Office of Investigations File Custodian should perform a file review and appropriately dispose of or retire materials. Authorized DOE methods for destruction/disposal of documentation must be followed.

For investigation files, after the investigation report is issued or, if no report is being issued, the investigation is closed, the official investigation file is forwarded to Office of Investigations Headquarters for retention in the central file room (except for classified materials, which are maintained in the OIG security area). The file retention period cited in the RIDS begins on the closing date of the investigation. The RIDS specifies that each investigation file will be held for a minimum of ten years from the end of the fiscal year in which the investigation was closed.

Documents that are not the "official" copy of a document or are not otherwise required to be retained (e.g., are not required as part of the official investigation file) may be appropriately disposed of. Examples include documents kept only for reference purposes; information copies of correspondence, directives, forms, or other documents on which no administrative action is recorded or taken; publications that require no action; and personal papers that are a staff member's private, nonpublic documents that do not affect DOE business, including diaries and personal documents (these files may be maintained in the staff member's desk or work area, but not in designated office file cabinets). Employees should not retain investigation-specific materials after the issuance of the associated investigation report or investigation closeout except as specified in Chapter 5 of this Manual.

4. Classified Material Classified material that is generated, gathered, or received by Office of Investigations should be maintained in accordance with applicable DOE orders and OIG directives. Information that is not under the personal control and observation of an authorized person should be stored in a locked, authorized security container. To the extent possible, classified material should be organized in accordance with the procedures specified in this chapter. In the event of a conflict, the procedures pertaining to classified matter will govern. If most of the investigation file is unclassified, the investigation file should be retained in the central file room and should contain a note identifying the location of any classified matter. If essentially the entire file is

classified, a card should be maintained as a place holder in the central file room, and it should identify exactly where the file is stored.



OFFICE OF INVESTIGATIONS - INDIRECT JOB CODES

<u>Project Code No.<sup>1</sup></u>	<u>Name &amp; Definition</u>
IFYXX899	<u>INVESTIGATIVE MANAGEMENT AND ADMINISTRATION</u> - Time spent by Special Agent team leaders, supervisors, and managers in general management and administration of the investigative group, office, etc. This code will also be used by acting supervisors for general management and administrative activities. Team leaders, supervisors, and managers will use the training, travel, case development, and other codes where appropriate. This time is considered "eligible" during core work hours and "availability" outside core work hours. <sup>2</sup>
IFYXX800	<u>GENERAL CASE DEVELOPMENT (LIAISON)</u> - This code is used to document general case development efforts not associated with a specific allegation or investigation. Examples include general liaison with DOE management, other law enforcement agencies, etc., fraud awareness briefings, distribution of Hotline posters and brochures, fostering relationships with OIG customers, and general discussions with informants. This time is considered "eligible" during core work hours and "availability" outside core work hours. Attendance at conferences sponsored by professional organizations--where training is not involved--will be charged to this code, General Case Development (Liaison).
IFYXX801	<u>SPECIFIC CASE DEVELOPMENT</u> - This code is used to document case development activities--including "pre-investigative" activities--associated with a specific allegation for which an EIGPT number has not been assigned (e.g., predication or case number). Examples include interviewing complainants at initial intake, specific discussions with informants, and preliminary assessment of proactive initiatives and opportunities. This time is considered "eligible" during core work hours and "availability" outside core work hours. Activities associated with a specific predication or case will be charged to that number.

<sup>1</sup> Charge codes where "X" appears as the first letter are general OIG codes that are available to all OIG employees. "I" codes are used only by Office of Investigations personnel. "FY" denotes the fiscal year in which the time is being charged (i.e., FY 1999 would be 99, FY 2000 would be 00, etc.). The Project Code for General Case Development (Liaison) would be I00XX800 during FY 2000, and I01XX800 during FY 2001.

<sup>2</sup> References to "eligible," "excludable," and "availability" relate to the bottom portion of the Workhour Report Form.

- IFYIN001      **OTHER NON-INVESTIGATIVE ACTIVITIES (ELIGIBLE)** - This code is a "catch-all" for all eligible type non-investigative activities or "work" (in terms of availability pay). Examples of eligible type non-investigative activities include AIGI/DAIGI/SAC/ASAC support, staff meetings, budgeting and policy activities, Semiannual Report activities, ADP duties, firearms related activities (other than training), serving as an instructor (including general, investigative, and firearms), training administration, sponsorship/mentoring activities, physicals, participation in Process Improvement Teams and Inspection Review Teams, operations support, general administrative functions (such as timekeeping, travel vouchers, etc.), in-house televideo meetings, diversity advocate activities, luncheons and similar celebration events (e.g., retirement, holiday, etc.), office sponsored community service activities, Combined Federal Campaign and Savings Bond activities, and other "work" related activities that cannot be attributed to a specific case number or case development. This time is considered "eligible" during core work hours and "availability" outside core work hours.
- IFYIN002      **OTHER NON-INVESTIGATIVE ACTIVITIES (EXCLUDABLE)** - This code is a "catch-all" for excludable type non-investigative activities (in terms of availability pay). With the implementation of training and travel codes, IFYIN002 will be used in limited and rare circumstances. This time is considered "excludable" during core work hours and "availability" outside core work hours.
- IFYIN003      **PHYSICAL TRAINING PROGRAM** - This code is used to record activities relating to the OIG's physical training program. Agents may not claim more than one hour of IFYIN003 time per day or more than three hours per week. In addition, IFYIN003 may be claimed only on an "eligible" day. Physical training is an eligible activity.
- IFYIN004      **GENERAL INFORMATION TECHNOLOGY SUPPORT** - This code is used to document non-investigative work by Technology Crimes Section (TCS) personnel in providing technical solutions in support of TCS operations as well as specific TCS and non-TCS investigations. Examples include: research and development of technology solutions; determining the proper application of technology to solve an issue; set up of computer equipment and/or software for both general TCS operations and specific TCS and non-TCS investigations; and troubleshooting and repair of existing equipment used in support of the investigative mission. This code is generally used for efforts that result in technical benefits beyond a specific investigation. Actual processing of computer media in media analysis,

acquisition of media via subpoena or search warrant, interviews, record reviews, and other similar direct investigative activities by TCS staff will be recorded under the specific case for which the activity was performed.

XFYXX954      CREDIT TIME USED - Periods of time off during the biweekly pay period to which previously accumulated credit hours are applied. This code may not be used by 1811s receiving availability pay.

XFYXX955      MILITARY LEAVE - Excused absences of employees serving permanent, indefinite permanent, part-time or temporary military appointments.

XFYXX956      ANNUAL LEAVE - Hours of earned leave for which an employee would otherwise work and receive pay, exclusive of holidays and non-workdays established by Federal Statute, Executive Order, or Administrative Order. Annual leave is earned by employees based upon their years of creditable Federal civilian and military service.

XFYXX957      SICK LEAVE - Hours of used sick leave for which an employee would otherwise work and receive pay, exclusive of holidays and non-workdays established by Federal Statute, Executive Order, or Administrative Order.

XFYXX958      LEAVE WITHOUT PAY - A temporary non-pay status and absence from duty which is normally requested by the employee and which requires prior approval by the appropriate supervisor.

XFYXX959      HOLIDAY - Non-workdays established by Federal Statute, Executive Order, or Administrative Order.

Special Agents who work holidays must report the holiday and investigative work. For example, assuming an agent works 10 hours on a holiday, he/she will report 8 holiday hours (XFYXX959) and 10 case hours for a total of 18 for the day. All 10 case hours will be reported as "availability" hours and the 8 holiday hours as "excludable." No basic works hours will be reported.

XFYXX960      ADMINISTRATIVE LEAVE - Hours for which an employee may be excused from duty when absence is necessary for specific reasons such as registration and voting, weather, funeral leave, blood donation, and union activity.

XFYXX961      COURT LEAVE - Authorized absence of an employee from work status for jury duty, or to attend judicial proceedings in a non-official capacity as a witness on behalf of a State or local government.

- XFYXX962      NONDUTY HOURS (NON-EMPLOYMENT) - Periods of nonpay status for employees hired under a type of appointment referred to as "Career Seasonal", "Limited Year", or "WAE" and employees furloughed with a "not-to-exceed" date.
- XFYXX963      ABSENT WITHOUT LEAVE - A nonpay status resulting from an Agency determination that it will not grant any other type of leave for the period of absence for which the employee does not obtain written authorization or for which his/her request for leave has been denied.
- XFYXX965      USE OF COMPENSATORY TIME - Compensatory hours used by General Schedule employees. Compensatory time earned is the time off that such employees may request instead of receiving premium pay for irregular or occasional overtime, or regularly scheduled overtime under flexible workhours.
- XFYXX966      USE OF RESTORED LEAVE - Use of annual leave that may have been forfeited or not credited because of administrative error, exigencies of public business, or illness or injury of an employee, but which was subsequently restored.
- XFYXX967      WORKERS COMPENSATION - Use for continuation of regular pay under the Federal Employee's Compensation Act for a period not to exceed 45 calendar days.
- XFYXX993      GENERAL TRAVEL - This code is used to document travel activities not associated with a specific investigation. Examples include travel for training, conferences, site visits, etc. Includes TDY-type or long-distance travel, not local travel during the normal workday. This time is considered "excludable" during core work hours and "availability" outside core work hours. Travel associated with a specific case will be charged to the case number.
- XFYXX994      GENERAL TRAINING - This code is used to document attendance at training courses, conferences, sessions, etc. This includes but is not limited to FLETC, annual OI agent conferences, procurement training, computer training, firearms training, EEO/diversity training, specialized investigative techniques, annual ethics and security refreshers, etc.
- This code includes actual class time and mandatory study time as a participant. This time is considered "excludable" during core work hours and "availability" outside core work hours. Attendance at conferences sponsored by professional organizations, prosecutors, the law enforcement community, etc. will be charged to General Training only if training sessions are held. Otherwise, attendance will be considered "eligible" and charged to General Case Development (Liaison).

Travel associated with training will be charged to XFYXX993 (General Travel).

Trainers and instructors will charge time to IFYIN001 (Other Non-Investigative Activities (Eligible)).

Special Agents attending the *basic investigator course* at FLETC will charge 8 hours per weekday to General Training during their entire assignment to FLETC (with holiday time and sick/annual leave being charged on weekdays where appropriate). Time will not be claimed for studying, classroom sessions, or exercises that occur after-hours and/or on weekends. Additionally, overtime will not be paid. In sum, agents attending basic FLETC training will charge 80 hours per pay period (10 weekdays @ 8 hours per day). As noted elsewhere in this chapter, the AIGI has the authority to waive the restriction on new agents receiving availability pay prior to completing FLETC. When this occurs, agents will receive availability pay immediately upon their arrival at DOE OIG. However, the agents will not report or claim any availability hours *during their stay at FLETC*. Because each day at FLETC is *excludable* and an extra 2 hours per day is not required, the agents will not be in an "availability" deficit at the end of their tour. Agents will return to the office with a zero balance.

XFYXX999

MANAGEMENT AND ADMINISTRATION (GENERAL) - Time spent by managers, not in the 1811 series, in general management and administration of an office. This code may not be used by 1811s.

EMPLOYEE INITIAL AND ANNUAL CERTIFICATION  
OF QUALIFICATION FOR AVAILABILITY PAY

OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

MEMORANDUM FOR: Supervisors

SUBJECT: Availability Pay

I hereby certify that I have reviewed that portion of Chapter 13 of the Investigations Manual dealing with law enforcement availability pay and meet the stipulated requirements. I understand that I am expected to work an annual average of 2 or more unscheduled duty hours on each eligible day in order to meet the needs of the DOE OIG and be paid availability pay. I also understand that if I do not meet the 2-hour per day requirement, I may be subject to the withdrawal of availability pay through adverse personnel procedures.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

SUPERVISOR ANNUAL CERTIFICATION  
OF AVAILABILITY HOURS FOR ASSIGNED STAFF

MEMORANDUM FOR: Assistant Inspector General for Investigations

THRU: DIP<sup>3</sup>

FROM: [Insert Supervisor Name, Title, and Office]

SUBJECT: Annual Certification of Availability Hours

I certify that the following Special Agents have met the annual requirement for availability pay for Fiscal Year \_\_\_\_\_ as evidenced by the attached summary of availability hours reported for these individuals in the Energy Inspector General Project Tracking (EIGPT) system. These same Special Agents are expected to perform official duties during unscheduled duty hours for Fiscal Year \_\_\_\_\_ that average 2 or more hours in excess of each eligible day in order to meet the needs of DOE OIG and continue to qualify the individual for availability pay.

Agent Names

Attachment

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

ATTACHMENT TO SUPERVISORS ANNUAL CERTIFICATION  
OF AVAILABILITY HOURS FOR ASSIGNED STAFF

Summary of Availability Hours Reported for Fiscal Year 20??

<u>Name of Special Agent</u>	<u>Eligible Days*</u>	<u>Reported Availability Hours</u>	<u>Average No. of Availability Hours Per Eligible Day</u>
------------------------------	---------------------------	--	---

- \* An eligible day is defined as a day in the basic workweek (Monday through Friday) during which the Special Agent works at least 4 hours during the basic work day (i.e., core hours), excluding approved leave, training and travel hours, regularly scheduled overtime, and other excused absence hours (e.g., snow days, relocation activities, etc.).



INSTRUCTIONS FOR PREPARING WORKHOUR REPORT FORM

General. The Workhour Report Form is the standardized form to be used by all Office of Investigations personnel required to prepare a timesheet and input charges into the Energy Inspector General Project Tracking (EIGPT) system. Entries on the form will be typed or handwritten in ink. The reporting period will correspond to official biweekly pay periods which end on alternate Saturday nights at midnight and will be entered on the form in DD/MON/YY format.

Employee Number. Enter user code number assigned to individuals.

Employee Name. Enter last name, first name and middle initial.

Employee Signature and Date. The form should be signed and dated within 2 days of the reporting period ending.

Supervisor's Initials and Date. Supervisory initials will not only endorse that the Workhour Report Form has been reviewed and approved but that the hours reported shall be entered into the EIGPT. The timekeeper will attach a copy of the Timekeeping System (Input/Update) Form to the Workhour Report Form after appropriate EIGPT entry.

Availability Pay. Place an "X" in the appropriate block to show eligibility for availability pay.

Position. Place an "X" in one of the following blocks to show nature of duties:

- o HQ -- Headquarters Staff (including agents on special assignment to Headquarters);
- o Fld Mgr -- SACs and ASACs;
- o Agt -- Includes all other Special Agents

Form Body. The body of the Workhour Report Form will be used to identify the various administrative accounts, projects and investigative cases that are normally performed by criminal investigators, administrative and management staff of the Office of Investigations. A listing of the indirect project codes and definitions is shown on Exhibit B - A:IM13EXB.DOC. Time charged to individual projects and investigative cases will be reported on the appropriate line under the day on which the activity is performed.

Basic Work Hours. Enter a number up to 8 hours for each normal workday (Monday through Friday). Time may be entered in 1/4, 1/2, 3/4, or whole hour increments. Basic work hours may not be reported on weekends or Federal holidays. Do not include any Excludable Hours or Availability Hours in the basic Work Hour Block.

**INSTRUCTIONS FOR PREPARING WORKHOUR REPORT FORM**  
(Continued)

**Excludable Hours.** Enter a number up to 8 hours for the total number of sanctioned training and travel hours, approved sick leave and annual leave hours, and hours of other excused absence with pay (e.g. administrative leave, snowdays, and/or relocation activities) occurring during the basic work day. Time may be entered in 1/4, 1/2, 3/4 hour or whole hour increments.

**Availability Hours.** Use this line to report unscheduled duty hours worked for availability pay purposes. Time may be recorded in whole or 1/2 hour increments. Quarter hour increments are not permitted. Availability hours are those hours for which an agent charges time outside the basic work day/core work hours. For example, if an agent's core work hours are 8:00 a.m., after 4:30 p.m., any activities performed before 8:00 a.m., after 4:30 p.m., on weekends, or on Federal holidays would be recorded as "availability hours." All such availability hours should be recorded against the appropriate existing project or case number on the upper portion of the Workhour Report Form. If not otherwise apparent, an explanation of the activity performed should be recorded in the "Remarks" section of the form.

**Scheduled Overtime.** Enter the daily number of officially ordered and approved overtime hours worked. All scheduled overtime must be approved in advance by the AIGI. If approved, include all night, holiday and Sunday hours.

**Credit Hours Worked.** Enter the total credit hours worked on this line. Note that this line applies only to personnel not receiving availability pay.

**Total Hours.** Enter the total of all hours recorded for the period (i.e., Basic Work Hours, Excludable Hours, Availability Hours, Scheduled Overtime, and Credit Hours Worked). Note that Excludable Hours and Availability Hours only apply to Special Agents receiving availability pay.

**Eligible Days.** Special Agents receiving availability pay should place an "X" or "1" on this line for each normal workday (Monday through Friday) which is "eligible" for availability pay purposes. An eligible day is defined as a day in the basic workweek (Monday through Friday) during which the Special Agent works at least 4 hours during the basic work day (i.e., core hours), excluding approved leave, training and travel hours, regularly scheduled overtime, and other excused absence hours (e.g., snow days, relocation activities, etc.). Time spent providing training as an instructor is considered "work" and, therefore, is considered "eligible" time. Note that working at least 4 hours on a weekend or Federal holiday does not make that day "eligible."

Form Remarks. Enter any comments that would explain unusual situations, such as extremely high totals in any category. This area is also used to explain any IFYIN001 and IFYIN002 time charges.

Form Distribution. The original Workhour Report Form will be used to enter information into the EIGPT. It will be retained in the field offices for 3 years after the period it documents. Workhour Report Forms for SACs, Operations Officers, and Headquarters managers will be submitted to and approved by the DAIGI. Workhour Report Forms for all SACs and Headquarters personnel will be retained by Headquarters.

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

REPORT ON RESULTS OF AVAILABILITY AUDIT

MEMORANDUM FOR: Administrative File

FROM: [Insert Supervisor Name, Title, and Office]

SUBJECT: Quarterly Audit of Unscheduled Duty Hours--First Quarter FY 20??

The quarterly audit of unscheduled duty hours has been conducted for the \_\_\_\_\_ Region (or Headquarters Component) for the period \_\_\_\_\_ through \_\_\_\_\_. A comparison of unscheduled duty hours (availability hours) generated from the Energy Inspector General Project Tracking (EIGPT) system with the net eligible days during the period showed that [most or all] staff members are meeting the 2-hour per day requirement. In those isolated cases where a shortfall was identified, the workload requirements of the Special Agents involved were examined and distribution of workload appropriately adjusted.

As required by Chapter 13 of the Investigations Manual, the Availability Hours Report from EIGPT is attached documenting the availability hours worked by each individual agent in this office.

Attachment

U.S. DEPARTMENT OF ENERGY  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

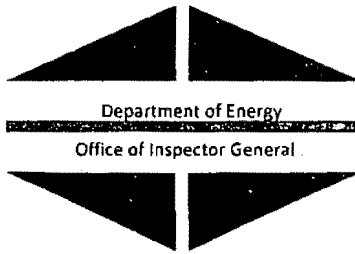
ATTACHMENT TO SUPERVISOR REPORT ON  
RESULTS OF AVAILABILITY AUDITS

Summary of Availability Hours Reported--Cumulative From Beginning of Fiscal Year

\_\_\_\_\_Quarter, FY\_\_\_\_\_

<u>Name of</u> <u>Special Agent</u>	<u>Eligible</u> <u>Days*</u>	<u>Reported</u> <u>Availability</u> <u>Hours</u>	<u>Average No.</u> <u>Availability</u> <u>Hours Per</u> <u>Eligible Day</u>	<u>Cumulative FY</u> <u>Average No. of</u> <u>Availability</u> <u>Hours Per</u> <u>Eligible Day</u>
--	---------------------------------	--	--	---

- \* An eligible day is defined as a day in the basic workweek (Monday through Friday) during which the Special Agent works at least 4 hours during the basic work day (i.e., core hours), excluding approved leave, training and travel hours, regularly scheduled overtime, and other excused absence hours (e.g., snow days, relocation activities, etc.).



Department of Energy  
Office of Inspector General

## WEEKLY ACTIVITY REPORT

Ending Month ##, 2013

The Office of Investigations (OI) "Weekly OIG Activity Report" is intended for the use of the Department of Energy (Department), Office of Inspector General (OIG) employees only. It may not be disclosed outside the OIG without prior approval of the Assistant Inspector General for Investigations (AIGI). The narratives contained in this report are general descriptions of investigative activities performed by OI Special Agent(s) (SA). Details on any particular matter may be obtained by reviewing the Executive Brief (IEB) in the Energy Inspector General Project Tracking (EIGPT) system.

### SIGNIFICANT ACTIVITY

1. Heading  
Summary
2. Heading  
Summary

### CASE INVENTORY

Total Open Cases as of Previous Ending Date	###
Cases Opened This Week	##
Cases Closed This Week	##
Total Open Cases for this Ending Date	###
Cases in Hold Status	##
Cases Pending Closure/Action	##
TCS Fraud Case Support	##

### HOTLINE AND MANAGEMENT REFERRAL OPERATIONS

Hotline Contacts	###
Hotline Complaints Predicated	##
Referral Letters Issued	##
Positive Outcomes (Detailed Below)	##

#### Positive Outcome Details

- Summary

### FREEDOM OF INFORMATION/PRIVACY ACT (FOIA)

Status as of COB March ##, 2013

With POFC	With MA POFC	In CIG	For Signature	Total Open
##	##	##	##	##
Completed	Opened	Withdrawn	Closed	Closed This CY
##	##	##	##	##

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## **RECOVERY ACT EFFORTS**

The Office of Investigations completed # Recovery Act-related awareness briefings over the past week, as follows:

- Summary

## **OTHER MATTERS**

- Summary

## **JOYS, CARES, CONCERNS**

- Summary

## **POLICY, PLANS AND PROGRAMS (P3) UPDATES**

- Summary

DRAFT

## **DISTRIBUTION**

Inspector General  
Counsel to the Inspector General  
Deputy Inspector General for Audits and Inspections  
Assistant Inspector General for Audits  
Assistant Inspector General for Inspections  
Deputy Inspector General for Management and Administration  
All Office of Investigations Employees

This document is for ~~OFFICIAL USE ONLY~~. Public disclosure is determined by the Freedom of Information Act (Title 5, U.S.C., Section 552) and the Privacy Act (Title 5, U.S.C., Section 552a).

**OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS**

**ACTION ITEM REPORT<sup>1</sup> – January 2, 2004**

**Reference Data**

Action Item No.: 6250188

Case Title/No.: Stone Laboratories; False Claims; Hanford Site (I03RL100)

Case Agent: Kendall Childs

Elapsed Days: 100

Staff Hours: 800

Next Update Due:

**Background**

- ✓ On September 1, 2003, the DOE's Richland Operations Office (RL) advised the OIG that Northwest Fuels (Northwest), a subcontractor to Fluor Hanford, supplied coal to the Hanford Site that did not meet contractual specifications. RL further alleged that as a result of burning the coal provided by Northwest, state of Washington environmental regulations for sulfur dioxide (SO<sub>2</sub>) emissions were violated.
- ✓ This is a joint investigation with the Federal Bureau of Investigation in coordination with the Criminal and Civil Divisions of the U.S. Attorney's Office for the Eastern District of Washington.
- ✓ In a letter to the Inspector General dated October 1, 2003, U.S. Senator Patricia Murray, requested an investigation of Northwest.

**Investigative Findings**

- ✓ The investigation determined that Northwest had a verbal subcontract with D&L Coal (D&L), and its parent company, R&C Coal (Ruby), to supply coal meeting the quality standards set forth by Fluor Hanford. Northwest also contracted with Stone Laboratories (Stone) to perform quality assurance testing of the coal supplied by D&L.
- ✓ The investigation revealed that none of the coal D&L supplied to Hanford complied with contract specifications. Specifically, SO<sub>2</sub> emissions from the burning coal exceeded the acceptable limits imposed by the state of Washington.
- ✓ A 43-count indictment was issued against R&C's owner, Ms. Wendy Axel, and Stone's owner, Ms. Denise Steel. Seven of the 43 counts pertained to DOE contracts.

THIS DCOUMENT CONTAINS LAW ENFORCEMENT SENSITIVE  
INFORMATION. IT MAY BE SHARED ONLY WITH OFFICE OF INSPECTOR  
GENERAL PERSONNEL WITH A NEED-TO-KNOW.



The 7 counts charged Ms. Axle and/or Steel with violations of Title 18 U.S.C. Section 287 (False Claims), and Title 18 U.S.C. Section 1031 (Fraud).

- ✓ Ms. Axle and Steel each pleaded guilty to one count of Title 18, U.S.C., Section 1001 (False Statements). Both were sentenced to 2 years probation. No fines or restitution were ordered by the sentencing judge in consideration of a civil complaint filed by the United States Attorney's Office for the Eastern District of Washington against Ms. Axle and Steel, as well as R&C, D&L, and Stone, under Title 31, U.S.C., Sections 3729-3733 (False Claims Act).
- ✓ The DOJ subsequently filed a motion for summary judgment in this matter seeking \$1,075,000 in penalties against Stone and Ms. Steel and \$4,150,000 in penalties and \$691,482.36 in damages from D&L and Ms. Axle.
- ✓ On September 23, 2003, the assigned judge granted a partial summary judgment against Stone and Ms. Steel in the amount of \$1,030,000. No ruling was made concerning the remaining subjects.
- ✓ Ms. Axle and Steel as well as D&L and Stone, were previously suspended from Government contracting.
- ✓ On November 14, 2003, a jury in the district court of Washington found that D&L and Ms. Axle filed 301 false claims against the Government. The total verdict for the Government is \$2,914,589.

**Planned Actions**

- ✓ Issue Administrative Report to Management (ARM) recommending debarment action against Ms. Axle and Steel as well as D&L and Stone.

**OFFICE OF INVESTIGATIONS  
SEMIANNUAL REPORT TO CONGRESS  
SIGNIFICANT CASE FORM**

<b>Originate in Field</b>	
<b>Case Number:</b>	<b>Case Agent</b>
<b>Nature of Action (e.g., IRM, conviction, monetary recovery):</b>	
<b>Level of Significance (Circle one):</b>	
LOW	MODERATE
	HIGH
<b>Category (Procurement, ES&amp;H, etc.)</b>	
<b>ASAC CERTIFICATION</b>	
<b>Signature</b>	<b>Date:</b>
<b>SAC CERTIFICATION</b>	
<b>Signature</b>	<b>Date:</b>
<b>Headquarters Action</b>	
<b>Operations Officer/Reviewer</b>	<b>Received Date:</b>
<b>Circle one:</b>	<b>Comment/Reason:</b>
Accepted      Hold      Reject	
<b>Signature</b>	<b>Date:</b>
<b>AIGI or DAIGI Review</b>	<b>Received Date:</b>
<b>Circle one:</b>	<b>Comment/Reason:</b>
Accepted      Hold      Reject	
<b>Signature</b>	<b>Date:</b>
<b>Office of Resources Management</b>	<b>Received Date:</b>
<b>Circle one:</b>	<b>Comment/Reason:</b>
Accepted      Hold      Reject	
<b>Signature</b>	<b>Date:</b>
<b>SAC Notified of Final Action By:</b>	<b>Notification Date:</b>



## Document Number 30



CHAPTER 14

PERSONNEL MANAGEMENT

**I. SCOPE OF CHAPTER**

This chapter summarizes overall Department of Energy (DOE) and Office of Inspector General (OIG) personnel management procedures as they apply to the Office of Investigations.

**II. GENERAL PERSONNEL POLICIES**

Information regarding personnel administration, work force discipline and other employment-related issues are discussed at length in various Departmental and OIG orders, directives and policies. These documents can be found on the Department and OIG websites at:

- <https://www.directives.doe.gov/directives/current-directives>; and
- [https://igcomm.doe.gov/policy\\_219.cfm](https://igcomm.doe.gov/policy_219.cfm).

Requirements of particular relevance to managers, supervisors<sup>1</sup> and employees are summarized below.

**A. Personnel Administration**

The OIG's Personnel Management System policy indicates that managers and supervisors will:

1. Promote communication between managers/supervisors and employees regarding job performance expectations;
2. Ensure accountability for the accomplishment of assigned organizational mission objectives/goals and strategic plans;
3. Evaluate employee performance in a fair and equitable manner against performance standards which have been established and communicated to the employee in writing;
4. Subject to the availability of funds, reward employees who significantly exceed performance expectations with monetary recognition commensurate with their performance ratings; and

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<sup>1</sup> For the purpose of this chapter, supervisors are defined as GS-15s. Managers are defined as Senior Executive Service. Assistant Special Agents in Charge are considered "Team Leaders" and do not meet the definition of "supervisor" as referenced in Title 5 U.S.C., Section 7103 (a) (10).

## CHAPTER 14 – PERSONNEL MANAGEMENT

5. Assist employees in improving unacceptable performance and to identify training needs.

### B. Access to Personnel Records

Employee personnel records are maintained in the electronic Official Personnel Folder (eOPF). The eOPF is an electronic version of the original hard-copy Official Personnel Folder (OPF). The eOPF can be accessed by employees via the internet.

Information on the eOPF and how to access it is available on the IGNet under Employee Information/New Employees.

Employees should periodically check their eOPF to ensure that it is accurate.

### C. Work Force Discipline

DOE Order 3750.1 "Work Force Discipline," provides guidance and procedures, and states responsibilities for maintaining work force discipline within the Department and the OIG. In accordance with this Directive, supervisors and managers will:

1. Keep employees informed of rules, regulations, and standards of conduct, and maintain order and discipline within the framework of established procedures;
2. Gather, analyze, and consider carefully all facts and circumstances before taking or recommending corrective action; and
3. Issue oral admonishments, notices of reprimand and initiate proposed actions after consultation with the OIG's Office of Management and Administration.

### D. Dress Policy

The OIG dress policy is business casual. Generally, employees may wear business casual clothing except when meeting with non-OIG individuals. Business casual may be acceptable for some meetings with non-OIG individuals; however, this should be determined on a case-by-case basis.

## CHAPTER 14 – PERSONNEL MANAGEMENT

The following clothing items are considered unacceptable in the workplace:

- Jeans
- Sweat pants or sweat suits
- Shorts or mini-skirts
- Stretch pants or leggings
- Cargo pants or military fatigues
- Collarless, novelty, or muscle shirts
- Tank, tube or halter tops
- Sneakers, flip flops, or sandals

Exceptions to this policy may be made only by specific authorization of the Assistant Inspector General for Investigations (AIGI), Special Agent-in-Charge (SAC), or Assistant Special Agent-in-Charge (ASAC), as appropriate. In the case of firearms or defense tactics training days, deviations from appropriate attire are acceptable.

### E. Communicating with Employees

Supervisors at all levels are to maintain effective and frequent communications with employees to assist them in their career development. Employees are to be provided information concerning status of personnel actions concerning promotions, awards, bonuses, training and other employee-related actions through their appropriate supervisory channels. Personnel assistance and information or guidance concerning personnel matters – such as job qualifications, grievances, counseling, equal opportunity, training, performance appraisal procedures, rules, regulations, policies and procedures – may be obtained from the OIG Office of Management and Administration.

## III. INVESTIGATIONS CAREER ADVISORY PANEL

The Investigations Career Advisory Panel (ICAP) advises the AIGI on personnel management matters. The procedures established for the ICAP are designed to provide an equitable, fair and deliberative approach for identifying and recognizing those persons who have performed in a manner worthy of recognition.

### A. Membership

The Deputy Assistant Inspector General for Investigations (DAIGI), SACs and P3 Director are members of the ICAP. The P3 Director will function as the Executive Director of the ICAP and will arrange for the ICAP meetings and brief the AIGI on results of those meetings. The DAIGI or designated SAC will act as the ICAP Executive Director in instances in which the P3 Director cannot function in this capacity.

## CHAPTER 14 – PERSONNEL MANAGEMENT

### B. Responsibilities

The P3 Director will ensure compliance with the ICAP functions, as described in this chapter. The ICAP members will execute their mandate in a manner that is fair and equitable to all employees and that ensures mission priorities are given adequate consideration. The ICAP will ensure that personnel actions referred to it by the AIGI for deliberation:

1. Are adequately supported and documented in accordance with this Manual and other pertinent OIG personnel policies, DOE Orders, and Federal Personnel procedures, rules and regulations;
2. Take into consideration the most qualified and deserving candidates among all personnel regardless of duty station; and
3. Are kept confidential and are discussed only with the AIGI.

### C. Frequency and Place of Meetings

The ICAP shall meet as often as needed to complete its assigned functions. The Executive Director will notify all members of the agenda items in advance of each scheduled meeting. It is not essential that the panel meet in person. Conference calls are permissible. Although a quorum consists of three members, it is desirable for all members to participate in each meeting. Substitutes are not permitted.

### D. Advisory Functions

The ICAP shall function in an advisory capacity to the AIGI. Its recommendations are not binding on the deciding official.

#### 1. Promotions and New Hires

Unless otherwise indicated by the AIGI, the ICAP will review applications and make recommendations for positions at the GS-14 and GS-15 levels. However, lower-graded positions may be referred to the ICAP if desired by the AIGI.

#### 2. Awards

As directed by the AIGI, the ICAP will review and make recommendations for various awards. The ICAP will submit its recommendations to the AIGI for consideration. The AIGI will either approve/disapprove the ICAP recommendations or, as appropriate, submit the recommendation to the IG for approval.



## CHAPTER 14 – PERSONNEL MANAGEMENT

### 3. Training

As directed by the AIGI, the ICAP will consider training requests that involve a substantial commitment of resources (i.e., time and/or cost). In making a recommendation as to whether the resources should be committed, the ICAP will take into consideration existing budgets, an employee's current duties and responsibilities, the need for the training, and the impact on or benefit to mission accomplishment.

## IV. PERFORMANCE APPRAISAL PLANS

Responsibilities and procedures for an OIG performance evaluation and rating plan are provided in the Performance Management System policy, (located on the IGNet under Policy/Management and Administration). In accordance with this policy, supervisors and managers are responsible for ensuring the accuracy of each employee's position description, identifying job elements (including critical elements) of the position, setting the standards of performance and evaluating each employee against established standards annually. At least one progress review is required to be held during the appraisal period.

### A. Setting Performance Elements and Standards

Performance elements and standards are established and/or reevaluated annually. Each employee will sign a statement acknowledging the established elements and standards for the rating period.

### B. Production Reports

1. Production Reports are generated by each employee to demonstrate his/her accomplishments through the performance period. Production Reports will be used in conjunction with the annual appraisal process and may also be used in connection with periodic employee progress reviews at the option of the rating official. Production Reports are a supplement to demonstrated on-the-job performance and rating official observation and assessment (with appropriate input from team leaders/supervisors/managers and OIG customers). Each year, P3 will issue a Production Report template based on the elements outlined in the performance plan.
2. It is recommended that employees initiate a Production Report at the start of each rating period and update it throughout the year to ensure completeness. Additionally, employees are encouraged to use various Energy Inspector General Project Tracking (EIGPT) reports to identify projects he/she has worked on throughout the year.

## CHAPTER 14 – PERSONNEL MANAGEMENT

3. Employees will submit a Production Report for team leader/supervisor/manager review at or near the end of a rating period (or at other times at the discretion of management). P3 will give annual guidance on the format and length of the report. The employee should use his/her own discretion on the level of detail included in the report. However, it should be noted that this is the employee's opportunity to highlight accomplishments and he/she should take advantage of this tool. Team leaders/supervisors/managers, in turn, may provide insight as to how a person's accomplishment report can be refined and/or improved. Employees need to reflect their level and quality of effort and productivity throughout the rating period, while at the same time striking a balance between under-informing and over-informing the rating official.

### C. Appraisal Period

The appraisal period is from October 1 through September 30. The mid-term progress review is conducted after March 31, which is the midpoint of the performance period. For employees whose performance plan did not begin in October due to the establishment of new performance standards (e.g., promotion, new hire) the mid-term progress review will be conducted at the midpoint between the start date of the new performance standards and September 30. New employees or recently promoted employees who have not served in their current position for more than 90 days by September 30 will not receive a rating for the period. The employee's performance from the previous rating period will be factored into the next annual rating period. For additional information about rating periods for new or newly promoted employees should consult with the OIG's Office of Management and Administration.

### D. Assigning Performance Ratings

Rating officials are responsible for ensuring that employee performance ratings are assigned in accordance with the procedures and timeframes described in the Performance Management System policy (located on the IGNet under Policy/Management Administration). Rating officials should ensure they maintain familiarization with each employee's performance elements and standards. Rating officials will consider, at a minimum, the following factors when assessing performance:

## CHAPTER 14 – PERSONNEL MANAGEMENT

- Employee performance elements and standards;
- Personal observations and assessments;
- Personal Accomplishment Reports;
- Demonstrated on-the-job performance;
- Team leader/supervisor/manager input; and
- Feedback from OIG customers.

It is important — prior to assigning a performance rating — that rating officials solicit input from other OIG team leaders/supervisors/managers when an employee performed work outside his/her region or on behalf of another region or OIG component (e.g., 30-day TDY to another region, joint project with the Office of Audit Services, completion of a collateral lead, detail to Headquarters, etc.).

Employees who receive a performance rating below Meets Expectation will no longer be assigned ancillary duties (e.g., Regional Firearms Coordinator, Defense/Control Tactics Coordinator, etc) not will they be eligible to participate in the Relief Agent-in-Charge-Program.

### E. Finalizing Performance Ratings

A rating official is responsible for completing the official appraisal, signing it, and forwarding it to the reviewing official. The reviewing official, in turn, discusses the proposed rating with the rating official and, if approved, signs the appraisal before the rating is discussed with the employee. The rating must be discussed with the employee and the employee's signature sought by the established due date each year.

## V. PROMOTIONS AND RECRUITMENT

Various Office of Personnel Management (OPM), Departmental, and OIG regulations, directives, orders, and policies provide guidance to Office of Investigations managers and supervisors on promoting employees and recruiting new employees. Requirements of particular relevance to managers, supervisors and employees are summarized below.

### A. Equal Opportunity and Diversity Program

The OIG fully supports the Department's Equal Opportunity and Diversity Program. All Office of Investigations supervisors and managers should be familiar with DOE Order, DOE O 311.1B, Equal Opportunity and Diversity Program, approved February 12, 2003, and are responsible to ensure this program is being fully implemented. Specific objectives of this program include the following:

## CHAPTER 14 – PERSONNEL MANAGEMENT

1. Promoting diversity at the Department and fostering a culture of inclusion and respect;
2. Providing equal opportunity in employment for all Department employees and applicants and alleviating conspicuous absences and/or manifest imbalances;
3. Promoting through appropriate monitoring and educational programs the full realization of equal employment opportunity (EEO) for minorities, women, and people with disabilities;
4. Identifying and eliminating systemic or institutional barriers to employment, both physical and nonphysical;
5. Prohibiting discrimination in employment due to race, color, religion, sex (including sexual harassment), national origin, age, disability, sexual orientation (including sexual orientation harassment), or reprisal for prior participation in the EEO process;
6. Developing, implementing, and monitoring EEO counseling, complaints, and investigations program in accordance with laws, rules, regulations, policies, and procedures that prohibit discrimination and to provide for the prompt, equitable adjudication of complaints filed by individuals or classes;
7. Ensuring that applicants for and recipients of Federal financial assistance are in compliance with civil rights laws that prohibit discrimination in programs, projects, and activities; and
8. Implementing an affirmative employment program to promote EEO for minorities, women, and people with disabilities.

### B. Within-Grade Increases

Within-Grade Increases are governed under Title 5, Code of Federal Regulations, Part 531, Subpart C. Supervisors and managers are responsible for applying the provisions of these regulations as they pertain to within-grade step increases. Specific responsibilities include certifying that subordinate employees have performed at an acceptable level of competence for within-grade increases, or preparing recommendations for the withholding of within-grade increases. Within-grade increases are based on performance and, as such, are not guaranteed. Supervisors should consult with OIG's Office of Management and Administration when an employee's performance is such that denial of a within-grade increase is contemplated.

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### C. Career Ladder Promotions

1. A career ladder is the full range of grade levels for which an employee can be promoted without being required to compete. A career ladder extends from the entry level to the journeyman level (full performance level). For example, a criminal investigator hired at the GS-9 grade level would be promoted up the career ladder to grades GS-11, GS-12 and GS-13 based on his/her overall performance and training accomplished at each grade level.
2. Career ladder positions exist within the Office of Investigations. Most notable of the career ladders is the 1811 job series. The 1811 career ladder extends from a GS-9 to a GS-13. Individuals in career ladder positions will be provided with developmental assignments of increasing difficulty that provide grade-building experience and prepare the individual to be promoted as they demonstrate the ability to perform at the next higher grade level.
3. Promotions beyond the full performance grade level of a career ladder will be made through formal advertising and competitive procedures. The position will be advertised and the employee will compete with other candidates for the promotion.

### D. Criminal Investigator (1811 series) Promotions

OPM career ladder promotion guidelines place promotion decisions at the discretion of management. Special Agent positions up to GS-13 fall within this category. Promotions are not deemed to be automatic and management is under no obligation to initiate a promotion action. In the course of sound organizational management and leadership practices, SACs and ASACs should be providing contemporaneous feedback and guidance to employee's to assist them in their professional growth and advancement. Based on this feedback, Special Agents should know if they meet the criteria to be promoted to the next grade level.

Special Agent promotion actions within the Office of Investigations will be initiated by the supervising SAC when the Special Agent has met the minimum qualifications for promotion as outlined in this policy. The initiating action may be submitted prior to the Special Agent meeting actual time-in-grade requirements to allow for administrative processing. In an effort to ensure promotion uniformity throughout the Office of Investigation and to ensure only eligible Special Agent's are considered for promotion, the following minimum standards and requirements for promotion must be met.

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### E. Criminal Investigator Promotion Criteria and Process through GS-12

#### 1. Promotion Criteria

Special Agents may be promoted to the next higher grade, up to GS-12, if the agent has:

- a. Completed a basic Federal criminal investigator training program (e.g., Federal Law Enforcement Training Center (FLETC) or an Office of Investigations approved equivalent).
- b. Successfully performed for a minimum of 12 months at the next lower 1811 grade. Successful performance is defined as a Special Agent who has received a “meets expectations” or higher on all critical elements on the most recent performance appraisal and has no adverse administrative actions pending.
- c. Special Agents transferring into the Office of Investigations must serve a minimum of 90 days in the office to be eligible for promotion to the next higher grade.

#### 2. Promotion Process

- a. Special Agents recommended for promotion up through GS-12 will submit their most recent performance appraisal form to the SAC for inclusion in the promotion packet. Special Agents transferring into the Office of Investigations, who have not received a performance appraisal from the Office of Investigations, may provide their most recent performance appraisal from their previous employer for consideration.
- b. SACs will include a brief memo in the promotion package articulating that the Special Agent has met the criteria and demonstrated the knowledge, skills and abilities for promotion to the next higher grade.
- c. Promotion packets up through GS-12 will be submitted to the DAIGI by the SAC. If the DAIGI concurs with the recommended promotion, the DAIGI will instruct P3 to prepare the SF-52 promotion action for presentation to the AIGI for final approval.

### F. Criminal Investigator Promotion Criteria and Process to a GS-13

Due to the level of independence and expertise expected of Special Agents at the GS-13 level, the criteria and process for promotion differ than the promotion process for lower grades.

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### 1. Promotion Criteria

- a. The Special Agent must have 12 months time in grade as a GS-1811-12, 90 days of which must have been as an 1811 with the DOE Office of Investigations.
- b. The Special Agent must have completed a basic Federal criminal investigator training program; (i.e., FLETC or an Office of Investigations approved equivalent).
- c. The Special Agent must have received a rating of “meets expectations” or higher on the critical elements rated on his/her most recent 1811 performance appraisal, shall not have received a rating below “meets expectations” on any critical element rated, and have no adverse administrative actions pending. If the Special Agent has not received an DOE Office of Investigations performance appraisal, the last appraisal from his previous employer may be submitted for consideration.
- d. If a Special Agent is not recommended for promotion because of a rating of “needs improvement” or lower on any rated critical element on his/her most recent performance appraisal, the Special Agent may be considered for promotion again at any time after 120 days of receipt of the “needs improvement” performance appraisal. There is no requirement for the Special Agent to wait until receiving their next performance appraisal before being eligible for promotion consideration. The SAC will include a memorandum to the DAIGI with the promotion recommendation addressing the poor performance appraisal and explaining how the poor performance has been corrected.
- e. In addition to the Special Agent’s general performance as an 1811, ASACs and SACs should also consider the Special Agent’s experience and performance in areas such as:
  - i. Service as a lead case agent over multiple cases or special inquiries.
  - ii. Experience writing complex documents such as Investigative Reports to Management, Memorandum of Investigative Activity, Reports of Investigation, search warrant affidavits and subpoena requests.
  - iii. Experience coordinating judicial actions with a criminal/civil Assistant United States Attorney.
  - iv. Experience coordinating and conducting investigative activities with other agencies.
  - v. Level of independence displayed in conducting investigative work.
  - vi. Experience testifying in criminal, civil and/or administrative proceedings.
  - vii. Experience with advanced operations (e.g., search warrants, arrests, consensual monitoring).
  - viii. Experience conducting fraud awareness briefings.

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- ix. Briefings to senior management (SAC or above).
- x. Professional education and advanced training completed.
- xi. Level of professionalism, discretion and teamwork displayed.

### 2. Promotion Process

- a. Special Agents seeking promotion to a GS-13 are encouraged to discuss their plans with their ASAC and SAC prior to submitting a promotion package. Such a discussion may assist the agent in deciding if promotion at that time is appropriate based on the ASAC or SAC's assessment of the agent's performance.
- b. The SAC may initiate a promotion action once an agent has met the promotion criteria described above. The SAC may incorporate the ASAC into the promotion process at their discretion.
- c. SACs supervising Special Agents meeting the criteria outline in this chapter must provide a justification to the AIGI if the promotion action is delayed or is not being considered.
- d. The Special Agent being considered for promotion will submit the following documentation in support of his/her promotion recommendation:
  - i. Most recent performance appraisal; and
  - ii. A succinct Qualification Statement demonstrating his/her ability to independently plan, coordinate, and conduct DOE investigations and effectively liaison with the Office of Audits and Inspections, other law enforcement agencies and private industry in cooperative efforts to conduct investigations. The Qualification Statement may not exceed 2 pages. The statement should support the Special Agent's ability to independently perform at the GS-13 level and should include items such as case examples, achievements, presentations given, documents written (e.g., search warrant affidavits, Investigative Reports to Management), training, etc. Special Agents serving in the Technology Crimes Section should also address topics such as forensics examinations conducted.
- e. If the supervising SAC approves the request for promotion, he/she will request that another SAC review the documentation to determine if he/she concurs with the promotion.
- f. If the reviewing SAC concurs with the promotion, the supervising SAC will prepare a memorandum to the DAIGI recommending the Special Agent for promotion.



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- g. If the reviewing SAC does not concur with the promotion, he/she will document the reasons for non-concurrence. If the supervising SAC decides to proceed with the promotion, a final determination on the promotion will be made by the DAIGI in consultation with the supervising SAC, the reviewing SAC and the AIGI.
- h. If a concurrence is received on the recommended promotion, the DAIGI will instruct P3 to prepare the SF-52 promotion action for presentation to the AIGI for final approval.

**Note:** Absent extenuating circumstances, and subject to the availability of funds, all GS-13s will be expected to do a rotation at Headquarters for a minimum of 2 weeks and a maximum of 30 days. This will provide the Special Agent a better perspective of the Office of Inspector General and the Office of Investigations operations and will benefit the overall organization.

### G. Vacancy Actions

Vacancies will be filled through formal advertising and competitive procedures and through non-competitive methods (e.g., reassignment/transfer, change to lower grade, reinstatement appointment from OPM certificate of eligible candidates, direct hire, and special authorities for excepted appointments).

Vacant positions will be filled by the best available candidates and in accordance with Federal policy and applicable civil service laws and regulations. Candidates being considered for a position must be able to document current performance requirements and demonstrate that s/he will equal or exceed the performance requirements of the position for which s/he is being considered. Performance elements and standards as well as annual accomplishment reports should be considered when an Office of Investigations' employee applies for a vacant position.

The P3 Director is responsible for processing all hiring actions and coordinates the actions with the AIGI.

#### 1. GS-9 through GS-13 Vacancies

- a. *Education and Experience Requirements* – All entry level applicants must meet the education and experience requirements outlined below.
  - i. *GS-9 Applicants* – Must have a master's or equivalent graduate degree, or two full years of progressively higher level graduate education leading to an LL.B. or J.D., or one year of specialized experience equivalent to a GS-7 in the Federal service;

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- ii. *GS-11 Applicants* – Must have three years of graduate education or a PhD or equivalent doctoral degree; or one year of specialized experience equivalent to the next lower grade; and
- iii. *GS-12 & GS-13 Applicants* – Must have one year of specialized experience equivalent to the next lower grade.
- b. *Recommending Officials* – For their respective staffs, the DAIGI, SACs and the P3 Director are responsible for recommending candidates to fill vacant positions.
- c. *Selecting Official* – The AIGI is responsible for approving all vacancy announcements and selecting the best qualified applicant for the position.

### 2. GS-14 & GS-15 Vacancies

- a. *Education and Experience* – Must have one year of specialized experience equivalent to the next lower grade.
- b. *Recommending Officials* – The ICAP is responsible for recommending candidates to fill vacant positions.
- c. *Selecting Official* – The AIGI is responsible for approving all vacancy announcements and selecting the best qualified applicant for the position.

### 3. Senior Executive Service Positions

- a. *Education and Experience* – Executive Core Qualifications (ECQs) define the competencies needed by applicants.
- b. *Recommending Officials* – The DIGI is responsible for recommending candidates to fill vacant positions.
- c. *Selecting Official* – The Inspector General (IG) is responsible for approving all vacancy announcements and selecting the best qualified applicant for the position.

## H. Writing Assessments for ASAC, Operations Officer and Special Agent Applicants

Before an applicant for an ASAC, Operations Officer or Special Agent position is selected, he/she will complete a writing assessment in order to assess their critical thinking and analytical skills.

- 1. *For a Special Agent applicant*, the SAC will coordinate with the P3 Director to obtain copies of the guidelines and the writing assessment to be used in the process.

## CHAPTER 14 – PERSONNEL MANAGEMENT

2. *For an ASAC or Operations Officer applicant*, at the time of the interview, the P3 Director will provide the ICAP with the guidelines and a copy of the writing assessment to be used in the process.

### I. Oral Personnel Reference Checks

The Recommending Official is responsible for ensuring that Oral Personnel Reference Checks are completed on applicants prior to submitting a recommendation to the Selecting Official. Recommending Officials should use the Oral Personnel Reference Check form to document the reference checks (See Oral Personnel Reference Check Form – Chapter 14, Exhibit A). The applicant's current and previous first level supervisor must be contacted as part of the reference checks. A minimum of three reference checks must be done. Reference checks are not required for internal applicants.

### J. Probationary Period for New Managers and Supervisors

The Office of Investigation's success in carrying out its mission is dependent to a large extent on the caliber of its managers and supervisors. Incumbents of these positions must demonstrate effective managerial and supervisory skills and abilities, which cannot be readily taught or developed in other kinds of positions. In order to assess a new appointee's supervisory or managerial ability, a 1-year period of probation is required of all newly-appointed managers and supervisors. In the event that perceived potential to perform as a manager or supervisor does not result in acceptable performance of those duties during the period of probation, a newly-appointed manager or supervisor will be removed from the supervisory or managerial position and reassigned to a non-supervisory position in accordance with the provisions of DOE Order 320.1. It should be noted that ASAC's are considered "Team Leaders" and do not meet the definition of "supervisor" as referenced in Title 5 U.S.C., Section 7103 (a) (10).

## VI. RELOCATION AND REASSIGNMENT

Teamwork and knowledge of operations are important to an effective organization. One way to improve both is to permit staff members at all levels to learn as much about the jobs of others as possible. Although considerable knowledge can be gained through periodic meetings and discussions that is not the same as knowledge gained by experiencing the work that others are required and expected to do. The SACs and Headquarter Directors are encouraged to explore staffing options that broaden the knowledge and understanding that staff members have of OIG and Departmental operations at various locations.

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### A. Mobility Agreements

All employees in the Criminal Investigator job series (1811) are required as a condition of employment to sign a Mobility Agreement (See Mobility Agreement Form – Chapter 14, Exhibit B). This agreement subjects the employee to the possibility of a mandatory permanent change of duty station. The OIG's Office of Management and Administration is responsible for ensuring criminal investigators sign the agreement.

### B. Permanent Relocation

Employees in one office or region may request permanent reassignment to another office or region. Such assignments would involve a permanent change of station and are subject to AIGI approval.

### C. Temporary Assignments

With AIGI approval and subject to the availability of funds, the DAIGI, SACs or P3 Director may request that an employee be detailed on a temporary basis to fill a position at another location. Likewise, employees in one office or region may request assignment to another office or region on a temporary basis. Such assignments would normally be for 120 days or less and would not involve a permanent change of station. A temporary reassignment of this nature could be particularly opportune when an organization has a vacant position due to promotion or retirement, and the replacement is not due to arrive for a period of time. When an employee is temporarily promoted, reassigned, or detailed for more than 120 calendar days, a separate performance appraisal must be obtained for consideration by the rater who prepares the employee's annual performance appraisal.

### D. Hardship Transfers

1. Requests for transfer based on hardship must be submitted by the employee's SAC to the DAIGI. Privacy of the individual requesting the transfer should be respected. The request should not be disclosed outside the line of management.

## CHAPTER 14 – PERSONNEL MANAGEMENT

2. The employee requesting the transfer must be thoroughly interviewed by the SAC concerning the circumstances of the hardship and the SAC's formal request must present the results of that interview. Recommendations of the SAC are considered the most important factors. Observations of the SAC should address whether a temporary assignment or permanent change of station would be best and whether a replacement would be needed in the event the request is approved. The employee's written and signed request for transfer must accompany the SAC's request. The following information must also be submitted with the request:
  - a. *Parental Hardship* – age of parents; written statement from doctor setting forth diagnosis, prognosis and recommendations; income of parents; names, ages and residences of other relatives of parents; identity of anyone presently assisting parents and statement why such assistance is not sufficient.
  - b. *Hardship Involving Spouse or Children* – statement from doctor if hardship is medically related.
  - c. *Hardship Involving Employee* – statement from doctor setting forth diagnosis, prognosis and recommendations if hardship is medical.
3. Upon receipt of the request, the DAIGI will forward the request to the P3 Director for review and comments. The DAIGI will provide the AIGI with recommendations regarding the request and the AIGI will make the final determination.
4. Statements from doctors supporting medical hardships do not ensure the request will be granted, although they are a factor in the decision process.
5. Hardship transfer requests will be handled on a case-by-case basis. The totality of the circumstances and various alternatives other than a transfer are compared with precedents involving prior similar requests. The Office of Investigations will make every reasonable effort to accommodate hardship requests; however, staffing levels, budget considerations and needs of the office will be the driving factors.

Although not absolutely excluded, the following circumstances generally are not sufficient reasons to necessitate a transfer:

- a. *Parental Hardship* – The infirmities associated with the aging process are common to all employees with living parents and in-laws.
- b. *Divorce and Custody of Children* – In divorce situations where children are involved; custody and visitation problems are common developments.

## CHAPTER 14 – PERSONNEL MANAGEMENT

- c. *Working Spouse Hardships* – Due to the large number of employees with working spouses, regardless of the size of the spouse's income, such employees cannot generally expect hardship transfers.
- d. *Financial Hardship* – Financial problems generally will not substantiate a hardship request, particularly when the basis is the inability to sell a residence.

### VII. STAFF RECOGNITION

All forms of recognition are to be based on solid achievements by the person being honored. The form of recognition may range from a promotion to letter of commendation for a job well done. Monetary and nonmonetary or honorary awards (e.g., certificate of appreciation, plaque, letter of appreciation, etc.) will be used as appropriate.

#### A. Responsibilities

The DAIGI, SACs and P3 Director are responsible for initiating actions designed to recognize the superior performance of staff members who have contributed to mission accomplishment in a substantial way.

#### B. Performance Awards

Subject to the availability of funds, employees may receive awards based on summary performance ratings. Performance awards may be monetary, quality step increases or time off awards. The eligibility criteria for performance awards are outlined in the Performance Management System policy (located on the IGSNet under Policy/Management and Administration).

#### C. AIIG Annual Awards

For purposes of recognizing sustained, quality work, the following Office of Investigations annual honorary awards are established:

1. *AIIG Investigator of the Year Award* is awarded to a nonsupervisory Criminal Investigator who demonstrated extraordinary competence and achieved major accomplishments in conducting one or more complicated, long-term and/or sophisticated investigations of major significance.

## CHAPTER 14 – PERSONNEL MANAGEMENT

2. *AIGI Staff Person of the Year Award* is awarded to a support employee who demonstrated exceptional motivation, initiative and performance in support of the Office of Investigations efforts; or who displayed extraordinary achievements in overcoming unusual difficulties or unique situations of great importance to the mission of the office. Investigators are not eligible for this award.
3. *AIGI Investigation of the Year Award* is awarded for a complex, time-sensitive and/or high-profile investigation of criminal, civil and/or administrative wrongdoing. Investigations to be considered include but are not limited to complex procurement fraud schemes, significant environmental crimes, sophisticated computer hacking efforts or notable ethics violations.
4. *AIGI New Employee of the Year Award* is awarded to a new employee who has demonstrated exceptional motivation, initiative, and performance in their assignments; or someone who has displayed extraordinary achievement in overcoming unusual difficulties or unique situations in the performance of their duties. This award may be given to any Office of Investigations employee hired within two years of the date of the award.

These awards consist of inscribed plaques and certificates signed by the AIGI. The names of the recipients will be added to an office plaque, which will contain the names of all annual recipients of these awards.

### D. Nomination Process

The nomination process is open to all Office of Investigations' employees. Any employee may nominate a colleague in their office, another region, or Headquarters. Nominations will cover performance and successes for the period from September 1 through August 31. Nominations can be made by completing the AIGI Honorary Award Nomination form (See AIGI Honorary Award Nomination Form – Chapter 14, Exhibit C). The narrative explaining why the candidate is being nominated must not exceed one page. Due dates for nominations will be established annually. The P3 Director will coordinate the honorary awards program for the Office of Investigations.

### E. AIGI Annual Awards Selection Process

The ICAP, will review the AIGI Annual Awards nominations and make final recommendations to be presented to the AIGI for consideration. The AIGI will make the final selection for each award.

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### F. AIGI Annual Awards Ceremony

An awards ceremony will be held annually and the awards will be presented by the AIGI. Recipients of awards are expected, but not required, to travel to Headquarters to accept the award.

### VIII. TIMEFRAMES FOR APPRAISALS AND ANNUAL RECOGNITION

The following key milestones/events integrate the Office of Investigations appraisal system and the annual awards program:

Milestone/Event	Timeframe
Development/Reevaluation of Performance Elements and Standards and Performance Agreement	March
Employee Signature on Performance Elements and Standards and Performance Agreement	October
Employee Progress Reviews	April
ICAP Review of Nominations for Annual Office of Investigations Awards	September
Preparation of Personal and Regional Accomplishment Reports	October
Manager's Evaluation of Personal and Regional Accomplishment Reports	October
Preparation of Employee Appraisals/ Including Discussion With Employees	October
Submission of Appraisals	November
Annual Awards Ceremony Conducted by AIGI and SACs	December

### IX. OUTPROCESSING EMPLOYEES

There are certain required steps in processing departing Office of Investigation employees, including conducting an exit interview.



## CHAPTER 14 – PERSONNEL MANAGEMENT

### A. Exit Interview

#### 1. Selecting Manager to Conduct the Exit Interview

When an employee receives an official release date, the supervisor should identify another manager to coordinate the exit interview. Absent extenuating circumstances, the identified manager must not be in the departing employee's line of command. Additionally, the exit interview must be conducted by an Office of Investigations manager that is at least one level above the level of the departing employee's immediate team leader.

#### 2. Conducting the Exit Interview

- a. The manager coordinating the exit interview should contact the departing employee directly and request that the employee complete PART I of the OI Employee Exit Interview form (See OI Employee Exit Interview Form, Chapter 14, Exhibit D).
- b. The employee should be asked to return PART I of the completed OI Employee Exit Interview form directly to the coordinating manager. The employee should not share the completed form with their ASAC or SAC.
- c. Once the OI Employee Exit Interview form is received, the manager should offer the employee an opportunity to discuss his/her responses to the questionnaire in order to obtain any additional information that may be insightful.
- d. PART I of the OI Employee Exit Interview form along with a written summary from the manager's conversation with the employee must be submitted to the P3 Director. The P3 Director will share the information from the exit questionnaire with the DIGI, AIGI and DAIGI. Discussions with the appropriate SAC and ASAC may follow.

**Note:** Participation in the exit interview process is voluntary. Departing employees may, at their discretion, opt out from either the written or interview portion.

### B. Exit Documents

Employees departing from the OIG must complete the following documents:

1. PART II of the OI Employee Exit Interview Form (See OI Employee Exit Interview Form, Chapter 14, Exhibit D)

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### 2. Final Separation Checklist (DOE Form)

- a. HQ employees will complete HQ Employee Final Separation Clearance (See Employee Final Separation Clearance Form for HQs Employees, Chapter 14, Exhibit E).
- b. Field employees will complete Field Employee Final Separation Clearance Form (See Field Employee Final Separation Clearance Form, Chapter 14, Exhibit F).

The departing employee's supervisor is responsible for providing these forms to the employee. The supervisor should ensure that the forms are completed prior to the employee's departure and that the completed documents are provided to P3. P3 will provide copies of the documents to OIG's Office of Management and Administration.

**Note:** OIG's Office of Management and Administration will also provide departing employees with an OIG-specific exit interview form. The departing employee should work directly with the OIG's Office of Management and Administration when completing and submitting this form.

U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

**Oral Personnel Reference Check**

<b>NAME OF APPLICANT:</b>	<b>DATE OF BIRTH:</b>	<b>CHECK MADE BY:</b>
<b>REFERENCE:</b>	<b>TELEPHONE NUMBER:</b>	<b>DATE OF CHECK:</b>

PRIVACY ACT INFORMATION STATEMENT. *We are considering the above applicant for a position with us and wish to obtain some information from you about him/her. I must notify you that in accordance with P.L. 93-579, the Privacy Act of 1974, all information provided may be disclosed to the individual being referenced upon that individual's request. You may request confidentiality as to your identity and any information that would reveal your identity.*

The reference has requested that his/her identity not be revealed (check if reference so requests) ☐

<b>1. WHEN DID YOU FIRST MEET HIM/HER?</b>   <b>WHAT WAS/IS THE NATURE OF YOUR RELATIONSHIP (E.G., SUPERVISOR, FRIEND, ETC.)</b>	<b>2. <u>WHAT</u> WAS HIS/HER JOB WHEN HE/SHE STARTED WITH YOU?</b>   <b><u>WHAT</u> CHANGED IN HIS/HER DUTIES OR RESPONSIBILITIES WHILE WITH YOU?</b>
<b>3. WHY DID HE/SHE LEAVE YOUR EMPLOY? [WHY IS HE/SHE SEEKING TO LEAVE CURRENT POSITION?]</b>	<b><u>WHAT</u> CHANGED IN HIS/HER DUTIES OR RESPONSIBILITIES WHILE WITH YOU?</b>

**4. WHAT DO YOU THINK OF HIS/HER –**

**A. QUALITY OF WORK PRODUCT? SPECIFICALLY, WRITTEN PRODUCTS AND ORAL BRIEFINGS.**

**B. WORK ETHICS? CONSCIENTIOUS? DEPENDABLE? HIGH INITIATIVE?**

**C. ABILITY TO LEAD OTHERS? ABILITY TO SUPERVISE OTHERS?**

**D. HOW ARE HIS/HER INTERPERSONAL SKILLS? ABILITY TO GET ALONG WITH OTHERS? HOW DOES HE/SHE DEAL WITH CONFLICT AND DISAGREEMENTS WHEN THEY ARISE?**

**E. HOW DOES HE/SHE RESPOND TO CHANGE? HOW DOES HE/SHE EXPRESS DISAGREEMENT WITH MANAGEMENT DECISIONS (E.G., POLICY CHANGES, ORGANIZATIONAL CHANGES, ETC.)?**

**F. ACCEPTANCE OF RESPONSIBILITY? INTROSPECTIVE?**

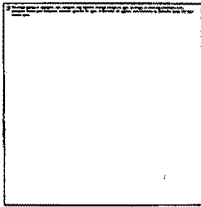
**G. ABILITY TO BUILD COALITIONS AND CONSENSUS? [AMONG AND WITHIN THE TEAM]**

**H. ABILITY TO COMPROMISE, FIND SOLUTIONS THAT ARE ACCEPTABLE TO EVERYONE AND IN THE ORGANIZATION'S INTEREST?**

**I. WHAT IS YOUR ASSESSMENT OF HIS/HER "TRADECRAFT"? [INVESTIGATIVE ABILITY AND INSIGHTS]**

<p><b>5. ARE YOU AWARE OF ANYTHING THAT WOULD PREVENT HIM/HER FROM PERFORMING A FULL RANGE OF LAW ENFORCEMENT POWERS [FIREARMS, ARRESTS, SEARCHES, ETC.]?</b></p>	<p><b>6. IS HE/SHE CONSIDERED OF GOOD MORAL CHARACTER? AWARE OF ANYTHING THAT WOULD PRECLUDE HIM/HER FROM MAINTAINING OR OBTAINING A TOP SECRET CLEARANCE?</b></p>
<p><b>7. WHAT KIND OF WORK DO YOU CONSIDER HIM/HER BEST QUALIFIED FOR?</b></p>	<p><b>8. WOULD YOU RECOMMEND HIM/HER FOR (Describe duties of position for which being considered)?</b></p>

<b>9. WHAT ARE HIS/HER STRONG POINTS?</b>	<b>10. WHAT ARE HIS/HER WEAK POINTS?</b>
<b>11. WOULD YOU REEMPLOY HIM/HER?</b>  <input type="checkbox"/> YES <input type="checkbox"/> NO	<b>REMARKS</b>
<b>12. IS THERE ANYTHING YOU WOULD CARE TO ADD?</b>	



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Mobility Agreement**

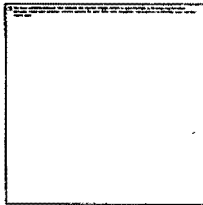
I hereby acknowledge that, as a condition of my employment as a Criminal Investigator with the Department of Energy, Office of Inspector General (OIG), I may be required to relocate to an OIG office in another geographic location based on the needs of the organization.

I also understand that my failure to accept such a directed reassignment could be a basis for my separation from the service.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



U.S. Department of Energy  
Office of Inspector General  
Office of Investigations

**Assistant Inspector General for Investigations  
Honorary Award Nomination Form (Insert Year)**

Write the name of the candidate you wish to nominate on the line beside the award title. For each candidate nominated, attach a narrative, not to exceed one page, detailing the reason for your nomination. Candidates will not be considered if a justification page is not attached. All personnel may nominate one candidate in one or all of the following categories:

**NAME OF NOMINATING EMPLOYEE:**

**AIGI Investigator of the Year**

*Awarded to a nonsupervisory Criminal Investigator who demonstrated extraordinary competence and achieved major accomplishments in conducting one or more complicated, long-term, and/or sophisticated investigation(s) of major significance.*

**NOMINATION:**

**AIGI Staff Person of the Year**

*Awarded to a nonsupervisory support employee who demonstrated exceptional motivation, initiative, and performance in support of the Office of Investigations efforts; or who displayed extraordinary achievements in overcoming unusual difficulties or unique situations of great importance to the mission of the office. This award includes secretaries, analysts, and any non-investigators. Investigators are not eligible for this award.*

**NOMINATION:**

**AIGI Investigation of the Year**

*Awarded for a complex, time-sensitive, and/or high-profile investigation of criminal, civil and/or administrative wrongdoing. Investigations to be considered include but are not limited to complex procurement fraud schemes, significant environmental crimes, sophisticated computer hacking efforts, or notable ethics violations.*

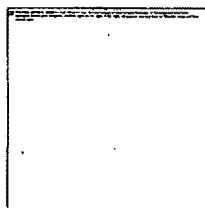
**NOMINATION:**

**AIGI New Employee of the Year**

*Awarded to a new nonsupervisory support employee or criminal investigator who has demonstrated exceptional motivation, initiative, and performance in their assignments; or someone who has displayed extraordinary achievement in overcoming unusual difficulties or unique situations in the performance of their duties. This award may be given to secretaries, non-supervisory analysts and criminal investigators. Only employees who were hired within two years of the date of award are eligible. The award is typically made in October (e.g., reporting date occurred on or after October 1, 2002 for an award being given in October 2004).*

**NOMINATION:**





**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**Office of Investigations Employee Exit Interview Form**

**Part I - Evaluation of the Office of Investigations**

**A. Team Leader/Supervisor**

Please rate the following from 1 (poor) to 5 (excellent) using the drop down menus below.

	ASAC/Team Leader	SAC/Supervisor
1. Communication with team leader/supervisor		
Easily accessible	Rate from 1-5	Rate from 1-5
Provides feedback	Rate from 1-5	Rate from 1-5
2. Managerial skills of team leader/supervisor (direction & guidance provided, fairness, etc.)		
Provides clear and concise directions and guidance	Rate from 1-5	Rate from 1-5
Periodically provides performance evaluations	Rate from 1-5	Rate from 1-5
Fairness and equitable in assignments, appraisals, training, etc.	Rate from 1-5	Rate from 1-5

**B. Personal**

Based on your own experiences, please rate the following from 1 (poor) to 5 (excellent) using the drop down menus below.

1. Opportunity for advancement	Rate from 1-5
2. Morale	Rate from 1-5
3. Work environment	Rate from 1-5
4. Training received	Rate from 1-5
5. Working hours	Rate from 1-5
6. Appropriateness of assignments	Rate from 1-5
7. Application of personnel policies/practices	Rate from 1-5

- C. Employee's suggestions for improvement or comments to expand on the ratings above:
- D. Employee's observations of positive aspects of the organization and/or supervisor/manager:

Exiting Employee:

OIG Manager Signature:  
(Level above immediate team leader/supervisor)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Part II – Separation Check List**

Upon completion, indicate that you have received separation briefings on each topic by checking the boxes.

**A. Health Benefits Coverage**

- ☐ Continuation in retirement
- ☐ Transfer to another agency
- ☐ 31-day extension of coverage
- ☐ Temporary continuation of coverage
- ☐ SF-2810 issued to employee

**B. Life Insurance Coverage**

- ☐ Continuation into retirement
- ☐ 31-day extension of coverage
- ☐ Conversion privileges
- ☐ SF-2821 issued to employee
- ☐ SF-2819 issued to employee
- ☐ Transfer to another agency

**C. Thrift Savings Plan**

- ☐ Employee contribution withdrawal packet
- ☐ TSP form 18 completed
- ☐ TSP form 19 completed (transfer employees)
- ☐ Continuation in another agency

**D. Retirement**

- ☐ Deferred annuity (separating employees)
- ☐ Refunded service (csrs/fers)
- ☐ Not applicable (transfer to another agency)

**E. Annual Leave**

- ☐ Transfer to another agency
- ☐ Lump sum payment (*employees separating from federal service*)

F. Sick Leave

- ☐ Explain 3-year time period (*employees separating from federal service*)
- ☐ Transfer to another agency

G. Payroll

- ☐ Arrangement for receipt of last paycheck
- ☐ Reinstatement eligibility
- ☐ Separation clearance form forwarded to personnel

H. Firearms Equipment

- ☐ OIG issued firearm and related equipment returned (including but not limited to firearm, extendable baton, ammunition, handcuffs, body armor, raid jacket, portable gun safe, etc.)
- ☐ "Firearms and Related Equipment Receipt" completed

I. Other Property

- ☐ DOE and/or OIG property returned (e.g., laptop, cell phone, pager, calling card, travel card, purchase card, office keys, pda, parking permit/pass, etc.)

J. Identification

- ☐ DOE badge returned (i.e., building access/clearance id)
- ☐ OIG credentials returned

K. Exit Interview

- ☐ Completed Part I of "Office of Investigations Employee Exit Interview Form" and discussed it with a manager at a level above immediate team leader/supervisor

Exiting Employee:

OIG Representative, Supervisor or Team Leader:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

HQ F 5293  
(03-05) (rev. 06-07)  
All Other Editions Are Obsolete

## U.S. DEPARTMENT OF ENERGY EMPLOYEE FINAL SEPARATION CLEARANCE

Originating office completes Items 1-6. Employee hand-carries form to organizations listed in Items 7-11. Form should reach the Office of Security and the Headquarters Servicing Human Resources (Personnel) office on or before the last day of active duty.

PART I: To be completed by Division or Office to which employee is assigned.					
1. DATE FORM INITIATED: _____					
2. NAME OF PERSON SEPARATING: _____		TELEPHONE EXTENSION: _____		3. LAST DAY OF ACTIVE DUTY: _____	
4. TITLE OF POSITION, SERIES OR GRADE, DIVISION OR OFFICE: _____				5. FORWARDING ADDRESS OF PERSON SEPARATING: _____	
ORGANIZATIONAL UNITS		TO BE COMPLETED BY ADMINISTRATIVE OFFICER			
8A.		PROPERTY/EQUIPMENT/COMPUTER TERMINAL TURNED IN OR TRANSFERRED <span style="float: right;">(INITIALS)</span> RECORDS TRANSFERRED <span style="float: right;">(INITIALS)</span> GC LAW LIBRARY (6-4846) <span style="float: right;">(INITIALS)</span> KEYS TURNED IN (Collect) <span style="float: right;">(INITIALS)</span> AMERICAN EXPRESS AND VISA CREDIT CARDS TURNED IN (Collect) <span style="float: right;">(INITIALS)</span> SAFE COMBINATIONS (Change as necessary) SPECIAL ACCESS TERMINATION CONTACT 6-5085 TO VERIFY IF DEBRIEFING IS REQUIRED TS DOCUMENTS CONTACT APPROPRIATE TOP SECRET CONTROL OFFICER OR (HSO) STU 111 SECURE VOICE TELEPHONE (TURNED IN TO HEADQUARTERS SECURITY OFFICER (HSO))			
8B. CLEARANCE:		SEET, PROGRAM MANAGER (Room 4E-084) RECORDS LIAISON OFFICER (RLO)			
INFORM:		Cleared by: _____ Date: _____ ENERGY INFORMATION ADMINISTRATION HC EMPLOYEE WORKLIFE CENTER HC OCCUPATIONAL HEALTH UNIT IM DIRECTORY/TELEPHONE CREDIT CARD IM USER ID/ACCESS CONTROL IM SECURE VOICE TELEPHONE MA PARKING OFFICE IG Credentials (Collected) <span style="float: right;">(INITIALS)</span>			
		ADMINISTRATIVE OFFICER: _____ DATE: _____ WHEN NECESSARY HEADQUARTERS SECURITY OFFICER: _____ DATE: _____			
PART II: TO BE COMPLETED BY ORGANIZATIONS BELOW WHERE CLEARANCE CANNOT BE GRANTED UNTIL ITEMS ARE TURNED IN OR COVERAGE BY REIMBURSEMENT. IDENTIFY ITEMS AND/OR AMOUNT IN REMARKS BOX.					
	ROOM #	ITEM OR ACTION	CLEARED	NOT CLEARED	SIGNATURE AND DATE/REMARKS
7. ASSISTANT GENERAL COUNSEL FOR STANDARDS OF CONDUCT  FOR PERSONS REQUIRED TO FILE ONLY	6A-211/FORS or call 46-1522	SF-278 REPORT OF FINANCIAL INTERESTS AND/OR OGE-450 FINANCIAL DISCLOSURE REPORT AND ENVELOPE TO GO (See reverse side)  CONDUCT OF EMPLOYEES OGE-450 PROVIDED (POST-EMPLOYMENT RESTRICTIONS)			
8. PROPERTY OFFICE	IF-039/FORS R-006/GTN	PROPERTY/EQUIPMENT TURNED IN OR TRANSFERRED			
9. PASSPORT OFFICE	GB-172/FORS E-072/GTN	TURN IN PASSPORT			
10. SAFEGUARDS and SECURITY	IG-033/FORS B-106/GTN	DEBRIEFING DOE F 5631.19 IDENTIFICATION BADGE			
11. HEADQUARTERS SERVICING PERSONNEL OFFICE	4E-084/FORS F-133/GTN	EXIT INTERVIEW (NSA GC OIG - see instructions)			
RETURN TO ADMINISTRATIVE OFFICER FOR FILING; SEND COPY TO PAYROLL (CF-11, C-248 GTN) IF FINANCIAL OBLIGATION EXISTS.					

PRIVACY ACT STATEMENT ON REVERSE



Printed with soy ink on recycled paper

## Instructions

Items 1 - 4 is to be completed by the originating office to which the person is assigned. In most cases the Administrative Officer.

Items 6A - Originating office is required to clear departing employee for each of these items.

Property/Computer equipment - Transfer to ☐ another person or office, as appropriate.

Transfer of Records - Transfer Federal records ☐ to person assuming responsibility or a Records Liaison Officer (RLO).

GC Law Library - Call 6-4948 to obtain ☐ clearance.

American Express/Visa/Credit Card - Cut ☐ card(s) in half and return to Administrative Officer.

Safe combinations - Change if departing employee knows combination.

Special Access Termination - Must terminate access (only if appropriate).

Top Secret (TS) Documents - Follow security procedures.

Secure Voice Telephone (STU 111) - Keys turned in to Headquarters Security Officer (HSO).

Item 6B - For employee action (as applicable) ☐  
Parking Permits - Return to GG-031 Forrestal or ☐  
E-078 Germantown.

Records Management - notify the Records Liaison Officer that custodianship of the Federal records has been transferred and identify the new custodian by ☐ name, telephone number, and physical location. For information/assistance contact 301-903-0583 or ☐  
<http://cio.energy.gov/records-management.htm>

Subsidy for Energy Employee Transit (SEET) - ☐  
Return fare media to SEET Program Manager ☐  
Room 4E-084/FORS. Call 6-2452 to obtain ☐  
financial obligation balance information.

Items 7-11 - Employees hand carry this form to the offices listed in Items 7 through 11. Note that Item 7 ☐ applies only to employees required to file Financial Disclosures (see below). Item 9 applies if the ☐ employee has a U.S. Department of Energy (DOE) ☐ issued passport. Enter N/A in the "cleared" box if ☐ Item 7 or 8 do not apply. Item 11 should be the ☐ LAST clearance. Final clearance for NNSA, SC, and ☐ OIG employee granted by their respective Human ☐ Resource office. (NNSA - GB-157/F-125; SC - 2nd ☐ floor, G corridor GTN; OIG - 5D-031)

UPON COMPLETION RETURN THIS FORM TO ☐  
THE ADMINISTRATIVE OFFICER

Administrative Officer: If the employee has a financial or property obligation a copy of this form should be submitted to ☐ the Payroll and Budget Execution Team by the separation date for salary offset. The Payroll team is located at CF-11 ☐ Room C-248 GTN or FAX (301) 903-3918.

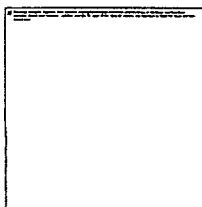
### FINANCIAL DISCLOSURE FORMS REQUIRED BY SEPARATING DOE EMPLOYEE

SF-278 is required for all separating employees that are paid at a rate of GS-16 (or equivalent) or above and worked 60 days or more in the preceding year.

SF-450 is required for all separating employees who have filed a financial statement and are not required to file a SF-278.

### PRIVACY ACT STATEMENT

Public Law 95-91 (The Department of Energy Organization Act) authorizes the collection of this information. The information requested in this form is intended for the use of agency officials and managers to release obligations which might have been incurred by the employee during employment. Completion of this form is voluntary. However, if the employee fails to complete the form, his or her final paycheck may be delayed.



**U.S. Department of Energy**  
Office of Inspector General  
Office of Investigations

**OFFICE OF INSPECTOR GENERAL**  
**FIELD EMPLOYEE FINAL SEPARATION CLEARANCE FORM**

Name of Employee:

Date of Separation:

Title of Position:

Series/Grade:

Office:

Forwarding Address:

**PART I – TO BE COMPLETED BY FIELD OIG**

I have accounted for all property and equipment for the above employee and verified there are no outstanding travel obligations. An exit security briefing has been conducted by the site's security office.

	Name	CLEARED		NOT CLEARED	
		Initials	Date	Initials	Date
1. Cell Phone/Pager/Calling Card					
2. Safe Combination Change					
3. Classified Documents Transfer					
4. Keys Collected					
5. Security Termination Statement					
6. DOE Badge Returned					
7. Property Transferred					
8. Identify/Reassign Records					
9. SCI Access-Debriefed					

REMARKS:

\_\_\_\_\_  
SUPERVISOR'S SIGNATURE\_\_\_\_\_  
FIELD SECURITY OFFICER\_\_\_\_\_  
DATE

**PART II – TO BE COMPLETED BY HEADQUARTERS OIG**

Items 1-3 below must be returned to HQ upon separation of employee.

	Name	CLEARED		NOT CLEARED	
		Initials	Date	Initials	Date
1. Copy of Security Termination Statement	(b)(6)				
2. Travel Charge Card					
3. OIG Credentials					
4. Training Obligations					

**RETURN TO:**

Department of Energy

Office of the Inspector General, Rm. 5D-031

Attn: (b)(6)

1000 Independence Avenue, SW

Washington, DC 20585





Document Number 31



CHAPTER 15

TRAVEL

A. SCOPE OF CHAPTER

This chapter summarizes responsibilities, policies, and procedures for approving and conducting official travel.

B. GENERAL POLICY AND CONTROL

DOE Order 1500.2A, "Travel Policy and Procedures," issued June 7, 1989, contains official travel policy and procedures for Department employees. The Headquarters Directors and SACs are responsible for ensuring that travel necessary to accomplish the Office of Investigations mission is properly approved, is conducted in an effective and economical manner, and complies with the travel procedures contained in the Departmental Order as implemented by the Assistant Inspector General for Resource Management. Travelers also bear responsibility for ensuring that they comply with the Department's prescribed travel procedures.

1. Travel Administration In accordance with OIG Directive IG-20B, "Travel Administration", issued August 6, 1992, the Assistant Inspector General for Resource Management is responsible for:

- Processing credit card applications;
- Providing a monthly report on travel expenditures to the AIGI and the DIP<sup>3</sup>; Facilitating the authorization process and coordinating all Permanent Changes of Station for OIG personnel; and
- Advising OIG employees of any changes to the travel regulations;
- Signing any travel authorization that requires actual expenses, and routing to the Office of the Chief Financial Officer.

2. Approving Travel The Headquarters Managers and SACs are responsible for ensuring that travel authorizations are properly prepared and signed by the appropriate supervisor and that they are submitted to the Office of the Chief Financial Officer in a timely manner. Travel authorizations should be submitted at least three working days prior to the start of the travel. If this is not possible, special arrangements should be made with the Office of the Chief Financial Officer to expedite processing. If the traveler's immediate supervisor is not available to sign the travel authorization, the appropriate

delegation of authority to the person who signs the travel authorization should be attached to it.

3. Reimbursement for Travel Reimbursement for all travel expenses will be in accordance with DOE Order 1500.2A.

- a. Responsibilities It is the employee's responsibility to ensure that all claims for expenses are actually incurred in the performance of travel strictly for official business and that it is performed in the most efficient and economical manner. It is the supervisor's responsibility to review travel claims for conformance with prescribed policies prior to submission for payment.
- b. Travel Vouchers After travel is completed, employees should promptly submit completed vouchers to their supervisors. It is a Department requirement to submit travel vouchers within ten working days of completion of an official trip. Review and approval of travel vouchers by first-level supervisors, who are fully knowledgeable of the traveler's activities, are required. Such approval will be considered sufficient evidence that authorized travel was performed. Supervisors should ensure that all vouchers are submitted to the Office of the Chief Financial Officer within seven working days after travel has been completed.
- c. Local Travel Reimbursements claims for local travel expenses must be submitted on SF 1164 and include a statement of the purpose of the travel. These claims may be submitted as incurred for amounts over twenty-five dollars. Claims for amounts under twenty-five dollars should be consolidated and submitted on a monthly basis.

C. GENERAL TRAVEL PROCEDURES

Because of the extensive nature of prescribed travel procedures in DOE Order 1500.2A, they are generally not repeated in this Manual. A less formidable compilation of information on travel requirements is contained in a brochure titled, "Reimbursing You for Your Travel Expenses." The brochure was issued by the Office of the Controller (now Chief Financial Officer's Office) in June 1989. Each Office of Investigations traveler should have a copy of this brochure and be familiar with its contents. Although not a comprehensive listing, the following items are provided to remind travelers of particularly relevant OIG, Departmental or other Federal policies that may apply to them while they are in a travel status. But this is no substitute for knowledge of the provisions of DOE Order 1500.2A and employees will be fully subject to it.

1. Auto Accidents Field personnel involved in an accident resulting in personal injuries or property damage while driving a privately owned, Government-owned, or rented vehicle on official business should, unless incapacitated, promptly notify their SAC of the accident. Headquarters personnel should notify their supervisor.

They are also responsible for preparing an SF 91, "Operator's Report of Motor Vehicle Accident," and/or SF CA-1, "Federal Employees Notice of Traumatic Injury and Claim," if appropriate, and forwarding these items to their SAC in an expeditious manner for further processing. The SF 91 is to be used to report instances of property damage; SF CA-1 is used to report personal injuries. These reports are submitted to the appropriate administrative services office or the serving personnel office, respectively.

2. Local Travel Travel authorizations are not required for travel performed within a fifty mile radius of an employee's official duty station. In addition to the use of a privately owned vehicle and other local transportation costs, telephone calls, telegrams, registration fees, parking expenses, etc., are claimed on the local travel form (SF 1164). Local travel is not to be used to obtain supplies and other items that should be requisitioned through normal channels. The costs of reproduction of materials incident to obtaining evidence, however, may be claimed on a local voucher if documentation is provided. Travel authorizations may be issued for travel within the local area when an employee is to remain away from home overnight, or to attend conferences or meetings that require the payment of a registration fee of fifty dollars or more. Employees must deduct the cost of their normal commute when on a regular workday they perform official travel between their residence and a local temporary duty point.

- a. Necessary Expenses Local travel expenses will include only those expenses necessary for the performance of assigned duties. Mileage or other local transportation costs between an employee's home and temporary duty sites may be claimed to the extent it exceeds the normal commute between home and official duty station. For purposes of computing normal commuting costs, car pool members may divide their commuting mileage by the number of regular members in the car pool.
- b. Travel Between Work Sites Travel between work sites will be by Department shuttle, local transportation, or privately owned vehicles whenever practicable. Use of taxis for such travel will be on an exception basis only, and must be justified by the traveler on his/her travel voucher.

3. Phone Calls Charges for both local and long distance telephone calls made in connection with official business are allowable as a transportation expense. Travelers are also authorized

to make brief long distance calls to their family or residence when in a travel status for at least two nights. The maximum number of calls that may be authorized is an average of one per day, not to exceed a cost of four dollars a call, with a twelve dollars maximum amount that may be approved for reimbursement per trip (or each consecutive seven day period of a single trip). Travelers are also authorized to make long distance calls to notify their families of transportation delays, or changes in their travel schedule, and to notify family, doctor, or others when the employee is injured on the job.

4. Laundry and Dry Cleaning Laundry, dry cleaning, and pressing are now a separate allowable expense; however, the traveler must incur a minimum of four consecutive nights lodging on official travel to qualify for reimbursement. The traveler will be reimbursed up to five dollars for each night of official travel where lodging is claimed, up to a total of thirty calendar days for any TDY assignment. Travelers on extended TDY will not be entitled to this allowance after the first thirty calendar days and employees executing a Permanent Change of Station are not eligible for this allowance.

5. Receipts Travelers should obtain and submit receipts for lodging expenses. Receipts for meals and incidental expenses are not required when fixed allowances are authorized. However, receipts are required for all other cash expenditures in excess of twenty-five dollars plus any applicable tax and for the following expenditures, regardless of cost:

- Freight shipments, excess baggage, and baggage transfer, checking and storage charges;
- Fees for copies of records furnished by State officials (e.g., clerks of courts);
- Hire of special conveyances such as boats, motor vehicles (other than taxis), and aircraft;
- Operating expenses--such as garage rental, gas, and oil--for rented vehicles and special conveyances;
- Telegrams and long distance telephone calls (except where a coin operated telephone is used and it is so stated in the travel voucher); and
- Cash payments for passenger transportation services (except for taxis or local transportation, such as a bus or streetcar, used in lieu of taxi).

6. Rental Cars Use of a rental car must be specifically authorized and justified on the travel authorization. Rental

cars should be used only when other methods of transportation would not be advantageous to the Government. Travelers obtaining rental cars are reminded that the Government will not pay or reimburse employees for the cost of the collision damage waiver or collision damage insurance available for an extra fee in commercial rental contracts. If this fee is automatically added, it is the traveler's responsibility not to incur the charge since Government rate agreements already include full comprehensive and collision coverage.

7. Taxes on Lodging Taxes will be reimbursed separately based on the actual taxes paid by the traveler and will be claimed and itemized as miscellaneous expenses.

8. Tax Exemption Certificates There are some locations that offer specific exemptions to individual Federal employees for payment of State and local lodging occupancy taxes. The tax jurisdictions known to offer exemptions are identified along with the procedural requirements in the OAG Official Traveler-Travel Guide. Federal employees on official travel should claim an occupancy tax exemption in those jurisdictions where a specific exemption exists. Claims are to be made in accordance with the procedures required by the tax jurisdiction. In some instances, the operator of the lodging house will provide the exemption certificate for completion. Where the specific exemption exists but an exemption certificate is otherwise unavailable, the traveler should attempt to use a copy of the exemption certificate shown in Exhibit A (IM15EXA.DOC). A separate exemption certificate is required for each occupancy and for each representative or employee. The completed certificate is to be retained by operators of hotels, motels, and similar accommodations as evidence of exempt occupancy. Office of Investigations employees are cautioned not to claim exemptions for other than official travel.

9. Reduction of Per Diem An appropriate deduction will be made to per diem when meals are provided, while attending conferences, training courses, etc., as part of the registration fee. Meals provided by common carrier (airline or train), or a complementary meal provided by a hotel/motel, does not affect your per diem and, need not be deducted on your travel voucher.

D. TRAVEL OF WITNESSES UNDER SUBPOENA TO TESTIFY IN AN ADMINISTRATIVE HEARING

Section 161(e) of the Atomic Energy Act of 1954, as amended, provides authority to the Department for subpoenaing witnesses and for paying such witnesses the same fees and mileage, transportation, and subsistence expenses as paid to witnesses in any court of the United States. Title 5 U.S.C. Section 5751 sets forth the provisions regarding travel expenses and subsistence to be paid witnesses who are employees of the Government. Fees, mileage, and subsistence expenses to be paid witnesses who are not employees of the Government are set forth in Title 28 U.S.C. Section 1821.

1. Government Employees Any employee of another Federal agency subpoenaed by DOE will be allowed the same transportation, per diem, and necessary incidental travel expenses by his or her employing agency in accordance with the Federal Travel Regulation as if he/she were on official business at a temporary duty station. Other agencies will be reimbursed for travel expenses and per diem paid to their employees who are summoned by the Department. Government employees are not entitled to attendance fees, but the period involved in serving as witnesses should be without loss of salary or compensation and should not be charged as leave of absence. Any questions concerning special situations should be referred to the Counsel to the Inspector General.

2. Other-Than-Government Employees A witness who travels by common carrier should be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled. Each witness who travels by privately owned vehicle should be paid on the basis of the mileage allowance prescribed for Government travelers. A subsistence allowance is to be paid to a non-incarcerated witness when an overnight stay is required at the place of attendance. Such allowance will be paid in an amount not to exceed the prescribed maximum per diem rates set forth in the Federal Travel Regulation. In addition, each person subpoenaed will be paid thirty dollars for each day's attendance and for the time necessarily assigned going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance.

3. Cost-Type Contractor Personnel Whenever feasible and possible under the contract, employees of cost-type contractors who are subpoenaed by the Department should appear and travel as a part of their contract employment without direct reimbursement or payment by the Department. In the event this is not possible under the contract or is otherwise not feasible, such individual shall be entitled to fees, travel expenses and subsistence the same as other-than-Government personnel (see D.2. above).



TAX EXEMPTION CERTIFICATE  
TAX ON OCCUPANCY OF HOTEL ROOMS

---

NAME OF HOTEL, APARTMENT HOTEL, OR LODGING HOUSE

DATE

---

ADDRESS

This is to certify that I, the undersigned, am a representative of the United States Governmental department, agency or instrumentality indicated below; that the charges for the occupancy at the above establishment on the dates set forth below have been or will be paid for by such governmental unit; and that such charges are incurred in the performance of my official duties as a representative or employee of such governmental unit.

DATES OF  
OCCUPANCY \_\_\_\_\_\_\_\_\_\_  
(SIGNATURE)GOVERNMENTAL  
UNIT \_\_\_\_\_\_\_\_\_\_  
(TITLE)



Document Number 32



**CHAPTER 16**

**TRAINING AND PROFESSIONAL DEVELOPMENT**

**I. SCOPE OF CHAPTER**

This chapter provides detailed policies and procedures for the professional development and training of Office of Investigations employees, which includes Special Agents, administrative staff, analysts, team leaders and managers. This chapter describes the procedures for achieving compliance with investigative standards dealing with training. Of equal importance, however, is the Office of Investigations goal to provide training opportunities that meet specific needs and contribute directly to attaining individual and organizational excellence. To that end, this chapter also describes a training system designed to go beyond meeting minimal required training requirements and, instead, encourages the development of motivated, well trained, highly qualified, and interdisciplinary employees.

**II. TRAINING REQUIREMENTS**

To comply with the "Quality Standards for Investigations" issued by the Council of Inspectors General on Integrity and Efficiency (CIGIE), each employee assigned to perform investigative work should complete, every two years, at least forty hours of training that contributes to his/her professional proficiency. Budget constraints and operational considerations may impact the number of hours available for each employee.

Although there are no specific training requirements that must be met by those Office of Investigations staff members who do not conduct investigations, non-investigators are encouraged to take relevant job-related training opportunities to enhance their development and increase their knowledge, skills and abilities to perform their jobs more effectively. Secretaries, administrative support personnel and other specialists are essential to the efficient and effective operation of the Office of Investigations. Therefore, managers should work closely with the staff to identify and obtain training.

**III. TRAINING REFERENCES**

The training requirements outlined in this chapter deal primarily with policy and procedures related to training guidelines provided in the CIGIE's "Quality Standards for Investigation." Office of Investigations employees should also be aware, however, of the following:

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

### A. Department Training Order

Department of Energy (DOE) Order 360.1B, "Federal Employee Training," establishes requirements and assigns responsibilities for DOE Federal employee training, education, and development under the Government Employees Training Act of 1958.

### B. Department Training Manual

DOE Manual 360.1-1B, "Federal Employee Training Manual," provides detailed requirements to supplement DOE O 360.1B. The information in the Manual is intended to assist in improving Federal workforce performance.

### C. Corporate Human Resources Information System

The Department's Corporate Human Resources Information System (CHRIS) database is used to track information on training and professional development activities. The Office of Investigations uses CHRIS to assist in ensuring that Office of Investigations training policies and requirements are met. CHRIS accumulates information on training plans and training courses completed.

## IV. RESPONSIBILITIES FOR TRAINING

The responsibilities of employees, supervisors, and the Office of Investigations Training Coordinator are detailed below.

### A. Employees

1. Each employee is expected to seek and successfully complete training appropriate to his/her grade level, experience, likely investigation areas and personal development goals. Employees should discuss their training needs and preferences with their supervisor. They should determine course offerings and availability. To formalize this process, employees must annually complete an Individual Development Plan (IDP) detailing developmental objectives and correlating desired training and potential developmental assignments. The Office of Inspector General's (OIG) Office of Management and Administration (MA) establishes the due date for the completion of IDPs each year. Policy, Plans and Programs (P3) will notify supervisors of the due date.

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

Examples of developmental objectives that could be identified in an IDP are: (1) attaining professional certification, (2) gaining expertise in a relevant functional area (e.g., procurement), (3) increasing knowledge in a relevant program area, or (4) membership in professional activities. The IDP requires employees to identify short-term (within one year) and long-term developmental objectives and, in concert with their supervisor, to request specific courses or programs designed to help achieve those objectives.

2. IDPs should be prepared and approved using Employee Self Service (ESS). IDPs serve the dual purpose of encouraging employees to plan their individual development and allowing the OIG to fulfill its obligation to annually assess training needs. IDPs are intended to be a tool to help employees plan and develop their careers. They are intended to help identify training needs. While requested training should usually be identified in or directly related to the objectives established in the IDP, this will not always be the case. Training requests will not be denied simply because the requested course is not specifically identified in the IDP; however, training should not be approved unless an IDP has been completed.
3. Employees are also responsible for retaining documentation for each course or training program completed and are ultimately responsible for documenting participation in the training course. Acceptable documentation includes records of course grades, outlines and other evidence of attendance or certificates of completion from program sponsors. Office of Investigations employees, for their own benefit and future reference, should retain the documentation indefinitely. Employees should periodically review their training records to ensure compliance with all training requirements.
4. Employees attending classes at the Federal Law Enforcement Training Academy (FLETC) must conform to the highest level of professionalism at all times. Students who fail to meet FLETC student conduct standards are subject to FLETC Directive 67-35.C – Student Misconduct. The OIG will also review the circumstances of reported misconduct and will determine on a case-by-case basis any additional consequences that may be taken as a result of the identified misconduct. Depending on the circumstances, additional consequences may include, among other actions, verbal or written admonishment, suspension or termination.

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

### B. Supervisors

Supervisors are expected to take a proactive role in the training and development of the employees who report to them. As part of the IDP process and throughout the year, supervisors should suggest goals and training beneficial to the employee and encourage the development of skills and abilities that are critical to Office of Investigations. Supervisors should also help employees identify areas of needed improvement and suggest training in those areas. Although not mandatory, employees and supervisors are encouraged to discuss and revise IDPs as part of mid-point performance evaluations. Supervisors should periodically review employees' training records to ensure compliance with training requirements.

### C. Training Coordinator

The Office of Investigations Training Coordinator is responsible for:

1. Verifying all employees complete an IDP annually;
2. Establishing and maintaining current information on course offerings, schedules, and vendors; and
3. Acting in an advisory capacity to assist employees and supervisors in preparing development objectives and choosing appropriate training to achieve those objectives.

## V. TRAINING REQUEST PROCEDURES

To the extent feasible, considering budget constraints and office priorities, Office of Investigations will provide financial support for relevant training. The use of the Department sponsored On-Line Learning Center is encouraged, especially during times of budget constraints. The following procedures should be followed in requesting training.

### A. Training Request

At least four weeks prior to the scheduled start date of desired training, the employee must propose and discuss the training request with his/her supervisor. Once the supervisor has given preliminary approval, the employee will request the training through CHRIS.

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

### B. Registration and Travel Arrangements

Upon approval of the training request in CHRIS, the employee can register for the class. As part of the CHRIS approval process, the OIG's Office of Management and Administration will provide the employee with an SF-182. In those cases in which there is a cost associated with the training, the employee must provide the SF-182 to the vendor responsible for the training. Providing the vendor with the SF-182 will help to ensure that the vendor receives timely payment for the training. In those cases in which there is not a cost associated with the training, the employee does not need to forward the SF-182 to the vendor. Additionally, an employee does not need to provide the SF-182 to the vendor if the training is sponsored by the FLETC or the IG Criminal Investigator Academy. After the employee is registered in the course, the necessary lodging and transportation arrangements can be made by the employee.

### C. Cancellations

The employee will notify his/her supervisor of the cancellation of scheduled training and the reason for cancellation. In addition, the employee must notify P3 to cancel the training in CHRIS. If an employee cannot attend scheduled training and a course slot has been reserved for Office of Investigations, the supervisor should consider sending another employee. When a substitute cannot be found, P3 should also be notified in order to cancel the registration and to ensure funds are de-obligated.

## VI. FIRST YEAR SPECIAL AGENT TRAINING PROGRAM

### A. New Employee Handbook

P3 will provide new employees with a New Employee Handbook. The handbook will contain information on the organization's mission and vision, the structure of the organization and administrative forms/information relevant to the 1811 career field. P3 will also ensure that the agent has access to the Investigations Manual.

The Special Agent-in-Charge (SAC) will assign the Special Agent to a mentor and provide the agent with a briefing on the operations of the Department, the OIG, and the Office of Investigations. This should be supplemented by a more formal DOE or OIG-sponsored new employee orientation training session. Relocated personnel should be assisted in getting settled in their new environment by doing such things as helping them find housing or providing them with information about the surrounding community.



## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

### B. Classroom Training

Formal classroom training for first-year Special Agents generally includes the Basic Criminal Investigator Training Program (BCITP) followed by the IG Investigator Training Program (IGITP) at FLETC. This training should be completed within the first year of employment unless circumstances beyond control dictate otherwise (e.g., FLETC does not have any available courses, illness of the agent, budget constraints, etc.). Failure to successfully complete BCITP on the first attempt will result in the employee being reassigned from the Criminal Investigator occupational series (1811) or separated from the agency. Employees who have served as Special Agents outside the Inspector General community may take the IG Transition Training Program (IGTTP) in place of IGITP. The agent's SAC will decide whether an agent takes IGITP or IGTTP. New Special Agents will be required to sign the *New Special Agent Training Agreement Form* (See New Special Agent Training Agreement – Chapter 16, Exhibit A).

### C. On-the-Job-Training

On-the-job-training is as critical to an effective training program as formal training. It is an effective tool in exposing staff to the standards and procedures of the organization and is particularly useful for developing skills unique to an employee's job. On-the-job-training will vary, depending on the employee's grade level. For example, the on-the-job-training for a GS-7 Special Agent will be more intense and broad than for a GS-13 Special Agent.

#### 1. General Guidance

The On-the-Job-Training Program for new Special Agents is intended to formally plan and recognize learning objectives which take place through work experience. Ensuring that on-the-job-training is effectively implemented is a joint responsibility of the agent, the Assistant Special Agent-in-Charge (ASAC), and the SAC.

Special Agents are hired into the Office of Investigations with varying backgrounds and experience. Therefore, a "one-size-fits-all" approach to on-the-job training is not mandated. It is incumbent upon supervisors to develop an on-the-job training program tailored to the specific needs of the Special Agent, realizing that on-the-job-training programs may vary from agent to agent.

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

The developed on-the-job training plan will be maintained by the ASAC, with oversight and approval of the SAC. The Special Agent's progression in the on-the-job-training plan will be documented and made part of the Special Agent's training file which will be maintained in the field by the supervisor. The *On-The-Job-Training Plan* will be used to document the agent's performance (See On-The-Job-Training Performance Record – Chapter 16, Exhibit B).

### 2. Suggested Implementation of On-the-Job-Training

SACs and ASACs should be aware of the experiences and skills of a new special agent as a result of the hiring process. This provides the SAC/ASAC with an opportunity to tailor an on-the-job-training plan for the Special Agent prior to the Special Agent reporting for his/her first day of work. To be most effective an on-the-job-training plan should identify:

- a. Topics to be covered;
- b. Number of hours for completing each task;
- c. Estimated completion date; and
- d. Evaluation criteria.

### 3. Phases of the On-the-Job-Training Program

The on-the-job-training plan will include a two-phase approach with targeted training tasks to be completed within specified periods of time.

*Phase I* – The focus of Phase I is to ensure that the Special Agent has the required organizational knowledge to effectively perform within the OIG structure. This training will be completed within 60 days of the agent beginning work and, at a minimum, will consist of training on:

- a. CIGIE "Investigative Quality Standards" – Appendix B, Training Profile Illustration for Investigators (located at <http://www.ignet.gov/pande/standards/invstds.pdf>);
- b. DOE;
- c. Duties, roles and responsibilities of an Office of Investigations Special Agent;
- d. Type of investigations conducted and priorities of the Office of Investigations;
- e. Office of Investigations structure, functions and policies;
- f. Office of Investigations administrative processes (i.e., case management, writing format, EIGPT systems, property management); and
- g. Roles and responsibilities of the Offices of Audits and Inspections.

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

*Phase II* – The focus of Phase II is to build on the Special Agent's skills already learned through formal training and experiences and to hone those skills specifically to the Office of Investigation's investigative mission. After completing Phase II, a newly assigned Special Agent should have the skills and knowledge to perform basic Office of Investigation investigations. Phase II should be completed within the first year of the Special Agent's assignment to the Office of Investigations and, at a minimum, will include training on:

Processing and assessing allegations;

- a. Planning and developing investigations;
- b. Case management;
- c. Types of fraud schemes typically encountered in DOE funded programs;
- d. Special investigations (i.e., targeted, high-profile, time sensitive investigations);
- e. Specialized investigative techniques and procedures;
- f. Report writing (e.g., Memorandum of Investigative Activity, Investigative Report to Management, etc.);
- g. Civil and administrative investigations and remedies; and
- h. Liaison with law enforcement, prosecutors and private industry.

Based upon the experience and needs of the Special Agent, SACs and ASACs may expand the focus of the Special Agent's on-the-job-training plan, as necessary.

### D. Mentoring Program

Entry level Special Agents will be assigned for a period of at least six months to a more seasoned Office of Investigations Special Agent to facilitate the transition to a confident Criminal Investigator. The preferred mentor is a GS-12 or GS-13 co-located with the new employee; however, staffing allocations may dictate another arrangement (e.g., senior agent from another office). The mentor is not considered the agent's supervisor. Mentors help new Special Agents become acquainted with their surroundings on the job and provide informal counseling. The mentor assists the Special Agent with on-the-job training opportunities and documenting the Special Agent's progression in the *On-The-Job-Training Plan* (See On-The-Job-Training Performance Record – Chapter 16, Exhibit B). The mentor should provide meaningful exposure to the planning, conducting and reporting investigative activities. The mentee is not expected to merely perform administrative assignments for the mentor.

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

### VII. RELIEF AGENT-IN-CHARGE PROGRAM

This section presents the procedure for identifying and selecting Relief Agents-in-Charge (RAIC). The RAIC Program is a formalized approach for identifying GS- 13 Special Agents who demonstrate the potential for increased responsibility and can serve in leadership positions in the absence of the ASAC.

The RAIC Program is a critical element in the development of future Office of Investigation leaders and serves two purposes:

1. Provides professional growth and development for selected Special Agents exceeding the minimum performance standards; and
2. Ensures competent leadership is in place in the absence of an ASAC or SAC.

Participation is recommended to assist eligible Special Agents in taking full advantage of opportunities for professional growth. Participation in the RAIC Program is completely voluntary and is not a prerequisite for applying for an Operations Officer, ASAC or SAC position. Acceptance into the RAIC Program is competitive and is not guaranteed for any applicant. An agent may opt-out of the program any time after selection.

#### A. Eligibility

Minimum requirements for participation include:

1. The agent must be a GS-13 on the application due date;
2. The applicant must have received a minimum of "meets expectations" for all elements in his/her most recent DOE OIG performance appraisal (or 1811 appraisal from prior agency if the agent has not been with DOE for the minimal time to be rated);
3. The applicant must not have been on a performance assistance plan or performance improvement plan, nor had any adverse personnel actions (e.g., letter of caution, letter of reprimand, suspension, removal of LEAP, etc.) within the past 12 months; and
4. The applicant must be in compliance with the Standards of Ethical Conduct outlined in Chapter 3 of the Investigations Manual.

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

### B. Application Process

At the discretion of the AIGI, in consultation with the SACs, the Office of Investigations will periodically issue a notice to all Special Agents giving a timeframe in which they may submit their names and qualifications to their SAC for consideration as a RAIC.

All applicants must submit the following to their SAC:

1. A signed *RAIC Program Agreement Form* (See RAIC Program Agreement – Chapter 16, Exhibit C); and
2. A written statement explaining why they would like to participate in the RAIC program, their qualifications, and their leadership potential.

Special Agents considering entry into the RAIC program are encouraged to discuss their plans with their supervisor prior to submitting an application. Such a discussion may assist the agent in deciding if participation in the program, at this time, is appropriate for the agent's development.

### C. Selection Process

Each SAC, with the input and assistance of their ASACs, will review the applications submitted by Special Agents within their offices. The SAC, based on the Special Agent's application and other information available to the SAC, will consider the following qualifications for each candidate:

1. Demonstrated DOE institutional knowledge;
2. Past performance history as a DOE OIG Special Agent;
3. Demonstrated understanding of DOE OIG policies and procedures, CIGIE professional standards and Standards of Ethical Conduct for Employees of the Executive Branch;
4. Demonstrated potential for increased responsibility;
5. Leadership skills including the ability to:
  - a. Lead individuals and tasks;
  - b. Build and manage an effective team;
  - c. Foster an environment of objectivity, fairness, honesty, and integrity; and
  - d. Champion the organization's vision, mission, and goals.

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

6. Interpersonal skills including the ability to:
  - a. Respond appropriately to controversial issues;
  - b. Identify and implement effective resolutions to conflict;
  - c. Develop rapport with a diverse group of individuals; and
  - d. Avoid divisive comments and behavior.
7. Decision making skills including the ability to:
  - a. Use available facts to formulate positions;
  - b. Understand the impact of organizational issues on decision-making;
  - c. Identify and weigh alternatives; and
  - d. Make timely decisions in light of limited information.
8. Analytical skills including the ability to:
  - a. Weigh the relevance and accuracy of information prior to reaching a conclusion;
  - b. Identify and evaluate the effectiveness of alternate solutions; and
  - c. Make construction recommendations based on the completed analysis.
9. Adaptability and flexibility including the ability to:
  - a. Rapidly adapt to new information or changing conditions; and
  - b. Timely address unexpected obstacles;
10. Oral and written communications skills including the ability to express information and concepts in a clear, complete, concise, timely, objective and effective manner.

Based on the SACs review of a Special Agent's qualifications, the SAC may nominate one or more qualified applicants to be considered by a panel consisting of all Office of Investigations SACs. Based on the nominations received, the SAC panel will identify agents to participate in the RAIC program. A majority of the SACs on the panel must agree in order for an agent to be accepted into the program. The SACs will consult with the AIGI before making a formal announcement on RAIC Program selections.

### D. Number of RAICs

The number of RAICs a SAC may designate in a particular region will be limited to a realistic proportional representation of the authorized levels of Office of Investigations Special Agents, as well as the ability to provide adequate oversight

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

and training opportunities for all of the participants. Absent compelling circumstances:

1. Offices with three or fewer Special Agents may have only one Special Agent enrolled in the RAIC program;
2. Offices with four or five Special Agents may not have more than two Special Agents enrolled in the RAIC program; and
3. Offices with six or more Special Agents may not have more than three Special Agents enrolled in the RAIC program.

### E. Serving as Acting SAC or ASAC

Once selected, RAICs will be placed on a list of qualified personnel who may be selected to serve in the absence of an ASAC or SAC. The SAC/ASAC may, at their discretion, identify a local non-RAIC senior GS-13 to serve in an acting ASAC or SAC capacity if a local RAIC is not available.

**Note:** GS-15s within the Office of Investigations may not telework. As such, individuals serving in an acting capacity for a SAC may not telework. Relief Agents-in-Charge and other GS-13 agents serving in an acting ASAC capacity may not telework, with one exception. The acting ASAC may telework up to one day during any consecutive five day period. This policy is designed to help ensure that the on-the-job training and experiences associated with serving in an acting ASAC capacity are maximized by being on-site. All telework policies and procedures must be followed, including coordinating work assignments with the appropriate SAC.

### F. Development of RAIC Skills

Participation in the RAIC Program does not guarantee selection for promotional or developmental opportunities. Additionally, while participation in the program is not mandatory for promotional consideration, the RAIC Program provides a unique opportunity for agents to familiarize themselves with the duties and responsibilities of an ASAC and SAC; develop their managerial and leadership skills; and receive on-the-job and formal supervisory training. Such experience may enhance and demonstrate an agent's knowledge, skills, and abilities for becoming a leader in the Office of Investigations. Additionally:

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

1. The SAC must ensure that RAICs are given sufficient assignments to meet developmental needs. The ASAC will track the RAIC's on-the-job training performance using *On-the-Job Training Plan* (See On-The-Job-Training Performance Record – Chapter 16, Exhibit B – this is the same template used for new Special Agents).
2. Newly designated RAICs should receive a minimum of 40 hours of documented training within six months of selection. This training may include a combination of serving as Acting ASAC, on-the-job training, formal training courses, and temporary assignments to Headquarters.

It is intended that RAICs will serve a minimum of 20 consecutive working days in a temporary duty assignment at Headquarters within the first 6 months of being designated as a RAIC (subject to operational requirements, RAICs experience, and funding). This assignment will involve development opportunities identified by an Operations Officer designed to expose the RAIC to a comprehensive range of experiences in Headquarters related to programs, operations, and tasks.

3. Should a RAIC be transferred from one region to another (voluntary/ involuntary), the gaining SAC will determine whether the Special Agent will maintain their RAIC designation at their new assignment.

### G. Period of Relief Agent-in-Charge Enrollment

RAICs will remain enrolled in the program for 24 months after initial selection. At the end of the enrollment period, the RAIC may submit a request to his/her SAC for retention past the initial period. Reenrollment may be authorized for an additional 24-month interval by the SAC, with concurrence of the AIGI. RAICs may voluntarily opt out of the RAIC program at anytime.

### H. Suspension or Removal From RAIC Program

A Special Agent may be suspended or removed from the program at any time at the discretion of the SAC. Circumstances for removal may include but are not limited to:

1. The RAIC fails to comply with the Standards of Ethical Conduct as outlined in Chapter 3 of the Investigations Manual;
2. The RAIC receives a letter of caution or warning for conduct or performance issues;



## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

3. The RAIC's current performance appraisal of record is not consistent with eligibility requirements;
4. The RAIC is subject to disciplinary action; or
5. The RAIC demonstrates poor leadership and/or supervisory capabilities.

The SAC and ASAC will make this determination based on the totality of circumstances. The AIGI should be consulted before the final decision is made to suspend or remove the Special Agent from the RAIC program.

### I. Responsibilities

The RAIC Program will be administered within the confines of all OIG and Office of Investigations policies and procedures, as well as all other applicable laws and regulations. The following is a list of responsibilities for administering the RAIC Program:

#### 1. Assistant Inspector General for Investigations/Deputy Assistant Inspector General for Investigations

The AIGI, or his/her designee, will provide overall leadership to ensure that this program is meeting the AIGI's goals and objectives in developing Special Agents and maintaining a pool of qualified agents to serve in leadership positions.

#### 2. Special Agent-in-Charge

SACs will review each application submitted by Special Agents within his/her office and may select one or more qualified Special Agent applicants to be nominated as a RAIC. The SAC will ensure that the Special Agent participating in the RAIC program is receiving the appropriate training and assignments to ensure the agent's success in the RAIC Program. SACs will keep the Headquarters Operations Officers updated on changes regarding the status of RAIC's in their region.

#### 3. Assistant Special Agent-in-Charge

ASACs will assist the SAC in reviewing each application and will provide input to the SAC during the selection process. The ASAC will ensure the RAIC is receiving the appropriate training and assignments and will complete the *On-the-Job Training Plan* for the RAICs located in his/her region (See *On-The-Job-Training Performance Record* – Chapter 16, Exhibit B – this is the same

## CHAPTER 16 –TRAINING AND PROFESSIONAL DEVELOPMENT

template used for new Special Agents). The ASAC will maintain documentation that the RAIC has received the required training established for RAICs.

### 4. Relief Agent-in-Charge

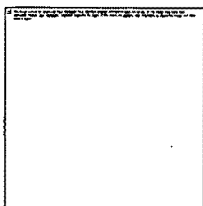
The RAIC will ensure that once selected for the program, he/she will comply with all requirements outlined in the RAIC policy and ensure completion of the tasks outlined in the *On-the-Job Training Plan* (See On-The-Job-Training Performance Record – Chapter 16, Exhibit B – this is the same template used for new Special Agents). It is incumbent upon the RAIC to proactively identify and request training opportunities.

### 5. Headquarters Operations Officer

The Operations Officer will maintain a list of all Special Agents that are active in the RAIC Program and of those that have successfully completed the program. An Operations Officer will serve as the RAIC's mentor during their detail to Headquarters and will identify development opportunities for the RAIC during his/her Headquarters rotation.

## VIII. PROFESSIONAL CERTIFICATION

Professional certification, such as Certified Fraud Examiner, is a mark of professional excellence and stature for Special Agents and for Office of Investigations. Special Agents are encouraged to pursue certification. Subject to the availability of funds, Office of Investigations may pay the cost of an approved review course, including tuition, fees, books, and course materials. The Office of Investigations will not pay for travel expenses, the examination cost, continuing education classes to maintain certification or annual association fees. Such courses must be completed on the employee's off-duty time. Office of Investigations will only pay for such a course once per employee and the employee is required to sit for the next scheduled examination after completing the course. If the employee does not sit for the examination within one year of completion of the course, the employee's ability to take additional OIG-funded training classes may be adversely impacted.



## U.S. Department of Energy

Office of Inspector General

Office of Investigations

### New Special Agent Training Agreement

I hereby acknowledge that failing to successfully complete, on the first attempt, the Federal Law Enforcement Training Center's (FLETC) Basic Criminal Investigator Training Program will result in reassignment from the Criminal Investigator occupational series (1811) or separation from the U.S. Department of Energy, Office of Inspector General.

\_\_\_\_\_  
Special Agent Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



# U.S. Department of Energy

Office of Inspector General

Office of Investigations

## On-the-Job Training Performance Record

Special Agent Name:

Duty Station:

Grade:

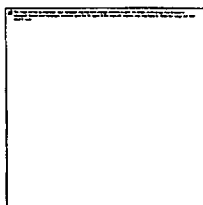
On-the-Job Training Element (insert agent-specific training elements – add/delete lines as needed)	Date Element Completed Satisfactorily	Comments on Performance of Element
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### PHASE I

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### PHASE II

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## U.S. Department of Energy

Office of Inspector General

Office of Investigations

### Relief Agent-In-Charge Program Agreement

I certify that I have received, read, and understand the Office of Investigations Relief Agent-in-Charge (RAIC) Program policies and procedures. I understand that participation in the RAIC Program is completely voluntary, and I may opt-out at any time. I further understand that participation in the program does not guarantee selection for promotional or developmental opportunities. If selected, I agree to fully comply with all of the requirements outlined in the RAIC policy, and I will ensure that I complete the tasks outlined in the *On-the-Job Training Plan*.

\_\_\_\_\_  
Special Agent Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



Document Number 33



**CHAPTER 17**

**ENERGY INSPECTOR GENERAL PROJECT TRACKING (EIGPT) SYSTEM**

**I. SCOPE OF CHAPTER**

This chapter gives a brief overview of the Energy Inspector General Project Tracking (EIGPT) system, which is the Office of Inspector General's (OIG) management information system. Functions for the Office of Investigations (OI) include: case management tracking and monitoring; timekeeping; property tracking; personnel management; and Hotline Operations. EIGPT users should refer to the OI EIGPT Handbook and Chapters 5 and 6 of the Investigations Manual (Manual) for detailed technical and user information.

**II. EIGPT OVERVIEW**

EIGPT is a user-friendly, menu-driven system that utilizes dropdown menus and help options to assist the user in navigating throughout the system. It allows OI employees to perform the following: input and update data using Data Entry Screens; query data using Multi-Record query screens (read only); and, generate reports. Only OIG employees with user IDs and passwords that have been assigned by the OIG's Office of Management and Administration can access the system.

EIGPT is to be used for official Government purposes only and employees may access only the modules, screens, cases and information to which he/she has a need-to-know.

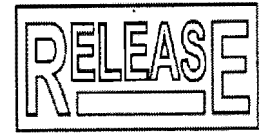
**III. OFFICE OF INVESTIGATIONS EIGPT HANDBOOK**

The OI EIGPT Handbook is the user guide for EIGPT's INV Module. Together with the Manual, the OI EIGPT Handbook provides guidance on how to access and use the system. The handbook is located on the IGNet under Policy and is issued separately from the Manual. The handbook is a stand-alone document that is updated as circumstances warrant. The OI EIGPT Handbook does not supersede but, rather, supplements the Manual.





Document Number 34



CHAPTER 18

TECHNOLOGY CRIMES SECTION

A. SCOPE OF CHAPTER

This chapter provides information on the Office of Investigations Technology Crimes Section (TCS).

B. TCS (General Description)

DOE, along with other Government agencies and commercial enterprises, has become increasingly dependant upon technology and computer systems. DOE has a large and complex computer infrastructure that facilitates its mission of conducting research and development, managing waste cleanup and disposal, and protecting national security. It is, therefore, a favorite target of cyber-criminals. Risks and vulnerabilities are on the increase, including fraud, employee misuse, virus attacks, security breaches and computer system intrusions. Additionally, historic methodologies for committing crime, especially white-collar crime, have been successfully adapted to modern technology. Traditional illicit activities such as fraud, waste, and abuse are now being conducted with or facilitated by computers.

The TCS within the Office of Investigations was established in November 1999, to:

- Investigate network intrusions and other technology crimes;
- Support traditional investigations, and assist audits and inspections, with forensic examinations and technical services;
- Publish reports to enhance DOE's technology operations.

The TCS is staffed by Special Agents with the technical skills and the federal law enforcement authority necessary to investigate complex computer crimes committed against DOE and to provide computer forensic support during general fraud investigations. The TCS operates as an integral component of DOE's efforts to combat cyber attacks and intrusion and other technology-related crimes. The unit is one piece of an integrated puzzle, and works closely with DOE program officials and managers, the U.S. Department of Justice, the Federal Bureau of Investigation, and other entities.

B. TCS (Operations Handbook)

The policies, procedures, and operational guidelines to be followed by TCS personnel on TCS-specific matters are outlined in a document entitled, "Technology Crimes Section Handbook." The handbook is issued separately from the Office of Investigations Manual, and it is a stand-alone document that is updated as circumstances warrant.

The handbook does not supercede but, rather, supplements the Office of Investigations Manual.



## Document Number 35



**CHAPTER 19**

**GENERAL POLICIES**

**I. SCOPE OF CHAPTER**

This chapter addresses general Office of Investigations policies that apply to all investigative work in the field and at headquarters to include: principles of supervision, coordination with the Office of Audits and the Office of Inspections, Freedom of Information Act (FOIA) requests, Privacy Act requests, media inquiries and press releases. The chapter also discusses Office of Investigations general policy regarding the transmittal and safeguarding of information.

**II. SUPERVISION**

Effective supervision is essential to the overall quality of an investigation. Generally, higher-level supervisors can provide a broader perspective to help focus and sharpen investigation objectives by selecting effective investigation approaches and objectives and determining the scope of work or resources that should be devoted to an investigation in relation to other investigative requirements and priorities. As an investigation progresses, supervisory review can help the Special Agent or investigative team deal with unanticipated complications and identify additional data needed to reach a resolution of the allegations.

**A. Responsibilities**

The Assistant Inspector General for Investigations (AIGI) and the Special Agents-in-Charge (SACs) are ultimately responsible for all investigative assignments and for ensuring that the staff receives appropriate guidance in performing its work. Assistant Special Agents-in-Charge (ASACs) also play a significant role in regional team leadership.

Assignments by all Office of Investigations personnel must be carried out impartially, fairly, equitably, and objectively. Employees must be familiar with their written position descriptions and annual performance plans. As shown below, each level of staff involved in an investigation has specific responsibilities for ensuring that investigations are performed in accordance with prescribed standards.

## CHAPTER 19 – GENERAL POLICIES

### 1. Special Agent

A Special Agent performs investigative work in accordance with Federal rules and regulations; OIG policies and procedures; and Council of Inspectors General on Integrity and Efficiency (CIGIE) standards. This includes: initiating investigations, preparing investigation work plans, conducting investigations, interviewing witnesses, collecting and safeguarding evidence, collecting and analyzing documents and records, preparing reports and other written products, documenting investigative activities, providing assistance to prosecutors, testifying in criminal, civil and administrative proceedings, providing oral briefings, preparing final investigative reports and closing cases. A full list of duties, responsibilities and activities is outlined in each agent's position description. The complexity and numbers of cases assigned to an agent will be determined, in part, by the agent's investigative experience, skills and knowledge.

### 2. ASAC

An ASAC provides technical, operational and administrative advice, direction and guidance to designated teams of Special Agents in the planning, conduct and reporting of investigations. An ASAC also conducts Case Progress Reviews. An ASAC is a team leader for his/her organization but is not considered a supervisor of record.

### 3. SAC

A SAC provides supervision and professional leadership for all investigative and administrative work performed in assigned regional offices. A SAC also directs, supervises and reviews all investigative work for which the region is responsible. A SAC may delegate some of his/her responsibilities, as deemed appropriate and allowable, to an ASAC.

**Note:** GS-15s within the Office of Investigations may not telework. As such, individuals serving in an acting capacity for a SAC may not telework. Relief Agents-in-Charge and other GS-12/13 agents serving in an acting ASAC capacity may not telework, with one exception. The acting ASAC may telework up to one day during any consecutive five day period. This policy is designed to help ensure that the on-the-job training and experiences associated with serving in an acting ASAC capacity are maximized by being on-site. All telework policies and procedures must be followed, including coordinating work assignments with the appropriate SAC.



## CHAPTER 19 – GENERAL POLICIES

### B. Timeliness of Supervision

Supervision is a continuing process. To be effective, it must be timely and include sufficient interim checks, starting at the inception of the investigation to ensure that work is properly planned, is on schedule and is being performed in accordance with the investigation work plans. It requires individual agents to keep their ASACs or SACs informed and for ASACs or SACs to make adjustments as necessary to deal with changing or unanticipated circumstances. However, the proficiency and experience of the agents and the difficulty of the investigative assignment will affect the extent and timing of supervision required. To ensure that supervision is timely, SACs are responsible for:

1. Ensuring the ASACs are providing adequate guidance or direction throughout an investigation, including suitable instructions to subordinates at the beginning of an investigation and other work assignments commensurate with the abilities and experience of the assigned agents;
2. Approving investigative cases in advance and ensuring that they are carried out and that investigative objectives are met, unless deviations are reasonable, justified and authorized;
3. Monitoring the status of work progress in a timely manner through periodic progress reports, status briefings, telephone calls, conference calls, site visits and reviews of case files to ensure that investigative work is being performed in accordance with quality standards and due professional care that adequately supports investigation results and conclusions; and
4. Ensuring compliance with administrative requirements, such as time reporting, leave, training, management information systems, etc.

### C. Documentation of Supervision

SACs are responsible to ensure that appropriate evidence of the ASAC's case review and case direction is documented and retained in accordance with the procedures provided in Chapter 6. Points raised by the ASAC in reviewing an investigative case and its documentary support shall be documented, addressed by the Special Agent and subsequently cleared by the ASAC. Differences of opinion between an agent and an ASAC concerning investigative issues will be documented and presented to the SAC to be resolved.

## CHAPTER 19 – GENERAL POLICIES

### III. COORDINATION WITH THE OFFICE OF AUDITS AND THE OFFICE OF INSPECTIONS

Maintaining professional and collegial relationships with the Office of Audits (Audits) and the Office of Inspections (Inspections) enhances the Office of Investigations' ability to prevent and detect fraud, waste, and abuse in agency programs and operations. For instance, Office of Investigations Special Agents may encounter areas of possible management and/or administrative deficiencies and systemic weaknesses during investigations that may more suitably or appropriately be resolved by OIG audit or inspection staff or that might influence an ongoing or planned audit/inspection. Conversely, Audit and/or Inspections staff may discover evidence of criminal conduct that may be more appropriately handled by Office of Investigations staff.

**Note:** It is not necessary to advise the AIGI and DAIGI of all communications and interactions with Audits and Inspections. However, there are particular instances outlined in this section in which the DAIGI and AIGI must be notified. It is also important to be cognizant of and identify other instances, not outlined below, that would warrant notification to the DAIGI and AIGI.

#### A. Facilitating Open Lines of Communication

ASACs, and SACs where appropriate, will implement a process within their regions to facilitate an open exchange of information between the Offices of Investigations, Audits and Inspections. ASACs, and SACs where appropriate, will ensure the following guidelines are observed, and will incorporate Special Agents into the process as needed:

1. For allegations reported to Office of Investigations field staff, discuss the allegation(s) with Audits and Inspections counterparts during the predication and complaint form process. Determine if Audits or Inspections has completed or plans to complete work in the same area. Discuss with Audits and Inspections the Office of Investigations' interest, if any. If it appears that case opening is not warranted, determine if Audits or Inspections has any interest in pursuing the matter and, if so, document this interest in the complaint form.
2. If not previously done at the initial receipt of an allegation, discuss the focus of an investigation at case opening with Audits and Inspections counterparts. This serves to open a dialogue on potential joint efforts and to determine if Audits or Inspections has completed or is planning any work in the same area.
3. For matters of joint interest, coordinate on-going discussions throughout the course of investigations, audits or inspections. If Audits and/or Inspections request that the Office of Investigations review a draft audit/inspection report, the ASAC must notify an Operations Officer. The Operations Officer will notify the DAIGI and AIGI.

## CHAPTER 19 – GENERAL POLICIES

4. Prior to the issuance of an Investigative Report to Management (IRM), share with Audits and Inspections counterparts a draft copy of the IRM. This serves several functions, including:
  - a. Determining if the Office of Investigations is making recommendations that conflict with any Audit or Inspection reports;
  - b. Ensuring that Audits and Inspections are aware of any systemic weaknesses being reported; and
  - c. Providing Audits and Inspections with the opportunity to offer insight concerning potential systemic weaknesses not identified or reported in the IRM.

Due to Privacy Act restrictions or other operational considerations, Audits and Inspections will be asked not to copy or distribute the draft IRM and to return it to the ASAC following the review.

DOE management's response to an IRM should be shared with Audits and Inspections if it addresses notable corrective action(s) involving internal controls or other information that may be of interest to Audits or Inspections (e.g., disallowance of costs on a contract).

5. Be familiar with ongoing and planned Audits and Inspections projects, which includes reading notification letters, surveys and reports;
6. Confer with Audits and Inspections upon discovery of issues with potential interest to these offices (e.g., deficiencies in accounting or administrative controls, programmatic irregularities, compliance issues, etc.); and
7. Explore opportunities to make presentations at local or regional Audits and Inspections conferences. This includes "brown bag" lunches.

### B. Protecting Sensitive Information

There may be instances where interaction with Audits and Inspections on case related matters is not feasible or recommended, or the exchange of information must be limited (e.g., Grand Jury information, complainant identities, sensitive investigation of personal misconduct by a high-level official, etc.). ASACs and Special Agents must exercise care not to inappropriately disclose sensitive or protected information, or information that could potentially adversely affect the conduct of the investigation (e.g., planned search warrants, consensual monitoring, etc.).

When exchanging case related information, Audit and Inspections must be advised to limit such information to persons with a need-to-know and that such information may not be disclosed outside the OIG.

## CHAPTER 19 – GENERAL POLICIES

**Note:** As outlined in the Allegation Processing Handbook, Audits and Inspections staff who receive complaints directly from complainants, are responsible for completing the Complaint Form. The staff is also responsible for sending complaints they receive directly to the Hotline and Analysis Section for processing.

### C. Referrals

#### 1. Referrals to Audits and/or Inspections

During the conduct of investigations, Special Agents may develop information involving deficiencies in accounting controls, or possible management or administrative irregularities. In these instances, Special Agents are to consult with their respective ASAC concerning possible referral to Audits and/or Inspections. ASACs will verbally consult with appropriate local Audits and Inspections supervisors and reach an agreement on whether a referral is warranted prior to making the referral. The ASAC must notify an Operations Officer prior to sending a formal referral to Audits and/or Inspections. The Operations Officer must ensure that the DAIGI and AIGI are aware of the referral prior to the referral being sent. A formal referral will be made in writing. The memorandum will discuss, in detail, the issue(s) to be considered by Audits or Inspections. The ASAC will forward the memorandum to the local Audits and/or Inspections supervisor.

#### 2. Referrals from Audits and/or Inspections

When OIG personnel become aware of possible criminal or civil violations through audit or inspection activities, or otherwise become aware of fraud, waste or abuse, the issue will be formally referred to the Office of Investigations for review. Prior to predating and processing an allegation or referral from Audits and/or Inspections, the responsible ASAC or SAC must notify an Operations Officer. The Operations Officer will ensure that the DAIGI and AIGI are aware of the referral.

### D. Requests for Assistance

When an investigation requires Audits and/or Inspections assistance, the following procedures will be followed:

1. The Special Agent will advise the ASAC or SAC of the need for Audit/Inspection assistance and all other pertinent factors;

## CHAPTER 19 – GENERAL POLICIES

2. If the ASAC agrees that Audit/Inspection assistance is necessary, the ASAC or SAC will, through the AIGI, make a request for Audit or Inspection assistance to the Deputy Inspector General for Audits and Inspections or designee;
3. Requests for assistance shall be specifically focused on those facts needed to support allegations of fraud and/or criminal wrongdoing and will be made in writing. To the extent possible, the request should describe the allegation(s) that is being pursued and identify specific objectives of the requested audit or inspection. Broadly stated and non-specific requests such as “a complete audit (or inspection) is requested” should be avoided;
4. ASACs need to ensure that declinations to complete an audit or inspection are explained in sufficient detail to satisfy the servicing Assistant United States Attorney; and
5. For audits/inspections that are conducted, ASACs need to ensure that sufficient written documentation is provided outlining the results of the audit/inspection.

**Note:** Additional information regarding Referrals and Requests for Assistance to Audit and Inspections can be found in OIG Directive IG-904C, “Coordination of Investigative Matters” (located on the IGNet under Policy/OIG).

### **IV. FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT**

The Freedom of Information Act (FOIA) and the Privacy Act provide for the disclosure of Federal agency records to the public. Both laws recognize legitimate needs to restrict disclosure of some information and require Federal agencies to establish policies and procedures governing disclosure of information. While neither law grants an absolute right to examine government documents, both laws provide a vehicle for requesting records and require a response to all requests made. If a requested record cannot be released, the requester will be given the reason(s) for the denial. The requester has the right to appeal the denial and, if necessary, to challenge it in court. OIG Directive IG-902E (located on the IGNet under Policy/OIG) establishes guidelines and procedures for processing requests under the FOIA and Privacy Act. The FOIA/Privacy Act Officer is located in the OIG Office of Management and Administration, and he/she is responsible for administering the Act within the OIG and for processing requests received.

#### **A. Freedom of Information Act Requirements**

The FOIA, Title 5, U.S.C. Section 552, applies to documents held by agencies in the Executive Branch of the Federal Government. The Act requires agencies to publish or make available certain types of information for inspection and copying, without the formality of a FOIA request, including:

## CHAPTER 19 – GENERAL POLICIES

1. Descriptions of agency organization and office addresses;
2. Statements of the general course and method of agency operations;
3. Rules of procedure and descriptions of forms;
4. Substantive rules of general applicability and general policy statements;
5. Final opinions made in the adjudication of cases; and
6. Administrative staff manuals that affect the public.

All other agency records may be requested under the FOIA. The FOIA does not provide a definition of "agency record" but the term is usually defined as material in the possession, custody or control of an agency. Personal notes of agency employees are not to be considered agency records. A record that is not an "agency record" will not be made available under the FOIA.

It is the intent of the Act and the policy of the OIG to make information available to the public to the fullest extent possible, unless release would be contrary to the public interest. Information that is determined to be exempt from release must fall within the nine exemption categories provided for within the Act.

### B. Privacy Act Requirements

The Privacy Act of 1974, Title 5, U.S.C. Section 552a, provides safeguards against invasion of privacy through the misuse of records by Federal agencies. In general, the Act allows citizens to learn how records are collected, maintained, used and disseminated by the Federal government. The Act also permits individuals to gain access to most personal information maintained by Federal agencies and to seek amendment of any incorrect or incomplete information. The Privacy Act applies to personal information maintained by agencies in the Executive Branch of the Federal Government. Agencies subject to the FOIA are also subject to the Privacy Act. The Privacy Act does not generally apply to records maintained by state and local governments, or private companies or organizations.

The only records subject to the Privacy Act are records about individuals that are maintained in a system of records. There are two general exemptions provided by the Privacy Act of 1974, Title 5, U.S.C. Sections 552a (j)(2) and 552a (k)(2), that preclude investigative files from being processed pursuant to the Privacy Act (Refer to the Privacy Act of 1974, Title 5, U.S.C. Section 552a for more specific details about these exemptions).

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### C. Freedom of Information and Privacy Act Requests

If a FOIA or Privacy Act request is received directly by the Office of Investigations (field offices or headquarters), the original request will be sent immediately to the OIG FOIA/Privacy Act Officer. All telephone inquiries and other correspondence concerning FOIA/Privacy Act matters will be sent directly to the OIG FOIA/Privacy Act Officer as soon as possible.

**Note:** When the Office of Investigations is apprised of a FOIA on an open investigation, the P3 Director will immediately notify the SACs, ASACs and Operations Officers. No files or case file documents may be discarded or disposed until further notice (including, but not limited to, investigator notes, bulky exhibits, reference materials and evidence).

See Chapters 6 and 12 for additional guidance on FOIA and records retention.

### D. Release of Information on Freedom of Information/Privacy Act Requests

1. The Deputy Inspectors General (IG) and the Assistant Inspectors General within OIG have been delegated authority by the Inspector General to make agency release determinations for material related to their program areas.
2. When records are being provided by more than one program area in response to a FOIA/PA request, the response will be signed by the Deputy IG for Management and Administration.
3. Generally, documents will not be provided under FOIA on an open investigation. The requestor is notified that the case is an open/on-going case and information will not be released until the case is closed. The requestor must submit another request once the case is closed.

See Chapter 7 concerning Privacy Act notices during the conduct of interviews. Also see Chapter 6 for further guidance on access to investigative records.

## V. MEDIA INQUIRIES

### A. Responding to Media Inquiries

It is the policy of the OIG to respond to all media inquiries through the OIG Media Liaison. This ensures consistency of approach, avoids duplication of effort, and provides accurate and complete data (See OIG Directive IG-905F located on the IGNet under Policy/OIG).

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1. OIG employees are not authorized to respond to media inquiries. OIG employees will not confirm or deny any information or disclose any OIG records, even if the information is already public.
2. All inquiries from the media must be referred to the OIG's Media Liaison or the dedicated media phone line at (202) 253-2162 without further elaboration. Office of Investigations employees who receive inquiries must immediately advise the OIG Media Liaison of the contact and the nature of the inquiry. The ASAC and an Operations Officer must also be immediately notified of the media inquiry. Employees must be prepared to provide a full briefing – oral or written – to headquarters.
3. Once an employee has referred the requester to the OIG Media Liaison Officer and has advised the ASAC and the Operations Officer of the contact, the staff member has no further responsibility in the matter and should make no comments or statements to the media representative, unless instructed to do so by the Inspector General.

### B. Disclosing Information to the Media

Information disclosures to the media are governed by various legal and/or policy considerations. In particular, information pertaining to ongoing investigations is not to be released. In each case, the OIG Media Liaison Officer, in consultation with the Inspector General, the Counsel to the Inspector General and other managers, as appropriate, will determine what information is to be released.

**Note:** All Office of Investigations staff must also be familiar with and follow DOJ guidelines concerning release of information relating to criminal and civil proceedings (Section 50.2 of 28 CFR and the U.S. Attorneys' Manual, Section 1-7.000).

## VI. PRESS RELEASES

Press releases must be processed in a timely manner in order to satisfy inquiries by the media. In most cases involving a public criminal or civil matter (e.g., indictment, conviction, settlement, etc.), the responsible U.S. Attorney's Office issues a press release. A press release may also be issued by another agency in a task force operation. In such instances, the case agent should work with the responsible party to obtain a draft copy of the press release prior to finalization.

In administrative cases or investigations where the prosecutor or other task force agency does not issue a press release, the ASAC and case agent should confer with an Operations Officer on the merits of an OIG press release. The Operations Officer will coordinate with appropriate headquarters personnel. If an OIG press release is approved, the ASAC, case



## CHAPTER 19 – GENERAL POLICIES

agent and Operations Officer will prepare a draft of the press release in consultation with the OIG Media Liaison Officer. The press release must not contain opinions, conclusions or undocumented statements. ASACs and case agents should consult with prosecutors on criminal and civil cases regarding the content of the press release. Final press releases must be reviewed by the Counsel to the Inspector General and approved by the Inspector General. A copy of the press release will be placed in the official case file.

**Note:** Office of Investigations staff must be familiar with, and follow, DOJ guidelines concerning release of information relating to criminal and civil proceedings (Section 50.2 of 28 CFR and the U.S. Attorneys' Manual, section 1-7.000). OIG press releases on matters involving DOJ or other law enforcement agencies should be coordinated with those entities prior to issuance.

### **VII. TRANSMITTING AND SAFEGUARDING CLASSIFIED INFORMATION, SENSITIVE UNCLASSIFIED INFORMATION, CASE SENSITIVE INFORMATION AND PERSONALLY IDENTIFIABLE INFORMATION**

Information and documents obtained or generated during the course of official OIG activities must be utilized only for official purposes and sensitive information must be protected to prevent unauthorized access. Sensitive information includes investigative files, allegation-based inspection data, personally identifiable information (PII) and other proprietary and privileged information. The Office of Management and Budget has defined PII as any information about an individual maintained by an agency, including but not limited to, education, financial transactions, medical history, criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as name, social security numbers, date and place of birth, mother's maiden name, or biometric records.

Sensitive OIG documents and information have the potential to damage governmental, commercial or private interests if disseminated or obtained by persons who do not need to know the information to perform their jobs or other Department authorized activities. It is each employee's responsibility to ensure such data is responsibly and adequately protected.

General policies for transmitting and safeguarding classified information, sensitive unclassified information, case sensitive information and PII are discussed at length in Department Order, DOE O 206.1, "Department of Energy, Privacy Act Program."

A comprehensive OIG document that addresses security policies and procedures can be found in OIG Directive IG-908H. Office of Investigations personnel must refer to this directive for specific handling of classified matter. The following sections provide general guidance on handling classified, sensitive unclassified, case sensitive and personally identifiable information.

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### A. Classified Document Control

It is OIG policy to protect from theft, destruction, loss or compromise, and to control and account for all classified matters under the OIG jurisdiction.

The procedures for handling classified matters are delineated in OIG Directive IG-908H (See OIG Directive IG-908H located on the IGNet under Policy) and specific instructions are provided for marking and documenting, reproducing, transferring, accounting for and destroying classified documents. Refer to Chapter 11 for additional guidance.

### B. Sensitive Unclassified Information Control

Sensitive unclassified information will be protected against accidental disclosure. Laws and regulations that govern the dissemination of certain sensitive unclassified information will be strictly followed. Information about the laws and regulations is discussed in more length at "Privacy Act of 1974, U.S.C., § 552a, as amended, IG Act of 1978 as amended, Section 7 (b) and DOE Order DOE O 206.1, "DOE Privacy Program."

### C. Case Sensitive Information Control

The following procedures must be followed when handling case sensitive information:

#### 1. Mailing Material

When items such as official case files, documents from a case file, evidence, subpoenaed materials, Grand Jury information or items designated as case sensitive are mailed to any location, the following procedures apply:

- a. The material must include a Case Document/Material Transmittal Slip Form as referenced in Chapter 6, Section V. The slip must contain, at a minimum, the case number, a brief description of the document(s)/material(s), the date of the transmittal, the identity of the custodian and the identity of the intended recipient. The case agent will retain a copy of the slip until notification is received that the document(s)/material(s) have been received.
- b. The material must be sealed inside an envelope on which the return address and the recipient's address have been typed. "TO BE OPENED BY ADDRESSEE ONLY (or DESIGNEE)" must be stamped or typed on the front and back of the envelope.

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- c. The envelope containing the material must be sealed inside another envelope (double-sealed). The return address and the recipient's address must be written on the outer envelope.
- d. The material must be sent using a shipping service that has a tracking capability (e.g., Registered Mail, Federal Express, UPS).
- e. The sender must contact the recipient prior to mailing the material to notify the recipient of the impending shipment.
- f. The sender must maintain a copy of the tracking documentation from the shipping service and a copy of the Case Document/Material Transmittal Slip Form until the recipient has confirmed receipt of the parcel and all of its contents.
- g. When the parcel reaches its destination, someone must sign the return receipt to indicate that the parcel was received. This procedure establishes the date the parcel was mailed, the date the parcel was received and by whom the parcel was received. In addition, upon receipt of the package, the recipient must contact the sender via email to notify the sender that the parcel was received.
- h. If the sender is not contacted by the recipient within three business days of mailing the parcel, the sender must contact the intended recipient and, if necessary, the shipping service, to determine the status of the parcel.

### 2. Official Use Only Statement

All official case files, individual case documents or summary information about an open investigation transmitted to a non-Office of Investigations entity or person (e.g., prosecutor, assisting law enforcement agency, Department manager, etc.) must include a cover page or letter/memorandum that contains the following "Official Use Only" statement:

*This report, including any attachments and information contained therein, are the property of the Office of Inspector General (OIG) and are for OFFICIAL USE ONLY. The original and any copies of the report must be appropriately controlled and maintained. Disclosure to unauthorized persons without prior OIG written approval is strictly prohibited and may subject the disclosing party to liability. Unauthorized persons may include, but are not limited to, individuals referenced in the report, contractors and individuals outside the Department of Energy. Public disclosure is determined by the Freedom of Information Act (Title 5, U.S.C., Section 552) and the Privacy Act (Title 5, U.S.C., Section 552a).*

This requirement applies to both originals and copies of investigative documents. Headquarters may approve deviations to this statement for special

## CHAPTER 19 – GENERAL POLICIES

reports in limited circumstances. The word "report" should be replaced with the word "letter" or "memorandum" where appropriate. Additionally, National Nuclear Security Administration may be substituted for Department of Energy. In appropriate circumstances, Office of Investigations may request the return of all originals and copies.

### 3. Transmission of Sensitive Information via E-mail

Sensitive data transmitted via electronic message (including attachments) must be protected by encryption or an alternative tool that prevents unauthorized access in the event of interception. It is not acceptable to use the basic unencrypted password file protection offered in the Microsoft Suite; however, it is acceptable to use the advanced 128-bit or higher encryption provided in the Microsoft Suite.

### 4. Facsimile Transmissions and Reproduction of Sensitive Information

Faxing and reproduction of sensitive documents should be done on Government-owned or approved equipment. Hotel, personal or commercial facsimile and copy machines should not be used.

### 5. Transmission of Sensitive Information by Hand

Sensitive information may be hand carried outside a DOE facility as long as the person carrying the document can control access to the document being transported.

### 6. Processing Sensitive Electronic Files No Longer Needed

When it is determined that sensitive electronic files are no longer needed, they should be appropriately and completely removed from the hard drive, thumb drive, disk or CD. If an officially sanctioned tool is not available for removal (e.g., secure wipe software), contact your local IT support team for assistance to permanently delete files or data. Additionally, files containing PII on laptops or removable media must be deleted within 90 days after a determination is made that it is no longer required. The decision to dispose of any document, whether it contains sensitive data or not, must be consistent with the policies and procedures established in the OIG's Records Inventory and Disposition Schedule (RIDS), as well as each OIG program office policies and procedures.

## CHAPTER 19 – GENERAL POLICIES

### D. Protecting Sensitive Information Away from the Office

Because of the importance and sensitivity of OIG information, the following additional measures should be followed by all OIG employees when handling case sensitive information away from the office:

#### 1. Removal and Storage of Sensitive Documents

Employees must limit the removal of OIG information and documents from the office. Examples of when removal may be necessary are temporary duty assignments, participating in a joint review with another agency, off-site audit and inspection activities and approved work at home. Regardless of whether the sensitive information is located in or away from the office, electronic and hard copy documents should be stored within a locked receptacle such as a drawer, safe, desk, file cabinet or bookcase when not in use.

#### 2. Computer Processing of Sensitive Information

OIG employees must use Department/OIG provided laptops to process sensitive electronic data outside the office, unless otherwise approved. Sensitive information and documents may not be transferred to, or stored on, non-DOE computers or personally-owned removable media. When sensitive information is contained on a laptop or any other form of portable media (e.g., thumb drive, CD, or other disk) that is to be transported outside the physical boundaries of the workplace, it must have adequate access controls. PII files stored on the removable media (as well as on a hard drive) must be protected by encryption or an alternative tool that prevents unauthorized access in the event of interception. It is not acceptable to use the basic unencrypted password file protection offered in the Microsoft Suite; however, it is acceptable to use the advanced 128-bit or higher encryption provided in the Microsoft Suite.

Except when connected to DOE via approved virtual private network connection, sensitive documents must not be opened and must remain protected when connected to the internet away from the office (e.g., hotel room, home, etc.). Firewall and antivirus protections must also remain active. Employees must have a two-factor authentication token to remotely access PII. The Department's Office of Chief Information Officer and local site IT support groups are responsible for issuing these tokens. The tokens must be obtained before accessing any on-line or remote system of records containing PII.

## CHAPTER 19 – GENERAL POLICIES

### 3. Destruction or Deletion of Sensitive Information

Sensitive electronic and hard copy documents may not be discarded outside of the office environment (e.g., personal trash, personal shredder, etc.). Disposal resources approved by the local security office must be used. Examples include an office shredder, burn bag and disk wipe software and tools.

### E. Suspected or Actual Loss, Compromise or Theft of OIG Sensitive Information

Suspected or actual loss, compromise or theft of OIG sensitive information must be reported immediately to the employee's supervisor and local Department of Energy Information Technology (DOE IT) hotline. When appropriate, law enforcement authorities should be notified as well. In addition to these notifications, the actual or suspected loss, theft, or compromise of PII must also be reported to the DOE Cyber Security Incident Advisory (CIAC) within 45 minutes of discovering the incident. When reporting incidents as possibly involving PII, there should be sufficient reason to believe that a security breach has occurred and that PII is likely to have been involved.





**U.S. Department of Justice**  
**Office of Information Policy**  
*Suite 11050*  
*1425 New York Avenue, NW*  
*Washington, DC 20530-0001*

*Telephone: (202) 514-3642*

September 25, 2014

Re: AG/14-03212 (F)  
VRB:LAD:DRM

While processing your Freedom of Information Act (FOIA) request dated May 4, 2013, for a copy of the U.S. Department of Energy Inspector General Investigations Manual dated April 2012, the Department of Energy (DOE) referred four documents, totaling thirty-nine pages, to this Office for processing and direct response to you on behalf of the Office of the Attorney General. The DOE request file number is HQ-2013-00978-F. For your information, the documents were received by this Office on June 5, 2014. This response is made on behalf of the Office of the Attorney General.

We have determined that three documents, totaling thirty-five pages are appropriate for release without excision, and copies are enclosed. Because one document, totaling four pages, originated with or is of primary interest to the Executive Office for United States Attorneys (EOUSA), we have referred that document, which consists of a one-page document and a three-page attachment, to EOUSA for processing and direct response to you. You may contact the Executive Office for United States Attorneys as follows:

Susan B. Gerson, Assistant Director, FOIA/Privacy Staff  
Executive Office for United States Attorneys  
Department of Justice  
600 E Street, NW, Room 7300  
Washington, DC 20530-0001  
Email: [USAEO.FOIA.Requests@usdoj.gov](mailto:USAEO.FOIA.Requests@usdoj.gov)  
Telephone: (202) 252-6020

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2013). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you are not satisfied with my final response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through this Office's eFOIA portal at <http://www.justice.gov/oip/efoia->



[portal.html](#). Your appeal must be received within sixty days from the date of this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "V-R-B", followed by a horizontal line extending to the right.

Vanessa R. Brinkmann  
Senior Counsel

Enclosures



Office of the Attorney General

Washington, D. C. 20530

December 8, 2003

Chapter 4, Exhibit A

Referral To DOJ

MEMORANDUM FOR THE HEADS AND INSPECTORS GENERAL OF EXECUTIVE  
DEPARTMENTS AND AGENCIES

ASSISTANT ATTORNEYS GENERAL

UNITED STATES ATTORNEYS

DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

FROM:

THE ATTORNEY GENERAL

SUBJECT:

Guidelines for Offices of Inspector General  
with Statutory Law Enforcement Authority

I have today signed the attached Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority to guide the exercise of criminal law enforcement authority by the presidentially appointed Inspectors General. These guidelines are the product of the hard work of many members of the law enforcement community engaged in the investigation and prosecution of crimes against government programs.

These guidelines govern the exercise of new statutory police powers by the Inspectors General, the coordination of overlapping responsibilities by federal law enforcement components, and the important role of federal prosecutors in providing guidance in the use of sensitive criminal investigative techniques. United States Attorneys and Assistant United States Attorneys should use these guidelines in working with Inspectors General to achieve fruitful investigations and prosecutions.

Crimes against government programs result in some of the most complicated and sensitive of criminal investigations and prosecutions. I want to emphasize that the American people expect the highest standards to be met by their government, and they expect us to aggressively investigate and prosecute those who would abuse or otherwise tarnish the public trust. As we go forward, I would like all of the participants in this great task to renew their commitment to the rule of law and the dignity of our mutual endeavor. I expect the combined efforts of the Inspectors General and the Federal Bureau of Investigation to root out corruption with the guidance of the United States Attorneys and the Criminal Division. Each of us has a role in this team effort and we must all be committed to that teamwork to make it succeed.

Attachment



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

### ATTORNEY GENERAL GUIDELINES FOR OFFICES OF INSPECTOR GENERAL WITH STATUTORY LAW ENFORCEMENT AUTHORITY

#### I. PURPOSE

These guidelines, required by section 6(e)(4) of the Inspector General Act of 1978 (the "Act"), as amended in 2002, govern the exercise of law enforcement authorities for those Offices of Inspector General that have been granted statutory law enforcement authorities pursuant to that Act. These Guidelines replace the Memoranda of Understanding under which the Department of Justice deputized certain Office of Inspector General investigators as Special Deputy United States Marshals and that described the training and operational requirements applicable to the deputized Office of Inspector General investigators.

#### II. BACKGROUND

The Department of Justice has primary responsibility for enforcement of violations of federal laws by prosecution in the United States district courts. The Federal Bureau of Investigation is charged with investigating violations of federal laws. Offices of Inspector General have primary responsibility for the prevention and detection of waste and abuse, and concurrent responsibility for the prevention and detection of fraud and other criminal activity within their agencies and their agencies' programs. The Inspector General Act of 1978, 5 U.S.C. app. 3, established criminal investigative jurisdiction for the offices of presidentially appointed Inspectors General. However, prior to enactment of section 812 of the Homeland Security Act of 2002 (Pub. L. No. 107-296), the Inspector General Act did not provide firearms, arrest, or search warrant authorities for investigators of those offices.<sup>1</sup> The Inspectors General of the various executive agencies relied on Memoranda of Understanding with the Department of Justice that provided temporary grants of law enforcement powers through deputations. As the volume of investigations warranting such police powers increased, deputations were authorized on a "blanket" or office-wide basis.

With the enactment of section 6(e) of the Inspector General Act, the Attorney General, after an initial determination of need, may authorize law enforcement powers for eligible personnel of each of the various offices of presidentially appointed Inspectors General. The determination of

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<sup>1</sup> Certain Offices of Inspector General had (prior to 2002) and continue to have OIG-specific grants of statutory authority under which they exercise law enforcement powers.

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need hinges on the respective office meeting the three prerequisites enumerated in section 6(e)(2). Those Offices of Inspector General listed in section 6(e)(3) of the Act are exempt from the requirement of an initial determination of need by the Attorney General.

Offices of Inspector General receiving law enforcement powers under section 6(e) must exercise those authorities in accordance with Guidelines promulgated by the Attorney General. This document sets forth the required Guidelines.

**III. APPLICATION OF GUIDELINES**

These Guidelines apply to qualifying personnel in those offices of presidentially appointed Inspectors General with law enforcement powers received from the Attorney General under section 6(e) of the Inspector General Act of 1978, as amended. Qualifying personnel include the Inspector General, the Assistant Inspector General for Investigations under such Inspector General, and all special agents supervised by the Assistant Inspector General for Investigations, provided that those individuals otherwise meet the training and qualifications requirements contained in these Guidelines. These mandatory guidelines do not limit Offices of Inspector General from exercising any statutory law enforcement authority derived from a source other than section 6(e). These Guidelines may be revised by the Attorney General, as appropriate. These Guidelines may be supplemented by agency-specific agreements between an individual Office of Inspector General and the Attorney General.

If the Attorney General determines that an Office of Inspector General exercising law enforcement powers under section 6(e), or any individual exercising such authorities, has failed to comply with these Guidelines, the Attorney General may rescind or suspend exercise of law enforcement authorities for that office or individual.

**IV. LAW ENFORCEMENT TRAINING AND QUALIFICATIONS****A. Basic and Refresher Training**

Each Office of Inspector General must certify completion of the Basic Criminal Investigator Training Program at the Federal Law Enforcement Training Center by each Inspector General, Assistant Inspector General for Investigations, and Special Agent/Investigator who will be exercising powers under these Guidelines. As an alternative, this training requirement may be satisfied by certification of completion of a comparable course of instruction to the Federal Law Enforcement Training Center Basic Criminal Investigator Training Program. Additionally, the Office of Inspector General will provide periodic refresher training in the following areas: trial process; federal criminal and civil legal updates; interviewing techniques and policy; law of arrest, search, and seizure; and physical conditioning/defensive tactics. The specifics of these programs should conform as much as

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practicable to standards such as those set at the Federal Law Enforcement Training Center or the Federal Bureau of Investigation Training Academy at Quantico, Virginia.

**B. Firearms Training and Qualification Requirements**

All individuals exercising authorities under section 6(e) must receive initial and periodic firearms training and qualification in accordance with Federal Law Enforcement Training Center standards. This training will focus on technical proficiency in using the firearms the Special Agent will carry, as well as the policy and legal issues involved in the use of deadly force. The initial training for this requirement must be met by successful completion of an appropriate course of training at the Federal Law Enforcement Training Center or an equivalent course of instruction (that must include policy and law concerning the use of firearms, civil liability, retention of firearms and other tactical training, and deadly force policy).

In addition to basic firearms training, each covered Office of Inspector General will implement a program of quarterly firearms qualifications by all individuals exercising authorities under section 6(e). Such program will be conducted in accordance with recognized standards.

**C. Deadly Force Policy**

The Offices of Inspector General will abide by the deadly force policy established by the Department of Justice.

**V. RANGE OF LAW ENFORCEMENT POWERS**

Section 6(e) of the Act provides that the Attorney General may authorize covered individuals to:

1. carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;
2. make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such individual, or for any felony cognizable under the laws of the United States if such individual has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and
3. upon probable cause to believe that a violation has been committed, seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States.

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Individuals exercising law enforcement authorities under section 6(e) may exercise those powers only for activities authorized under the Inspector General Act of 1978 or other statute, or as expressly authorized by the Attorney General.<sup>2</sup>

The Inspector General of each agency covered by these Guidelines, any Assistant Inspector General for Investigations under such Inspector General, and any special agent supervised by such an Assistant Inspector General are authorized to carry their firearms while off-duty when the Inspector General determines that they need to do so for operational or safety reasons.

The possession of firearms on aircraft while on official duty shall be governed by Transportation Security Administration guidelines and common carrier regulations applicable to the transport of firearms.

### VI. ADHERENCE TO ATTORNEY GENERAL GUIDELINES

In addition to any other Department of Justice directives or guidance referenced in these Guidelines, Offices of Inspector General will adhere to the Attorney General's Guidelines on General Crimes, Racketeering Enterprise, and Terrorism Enterprise Investigations; the Attorney General's Guidelines Regarding the Use of Confidential Informants; the Attorney General's Memorandum on Procedures for Lawful, Warrantless Monitoring of Verbal Communications; any other Attorney General Guidelines applicable to criminal investigative practices; and updated or amended versions of any of the aforementioned documents.

### VII. NOTIFICATION AND CONSULTATION REQUIREMENTS WITH RESPECT TO ALLEGATIONS OF CRIMINAL VIOLATIONS

The Inspector General Act directs expeditious reporting to the Attorney General whenever an Office of Inspector General has reasonable grounds to believe there has been a violation of federal criminal law.

#### A. Offices Of Inspector General/Federal Bureau of Investigation Mutual Notification Requirements

As the primary investigative arm of the Department of Justice, the Federal Bureau of Investigation has jurisdiction in all matters involving fraud against the Federal Government, and shares jurisdiction with the Offices of Inspector General in the

<sup>2</sup> Section 6(e) does not, of itself, provide plenary authority to make arrests for non-federal criminal violations. Legal authority for officers to respond to such offenses generally depends on state law. A federal agency may, however, as a matter of policy, permit its officers to intervene in serious criminal conduct that violates state law under certain circumstances.

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investigation of fraud against the Office of Inspector General's agency. In areas of concurrent jurisdiction, the Offices of Inspector General and the Federal Bureau of Investigation must promptly notify each other in writing upon the initiation of any criminal investigation. The notification requirement is a continuing obligation when new subjects are added to an investigation. Absent exigent circumstances, "promptly" shall be considered to be within 30 calendar days. Notification by the Offices of Inspector General shall be in writing and addressed to the Federal Bureau of Investigation in the district in which the investigation is being conducted. Notification by the Federal Bureau of Investigation shall be in writing and shall be addressed to the appropriate regional office of the Office of Inspector General. Notifications shall include, at a minimum and where available, (a) subject name, date of birth, social security number, and (b) any other case-identifying information including, but not limited to, (i) the date the case was opened or the allegation was received, and (ii) the allegation that predicated the case. For investigations in which allegations arise that are beyond the scope of the Office of Inspector General's jurisdiction, the Office of Inspector General will immediately notify the appropriate investigative agency of the allegations.

**B. Consultation with Prosecutors**

In criminal investigations, a federal prosecutor must be consulted at an early stage to ensure that the allegations, if proven, would be prosecuted. Such consultation will also ensure coordination of investigative methods.

**VIII. USE OF SPECIALIZED INVESTIGATIVE PROCEDURES AND TECHNIQUES****A. Court-Ordered Electronic Surveillance**

Court-authorized interceptions of wire, oral, or electronic communications are among the most intrusive investigative techniques currently available to law enforcement. The rigors of the approval process, expenditures of financial and manpower resources, and the probability of challenges by the defense bar make this technique subject to intense scrutiny. Surreptitious electronic surveillance using closed-circuit television presents similar considerations. Accordingly, any investigation involving the interception of communications pursuant to 18 U.S.C. §§ 2510, *et seq.*, electronic surveillance using closed-circuit television in situations where a warrant is required, or any other court-ordered electronic surveillance, shall be conducted only after consulting with the Federal Bureau of Investigation and appropriate United States Attorney's Office (or Criminal Division litigating component). Subsequent to such notification, the Federal Bureau of Investigation may choose to join the investigation, but is not required to do so. However, in an instance in which the Office of Inspector General intends to engage in court-authorized electronic surveillance without the participation of the Federal Bureau of

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Investigation, one of the following federal investigative agencies must participate in the investigation and supervise the application for and use of the surreptitious electronic surveillance: the Drug Enforcement Administration; Bureau of Alcohol, Tobacco, Firearms, and Explosives; Bureau of Immigration and Customs Enforcement; United States Postal Service; United States Secret Service; or Internal Revenue Service.

**B. Undercover Investigative Operations**

The Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations (the "Undercover Guidelines") ensure that the Federal Bureau of Investigation considers the efficacy, as well as the legal and policy implications, of every proposed undercover operation, and ensure that the use of the undercover investigative technique is subject to a management on-site review and oversight on a regular basis. It is the intent of this provision that undercover operations conducted by the Offices of Inspector General be subject to the same standards that govern the use of this investigative technique by the Federal Bureau of Investigation.

Accordingly, the community of Inspectors General granted law enforcement powers under section 6(e) of the Inspector General Act shall establish an Undercover Review Committee (the Committee) composed of 6 senior headquarters managers selected by the community of Inspectors General, with no two members of the Committee being employed by the same Office of Inspector General, for the purpose of reviewing undercover operations involving sensitive circumstances<sup>3</sup> in investigations that are not being conducted jointly with the Federal Bureau of Investigation. The Committee shall also include such representatives from the litigating sections of the Criminal Division of the Department of Justice as are designated by the Assistant Attorney General of the Criminal Division. If an undercover investigation being reviewed by the Committee is being conducted by an Office of Inspector General that is not represented on the Committee, a representative of that Office of Inspector General who is a senior management official shall be added as a full member of the Committee to review that undercover operation. The Federal Bureau of Investigation may designate a representative to participate in the Committee in a consultative role.

Before conducting an undercover operation lasting longer than six months, or involving any of the sensitive circumstances set forth in the Undercover Guidelines, the Office of Inspector General must first notify the Federal Bureau of Investigation. The Federal Bureau of Investigation may choose to join the investigation, in which case the

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<sup>3</sup> "Sensitive circumstances" are set forth in the Undercover Guidelines, and include investigations involving certain public officials, a significant risk of violence, authorized criminal activity, operation of a proprietary business, the risk for significant civil liability, and other circumstances as defined in those Guidelines.



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undercover operation would be subject to review by the Criminal Undercover Operations Review Committee of the Federal Bureau of Investigation. If the Federal Bureau of Investigation opts not to join the case, the undercover operation will be reviewed by the Committee. No undercover operation involving sensitive circumstances may be conducted without the approval of one of these committees.

The approval for each undercover operation involving sensitive circumstances must be renewed for each six-month period, or less, during which the undercover operation is ongoing. The standards of the Committee for approval of the undercover operation shall be the same as those set forth in the Undercover Guidelines. The Committee shall operate in the same fashion as the Criminal Undercover Operations Review Committee as outlined in the Undercover Guidelines.

Each Office of Inspector General whose law enforcement effort contemplates the use of the undercover investigative technique in investigations not involving the sensitive circumstances set forth above shall establish procedures that are consistent with the procedures established for such undercover investigations not involving sensitive circumstances as are set forth in the Undercover Guidelines.

**C. Especially Sensitive Targets**

- (1) Upon notification pursuant to Part VII, Subpart A of these Guidelines, or otherwise, the Federal Bureau of Investigation may choose to join, but would not be required to join, any investigation that involves:
  - (a) especially sensitive targets, including a member of Congress, a federal judge, a member of the executive branch occupying a position for which compensation is set at Executive Level IV or above, or a person who has served in such capacity within the previous two years;
  - (b) a significant investigation of a public official for bribery, conflict of interest, or extortion relating to the official's performance of duty;
  - (c) a significant investigation of a federal law enforcement official acting in his or her official capacity; or
  - (d) an investigation of a member of the diplomatic corps of a foreign country.
- (2) Investigations involving certain other classes of persons may result in serious security concerns, especially regarding the operation of the Federal Witness Security Program. Therefore, an Office of Inspector General investigation will be coordinated with the

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Office of Enforcement Operations of the Criminal Division, Department of Justice, when the investigation:

- (a) involves a person who is or has been a member of the Witness Security Program if that fact is known by the Office of Inspector General;
- (b) involves a public official, federal law enforcement officer, or other government employee or contract employee who is or has been involved in the operation of the Witness Security Program;
- (c) involves the use or targeting, in an undercover capacity, of a person who is in the custody of the Federal Bureau of Prisons or the United States Marshals Service, or is under Federal Bureau of Prisons' supervision; or
- (d) involves the use or targeting, in an undercover capacity, of a Federal Bureau of Prisons employee, if any part of the activity will occur within the confines of, or otherwise would be likely to affect the security of, a Bureau of Prisons-administered facility.

Investigations that require coordination with the Office of Enforcement Operations pursuant to Part VIII, Subpart C (2)(a)-(d) may be conducted without the participation of the Federal Bureau of Investigation. In such instances, notification of the investigation should not be made to any other agency without the explicit approval of the Office of Enforcement Operations.

**D. Consensual Monitoring in Certain Situations**

Consensual monitoring of conversations in some circumstances can present unusual problems. Accordingly, if the Office of Inspector General contemplates the use of consensual monitoring involving a consenting or non-consenting person in the custody of the Bureau of Prisons or the United States Marshals Service, the use of any type of consensual monitoring in the investigation, whether telephonic or non-telephonic, must be coordinated with the Office of Enforcement Operations at the Department of Justice.

Consistent with the Attorney General's Memorandum on Procedures for Lawful, Warrantless Monitoring of Verbal Communications, the use of any non-telephonic consensual monitoring in an Office of Inspector General investigation requires the prior approval of the Director or an Associate Director of the Office of Enforcement Operations if any of the following sensitive circumstances are present:

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- (a) the monitoring relates to an investigation of a member of Congress, a federal judge, a member of the Executive Branch occupying a position for which compensation is set at Executive Level IV or above, or a person who has served in such capacity within the previous two years;
- (b) the monitoring relates to an 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, and the offense investigated is one involving bribery, conflict of interest, or extortion relating to the performance of his or her official duties;
- (c) any party to the communication is a member of the diplomatic corps of a foreign country;
- (d) any party to the communication is or has been a member of the Witness Security Program and that fact is known to the agency involved or its officers;
- (e) the consenting or non-consenting person is in the custody of the Bureau of Prisons or the United States Marshals Service; or
- (f) the Attorney General, Deputy Attorney General, Associate Attorney General, any Assistant Attorney General, or the United States Attorney in the district where an investigation is being conducted has requested the investigating agency to obtain prior written consent before conducting consensual monitoring in a specific investigation.

**IX. PROSECUTOR CONCURRENCE FOR CERTAIN TECHNIQUES**

The use and control of informants, sources, and cooperating witnesses is recognized by the courts as lawful and often essential to the effectiveness of properly authorized law enforcement investigations. However, certain guidelines must be applied because the use of informants and cooperating witnesses may involve intrusion into the privacy of individuals, or cooperation with individuals whose reliability and motivation can be open to question. In the following situations, *inter alia*, the prior concurrence of a federal prosecutor must be obtained to avoid problems such as entrapment, danger to the public, and abuse of police authority:

1. when an informant is authorized to participate in criminal activities;
2. when an informant or cooperating witness is a person entitled to claim a federally recognized legal privilege of confidentiality, such as an attorney, member of the clergy, or psychiatrist;

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3. when aggregate payments for services or expenses to be made to a source who could be a witness in a legal proceeding exceed \$25,000; or
4. when the use of any member of the news media as a source is planned (and in such a situation the prior written approval of a federal prosecutor must be obtained).

**X. RELATIONS WITH THE NEWS MEDIA**

The Department of Justice has issued guidelines that prescribe policy and instructions concerning the release of information by Department of Justice employees relating to criminal and civil proceedings (see 28 C.F.R. § 50.2). Office of Inspector General personnel must familiarize themselves with and follow these guidelines. In addition, in the course of joint investigations between an Office of Inspector General and the Federal Bureau of Investigation, wherever a "news release" would be permitted pursuant to the guidelines noted above, the Office of Inspector General must coordinate the release with the Federal Bureau of Investigation and the Department of Justice.

**XI. REPORTING REQUIREMENTS**

Each Office of Inspector General shall make an annual written report to the Attorney General due on November 1 of each year, detailing the investigative and prosecutive activities of that Office of Inspector General. The report shall, at a minimum, contain information on the number of (1) federal criminal investigations initiated, (2) undercover operations undertaken, and (3) times any type of electronic surveillance was used. Additionally, the report shall provide information on all significant and credible allegations of abuse of authorities conferred by section 6(e)(1) of the Inspector General Act by Office of Inspector General investigative agents and what, if any, actions were taken as a result. The names of the agents need not be included in such report.

**XII. PEER REVIEWS**

In accordance with section 6(e)(7) of the Inspector General Act, covered Offices of Inspector General must implement a collective memorandum of understanding, in consultation with the Attorney General, under which each Office of Inspector General will be periodically reviewed by another Office of Inspector General or a committee of Offices of Inspector General. Reviews should occur no less often than once every 3 years. The purpose of the review is to ascertain whether adequate internal safeguards and management procedures exist to ensure that the law enforcement powers conferred by the 2002 amendments to the Inspector General Act are properly exercised. Results of the review will be communicated to the Attorney General, as well as to the applicable Inspector General.

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**XIII. NO THIRD-PARTY RIGHTS CREATED**

These Guidelines are adopted for the purpose of the internal management of the Executive Branch. These Guidelines are not intended to, do not, and may not be relied upon to, create any rights, substantive or procedural, enforceable at law or in equity by any party in any matter civil or criminal, nor do these Guidelines place any limitations on otherwise lawful investigative or litigation prerogatives of the Department of Justice or otherwise lawful investigative prerogatives of the covered Offices of Inspector General.

Dec. 8, 2004  
Date

John Ashcroft  
John Ashcroft  
Attorney General



**U.S. Department of Justice  
Office of Investigative Agency Policies**

**RESOLUTION 14**

Pursuant to the Attorney General's Order Number 1814-93, dated November 18, 1993, and in my capacity as Director of Investigative Agency Policies, I hereby issue the following resolution concerning the use of deadly force.

***Background***

The Supreme Court has addressed the constitutional restrictions on the use of deadly force. In view of those precedents, the investigative agencies of the Department of Justice ("DOJ") have, over the years, adopted policies to govern their employees' use of deadly force. To date, however, those policies have not been standardized. The Attorney General requested that the Office of Investigative Agency Policies ("OIAP") consider whether there should be a uniform DOJ deadly force policy and, if so, to draft it for her consideration.

Attached to this Resolution is a uniform deadly force policy and accompanying commentaries. Attachment A sets forth the uniform deadly force policy. Attachment B sets forth the commentaries governing the use of deadly force in non-custodial and custodial situations.

The deadly force policy and commentaries have resulted from many months of discussion, negotiation, and analysis among personnel from: the Federal Bureau of Investigation; the Drug Enforcement Administration; the United States Marshal Service; the immigration and Naturalization Service; the Bureau of Prisons; the Office of the Inspector General; and, DOJ's Criminal Division, Office of Legal Counsel, and Civil Rights Division.

***Discussion***

According to the terms of the Order creating the OIAP, I have been authorized, "in the areas of overlapping jurisdiction of the criminal investigative agencies," to:

[a]ssure, to the extent appropriate, consistent operational guidelines for the criminal investigative agencies of the Department [of Justice]; [and] ... [p]rovide advice to the Attorney General and the Deputy Attorney General on all investigative policies, procedures and activities that warrant uniform treatment or coordination ...

Order Number 1814-93, Sections (b)(2) and (9).

I am satisfied that this policy and the commentaries uphold the sanctity of human life and provide clear direction to law enforcement officials who, in the face of extraordinary danger, must resort to the use of deadly force. I have reviewed them with members of the OIAP Executive Advisory Board ("EAB") and there are no objections to them.

***Conclusion***

As I noted above, this Resolution and attachments have been approved by the EAB. Further, I have been advised that no OIAP member agency will appeal this Resolution or the attachments.

Louis J. Freeh

Director of Investigative Agency Policies

Dated: October 16, 1995

Washington, D.C.

**Attachment A**

**POLICY STATEMENT  
USE OF DEADLY FORCE**

I. Permissible Uses. 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. Fleeing felons. Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe: (1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and (2) the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person.

B. Escaping prisoners.

1. 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 escaping from a secure institution or is escaping while in transit to or from a secure institution; or

b. if the prisoner is otherwise effecting his or her escape in a manner that poses an imminent danger to the safety of other prisoners, staff, or the public (such as by attempting to ignite explosives).

2. The use of deadly force is not permitted if the subject is in a non-secure facility or a facility under the control of the Immigration and Naturalization Service, and (a) has not used or threatened the use of force likely to cause serious physical injury in his or her escape attempt, and (b) has not otherwise manifested an imminent threat of death or serious physical injury to the officer or community.

3. The use of deadly force is not permitted if the subject is in transit to or from a non-secure facility and is not accompanied by persons who are in transit to or from a secure facility and the



subject (a) has not used or threatened the use of force likely to cause serious physical injury in his or her escape attempt, and (b) has not otherwise manifested an imminent threat of death or serious physical injury to the officer or community.

4. After an escape from the facility or vehicle and its immediate environs has been effected, officers attempting to apprehend the escaped prisoner may not use deadly force unless such force would otherwise be authorized in accordance with this policy.

C. Prison Unrest. Deadly force may be used to maintain or restore control of a prison or correctional institution 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 other inmates, prison staff, or other persons. The use of deadly force would be unreasonable and thus not permitted to quell a disturbance when force other than deadly force reasonably appears sufficient.

II. Non-Deadly Force. If other force than deadly force reasonably appears to be sufficient to accomplish an arrest or otherwise accomplish the law enforcement purpose, deadly force is not necessary.

III. Verbal Warning. 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.

IV. Warning Shots. Warning shots are not permitted outside of the prison context. 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 grievous bodily harm.

V. Vehicles.

A. Weapons may not be fired solely to disable moving vehicles

B. Weapons may be fired at the driver or other occupant of a moving motor vehicle only when:

1. The officer has a reasonable belief that the subject poses an imminent danger of death or serious physical injury to the officer or another; and

2. The public safety benefits of using such force outweigh the risks to the safety of the officer or other persons.

VI. Vicious Animals. Deadly force may be directed against dogs or other vicious animals when necessary in self-defense or defense of others.

VII. Rights of Third Parties. Nothing in this policy and the attached commentary is intended to create or does create an enforceable legal right or private right of action.

## Attachment B

### Commentary Regarding the Use of Deadly Force in Non-Custodial Situations

#### I. Introduction

The Department of Justice hereby establishes a uniform policy with respect to the use of deadly force in both custodial and non-custodial situations. This commentary does not address the use of deadly force upon subjects relinquished to persons or facilities responsible for detention or incarceration. All other uses of deadly force are addressed in this commentary. The policy and this commentary provide practical guidance for officers who must make grave decisions regarding the use of deadly force under the most trying of circumstances. The policy also is intended to maintain uniformity among the various Departmental components and to achieve uniform standards and training with respect to the use of deadly force. Although each component may still develop and conduct its own training on deadly force, the policy governs the use of deadly force under all circumstances.

The policy is the product of discussion among the various law enforcement agencies whose personnel are called upon to make decisions regarding the use of deadly force, of review of the current policies governing the use of force, and of advice of legal counsel from various Department components, including those charged with law enforcement, defense of civil actions filed against the government, enforcement of civil rights, and provision of constitutional advice. In developing the policy, it became apparent that decisional law provides only limited guidance regarding the use of deadly force.<sup>(1)</sup> In addition, as a matter of principle, the Department deliberately did not formulate this policy to authorize force up to constitutional or other legal limits.<sup>(2)</sup>

#### II. Definitions

**Deadly force** is the use of any force that is likely to cause death or serious physical injury. When an officer of the Department uses such force in non-custodial situations, it may only be done consistent with this policy. Force that is not likely to cause death or serious physical injury, but unexpectedly results in such harm or death, is not governed by this policy.

**Probable cause, reason to believe or a reasonable belief**, for purposes of this policy, means facts and circumstances, including the reasonable inferences drawn therefrom, known to the officer at the time of the use of deadly force, that would cause a reasonable officer to conclude that the point at issue is probably true. The reasonableness of a belief or decision must be viewed from the perspective of the officer on the scene, who may often be forced to make

split-second decisions in circumstances that are tense, unpredictable, and rapidly evolving. Reasonableness is not to be viewed from the calm vantage point of hindsight.

### III. Principles on Use of Deadly Force

The Department of Justice recognizes and respects the integrity and paramount value of all human life. Consistent with that primary value, but beyond the scope of the principles articulated here, is the Department's full commitment to take all reasonable steps to prevent the need to use deadly force, as reflected in Departmental training and procedures. Yet even the best prevention policies are on occasion insufficient, as when an officer serving a warrant or conducting surveillance is confronted with a threat to his or her life. With respect to these situations and in keeping with the value of protecting all human life, the touchstone of the Department's policy regarding the use of deadly force is necessity. Use of deadly force must be objectively reasonable under all the circumstances known to the officer at the time.

The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to officers or other persons have failed or would be likely to fail. Thus, employing deadly force is permissible when there is no safe alternative to using such force, and without it the officer or others would face imminent and grave danger. An officer is not required to place him or herself, another officer, a suspect, or the public in unreasonable danger of death or serious physical injury before using deadly force.

Determining whether deadly force is necessary may involve instantaneous decisions that encompass many factors, such as the likelihood that the subject will use deadly force on the officer or others if such force is not used by the officer; the officer's knowledge that the subject will likely acquiesce in arrest or recapture if the officer uses lesser force or no force at all; the capabilities of the subject; the subject's access to cover and weapons; the presence of other persons who may be at risk if force is or is not used; and the nature and the severity of the subject's criminal conduct or the danger posed.

Deadly force should never be used upon mere suspicion that a crime, no matter how serious, was committed, or simply upon the officer's determination that probable cause would support the arrest of the person being pursued or arrested for the commission of a crime. Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause to believe: (1) the subject has committed a felony involving the infliction or threatened infliction of serious physical injury or death, and (2) the escape of the subject would pose an imminent danger of death or serious physical injury to the officer or to another person.

As used in this policy, "imminent" has a broader meaning than "immediate" or "instantaneous." The concept of "imminent" should be understood to be elastic, that is, involving a period of time dependent on the circumstances, rather than the fixed point of time implicit in the concept of "immediate" or "instantaneous." Thus, a subject may pose an imminent danger even

if he or she is not at that very moment pointing a weapon at the officer if, for example, he or she has a weapon within reach or is running for cover carrying a weapon or running to a place where the officer has reason to believe a weapon is available.

#### IV. Lesser Means

**Intermediate force.** If force lesser than deadly force could reasonably be expected to accomplish the same end, such as the arrest of a dangerous fleeing subject, without unreasonably increasing the danger to the officer or to others, then it must be used. Deadly force is not permissible in such circumstances, although the reasonableness of the officer's understanding at the time deadly force was used shall be the benchmark for assessing applications of this policy.

**Verbal warnings.** Before using deadly force, if feasible, officers will audibly command the subject to submit to their authority. Implicit in this requirement is the concept that officers will give the subject an opportunity to submit to such command unless danger is increased thereby. However, if giving such a command would itself pose a risk of death or serious bodily harm to the officer or others, it need not be given.

**Warning shots and shooting to disable.** Warning shots are not authorized. Discharge of a firearm is usually considered to be permissible only under the same circumstances when deadly force may be used--that is, only when necessary to prevent loss of life or serious physical injury. Warning shots themselves may pose dangers to the officer or others.

Attempts to shoot to wound or to injure are unrealistic and, because of high miss rates and poor stopping effectiveness, can prove dangerous for the officer and others. Therefore, shooting merely to disable is strongly discouraged.

**Motor vehicles and their occupants.** Experience has demonstrated that the use of firearms to disable moving vehicles is either unsuccessful or results in an uncontrolled risk to the safety of officers or others. Shooting to disable a moving motor vehicle is forbidden.

An officer who has reason to believe that a driver or occupant poses an imminent danger of death or serious physical injury to the officer or others may fire at the driver or an occupant only when such shots are necessary to avoid death or serious physical injury to the officer or another, and only if the public safety benefits of using such force reasonably appear to outweigh any risks to the officer or the public, such as from a crash, ricocheting bullets, or return fire from the subject or another person in the vehicle.

Except in rare circumstances, the danger permitting the officer to use deadly force must be by means other than the vehicle.

## V. Miscellaneous

Deadly force may be directed against dogs or other vicious animals when necessary in self-defense or defense of others.

Nothing in this policy and the attached commentary is intended to create or does create an enforceable legal right or private right of action.

1. Many issues addressed in the policy and this memorandum have never been addressed in reported decisions or the law remains unresolved. Courts would step outside their proper role if they formulated detailed policies with respect to the procedures governing deadly force; in contrast, the Department has the discretion to determine what the policy should be and to provide guidance to its employees with regard to these solemn issues. Cases arise in procedural postures--typically civil tort or civil rights actions, or motions to dismiss or overturn criminal charges or convictions--in which a wrongful act on the part of the government may not lead to recovery or sanctions. As a result, the court often does not reach the question of whether the use of force was wrongful.

2. The leading Fourth Amendment cases in this area are Tennessee v. Garner, 47 U.S. 1 (1985) and Graham v. Connor, 490 U.S. 386 (1989).

**Attachment B (continued)****Commentary Regarding the Use of Deadly Force  
in Custodial Situations****I. Introduction**

The Department of Justice hereby establishes a uniform policy with respect to the use of deadly force in both custodial and non-custodial situations. This commentary addresses the use of deadly force in custodial situations including conditions of prison unrest and when a subject is escaping custody. The policy and this commentary provide practical guidance for officers who must make grave decisions regarding the use of deadly force under the most trying of circumstances. The policy also is intended to achieve uniformity among the various Departmental components, which previously had established their own standards for the use of deadly force. Although each component may still develop and conduct its own training on deadly force, the policy governs the use of deadly force within any facility dedicated to the incarceration of persons or by any officer who is responsible for the transporting or custody of persons incarcerated or to be incarcerated. Those portions of the policy which address custodial or prison situations specifically, do not apply to officers who are merely detaining an arrestee or transporting an arrestee from the place of arrest; nor do these portions of the policy apply to the transporting of an arrestee to a facility dedicated to incarceration. In addition, the Immigration and Naturalization Service (INS) officers, in INS controlled facilities, are not authorized to use deadly force except in self-defense or defense of others.

The policy is the product of discussion among the various law enforcement agencies whose personnel are called upon to make decisions regarding the use of deadly force, of review of the current policies governing the use of force, and of advice of legal counsel from various Department components, including those charged with law enforcement, defense of civil actions filed against the government, enforcement of civil rights, and provision of constitutional advice. In developing the policy, it became apparent that decisional law provides only limited guidance regarding the use of deadly force.<sup>(1)</sup> In addition, as a matter of principle, the Department deliberately did not formulate this policy to authorize force up to constitutional or other legal limits.<sup>(2)</sup>

**II. Definitions**

**Deadly force** is any force that is likely to cause death or serious physical injury. When an officer of the Department uses such force, it may only be done consistent with this policy. Force that is not intended to cause death or serious physical injury, but unexpectedly results in such injury or death, is not governed by this policy.

**Escape** for the purposes of this policy encompasses the concept of immediacy of an attempt to leave custody. A person in custody is escaping from a facility or vehicle when he or she is attempting to escape and is still within the facility's immediate environs. Hence the concept of escape is different under this policy than under 18 U.S.C. § 751 and 28 U.S.C. § 1826(c), which provide that escapes are continuing offenses.

**Probable cause, reason to believe or a reasonable belief**, for purposes of this policy, means facts and circumstances, including the reasonable inferences drawn therefrom, known to the officer at the time of the use of deadly force, that would cause a reasonable officer to conclude that the point at issue is probably true. The reasonableness of a belief or decision must be viewed from the perspective of the officer on the scene, who may often be forced to make split-second decisions in circumstances that are tense, unpredictable, and rapidly evolving. Reasonableness is not to be viewed from the calm vantage point of hindsight.

### III. Deadly Force Generally

The Department of Justice recognizes and respects the integrity and paramount value of all human life. Consistent with that primary value, but beyond the scope of the principles articulated here, is the Department's full commitment to take all reasonable steps to prevent the need to use deadly force as reflected in Departmental training and procedures. Yet even the best prevention policies are on occasion insufficient, as when a serious prison disturbance occurs, or when a prisoner confined to a secure facility attempts to escape from custody. With respect to these situations and in keeping with the value of protecting all human life, the touchstone of the Department's policy regarding the use of deadly force is necessity. Use of deadly force must be objectively reasonable under all the circumstances known to the officer at the time, including the nature and the severity of prison disturbance, whether officers at the facility carry firearms, the use or threat of use of force upon the officer or others in any escape attempt, and the escapee's response to any warning.

The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to officers or other persons have failed or would be likely to fail. Thus, employing deadly force is permissible when there is no safe alternative to using such force, and without it the officer or others would face imminent and grave danger. An officer is not required unreasonably to place his or her life, that of another officer, another prisoner or suspect, or the public in danger of death or serious injury before using deadly force. Persons who have been determined to require confinement in a secure facility ordinarily pose such a danger when attempting to escape.

### IV. Prison Control

No force, deadly or non-deadly, may be used wantonly, maliciously or sadistically by prison officials against prisoners. Force may never be used solely for the purpose of causing harm.



Deadly force may be used in maintaining or regaining control of a prison, correctional institution, or any portion or facility of such an institution, in the event of a mutiny, rebellion, riot, or disturbance that threatens the safety of inmates, prison staff, or other persons. Deadly force may be used only when it is necessary and the officer reasonably believes that the subject is him or herself participating in a disturbance. Participation for these purposes is more than simply being in the area where others are visibly creating the disturbance, particularly if the subject has had no opportunity to exit that area. On the other hand, in considering the use of, deadly force in the exigent circumstances of a prison disturbance, an officer need not ascertain who is instigating or leading the disturbance before finding that someone is sufficiently participating in the disturbance. The reasonableness of an officer's determination to use deadly force may turn on the officer's vantage point and assignment. Deadly force may also be used when a single prisoner presents an imminent danger of serious physical injury to another person or persons.

#### V. Escapes

The Department's responsibility to protect the public is at its zenith when the Department, performing its custodial function, determines that a prisoner is to be confined in a secure facility. Acting in that capacity, the Department's obligation to ensure that prisoner's continued custody entails strict procedures including the threat of the use of deadly force should such a prisoner attempt to escape. Correctional officials may display firearms at federal correctional institutions to deter the escape of such prisoners. Officers may presume that a prisoner attempting an escape from a secure institution, as defined by the Bureau of Prisons, would pose an imminent danger of death or serious physical injury to members of the public if permitted to consummate the escape. Similarly, the use of deadly force is governed by the same principles in the case of prisoners in transit. If the prisoner is in transit to or from a secure facility, deadly force ordinarily would be necessary if no other means were reasonably likely to stop the escape from being consummated. A person attempting an escape is considered to be attempting an escape from a secure institution or in transit to or from it when the limits of such secure confinement have been specially extended, as, for instance, when the subject has been transferred to a hospital or permitted to attend a funeral under armed escort.

The presumption that those attempting to escape from secure facilities pose an imminent danger (and are thus subject to the use of deadly force) runs in the other direction if the facility is non-secure. A determination has already been made that, in non-secure facilities, persons would not pose an imminent danger to the public if the person escaped. Accordingly, and in the absence of other factors demonstrating an imminent threat, it would be unreasonable to use deadly force to prevent escapes of persons from non-secure facilities or to prevent escapes of persons in transit to or from a non-secure facility unless accompanied by persons going from or to a secure facility. Examples of factors demonstrating an imminent threat include the circumstances where the prisoner has become armed or has used or threatened to use force likely to cause serious physical injury. In making the "imminent threat" determination, it should

be recognized that "imminent" has a broader meaning than "immediate" or "instantaneous." The concept of "imminent" should be understood to be elastic, that is, involving a period of time dependent on the circumstances, rather than the fixed point of time implicit in the concept of "immediate" or "instantaneous". Thus, for example, a prisoner may pose an imminent threat, even if he or she is not at that very moment in possession of a weapon, if he or she is running to a place where the officer has reason to believe a weapon is available.

Once an escape is no longer in progress, but has been accomplished, that is, once the subject is no longer in the immediate environs of the facility, officers must attempt to effect a rearrest of the subject. In such cases, the policy pertaining to escaping prisoners is no longer applicable. Deadly force would then be authorized only consistent with the policy governing the use of such force in circumstances other than those of escaping prisoners.

#### VI. Destruction of Property

In accord with the policy permitting the necessary use of deadly force to maintain control of prisons and correctional institutions and to stop attempted escapes, deadly force may be used when someone is destroying or attempting to destroy property, if the loss of or damage to the property could contribute directly to an escape or attempted escape, serious physical injury, or death. Examples of this type of situation include using explosives in order to effect an escape from prison or attempting to disable a fire truck during a fire within an institution. If the destruction of property does not reasonably appear to be likely to so contribute to an escape, serious physical injury, or death, using deadly force would probably be unreasonable and thus forbidden.

#### VI. Lesser Means

**Verbal warnings.** The Department of Justice requires that before using deadly force, if feasible, officers will audibly command the subject to submit to their authority. Implicit in this requirement is the concept that officers will give the subject an opportunity to submit to such command unless the danger is increased thereby. However, if giving such a command would itself pose a risk of death or grievous bodily harm to the officer or others, it need not be given.

**Warning shots.** Within or from the immediate environs of a secure facility, warning shots may be fired as an intermediate measure at the discretion of the officer if verbal warnings are to no avail. If the officer determines that the firing of a warning shot is a necessary step to deterring or preventing an escape or preventing the loss of life or the infliction of serious physical injury, the officer may fire warning shots only if he or she can do so safely; that is, there is no apparent danger of injury to an innocent person.

#### VII. Limitation

Nothing in the policy and this commentary is intended to create or does create an enforceable legal right or private right of action.

1. Many issues addressed in the policy and this memorandum have never been addressed in reported decisions or the law remains unresolved. Courts would step outside their proper role if they formulated detailed policies with respect to the procedures governing deadly force in arrests, prison riots, and escapes; in contrast, the Department has the discretion to determine what the policy should be and to provide guidance to its employees with regard to these solemn issues. Cases arise in procedural postures--typically civil tort or civil rights actions, or motions to dismiss or overturn criminal charges or convictions--in which a wrongful act on the part of the government may not lead to recovery or sanctions. As a result, the court often does not reach the question of whether the use of force was wrongful. Relatedly, the judicial deference paid to decisions of correctional officers in use-of-force situations, coupled with immunity doctrines, may at least as a theoretical matter result in upholding (or at least failing to sanction) conduct that might not have been undertaken as a matter of policy.

2. The leading Eighth Amendment case, arising in the context of force used during prison unrest, is Whitley v. Albers, 475 U.S. 312 (1986). The courts have not fully resolved the demarcations among the Fourth Amendment, the Fifth Amendment's due process clause, and the Eighth Amendment in limiting the use of force following an arrest. See, e.g., Graham v. Connor, 490 U.S. 386 (1989); Albright v. Oliver, 114 S. Ct. 1340 (1994) (arrest without probable cause, no force involved); Brothers v. Klevenhagen, 28 F.3d 452 (5th Cir.), cert. denied, 115 S. Ct. 639 (1994) (analyzing shooting of detainee under Fourteenth Amendment due process); Wright v. Whiddon, 951 F.2d 297 (11th Cir. 1992).



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

May 30, 2002

Referral to DOJ

MEMORANDUM FOR THE HEADS AND INSPECTORS GENERAL  
OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: Procedures for Lawful, Warrantless Monitoring of Verbal Communications

By Memorandum dated October 16, 1972, the Attorney General directed all federal departments and agencies to obtain Department of Justice authorization before intercepting verbal communications without the consent of all parties to the communication. This directive was clarified and continued in force by the Attorney General's Memorandum of September 22, 1980, to Heads and Inspectors General of Executive Departments and Agencies. It was then superseded, with new authorization procedures and relevant rules and guidelines, including limitations on the types of investigations requiring prior written approval by the Department of Justice, in the Attorney General's Memorandum of November 7, 1983.<sup>1</sup>

The Attorney General's Memorandum of January 20, 1998, superseded the aforementioned directives. It continued most of the authorization procedures established in the November 7, 1983, Memorandum, but reduced the sensitive circumstances under which prior written approval of senior officials of the Department of Justice's Criminal Division is required. At the same time, it continued to require oral authorization from Department of Justice attorneys, ordinarily local Assistant United States Attorneys, before the initiation of the use of consensual monitoring in all investigations not requiring prior written approval. In addition, that Memorandum reduced and eventually eliminated the reporting requirement imposed on departments and agencies. These changes reflected the results of the exercise of the Department's review function over many years, which showed that the departments and agencies had uniformly been applying the required procedures with great care, consistency, and good judgment, and that the number of requests for consensual monitoring that were not approved had been negligible.

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<sup>1</sup>As in all of the prior memoranda except for the one dated October 16, 1972, this memorandum only applies to the consensual monitoring of oral, nonwire communications, as discussed below. "Verbal" communications will hereinafter be referred to as oral.

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This Memorandum updates and in some limited respects modifies the Memorandum of January 20, 1998. The changes are as follows:

First, Parts III.A.(8) and V. of the January 20, 1998, Memorandum required concurrence or authorization for consensual monitoring by the United States Attorney, an Assistant United States Attorney, or the previously designated Department of Justice attorney responsible for a particular investigation (for short, a "trial attorney"). This Memorandum provides instead that a trial attorney must advise that the monitoring is legal and appropriate. This continues to limit monitoring to cases in which an appropriate attorney agrees to the monitoring, but makes it clear that this function does not establish a supervisory role or require any involvement by the attorney in the conduct of the monitoring. In addition, for cases in which this advice cannot be obtained from a trial attorney for reasons unrelated to the legality or propriety of the monitoring, this Memorandum provides a fallback procedure to obtain the required advice from a designated attorney of the Criminal Division of the Department of Justice. Where there is an issue as to whether providing the advice would be consistent with applicable attorney conduct rules, the trial attorney or the designated Criminal Division attorney should consult with the Department's Professional Responsibility Advisory Office.

Second, Part V. of the Memorandum of January 20, 1998, required that an agency head or his or her designee give oral authorization for consensual monitoring, and stated that "[a]ny designee should be a high-ranking supervisory official at headquarters level." This rule was qualified by Attorney General Order No. 1623-92 of August 31, 1992, which, in relation to the Federal Bureau of Investigation (FBI), authorized delegation of this approval function to Special Agents in Charge. Experience has shown that the requirement of Special Agent in Charge approval can result in a loss of investigative opportunities because of an overly long approval process, and indicates that allowing approval by Assistant Special Agents in Charge would facilitate FBI investigative operations. Assistant Special Agents in Charge are management personnel to whom a variety of supervisory and oversight responsibilities are routinely given; generally, they are directly involved and familiar with the circumstances relating to the propriety of proposed uses of the consensual monitoring technique. Part V. is accordingly revised in this Memorandum to provide that the FBI Director's designees for purposes of oral authorization of consensual monitoring may include both Special Agents in Charge and Assistant Special Agents in Charge. This supersedes Attorney General Order No. 1623-92, which did not allow delegation of this function below the level of Special Agent in Charge.

Third, this Memorandum omits as obsolete Part VI. of the Memorandum of January 20, 1998. Part VI. imposed a reporting requirement by agencies concerning consensual monitoring but rescinded that reporting requirement after one year.

The Fourth Amendment to the United States Constitution, Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. §2510, et seq.), and the Foreign

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Intelligence Surveillance Act of 1978 (50 U.S.C. §1801, et seq.) permit government agents, acting with the consent of a party to a communication, to engage in warrantless monitoring of wire (telephone) communications and oral, nonwire communications. See United States v. White, 401 U.S. 745 (1971); United States v. Caceres, 440 U.S. 741 (1979). Similarly, the Constitution and federal statutes permit federal agents to engage in warrantless monitoring of oral, nonwire communications when the communicating parties have no justifiable expectation of privacy.<sup>2</sup> Because such monitoring techniques are particularly effective and reliable, the Department of Justice encourages their use by federal agents for the purpose of gathering evidence of violations of federal law, protecting informants or undercover law enforcement agents, or fulfilling other, similarly compelling needs. While these techniques are lawful and helpful, their use in investigations is frequently sensitive, so they must remain the subject of careful, self-regulation by the agencies employing them.

The sources of authority for this Memorandum are Executive Order No. 11396 ("Providing for the Coordination by the Attorney General of Federal Law Enforcement and Crime Prevention Programs"); Presidential Memorandum ("Federal Law Enforcement Coordination, Policy and Priorities") of September 11, 1979; Presidential Memorandum (untitled) of June 30, 1965, on, inter alia, the utilization of mechanical or electronic devices to overhear nontelephone conversations; the Paperwork Reduction Act of 1980 and the Paperwork Reduction Reauthorization Act of 1986, as amended; and the inherent authority of the Attorney General as the chief law enforcement officer of the United States.

I. DEFINITIONS

As used in this Memorandum, the term "agency" means all of the Executive Branch departments and agencies, and specifically includes United States Attorneys' Offices which utilize their own investigators, and the Offices of the Inspectors General.

As used in this Memorandum, the terms "interception" and "monitoring" mean the aural acquisition of oral communications by use of an electronic, mechanical, or other device. Cf. 18 U.S.C. § 2510(4).

As used in this Memorandum, the term "public official" means an official of any public entity of government, including special districts, as well as all federal, state, county, and municipal governmental units.

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<sup>2</sup>As a general rule, nonconsensual interceptions of wire communications violate 18 U.S.C. § 2511 regardless of the communicating parties' expectation of privacy, unless the interceptor complies with the court-authorization procedures of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. § 2510, et seq.) or with the provisions of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. § 1801 et seq.).

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**II. NEED FOR WRITTEN AUTHORIZATION**

**A. Investigations Where Written Department of Justice Approval is Required**

A request for authorization to monitor an oral communication without the consent of all parties to the communication must be approved in writing by the Director or Associate Director of the Office of Enforcement Operations, Criminal Division, U.S. Department of Justice, when it is known that:

- (1) the monitoring relates to an 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) the monitoring relates to an 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, and the offense investigated is one involving bribery, conflict of interest, or extortion relating to the performance of his or her official duties;
- (3) any party to the communication is a member of the diplomatic corps of a foreign country;
- (4) any party to the communication is or has been a member of the Witness Security Program and that fact is known to the agency involved or its officers;
- (5) the consenting or nonconsenting person is in the custody of the Bureau of Prisons or the United States Marshals Service; or
- (6) the Attorney General, Deputy Attorney General, Associate Attorney General, any Assistant Attorney General, or the United States Attorney in the district where an investigation is being conducted has requested the investigating agency to obtain prior written consent before conducting consensual monitoring in a specific investigation.

In all other cases, approval of consensual monitoring will be in accordance with the procedures set forth in part V. below.

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B. Monitoring Not Within Scope of Memorandum

Even if the interception falls within one of the six categories above, the procedures and rules in this Memorandum do not apply to:

- (1) extraterritorial interceptions;
- (2) foreign intelligence interceptions, including interceptions pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. § 1801, et seq.);
- (3) interceptions pursuant to the court-authorization procedures of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. § 2510, et seq.);
- (4) routine Bureau of Prisons monitoring of oral communications that are not attended by a justifiable expectation of privacy;
- (5) interceptions of radio communications; and
- (6) interceptions of telephone communications.

III. AUTHORIZATION PROCEDURES AND RULES

A. Required Information

The following information must be set forth in any request to monitor an oral communication pursuant to part II.A.:

- (1) Reasons for the Monitoring. The request must contain a reasonably detailed statement of the background and need for the monitoring.
- (2) Offense. If the monitoring is for investigative purposes, the request must include a citation to the principal criminal statute involved.
- (3) Danger. If the monitoring is intended to provide protection to the consenting party, the request must explain the nature of the danger to the consenting party.
- (4) Location of Devices. The request must state where the monitoring device will be hidden: on the person, in personal effects, or in a fixed location.



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- (5) Location of Monitoring. The request must specify the location and primary judicial district where the monitoring will take place. A monitoring authorization is not restricted to the original district. However, if the location of monitoring changes, notice should be promptly given to the approving official. The record maintained on the request should reflect the location change.
- (6) Time. The request must state the length of time needed for the monitoring. Initially, an authorization may be granted for up to 90 days from the day the monitoring is scheduled to begin. If there is the need for continued monitoring, extensions for additional periods of up to 90 days may be granted. In special cases (e.g., "fencing" operations run by law enforcement agents or long-term investigations that are closely supervised by the Department's Criminal Division) authorization for up to 180 days may be granted with similar extensions.
- (7) Names. The request must give the names of persons, if known, whose communications the department or agency expects to monitor and the relation of such persons to the matter under investigation or to the need for the monitoring.
- (8) Attorney Advice. The request must state that the facts of the surveillance have been discussed with the United States Attorney, an Assistant United States Attorney, or the previously designated Department of Justice attorney responsible for a particular investigation, and that such attorney advises that the use of consensual monitoring is appropriate under this Memorandum (including the date of such advice). The attorney must also advise that the use of consensual monitoring under the facts of the investigation does not raise the issue of entrapment. Such statements may be made orally. If the attorneys described above cannot provide the advice for reasons unrelated to the legality or propriety of the consensual monitoring, the advice must be sought and obtained from an attorney of the Criminal Division of the Department of Justice designated by the Assistant Attorney General in charge of that Division. Before providing such advice, a designated Criminal Division Attorney shall notify the appropriate United States Attorney or other attorney who would otherwise be authorized to provide the required advice under this paragraph.
- (9) Renewals. A request for renewal authority to monitor oral communications must contain all the information required for an initial request. The renewal request must also refer to all previous authorizations

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and explain why an additional authorization is needed, as well as provide an updated statement that the attorney advice required under paragraph (8) has been obtained in connection with the proposed renewal.

B. Oral Requests

Unless a request is of an emergency nature, it must be in written form and contain all of the information set forth above. Emergency requests in cases in which written Department of Justice approval is required may be made by telephone to the Director or an Associate Director of the Criminal Division's Office of Enforcement Operations, or to the Assistant Attorney General, the Acting Assistant Attorney General, or a Deputy Assistant Attorney General for the Criminal Division, and should later be reduced to writing and submitted to the appropriate headquarters official as soon as practicable after authorization has been obtained. An appropriate headquarters filing system is to be maintained for consensual monitoring requests that have been received and approved in this manner. Oral requests must include all the information required for written requests as set forth above.

C. Authorization

Authority to engage in consensual monitoring in situations set forth in part II.A. of this Memorandum may be given by the Attorney General, the Deputy Attorney General, the Associate Attorney General, the Assistant Attorney General or Acting Assistant Attorney General in charge of the Criminal Division, a Deputy Assistant Attorney General in the Criminal Division, or the Director or an Associate Director of the Criminal Division's Office of Enforcement Operations. Requests for authorization will normally be submitted by the headquarters of the department or agency requesting the consensual monitoring to the Office of Enforcement Operations for review.

D. Emergency Monitoring

If an emergency situation requires consensual monitoring at a time when one of the individuals identified in part III.B. above cannot be reached, the authorization may be given by the head of the responsible department or agency, or his or her designee. Such department or agency must then notify the Office of Enforcement Operations as soon as practicable after the emergency monitoring is authorized, but not later than three working days after the emergency authorization.

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The notification shall explain the emergency and shall contain all other items required for a nonemergency request for authorization set forth in part III.A. above.

IV. SPECIAL LIMITATIONS

When a communicating party consents to the monitoring of his or her oral communications, the monitoring device may be concealed on his or her person, in personal effects, or in a fixed location. Each department and agency engaging in such consensual monitoring must ensure that the consenting party will be present at all times when the device is operating. In addition, each department and agency must ensure: (1) that no agent or person cooperating with the department or agency trespasses while installing a device in a fixed location, unless that agent or person is acting pursuant to a court order that authorizes the entry and/or trespass, and (2) that as long as the device is installed in the fixed location, the premises remain under the control of the government or of the consenting party. See United States v. Yonn, 702 F.2d 1341, 1347 (11th Cir.), cert. denied, 464 U.S. 917 (1983) (rejecting the First Circuit's holding in United States v. Padilla, 520 F.2d 526 (1st Cir. 1975), and approving use of fixed monitoring devices that are activated only when the consenting party is present). But see United States v. Shabazz, 883 F. Supp. 422 (D. Minn. 1995).

Outside the scope of this Memorandum are interceptions of oral, nonwire communications when no party to the communication has consented. To be lawful, such interceptions generally may take place only when no party to the communication has a justifiable expectation of privacy,<sup>3</sup> or when authorization to intercept such communications has been obtained pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. § 2510, et seq.) or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. § 1801 et seq.). Each department or agency must ensure that no communication of any party who has a justifiable expectation of privacy is intercepted unless proper authorization has been obtained.

V. PROCEDURES FOR CONSENSUAL MONITORING WHERE NO WRITTEN APPROVAL IS REQUIRED

Prior to receiving approval for consensual monitoring from the head of the department or agency or his or her designee, a representative of the department or agency must obtain advice that the consensual monitoring is both legal and appropriate from the United

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<sup>3</sup>For example, burglars, while committing a burglary, have no justifiable expectation of privacy. Cf. United States v. Pui Kan Lam, 483 F.2d 1202 (2d Cir. 1973), cert. denied, 415 U.S. 984 (1974).

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States Attorney, an Assistant United States Attorney, or the Department of Justice attorney responsible for a particular investigation. The advice may be obtained orally from the attorney. If the attorneys described above cannot provide this advice for reasons unrelated to the legality or propriety of the consensual monitoring, the advice must be sought and obtained from an attorney of the Criminal Division of the Department of Justice designated by the Assistant Attorney General in charge of that Division. Before providing such advice, a designated Criminal Division Attorney shall notify the appropriate United States Attorney or other attorney who would otherwise be authorized to provide the required advice under this paragraph.

Even in cases in which no written authorization is required because they do not involve the sensitive circumstances discussed above, each agency must continue to maintain internal procedures for supervising, monitoring, and approving all consensual monitoring of oral communications. Approval for consensual monitoring must come from the head of the agency or his or her designee. Any designee should be a high-ranking supervisory official at headquarters level, but in the case of the FBI may be a Special Agent in Charge or Assistant Special Agent in Charge.

Similarly, each department or agency shall establish procedures for emergency authorizations in cases involving non-sensitive circumstances similar to those that apply with regard to cases that involve the sensitive circumstances described in part III.D., including obtaining follow-up oral advice of an appropriate attorney as set forth above concerning the legality and propriety of the consensual monitoring.

Records are to be maintained by the involved departments or agencies for each consensual monitoring that they have conducted. These records are to include the information set forth in part III.A. above.

VI. GENERAL LIMITATIONS

This Memorandum relates solely to the subject of consensual monitoring of oral communications except where otherwise indicated. This Memorandum does not alter or supersede any current policies or directives relating to the subject of obtaining necessary approval for engaging in nonconsensual electronic surveillance or any other form of nonconsensual interception.