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SECTION 137. |CRIMINAL|INFORMANTS|(SEE MIOG, PART II,
10-3; LEGAL ATTACHE MANUAL, 6-12;
LEGAL HANDBOOK FOR SPECIAL AGENTS, SECTION 8.)|

||137-1| RESPONSIBILITY FOR THE DEVELOPMENT AND OPERATION OF
INFORMANTS

(1) The SAC of each field office is personally responsible for the establishment of informant coverage concerning criminal activity of interest to the FBI within his/her territory. Particular emphasis is to be placed on the priority investigative matters of the office. Informants are an integral part of the office's overall criminal informant and cooperative witness intelligence base. The SAC must ensure that his/her Agents make every effort to develop quality informants, and that Agents receive the training and guidance necessary to enable them to perform their duties in an effective and efficient manner. The development and operation of informants must be closely supervised, because of the significant contributions which they make to FBI investigations and because of the difficulties inherent in their operation. Accordingly, the SAC should ensure that informant files are reviewed every 60 days by a Supervisory Special Agent.

(2) Each SUPERVISORY SPECIAL AGENT is personally responsible for the establishment of informant coverage concerning criminal matters under his/her supervision. Each Supervisor must ensure that Agents under his/her supervision make every effort to develop quality informants, and that their Agents receive the training and guidance necessary to enable them to perform their duties in an effective and efficient manner. Supervisors will review the informant files of those individuals being developed or operated by Agents under their supervision at least every 60 days. The fact that such a review was conducted must be documented in the informant's file on an FD-675 and indexed on the FD-237. The purpose of this review is to ensure that the informant is being operated in accordance with FBI and Attorney General Guidelines, and that adequate coverage is established for the investigative matters under his/her supervision. In fulfilling this responsibility, it is strongly suggested that the Supervisor periodically meet with the informants being operated by Agents under his/her supervision. When a Supervisor is either the case Agent or alternate Agent for an informant, the responsibility for administrative oversight, including the 60-day informant file reviews,

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authorization for the informant to participate in criminal activity and the initial review of informant payments, belongs to the ASAC.

(3) Each SPECIAL AGENT involved in criminal investigative activities at least 50 percent of his/her time, and not otherwise mitigated, is personally responsible for the development and operation of productive informants to address criminal matters within his/her investigative responsibilities. The SAC of each field office has the prerogative to task Agents not working criminal matters at least 50 percent of their time with the development and operation of their productive informants or liaison contacts. Agents are responsible for ensuring that their informants are operated in a manner which is their consistent with FBI and Attorney General Guidelines.

(4) The CRIMINAL INFORMANT PROGRAM MANAGER is personally responsible for ensuring that the program is operated in an effective and efficient manner, consistent with FBI and Attorney General Guidelines.

(5) The CRIMINAL INFORMANT PROGRAM COORDINATOR is personally responsible for ensuring that the SAC and Criminal Informant Program Manager are made aware of all significant issues and developments which impact on the Criminal Informant Program.

EFFECTIVE: 12/20/93

| 137-1.1 | Moved to 137-2.1 |

EFFECTIVE: 12/20/93

| 137-1.2 | Deleted |

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EFFECTIVE: 12/20/93

||137-2| DEFINITION

An informant is any person or entity who furnishes information to the FBI on a confidential basis. |The FBI will not disclose the identity of an informant, except as provided in 137-4.2. |

EFFECTIVE: 12/20/93

||137-2.1 Categories of Informants

Informants must be classified according to one of the following categories:

(1) Organized Crime (OC) - Those providing information concerning investigations falling within the organized crime program. (Classification 137A).

(2) Top Echelon (TE) - Those providing information concerning [REDACTED]

(3) Criminal (C) - Those providing information concerning investigations into matters of a general criminal nature. (Classification 137B).

(4) Domestic Terrorism (DT) - Those providing information concerning investigations into persons or groups involved in terrorist activities within the United States, such as bombings and other criminal terrorist activities, on which the FBI has an open and approved case. (Classification 137C).

(5) White Collar Crime (WC) - Those providing information concerning violations falling within the white collar crime program. (Classification 137D).

(6) Drugs (D) - Those providing information concerning investigations falling within the drug program. (Classification 137F).

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(7) Confidential Sources (CS) - Those providing information to the FBI on a confidential and regular basis as a result of legitimate employment or routine access to records, and not as a result of association with persons of an investigative interest to the FBI. The information provided by a Confidential Source must be relevant to authorized FBI investigations. The operation of a Confidential Source must be consistent with FBI and Attorney General Guidelines. A Confidential Source may be paid reasonable amounts for services and expenses. (Classification 137E).

EFFECTIVE: 12/20/93

137-3 DEVELOPMENT OF INFORMANTS (See MIOG, Part I,
137-3.1.2(1).)

The following factors must be taken into consideration in determining an individual's suitability to be an informant:

(1) Whether the person appears to be in a position to provide information concerning violations of law which are within the scope of authorized FBI investigative activity.

(2) Whether the individual is willing to voluntarily furnish information to the FBI.

(3) Whether the individual appears to be directed by others to obtain information from the FBI.

(4) Whether there is anything in the individual's background which would make him/her unfit for use as an informant.

(5) Whether the nature of the matter under investigation and the importance of the information being furnished to the FBI outweighs the seriousness of any past or contemporaneous criminal activity of which the informant may be suspected.

(6) Whether the motives of the informant in volunteering to assist the FBI appear to be reasonable and proper.

(7) Whether the information which the informant can provide could be obtained in a more timely and effective manner

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through other sources or by a less intrusive means.

(8) Whether the informant is sufficiently reliable and trustworthy, and whether there is an adequate means by which to verify his/her truthfulness.

(9) Whether the individual appears to be willing to conform to FBI and Attorney General Guidelines regarding his/her operation.

(10) Whether the FBI will be able to adequately monitor and control the activities of the informant.

(11) Whether his/her use as an investigative technique will intrude upon privileged communications or inhibit the lawful association of individuals or the expression of ideas.

(12) Whether the use of the informant could compromise an investigation or subsequent prosecution which may require the Government to move for a dismissal of the case.

EFFECTIVE: 12/20/93

137-3.1 Suitability and Pertinence Inquiries

Prior to the certification of an individual for use as an informant or Confidential Source, a suitability and pertinence inquiry (SI) must be conducted. The purpose of this inquiry is to determine whether he/she is suitable for use as an informant or Confidential Source and the pertinence of the information likely to be provided.

(1) The SI will be conducted for a period not to exceed 120 days. An extension of the initial 120-day period may be authorized by the SAC. The notification of an extension must be entered into CIMS no later than ten working days prior to the conclusion of the initial 120-day period. It must contain the facts or circumstances which preclude completion of the SI during the initial 120-day period. If an individual cannot be certified within 240 days from initiation of the SI, he/she should be closed.

(2) During the SI, the Agent may accept information volunteered by the individual and may make reasonable payments to him/her for services and expenses. In addition, he/she may be paid

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for the information. However, these individuals may not be used to participate in criminal activities or provide substantial assistance in an undercover operation during the SI period.

(3) An informant in the SI stage of development may not be used in a preliminary domestic security/terrorism investigation without the prior approval of a Supervisory Special Agent. Such approval must be recorded in the file. (See 137-4(16).)

(4) SIs should not be used to develop information concerning an individual for the purpose of inducing him/her to become an informant or a Confidential Source.

(5) Any lawful investigative technique can be utilized in determining an individual's suitability to be an informant.

EFFECTIVE: 06/08/94

137-3.1.1 Administration of the Suitability and Pertinence
Inquiry

(1) Upon selection of an individual for use as an informant, the field office will assign a 137 field number and an alpha character from the Resource Management Information System. This alpha character will ensure the time devoted to that 137 matter is allocated to the appropriate program. At that time, the field office will also assign a sequential field office symbol number. The symbol number will contain the field office two-letter identifier as a prefix, the symbol number, the letters SI, and the suffix of either an OC, C, DT, WC, CS or D to indicate the primary area in which the informant will be providing informational assistance. Example: BA 12345-SI-WC.

(2) The SI will commence on the date the 137 file is opened.

(3) Specific authority must be obtained from the SAC to conduct an SI for the individuals identified in (a)-(d) below. FBIHQ authority must be obtained prior to converting these individuals to fully operational status. This authority may NOT be obtained on a UACB basis. The specific restrictions concerning the development or operation of these individuals is set forth in Section 137-7. (See MIOG, Part I, 137-3.2(2).)

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- (a) Privileged informants, i.e., attorneys, physicians, members of the clergy, and news media personnel.
- (b) Individuals who are now or were ever in the Witness Security Program.
- (c) Minors (individuals under the age of 18).
- (d) A counselor in a drug treatment program.

(4) Immediately upon the opening of an informant, or upon the conversion of a cooperative witness to an informant, enter all information from the opening memorandum in the CIMS database, with the exception of those individuals identified in 137-7 which may require FBIHQ approval. All memoranda are to contain the following information: (See (5) below and 137-10.)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (h) A statement, if applicable, that this is a privileged occupation informant or, if applicable, a statement regarding the individual's occupation or status as a Federal or state parolee or probationer, an inmate, a past or current participant in the Witness Security Program, a law enforcement officer, an elected official, a union official, a minor, an employee of a financial institution, active duty military personnel, a school employee or a counselor in a drug treatment program. The statement should set forth

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the specific nature of the occupation, the type of information being received, how the information will be obtained and the justification for operating the source. The specific requirements for opening and operating such individuals are detailed in Section 137-7.

(5) Immediately upon the conversion of a cooperative witness to an informant, the field office must prepare a memorandum captioned with the field office two-letter identifier, symbol number and file number. However, individuals identified in 137-7.1 and 137-7.2(2) require prior FBIHQ approval. All such conversion memoranda are to contain the information set forth in 137-3.1.1(4). (See MIOG, Part I, 137-10.)

(6) If any of the above information is not available at the time the SI, the information should be obtained and entered into CIMS prior to the conversion of the individual to a fully operational informant.

EFFECTIVE: 06/08/94

137-3.1.2 Certification of Suitability and Pertinence

(1) At the conclusion of the SI, the supervisor must review the informant's file and make a written finding, based on the factors outlined in 137-3, stating whether the informant appears suitable for use and whether the information likely to be obtained from the individual is pertinent to and within the scope of the FBI's investigative responsibility. The supervisor's certification must be documented in the informant's file and indexed on the FD-237. (See MIOG, Part I, 137-3.2(1)(j).)

(2) If it is determined that the individual is not suitable for use as an informant, the inquiry is to be immediately closed by memorandum to the source file, which should include the specific reason(s) for the closing of the inquiry. This data should then be entered in the CIMS database. Additionally, if the informant is closed because of unauthorized criminal activity, other than for misdemeanor arrests, a teletype to FBIHQ, Criminal Informant Unit, is to be prepared detailing the date of arrest, the criminal activity, and the disposition of the charges. (See MIOG, Part I, 137-10.)

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EFFECTIVE: 06/08/94

| 137-3.1.3 | Moved to 137-3.1.2 |

EFFECTIVE: 12/20/93

137-3.2 Conversion From a Suitability and Pertinence Inquiry
to an Informant (See MIOG, Part I, 137-7.2(1)(a).)

(1) An individual becomes an informant once the supervisor certifies the individual's suitability. A memorandum is prepared, and the information is entered in CIMS. The memorandum must contain the following information in linear paragraph form:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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(j) Certification statement by the field office supervisor described in 137-3.1.2(1).

(k) If handled by a resident agency, identify resident agency.

(1) A statement, if applicable, that the specific requirements for opening and operating individuals detailed in Section 137-7 have been complied with. The statement should set forth specific details on how compliance was obtained.

(2) In the absence of response from FBIHQ, consider the operation of the informant to be approved. However, those individuals identified in Section 137-3.1.1(3)(a) - (d) may not be operated without a specific grant of authority from FBIHQ.

(3) Authority to operate an individual described in Section 137-7.1 must be requested in both the SI and conversion teletypes. Such teletypes may not be sent on a UACB basis.

EFFECTIVE: 06/08/94

137-3.3 | Revised and Moved--See 137-7, 137-7.1, 137-7.1.1,
137-7.1.2, & 137-7.2 |

EFFECTIVE: 12/20/93

|| 137-3.4 | Revised and Moved--See 137-6 |

EFFECTIVE: 12/20/93

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137-4 OPERATION OF INFORMANTS

(1) Every effort should be made to control the informant's activities when acting at the direction of the FBI to ensure that his/her conduct will be consistent with FBI and Attorney General Guidelines.

(2) Agents should not exercise improper influence on individuals in an attempt to develop them as informants, including promising immunity or reduction of sentence to those who furnish information. Any representations regarding plea agreements, immunity or other prosecutorial consideration for an informant's assistance are to be made only by the United States Attorney's Office.

(3) When it becomes apparent that an informant's role has changed from informational to operational in nature, i.e., making consensual recordings, introducing undercover Agents, purchasing evidence, or otherwise participating in similar operational activities, he/she must be converted to a cooperative witness. (See (15).) Thereafter, he/she must be operated in a manner which is consistent with the Part I, Section 270 of the Manual of Investigative Operations and Guidelines (MIOG).

(4) When it becomes apparent that an informant has furnished false information or that there is some other indication of unreliability, the Agent must promptly advise the SAC and provide FBIHQ with a teletype setting forth the factual background which gave rise to the concern. In addition, the teletype should state whether the informant has appeared as a witness on behalf of the Government in any FBI case or has furnished information which was disseminated to another agency.

(5) All investigative activity must be made a matter of record in the field office files, including negative contacts, to ensure that the informant's files are accurate and complete. However, contacts with an informant for payment purposes only, during which no positive information is generated, need not be reported as a negative contact on an FD-209.

(6) An alternate Agent must be assigned at the time the informant is opened. The alternate Agent must handle some contacts with the informant and must meet or observe the informant by the second contact after conversion. This will ensure the continued use of an informant during the absence or transfer of the case Agent. Any deviation from this requirement must be approved personally by the SAC

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and documented in a memorandum in the informant's file.

(7) Constant care should be exercised to avoid any disclosure to anyone which might result in the identification of an informant or cast suspicion upon an informant, except as described in 137-4.2.

(8) Agents have an affirmative responsibility to check the reliability of their informants.

(9) Operation of informants in undercover operations must be in compliance with FBI policy and "Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations." The operational use of informants in long-term cases or undercover operations may warrant use of a personal services contract between the informant and the FBI. This agreement must be coordinated with the substantive unit at FBIHQ and approved by the Contract Review Unit, FBIHQ. In a situation where prosecution is pending for the informant, a Plea Agreement may be warranted between the informant and the United States Government. Close coordination with the United States Attorney's Office is essential in both of these situations.

(10) All representations made to an informant regarding his/her future prosecution in cases in which he/she is a subject, must be made by the United States Attorney's Office, on behalf of the United States Government, and not by the case Agent or others, on behalf of the FBI.

(11) Care must be exercised in handling informants to ensure that they are provided with no information other than that which is necessary to carry out their assignments. Any disclosure of information to an informant obtained from criminal investigative files must have the express approval of the SAC and be documented in the informant's main file. All disseminations to informants must comply with the provisions of the Privacy Act. No dissemination may be made of information which is classified, which identifies other informants or cooperative witnesses, which is Grand Jury material (see Rule 6(e), Federal Rules of Criminal Procedure), or which is otherwise privileged. When it is decided to disseminate information regarding third persons or entities from FBI files, a teletype must be submitted to FBIHQ, on a UACB basis, under the informant's symbol number caption, setting forth the following information: (See (g) below.)

(a) That the SAC of the field office has authorized dissemination of information from FBI criminal investigative files.

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(b) The nature and seriousness of the matter being investigated.

(c) Specific details outlining the need to furnish the information to the informant.

(d) The specific information which is to be furnished to the informant.

(e) The fact that the information to be released has been coordinated with the appropriate field divisions that may be affected by such dissemination.

(f) In emergency situations, the SAC, or in his/her absence, the ASAC, may authorize the dissemination of such information from criminal investigative files and immediately thereafter advise FBIHQ in the manner described herein.

(g) If it is determined that dissemination of information from either civil or applicant investigative files is necessary in order to give the informant credibility, particularly in investigative matters dealing with loss of life, destruction of property, or which could have other serious consequences, or which may contribute to the solution of a serious crime, the SAC must seek authority from FBIHQ prior to making such a disclosure. The request in this instance must include all information outlined above in 137-4 (11) (a)-(e).

(h) If it is determined that the information from FBI files which is to be given to an informant concerns an individual of no investigative interest to the FBI, the individual should, except in the situations set forth below, be contacted in order to obtain consent to utilize the needed information. Such contact with a third party should not take place if to do so would jeopardize an investigation, disclose the identity of an informant, or when such contact could jeopardize the safety of the individual whose consent is being sought.

(i) When it is not possible or is otherwise inadvisable to obtain the third party's consent, the SAC must obtain authority from FBIHQ to disseminate such information. The request should also set forth the following information:

1. The nature and seriousness of the matter being investigated;

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- | 2. | An outline of the need to furnish the information to the informant;
- | 3. | A list of specific information to be furnished to the informant;
- | 4. | Justification for not advising the individual to whom the information pertains;
- | 5. | What effect such disclosure might have on the individual's reputation in the community; and
- | 6. | The personal recommendation of the SAC.

(j) If it is determined by the SAC that dissemination of information being considered for disclosure to an informant contains derogatory information regarding an individual who is or is not of investigative interest to the FBI, the SAC will personally make a recommendation to FBIHQ requesting authority to utilize such information.

(k) In all cases described above, wherein FBIHQ authority is required for dissemination of information from FBI files to FBI informants, this authority will be granted at the Section Chief level. All instances of such dissemination will be reviewed by the Director or Director's designee annually. The Director or Director's designee will personally authorize the dissemination of information to informants which is taken from applicant or civil files. Further, the Attorney General or Attorney General's designee will be notified of such disseminations.

(12) Informants will not be used to obtain information relating to legal defense plans or strategies. When a person has been formally charged with a crime and criminal proceedings are still pending, informants will not be used to deliberately elicit information concerning the crime(s) for which the person was charged. An individual is formally charged when he/she has been charged by indictment or information or after his/her initial appearance following arrest.

(13) Information of value provided by an informant on violations which are not of an investigative interest to the FBI should be disseminated to the appropriate law enforcement agency. If full disclosure is not made for one of the following reasons, then, whenever feasible, the field office should make at least limited disclosure to the law enforcement agency having jurisdiction. The

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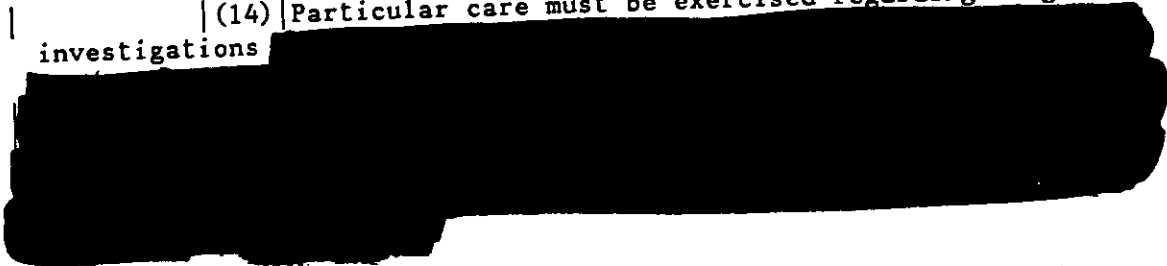
disclosure should be sufficient to apprise them of the nature and extent of the criminal activity. Full disclosure should be made to the appropriate law enforcement agency as soon as the need for restricting dissemination is no longer present. The action taken and the justification for the action should be documented in the informant's main file. Factors to be considered in making such a disclosure are whether the disclosure would jeopardize:

(a) The identity of an informant/cooperative witness;

(b) The life or personal safety of an FBI Agent, informant/cooperative witness or other persons; or

(c) A major ongoing FBI investigation.

(14) Particular care must be exercised regarding drug investigations



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b7E

(15) Increased participation in the investigation of drug trafficking will logically result in expanded use of consensual monitoring techniques. Care must be exercised to ensure that informants do not participate in consensual monitoring activities. An informant must be converted to a cooperative witness before he/she can participate in consensual monitoring activities. Any exceptions to this requirement must receive prior FBIHQ approval. Such individuals should be fully briefed as to the consequences of being converted to a cooperative witness, i.e., that they may be required to testify at trial. (See (3).)

(16) Domestic terrorism informants must be used in compliance with the "Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations." Prior to opening an informant in a Domestic Terrorism investigation, there must be an open and approved Domestic Terrorism case. (See 137-3.1(3).)

(17) Undisclosed participation in the activities of an organization by an informant in a manner that may influence the exercise of rights protected by the First Amendment must be approved

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by FBIHQ, with notification to the Department of Justice.

(18) The lawful activities of legitimate organizations are not subject to investigation. However, individual members of such organizations may be independently involved in criminal activity. In order to ensure that the privacy of constitutionally protected activities will be respected, the SAC must approve the use of any individual where:

(a) An informant or Confidential Source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or Confidential Source's formal affiliation will give him/her continued access to nonpublic information related to the legitimate purposes of the organization.

(b) An informant or Confidential Source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities.

(19) In determining whether to use an informant who is engaged in the lawful activities of legitimate organizations, the SAC should consider:

(a) The likelihood of responsible behavior by the informant during the course of his/her organizational membership.

(b) The ability of the FBI to focus the informant's reporting on members of the organization who are involved in criminal activities and to minimize adverse impact on innocent members of the organization.

(c) Whether the use of the informant or Confidential Source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

(20) In order to avoid the appearance of impropriety, Agents are prohibited from engaging in business or financial relationships with informants. If an exemption to this general prohibition is deemed necessary, the SAC must articulate sufficient background to demonstrate to FBIHQ that the relationship will not create an appearance of impropriety or otherwise reflect adversely upon the FBI.

(21) Sensitive circumstances require particular caution.

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When a criminal informant is operating under the direction of the FBI in any matter, the handling Agent and field Supervisor will review appropriate Attorney General's Guidelines on Undercover Operations Revised 11/13/92 as well as the MIOG, Part I, Section 137 and consult with FBIHQ in the event that questions arise regarding sensitive circumstances. The following represent sensitive circumstances requiring Section Chief level approval (a discussion of extraordinary criminal activity is provided at 137-5.1(2):

(a) Any investigative activity which involves the possibility of a criminal informant engaging in activity which involves "sensitive circumstances" as defined herein, must be presented to the appropriate CID section prior to the activity taking place. The section will either authorize the activity or refer it to the Undercover Review Committee for review/approval. For purposes of these guidelines, sensitive circumstances are involved if there is a reasonable expectation that the investigative activity will involve--

1. An investigation of possible criminal conduct by any elected or appointed official, or political candidate, for a judicial-, legislative-, management-, or executive-level position of trust in a Federal, state, or local governmental entity or political subdivision thereof.

2. An investigation of any public official at the Federal, state, or local level in any matter involving systemic corruption of any governmental function.

3. An investigation of possible criminal conduct by any foreign official or government, religious organization, political organization, or the news media.

NOTE: There are some circumstances involving officials in judicial, legislative, management, or executive-level positions which may logically be considered nonsensitive. In such instances, the Section Chief, White-Collar Crimes Section, FBIHQ, who has a national perspective on matters involving public officials, must be consulted for a determination of sensitive circumstances.

4. Engaging in activity having a significant effect on or constituting a significant intrusion into the legitimate operation of a Federal, state, or local governmental entity.

5. Establishing, acquiring, or using a proprietary.

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6. Providing goods or services which are essential to the commission of a crime, which goods and services are reasonably unavailable to a subject of the investigation except from the Government.

7. Activity that is proscribed by Federal, state, or local law as a felony or that is otherwise a serious crime -- but not including the purchase of stolen or contraband goods; the delivery or sale by the Government of stolen property whose ownership cannot be determined; the controlled delivery of drugs which will not enter commerce; the payments of bribes which are not included in the other sensitive circumstances; or the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary (this exemption does not include any statement under oath or the penalties of perjury).

NOTE: Some of the above activities, including the controlled delivery of drugs and bribe payments, are subject to specific review and approval procedures. These matters must be coordinated with FBIHQ.

8. A significant risk that a person participating in an investigative activity will be arrested or will supply falsely sworn testimony or false documentation in any legal or administrative proceeding.

9. Attendance at a meeting or participation in communications between any individual and his or her lawyer.

10. A significant risk that a third party will enter into a professional or confidential relationship with a person participating in an investigative activity who is acting as an attorney, physician, clergyman, or member of the news media.

11. A request to an attorney, physician, member of the clergy, or other person for information that would ordinarily be privileged or to a member of the news media concerning an individual with whom the news person is known to have a professional or confidential relationship.

12. Participation in the activities of a group under investigation as part of a Domestic Security investigation or recruiting a person from within such a group as an informant.

13. A significant risk of violence or physical injury to individuals or a significant risk of financial loss.

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14. Activities which could result in significant claims against the United States arising in tort, contract, or for compensation for the "taking" of property.

15. Untrue representations by a person participating in an investigative activity concerning the activities or involvement of any third person without that individual's knowledge or consent.

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137-4.1 Operation of Informants by Task Force Members (See MIOG, Part I, 137-4.2(5).)

(1) The primary purpose of these guidelines is to ensure that the integrity of the Criminal Informant Program is not diminished as a result of the implementation of the task force concept. These guidelines attempt to balance the need to encourage full cooperation among FBI and non-FBI task force personnel, while maintaining the level of security traditionally afforded to FBI informants. To attain this balance, Agents should limit the disclosure of the identities of FBI informants to non-FBI task force members to those situations where it is essential to the effective performance of their duties.

(2) The SAC of the office of origin may authorize task force members to act as a co-case Agent. Task force members who have been authorized by the SAC to act as a co-case Agent may be present at debriefings, witness payments, and have access to the informant's file. However, an alternate FBI case Agent must be assigned to handle the informant in the absence of the case Agent. The FBI case Agent or alternate Agent is ultimately responsible for the operation and control of the informant, including the responsibility for the preparation and submission of the necessary paperwork. A co-case Agent may meet with an informant without being accompanied by an FBI Agent, provided each such contact is fully documented. While the co-case Agent may make such contacts, it is recommended that the case Agent or alternate Agent be present during meetings with the informant. The presence of an Agent at such meetings not only serves to foster rapport, but also to ensure compliance with FBI and Attorney General Guidelines.

(3) Task force members may not be provided with the

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identity of an FBI informant, unless the SAC has granted appropriate disclosure authority or the SAC has approved him/her to be a co-case Agent for that specific individual. All task force members who have been designated as a co-case Agent must be advised of all relevant FBI and Attorney General Guidelines regarding the development and operation of FBI informants. The fact that the co-case Agent has been provided these instructions should be documented in the informant's file.

(4) In addition to being advised of the relevant FBI and Attorney General Guidelines, a task force member who has been authorized to act as a co-case Agent must be advised that:

(a) He/She is not to make any further disclosure of the identity of the informant, including to other members of his/her department or agency.

(b) He/She is not to prepare, or cause to be prepared, any paperwork or other record, other than official FBI records, regarding their contacts with or payments to FBI informants.

(c) He/She may not provide his/her department or agency with any documents or information which identify or tend to identify an FBI informant.

The fact that these instructions have been given to the task force member must be documented in the informant's file.

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137-4.2 Disclosure Authority (See MIOG, Part I, 137-2 & 137-4(7), Part II, 3-8.4.)

(1) The SAC, or in his/her absence the ASAC, is responsible for granting disclosure authority to disclose the identity of an informant and will necessarily cause such disclosure of the release of information contained in an informant's file. In the decision-making process it is recommended the SAC consider the following issues:

(a) The specific nature of the information to be disclosed.

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(b) The name, title and agency or department of all individuals who will have access to the information.

(c) The specific nature of the request, demand or order which generated the disclosure request.

(d) Whether the disclosure will have an adverse impact on any individuals or FBI investigations.

(e) The SAC's recommendation as to whether the FBI should voluntarily comply with the request or whether an attempt should be made to assert appropriate administrative or legal objections to the request, demand or order.

(2) The response to any subpoena, court order, or any request bearing on the identification of an informant or the production of any informant's file, document, data, or disclosure of the identity of the informant to any individual, must have prior SAC approval. Where appropriate, the field office should have the informant execute a release form (FD-746) prior to the disclosure of the informant's identity or any information provided by the informant. Should the informant refuse to sign the release, the refusal should be noted at the bottom of the form and the informant should be advised that the FBI may nevertheless release the informant information requested, as the informant privilege belongs to the FBI as opposed to the informant. The specific admonishment given to the informant should be recorded at the bottom of the form and the form should be witnessed by two Special Agents.

(3) Any disclosure of information in the informant's file outside of the FBI, should be documented in the informant's main file, including the name of the person to whom the informant's identity was disclosed, the specific nature of the information disclosed and the reason for the disclosure.

(4) Physical possession of the source file is never to be transferred to any individual outside the FBI other than a Federal judge for in-camera ex parte review. Any dissemination of serials from the source's files is to be done only after appropriate redaction and subsequent review by both the Principal Legal Advisor and SAC.

(5) Members of joint FBI task forces may be provided with the identity of an informant on SAC authority consistent with Section 137-4.1.

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(6) FBIHQ is to be subsequently advised of the facts and circumstances regarding all disclosure issues.

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137-4.3 Domestic and International Travel by Informants (See MIOG, Part II, 23-8.)

(1) DOMESTIC TRAVEL - An SAC may authorize travel by an informant within the continental United States following coordination with the SAC, or in his/her absence, the ASAC, of the field office to be visited. SAC authorization is only required in instances where the informant is traveling on behalf of or at the behest of the FBI. Travel may not be approved by any other management or supervisory official within the field office. Normal travel within the continental United States should be confirmed by teletype to the affected divisions.

(2) INTERNATIONAL TRAVEL - All informants who travel to an extraterritorial jurisdiction, either on behalf of or at the behest of the FBI, regardless of the number or frequency of such travel, must adhere to the provisions of the "Attorney General Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions." The approval mechanism necessary for informants to travel to extraterritorial jurisdictions is set forth in the aforementioned Attorney General Guidelines and may only be obtained on a request-only basis, not on a UACB basis.

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||137-5| INFORMANT PARTICIPATION IN AUTHORIZED AND UNAUTHORIZED
CRIMINAL ACTIVITY

|An informant may not be authorized to engage in any activity that would constitute a crime under state or Federal law, if engaged in by a private person acting without the authorization or approval of an appropriate FBI and United States Attorney's Office representative, except as authorized by this section. For the purposes of this section, such activity is referred to as "authorized criminal activity."|

EFFECTIVE: 12/20/93

||137-5.1 Informant Participation in Authorized Criminal Activity
(See MIOG, Part I, 137-5.2(1) & 137-6(1).)|

(1) Approval for participation by an informant in authorized criminal activities of an ordinary nature (those not fitting the definition of extraordinary criminal activity in ||137-5.1(2)), other than the routine purchase of stolen or contraband goods, requires authorization at the ASAC level or above. Participation in the purchase of stolen goods or contraband can be authorized at the level of the field supervisor or above. |For the purpose of these guidelines, drugs are contraband. | The authorizing official must make a written finding in advance of any such activity. | This written finding must be documented in the informant's main file prior to the activity and should specify the facts and circumstances relied upon in making this determination. In emergency situations, the ASAC or the appropriate Supervisory Special Agent may verbally authorize the activity and immediately thereafter document that authorization in the informant's main file. |The finding must state that: (See (3) below.)

(a) The activity is necessary to obtain information or evidence for |paramount|prosecutive purposes, to establish or maintain credibility|or cover|with|persons associated with criminal activity in connection with the investigation,|or to prevent or avoid the danger of|death or serious bodily|injury; or|

(b) The need for participation in a criminal activity by an informant outweighs the seriousness of the conduct

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involved.

(2) Participation by an informant in authorized extraordinary criminal activity may only be made by the SAC, or in the SAC's absence, the ASAC, after consultation with and the approval of the United States Attorney. Additionally, the participation of an informant in any of these activities may constitute a sensitive circumstance, and therefore will require prior approval of the appropriate Section Chief, FBIHQ. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to FBIHQ and to the Assistant Attorney General in charge of the Criminal Division or his/her designee, in a form suitable to protect the identity of the informant. The United States Attorney's opinion should be confirmed in writing in such a manner as to protect the informant's identity. Extraordinary criminal activity is defined as that activity which may involve a significant risk of violence, corrupt actions by high public officials or severe financial loss to any victim. FBIHQ must be notified by teletype of such authorizations, as well as the concurrence of the United States Attorney. (Sensitive circumstances are discussed in detail at 137-4(21). (See (1) above & (3) below.)

(a) If the SAC reasonably determines that an emergency situation exists requiring an informant's participation in extraordinary criminal activities prior to being able to obtain the United States Attorney's opinion, the SAC may approve the participation on his/her own authority but shall immediately thereafter notify the United States Attorney, FBIHQ and the Assistant Attorney General, Criminal Investigative Division or his/her designee. Situations wherein the SAC could utilize such authority are: to protect loss of life or substantial property, to apprehend or identify a fleeing offender, or to protect the imminent loss of essential evidence. In such emergency situations, the SAC shall attempt to consult by telephone with a senior member of the United States Attorney's Office before approving the informant's participation.

(3) Written findings made pursuant to 137-5.1(1) and (2) must be documented in the informant's main file prior to the activity and should specify the facts and circumstances relied upon in making this determination, the dates for which the criminal activity has been authorized, the concurrence of the United States Attorney and a description of the anticipated criminal activity expected to take place. In emergency situations, the documentation should be done as soon as possible following the activity.

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(4) When it is anticipated that the informant will participate in authorized criminal activity incident to a Group I undercover operation, approval must be given in advance by an Assistant Director on the recommendation of the Criminal Undercover Operations Review Committee, except that the Deputy Director's approval is required for participation in authorized criminal activity involving a significant risk of violence or physical injury to individuals. All approvals must be recorded in writing.

(5) When approval is granted for an informant to participate in criminal activity, he/she will be instructed that under no circumstances are they to participate in any act of violence, initiate a plan to commit criminal acts or use unlawful techniques to obtain information for the FBI.

(6) The field office should, to the extent practicable, ensure that:

(a) The adverse effect of the activity on innocent individuals is minimized.

(b) The informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he/she will participate.

(c) The informant's participation in the activity is closely supervised by the FBI.

(d) The informant does not directly profit from his/her participation in the activity.

(7) Any proposal by a Confidential Source to engage in otherwise criminal activities in order to gather information changes the status of that individual from Confidential Source to informant.

(8) The alternate contacting Agent or second witnessing Agent must be present whenever the informant is briefed regarding the nature and extent of his/her authorized criminal activity unless strong written justification can be given to and approved by the SAC, or in the absence of the SAC, the ASAC, not to have a second Agent present.

(9) The SAC must review all such criminal activity by informants at least every 90 days. The SAC's review must be documented in the informant's main file or the appropriate control file.

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137-5.2 Informant Participation in Unauthorized Criminal Activity

(1) While carrying out an FBI assignment, an informant or Confidential Source has a unique relationship with the FBI; therefore, his/her participation in any unauthorized activity in connection with an FBI assignment, even of a minor character, must be carefully scrutinized. Hence, whenever it is determined that an informant or Confidential Source has participated in criminal activity which was not authorized pursuant to Section 137-5.1, the field supervisor will ensure that the appropriate law enforcement or prosecutive authorities are advised of any violations of law and make a written determination of whether continued use of the informant is justified. This determination should be documented in the informant's main file.

(a) Whenever a field office learns of the commission of an unauthorized criminal act by an informant or Confidential Source, FBIHQ must be notified immediately. A recommendation must be made whether to notify the appropriate state or local law enforcement or prosecutive authorities of any violation of law, as well as whether continued use of the informant or Confidential Source is justified. In situations where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the field office must advise FBIHQ of:

1. The facts and circumstances surrounding the informant's or Confidential Source's criminal violation;

2. The nature of the notification or request that was made to state or local law enforcement or prosecutive authorities, and the justification for the notification;

3. The nature of the information gained as a result of the violation; and

4. What use will be made of any information gathered through the violation of law.

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Thereafter, the FBIHQ will make a specific determination on whether to continue use of the informant or Confidential Source.

(b) A field office must notify FBIHQ whenever it learns of participation by an informant or a Confidential Source in an act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. A secure teletype must be submitted to FBIHQ setting forth the facts and circumstances concerning the informant's violent activity, what notification or request has been made to state or local law enforcement or prosecutive authorities, what use will be made of any information gathered through the activity; and, whether the office will continue to use the informant.

(2) In determining whether to notify appropriate Federal, state or local law enforcement or prosecutive authorities of an informant's/Confidential Source's criminal activity, the following factors should be considered:

(a) Whether the crime was completed, imminent or inchoate.

(b) The seriousness of the crime in terms of danger to life and property.

(c) Whether the crime is a violation of Federal or state law, and whether a felony, misdemeanor or lesser offense.

(d) The degree of certainty of the information regarding the criminal activity.

(e) Whether the appropriate authorities already know of the criminal activity and the informant's/Confidential Source's identity.

(f) The effect of notification on FBI investigative activity.

(3) Under no circumstances will the field office take any action to conceal a crime by an informant/Confidential Source.

(4) No factual representations or recommendations may be made regarding the disposition of any charges which may stem from unauthorized criminal conduct by the informant without prior FBIHQ authorization.

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||137-6| GUIDELINES AND INSTRUCTIONS TO BE DISCUSSED WITH
INFORMANTS

The following matters must be made clear to the informant at the earliest opportunity, but in no event, later than the second contact after being converted. These admonishments must be reiterated at least annually or at any time there is an indication that there is a need. The fact that the informant has been so advised or readvised must be documented in his/her file and indexed on the FD-237. The admonishments are as follows:

(1) ASSISTANCE VOLUNTARY - The informant's assistance is strictly voluntary and will not exempt him/her from arrest or prosecution for any violation of law except where such violations were approved by the appropriate FBI official pursuant to Section 137-5.1.

(2) NOT EMPLOYEE OR UNDERCOVER AGENT - The informant is not and may not consider or represent himself/herself to be an employee or undercover Agent of the FBI.

(3) CONFIDENTIALITY - The informant's relationship must be maintained in the strictest confidence and he/she must exercise constant care to ensure that the relationship is not divulged to anyone.

(4) REPORT POSITIVE INFORMATION - The informant must report all positive information, both inculpatory and exculpatory, as promptly as possible.

(5) JURISDICTION - An informant who is providing information relating to specific criminal violations is to be advised of the pertinent legal issues related to the FBI's jurisdiction in that area.

(6) ACTS OF VIOLENCE - Informants will not participate in acts of violence. When asked to participate in an act of violence or when an informant learns of plans to commit an act of violence, the informant is to take all reasonable measures to discourage the violence, and report the incident to his/her handling Agent at their earliest opportunity.

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(7) UNLAWFUL TECHNIQUES - Informants will not use unconstitutional or unlawful techniques (e.g., breaking and entering, electronic surveillance, opening or tampering with the mail) to obtain information for the FBI.

(8) PLAN CRIMINAL ACTS - Informants will not initiate a plan to commit criminal acts.

(9) PARTICIPATION WITH SUBJECTS - Informants will not participate in criminal activities unless specifically authorized by the FBI.

(10) PAYMENTS ARE INCOME - If the informant is to be paid, he/she must be advised that the payments are taxable for Federal income tax purposes.

(11) GRANT OF CONFIDENTIALITY - The informant must be advised that the FBI will not disclose either his/her identity or the information provided by him/her on a confidential basis which tends to identify him/her, unless necessitated by compelling operational, litigative or prosecutorial considerations.

(12) CONFIDENTIAL SOURCE - Need only be advised that he/she is not acting as an agent or employee of the FBI and that under no circumstances should he/she use unlawful techniques to obtain information. The fact that a Confidential Source has been so advised must be documented in the main file and indexed on the FD-237.

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137-7 RESTRICTIONS REGARDING THE DEVELOPMENT AND OPERATION OF INFORMANTS (See MIOG, Part I, 137-3.1.1 (3) & (4), 137-3.2(1)(1) & Part II, 3-8.6.)

SAC authority is required to initiate an SI on an individual and FBIHQ authority is required to convert that individual to a fully operational privileged informant. For the purposes of this section, the following individuals are to be considered privileged informants: any person admitted to practice law in state court, any licensed physician, any practicing member of the clergy, and any member of the news media. Privileged informants that have been

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certified as to suitability must be authorized by the Assistant Director, Criminal Investigative Division (CID), before they can be converted to a fully operational informant. A field supervisor may approve the acceptance of information from a privileged individual on a one-time basis where the information is not privileged and is not collected at the behest of the FBI.

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137-7.1 Restrictions Concerning the Development and Operation of Privileged Occupation Informants (See MIOG, Part I, 137-3.1.1(5), 137-3.2(3), 137-7.1.2 & Part II, 3-8.6.)

(1) Acceptance of information from a privileged individual on a one-time basis, where the information is not privileged and is not collected at the request of the FBI, may be approved by a field supervisor.

(2) The operation of a privileged informant may constitute a sensitive circumstance and therefore may require the prior approval of the appropriate Section Chief, FBIHQ.

(3) The privileged informant's value to FBI investigative interests should be evaluated in terms of possible Fifth and Sixth Amendment and conflict of interest issues. These individuals will only be approved for operation when it can be clearly articulated that their assistance will be of such significant value to the FBI's law enforcement mission that it outweighs the sensitivity of these areas of concern, and the assistance cannot be reasonably obtained in another manner.

(4) The Principal Legal Advisor must review the results of every contact with all privileged informants to ensure that all legal or ethical issues are identified and properly addressed.

(5) An individual in the privileged category may not be operated as an informant if he/she would be willing to provide information if his/her confidentiality were not protected.

(6) Privileged informants must be advised that:

(a) In seeking information from him/her, the FBI is

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not requesting him/her to violate any legal obligation of confidentiality.

(b) He/She should not furnish any information to the FBI which would violate such a privilege.

(c) The FBI will not knowingly give him/her any assignments which will cause a violation of his/her legal or ethical obligations.

The fact that these advisements were given must be documented in the informant's file.

(7) If it is determined that the informant has furnished information which violates his/her obligation of client confidentiality, such information should be recorded for the purpose of:

(a) Establishing that the information was received and that the issue was recognized.

(b) Documenting that no use was made of the information.

(c) Acknowledging that the information received was relevant to an FBI investigation, and that the investigation proceeded independent of such information.

(8) Use of privileged or other client-related information will be permitted if it is furnished regarding a situation wherein there could be loss of life, serious physical injury, destruction of property of substantial value, result in other serious consequences or which may contribute to the solution of a serious crime. If such a situation does develop, depending upon the exigency of the circumstances, the United States Attorney's Office and FBIHQ must be consulted prior to any use of the privileged information. If, because of exigent circumstances, consultation with the United States Attorney's Office and FBIHQ is not possible prior to the use of the information, both the United States Attorney's Office and FBIHQ must be advised immediately after that use. Only in the most urgent of circumstances should FBIHQ and the United States Attorney's Office prior concurrence not be obtained. Use of privileged information is to be thoroughly documented and will be allowed only in serious situations where to ignore the information could be construed as neglect of duty, notwithstanding the fact that such information may not be admissible in a court of law. (See MIOG, Part I,

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| 137-7.1.1(1.) |

| (9) | Privileged informants who have not made significant contributions | to FBI investigative matters | within any six-month period should be closed. This will preclude the continued operation of marginal privileged informants and limit | contacts with privileged sources to those which are fully justified by operational considerations. |

| (10) | Any change in a privileged informant's status in the community must be immediately brought to the attention of FBIHQ. These changes would include appointment or election to public office, or | extensive | media attention. |

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| 137-7.1.1 Additional Restrictions Regarding the Operation of Attorneys (See MIOG, Part II, 3-8.6.)

The operation of an attorney as an informant presents a significant risk of creating the perception of conflict of interest due to his/her obligation to fully represent his/her client. Due to the sensitivity of these circumstances, the operation of attorney informants must be in strict adherence with the following instructions:

| 137-7.1(8), | (1) | EXCEPT FOR EXTRAORDINARY SITUATIONS AS SET FORTH IN NO INFORMATION | MAY | BE ACCEPTED FROM AN ATTORNEY INFORMANT REGARDING ANY OF HIS/HER CRIMINAL OR CIVIL CLIENTS REGARDLESS OF WHETHER OR NOT THE INFORMATION BEING PROVIDED IS DERIVED FROM A PRIVILEGED COMMUNICATION. The attorney informant should be specifically advised not to furnish any information, privileged or otherwise, concerning his/her clients. THIS RESTRICTION APPLIES TO INFORMATION RECEIVED BY THE ATTORNEY INFORMANT DURING THE ATTORNEY-CLIENT RELATIONSHIP AND DOES NOT APPLY TO INFORMATION RECEIVED BY THE ATTORNEY INFORMANT PRIOR TO OR SUBSEQUENT TO THE ATTORNEY-CLIENT RELATIONSHIP.

| (2) | No | payments | for services | are | to be made to an attorney with a criminal defense practice | without prior FBIHQ approval. |

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137-7.1.2 Additional Restrictions Regarding the Operation of
Members of the News Media (See MIOG, Part II, 3-8.6.)

In addition to the restrictions set forth in Section 137-7.1, information obtained from privileged informants who are members of the news media must be relevant to the FBI's investigative responsibilities. These individuals are not to be utilized for the purpose of controlling or manipulating the news media. Further, these individuals must be advised that the FBI will not knowingly influence or attempt to influence the editorial policy of the news media.

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137-7.2 Restrictions Concerning the Operation of Specific
Individuals as Informants Based on their Employment
or Status (See MIOG, Part I, 137-10.)

(1) The following informants may be authorized for operation by the SAC, or an individual designated by him/her, if the requirements set forth below are met and set forth in the opening teletype. This authorization must be noted in the opening teletype. Where such approval has been granted, the teletype may be submitted on a UACB basis. If the requirements cannot be met, these individuals may be opened on a request-only basis, not on a UACB basis.

(a) FEDERAL OR STATE PROBATION OR PAROLE.
Individuals on federal or state probation or parole may not be operated as informants in violation of the conditions of their probation or parole. It is required that these conditions be determined during suitability and pertinence inquiries and the results of this determination be documented in the conversion teletype as described in 137-3.2. In those cases where an individual would be in violation of probation or parole restrictions, if operated as an informant, the field office should obtain the necessary probation or parole official's permission to operate the individual. This authorization must be documented in the informant's file. In those

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instances where an individual's probation or parole officer cannot be contacted, FBIHQ must be advised of the reason why this contact cannot be made, the need by the field office to use the individual and a request for FBIHQ to grant authority for use of the individual as an informant. Where a field office deems that it would be inappropriate to contact either the source's probation or parole officer or sentencing judge, the field office may request FBIHQ authorization to operate the individual without the aforementioned concurrences. Such a request must set forth sufficient facts to justify a deviation from the aforementioned policy.

The United States Parole Commission (USPC) requires that parolees and mandatory releasees agree in writing not to act as informants or in other similar capacities for a law enforcement agency. This requirement does not preclude accepting information from such persons as citizen complainants. These individuals may be considered for development as informants when the period of their parole has expired or in those cases wherein the field office has obtained the necessary parole official's permission and this is documented in the conversion teletype described in 137-3.2. The operation of any federal parolee must be in compliance with the USPC rules and regulations.

(b) INMATES. The use of a cellmate informant, that is, one who has been placed in the cell for the purpose of gathering information regarding pending charges, requires the prior approval of FBIHQ and the concurrence of the prosecuting United States Attorney's Office. Cellmate informants may only be used as listening posts and may not question an accused or stimulate conversations concerning charged offenses. (See Legal Handbook for Special Agents, 8-3.3.2(1).) Any use of federal inmates, or anyone in the custody of the U.S. Bureau of Prisons, even if held in a local holding facility, which results in the release or transfer of an inmate informant, in authorized criminal activity, or consensual monitoring involving the inmate wearing a body recorder, must have prior approval of Office of Enforcement Operations (OEO), Criminal Division, Department of Justice (DOJ). This approval should be requested by teletype to the FBIHQ substantive unit subsequent to opening and prior to utilization of the source. (If an informant becomes operational, the informant should be converted to a cooperative witness. Operational is defined as wearing a body recorder, the introduction of an undercover Agent, etc.) In order to facilitate the submission of the appropriate information in the request to DOJ, OEO, the following outline is provided so that a well-informed decision can be made:

1. Location of prisoner;

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2. Identifying data on the prisoner, e.g., date of birth, place of birth, Bureau of Prisons number, Social Security Number, and physical description;
3. Charges for which prisoner is incarcerated; including date, sentence, judicial district, and sentencing judge;
4. Copy of prisoner's arrest record or summary of the arrest record must be submitted;
5. The necessity for utilizing the prisoner in the investigation including what other techniques have been tried and why they have failed;
6. The name of the investigation and his/her role in the crime or organization under investigation;
7. Describe the prisoner's relationship or association with the target(s) under investigation;
8. Are the targets aware of the prisoner's incarceration status? If so, what is the prisoner's cover story to avoid jeopardizing his/her safety or the investigation?
9. Detailed explanation of the operational role the prisoner is to perform;
10. Describe the security measures to be taken to ensure the prisoner's safety, alleviate risk to the public, and prevent the prisoner's escape;
11. Length of time the prisoner will be needed in the activity;
12. Will the prisoner be needed as a witness and will he/she be considered for the Witness Security Program?
13. Will a prison redesignation be necessary upon completion of the operational role?
14. Will the prisoner remain in the custody of the investigative agency; be housed in jails or similar facilities at certain times; or will the prisoner be unguarded except for their own protection?
15. The total number of law enforcement agents

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assigned to the security detail;

16. Has the request been endorsed by the appropriate federal/state prosecutor? If not, provide a detailed explanation. Please provide name, phone number, and location of the Assistant United States Attorney endorsing the request.

17. An interim progress report should be submitted if a continuance, beyond date originally projected for conclusion, is necessary, and a detailed progress report should be submitted at the conclusion of activity;

18. Sealed court order(s) must be obtained after the request has been approved if the prisoner is unsentenced or on writ status.

(c) SWORN LAW ENFORCEMENT OFFICERS. The opening of a sworn law enforcement officer as an informant will be permitted only in those instances where the individual is providing information in investigations into corruption within his/her employing governmental entity. A statement regarding the specific nature of the information to be provided and the reason why the information cannot be furnished to his/her department must be included in the opening teletype.

(d) ELECTED/APPOINTED GOVERNMENT OFFICIALS (FEDERAL, STATE AND LOCAL). These individuals must be advised that the FBI will only accept information concerning alleged criminal violations of law and will not accept information concerning the political beliefs or personal lives of individuals within their governmental body, or the private or confidential deliberations of that body, unless violations of law are occurring. Further, the FBI will not knowingly influence or attempt to influence any action of the governmental body unless in furtherance of a compelling investigative interest and authorized by the appropriate FBIHQ official. The fact that these advisements were given must be documented in the informant's file and set forth in the opening teletype.

(e) UNION OFFICIALS. These individuals must be advised that the information which they provide is subject to the reporting provisions of the Employee Retirement and Income Security Act and that the FBI is not interested in, nor will it accept, information concerning legitimate union activities. Further, the FBI will not knowingly influence or attempt to influence any action of the union.

(f) FINANCIAL INSTITUTION EMPLOYEES. These

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individuals must be briefed on the provisions of the Right to Financial Privacy Act and advised that the FBI will not knowingly accept information which violates the provisions of that Act.

(g) SCHOOL EMPLOYEES. These individuals must be advised of the provisions of Title 20, USC, Section 1232(g), commonly known as the Buckley Amendment. This statute generally prohibits educational institutions and their employees from releasing information from records which they maintain on students of the institution. Such informants must be advised of the provisions of the law, even if the information they are providing is obtained independent of their employment.

(h) ACTIVE-DUTY MILITARY. The provisions of the Posse Comitatus Act, Title 18, USC, Section 1385, may prevent the use of these individuals in certain types of investigations. These individuals must be advised that the FBI will neither seek nor accept assistance or information which will violate the provisions of the Posse Comitatus Act.

(2) The operation of the following informants may only be authorized by FBIHQ, not on a UACB basis. The opening communication should clearly articulate that their assistance will be of such significant value that it outweighs the sensitivity of operating the individual and that the assistance cannot be reasonably obtained in another manner. (See MIOG, Part I, 137-3.1.1 (5).)

(a) WITNESS SECURITY PROGRAM (WSP). The operation of a current or past participant in the WSP requires the approval of the Department of Justice's Office of Enforcement Operations (OEO) (See MIOG, Part II, Section 27-13.2.) A teletype with the [REDACTED] as the subject must be submitted to the Sensitive Information Unit, FBIHQ, Room 4944, with the following information:

1. Name of source or person relocated (source may be a witness or a person relocated as a result of witness's cooperation such as a family member, boyfriend, or girlfriend).

2. Alias(es) used by the witness.

3. Approval of the appropriate headquarters' official of the concerned agency (will be given by the SIU when communication is forwarded to OEO).

4. If the source is not a witness, relationship of source to the witness, and name of witness.

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5. Identifying data on source, e.g., sex, date of birth, place of birth, Social Security Number, and Bureau of Prisons Register Number (if applicable).

6. Source's employment; if unemployed, how source is subsisting; and extent this activity jeopardizes source's livelihood.

7. Name(s) of target(s) of investigation and their role in the crime or organization under investigation.

8. Significance and/or scope of the criminal activity and target(s).

9. Source's relationship or association with the target(s) under investigation.

10. Necessity of utilizing source in investigation, including details about nature of use being requested.

11. Consideration of alternatives to source's use and indication of why they will not work.

12. Detailed account of source's involvement in criminal activity subsequent to being approved for WSP services.

13. Appraisal of whether request centers on source's new criminal involvement, and how source is aware of new criminal activity.

14. The benefit that source expects in return for his/her cooperation.

15. Statement as to whether source's activity requires him/her to testify.

16. Indication as to whether source completed testimony for which he/she was placed in the WSP. If known, district and sponsoring AUSA.

17. If known, details about other agencies' use of source since relocation.

18. Probation or parole status of source (indicate whether U.S. Probation Office and U.S. Parole Commission

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should be notified).

19. Security measures to be taken to ensure source's safety and minimal risk to the public.

20. Use of electronic devices, body recorders, etc. (cooperative witnesses only).

21. Name of case Agent or Agent specifically responsible for safety of source.

22. Length of time source's assistance will be needed regarding this investigation.

23. Whether source is incarcerated; if so, location and whether prosecutor and/or judge should be advised.

24. Whether the source will remain in custody of the FBI, be housed in jails or similar facilities at certain times, or whether source will be unguarded except for his/her own protection.

25. If the source is incarcerated, whether a prison redesignation will be necessary upon completion of activity.

26. Whether source is represented by counsel and whether counsel concurs with activity.

27. If applicable, whether activity has been endorsed by appropriate federal/state prosecutor; if so, name, telephone number and location of prosecutor (cooperative witnesses only).

28. Whether source's activity will require submission of new WSP application and subsequent relocation.

29. Whether the source will be charged/indicted in this investigation.

(b) MINORS (INDIVIDUALS UNDER THE AGE OF 18). In requesting authorization to use a minor as an informant, the field office must indicate whether parental consent has been obtained for his/her use. If such consent has not been obtained, state whether such consent can or will be obtained. If obtaining consent from his/her parents is not feasible, the field office must state the justification for use of such an individual in the absence of parental consent.

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(c) BUREAU OF PRISONS (BOP) PERSONNEL. Utilization of BOP personnel requires approval of the Department of Justice's OEO. In submitting a request for review by OEO, the field must provide the appropriate FBIHQ substantive unit with the following information:

1. Name of BOP employee.

2. Location and job title of employee.

3. Necessity of utilizing the employee in the investigation. If other techniques are available, an explanation is required. Detail the activity in which the employee is to be engaged and the location and length of time the employee will be needed. Advise specifically whether the employee will be required to contact target(s), relatives, friends and associates outside the institution in connection with this investigation.

4. Name(s) of target(s) of the investigation and their role(s) in the crimes or organization under investigation.

5. Security measures to be taken to ensure the employee's safety.

6. Whether the employee will be needed as a witness.

7. Whether a job transfer will, or may, be necessary upon completion of the activity.

8. Whether the activity will jeopardize the employee's family, and if so, how.

9. Name(s), title(s) and location(s) of any BOP personnel and phone numbers with whom this matter has been, or will need to be discussed.

This does not apply to routine interviews of BOP personnel where the employee is not asked to perform an operational role in furtherance of an FBI investigation.

(d) COUNSELORS IN DRUG TREATMENT PROGRAMS. Federal law prohibits the opening of these individuals for the purpose of obtaining information on matters relating to the counseling of patients.

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137-8 | PAYMENTS TO INFORMANTS | (See MIOG, Part II, 32-1.) |

(1) The SAC is personally responsible for all payments to informants. All payments must be requested by the submission of a draft request form and a memorandum to the SAC. The memorandum must contain the case title, total amount previously paid to the informant during the Fiscal Year (FY), the date the informant file was opened, and the information justifying the requested payment. These requests should be closely scrutinized to ensure that they are commensurate with the value of the information received. This responsibility rests with the field office management.

(2) Payments to informants for services and expenses must be made from his/her case funds based on SAC or, in his/her absence, ASAC authority, and not from the substantive case fund payment authority. In resolving whether a payment should be charged to the informant or substantive case fund, it is useful to determine who derived the primary benefit of the payment, and whether the expense was incurred as a direct cost of operating the informant. Where the payment is made for the purpose of conferring a benefit to the informant or is made as a direct result of operating the informant, it should be charged against the informant's case fund authority and not the substantive case authority.

(3) The alternate contacting Agent or a second witnessing Agent must be present at all payments to an informant unless strong written justification can be given to and approved by the SAC, or in the absence of the SAC, the ASAC, not to have a second Agent present.

(4) An individual who has requested confidentiality may be paid one time for services rendered and/or expenses incurred under SAC authority without being opened as an informant. This one-time payment under SAC authority can be up to [REDACTED]. Should the person be paid a second time, he/she should be opened as an informant. This one-time payment policy may be waived by FBIHQ when necessary to maintain an individual for security or trial purposes. Payments to one-time nonsymbol sources are charged to the field office informant budget using the substantive case file number. Payments are therefore made from the case authority.

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b7E
(5) The SAC or, in his/her absence, an ASAC, may approve payments to an informant for expenses in obtaining information, the performance of services, or information on a C.O.D. basis up to [redacted] per FY. In situations where an informant will incur expenses, such as travel, in connection with his/her operation or in order to obtain information for the FBI, the SAC may authorize payment of an advance for these expenses prior to the expenses actually being incurred by the informant. Where funds are advanced in this manner, the field office must ensure that the actual expenses incurred by the informant are determined and reconciled with the advance of funds. When the total of such payments to an informant reaches [redacted] additional payment authority must be obtained from FBIHQ before any further payments or advances can be made. Subsequent requests for additional payment authority should be submitted in increments of [redacted] or the amount required for the current FY, whichever is less. Such requests may exceed [redacted] where operational considerations necessitate an enhanced authority level. In these situations, the request should set forth adequate justification for the enhanced authority level.

(6) The request for an additional [redacted] payment authority should be submitted by secure teletype to the CIU, FBIHQ, under the pertinent informant caption on a request-only basis. The teletype must include:

(a) A specific request that an additional [redacted] payment authority be granted.

(b) The total amount paid to the informant to date for the current FY, broken down by services, expenses and total payments.

(c) A concise summary of the information or services provided by the informant, in chronological order, for which he/she has been paid since the last authorization. This summary should include the title and character of each case, the general nature of the information or service provided by the source in the investigation, and a statement as to the value of the information or service provided by the source, including statistical accomplishments attributed to the informant as a result of the information provided. Immediately following this information, set forth a separate paragraph showing the dates of payments under the prior authorization and the amount paid on each date, divided into the amounts paid for services and the amounts paid for expenses. For the benefit of the requesting Agent, this information is available in the field office through on-line inquiry of the Financial Management System (FMS).

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(7) Payments to Informants by an Auxiliary Office (AO)

When an informant provides services to an office other than his/her Office of Origin (OO), care must be taken to record each payment using the informant's file number. This may be accomplished in one of two ways:

(a) If the individual is expected to provide services or information to another office for an extended period of time, close the informant file at the OO and reopen it at the new OO.

(b) If the individual is providing only temporary assistance, the AO may make payment(s) through the draft system using the informant's file number assigned by the OO up to the maximum amount authorized for the FY. The AO must coordinate with the OO to ensure that payments do not exceed the informant's authorization level.

(c) Note that payments to informants will be charged to the informant budget of the field office making the payment.

(8) Lump-sum payments

(a) Each field office is encouraged to submit requests for lump-sum payments for the informant at the conclusion of any case in which he/she has made significant contributions to FBI investigative matters. These requests must be personally approved by the SAC or, in his/her absence, the ASAC. The SAC and ASAC should closely review lump-sum requests to ensure that all payments are justified and that the amount requested is appropriate under the circumstances. Requests for lump-sum payments should be furnished to FBIHQ by teletype captioned with the informant's symbol number, sent to the attention of the CIU, FBIHQ.

(b) Furnish the title and character of the FBI case and all pertinent details which will justify a lump-sum payment. Each funding request concerning any investigative program will be considered strictly on the merits of the case and the significance of the informant's contributions to that investigation. The following issues must be addressed in any request for a lump-sum payment:

1. Significance of the investigation.

2. Degree of assistance rendered by the informant. The following factors should be addressed:

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- a. Whether the informant was responsible for the initiation of the case.
- b. Quality of the information furnished by the informant.
- c. Whether the information was available from other sources.
- d. Length of time which the informant devoted to the investigation.
- e. Whether the informant participated in consensual monitoring activities.
- f. Whether undercover Agents were introduced by the informant.
- g. Potential risk for violence toward the informant or his/her family.
- h. Whether the informant was able to continue his/her normal employment while assisting in the investigation.
- i. Whether the informant suffered any financial loss as a result of his/her cooperation.
- j. Value of seized or forfeited property obtained as a result of his/her cooperation.
- k. Statistical accomplishments attributed to information or assistance provided by this informant.
- l. Whether the informant will testify.
- m. Potential for long-term investigative contributions by the informant.
- n. If the informant is to testify, whether the Federal prosecutor concurs in the payment.
- o. Whether the informant has or will receive any payment for services or expenses from any other law enforcement agencies in connection with the information or services

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| which he/she provided to the FBI. |

| (9) | Regular Pay

Recommendations for informants to receive regular payments should contain full justification and a proposed maximum amount to be paid to the informant on a regular basis. Such requests should contain the same information as provided in a request for additional payment authority and should be submitted by teletype to FBIHQ. The request for regular payment authority should specify the length of time for which the authority is sought and the specific reasons why the individual should be paid on a regular basis rather than by SAC authority. Communications requesting renewal of regular payment authority must be submitted at least one week prior to the expiration of the currently authorized period.

| (10) | Receipts

(a) A receipt must be obtained from all informants at the time of each payment. The receipt is to be signed by the informant using his/her code name, and witnessed by the case Agent or alternate Agent and a witnessing Agent. Both the paying Agent and the witnessing Agent must sign the receipt for all informant payments. Approval for not obtaining a receipt would be rare and must have the personal endorsement of the SAC or, in his/her absence, the ASAC. In the event that a receipt cannot be obtained, a certification, signed by the paying Agent and witnessing Agent, may be submitted as documentation for the payment.

(b) If it becomes necessary to make a correction on a receipt, such corrections must be initialed by the informant using his/her code name initials, and not by the Agent.

(c) Receipts should be forwarded to FBIHQ in accordance with the provisions of the CONFIDENTIAL FUNDING GUIDE. A copy of the receipt attached to the request memo is to be maintained in the informant's main file.

(d) Where payments are to be made to a Spanish speaking informant, Form FD-777, Spanish/English Receipt for Informant and Informant Payments, should be executed to ensure that the terms and the amount of the payment are fully understood by the recipient.

(11) A gift may be made to an informant in lieu of a payment for services with the prior approval of the SAC, or in his/her

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absence, the ASAC. In reviewing such requests, care must be taken to avoid the appearance of impropriety and to ensure that the gift is to be given for strictly operational reasons. Purchase of the gift must be charged to the file number of the informant being paid as a payment for services. Agents are not to accept gifts from informants. For restrictions on financial, business and other dealings with informants, refer to the Manual of Administrative Operations and Procedures, Part I, 1-14.1.

(12) If private individuals or representatives of private industries or insurance companies offer a reward to an informant as a result of information supplied by the informant, they should be provided the pertinent information furnished by the informant if he/she agrees. SAC approval is necessary before participating in such payments. If it is necessary for an Agent to be involved in the reward payment in order to protect the informant, the transaction must be fully documented and appropriate receipts obtained. These transactions must adhere to all informant payment requirements. FBIHQ should be advised of the details of all such transactions.

(13) Income tax considerations

(a) All informants who receive compensation from the FBI for their services must be advised that such compensation must be reported as income when filing Federal income tax forms or other appropriate tax forms. Complete details of any problems the informant has encountered with the taxing authorities should be promptly furnished to FBIHQ.

(b) Informants should set forth income received from the FBI on the Federal income tax return as income received from other sources for personal services. Internal Revenue Service (IRS) regulations exempt law enforcement agencies from filing IRS Form 1099 (Miscellaneous Income Statement) for payments made to an informant. However, FBIHQ will provide a statement of payments made to an informant, upon his/her request, to assist the informant in reporting his/her income to the IRS.

(14) Stipulations regarding payments made to witnesses

(a) In trials in which an informant or other individual was paid a sum of money, and is a prospective witness, FBIHQ will furnish receipts signed by the prospective witness when so ordered by the court. Original receipts and a set of reproduced copies will be transmitted to the field office in the district where the trial will take place. In order for FBIHQ to furnish these

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materials, the appropriate field office must furnish FBIHQ the following information:

1. Correct full name.
 2. All aliases, code names, and symbol numbers.
 3. First date of contact by your office.
 4. Tabulation of all payments, broken down as to services and expenses. Although tabulations are not furnished to the Department, they must reflect all amounts contained in the FMS.
 5. Listing of any advances, refunds and outstanding balance of advances. (See (b).)
 6. Date of last contact by your office. (See (b).)
 7. Whether the individual has been contacted or opened by any other field office. (See (b).)
- (b) Where the informant has previously been used as a witness and tabulation of payments was prepared, information for items 137-8(14)(a)5 through 7 need be given only from date of last trial in which the individual was used.
- (c) Above information should be submitted by separate communication to the Accounting Section, Finance Division. Interdivisional correspondence should be addressed to FBIHQ with copies designated for interested offices.
- (d) When an informant is to testify, the informant's financial condition is to be discussed with him/her to ensure that the informant has fulfilled his/her tax obligations as reasonably as possible. If the informant has received FBI payments for services, the informant is to be reminded that these payments are income. Any payments by other law enforcement agencies are to be fully addressed. Any information developed or known concerning potential tax problems is to be brought to the attention of the United States Attorney's Office.
- (15) Receipt of unemployment compensation (See FCI Manual, Part I, 134-4.7(8)(a).)

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(a) At times, informants may temporarily lose their jobs and become eligible for unemployment compensation. Where unemployment regulations require listing of all sources of income as a prerequisite for unemployment compensation, an informant who is being paid by the FBI must comply with state laws. Informants must be alerted to those local requirements which may impact on them.

(b) Where state requires notification of FBI payments to informants that would necessitate disclosure of identity of the informant, the field office should consider discontinuing payments during the period of unemployment compensation benefits in order to protect his/her identity.

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ADMINISTRATION OF INFORMANTS

(1) Each informant must be assigned a code name which is unique to him/her within the field office. The code name or pseudonym is assigned to the informant as a measure of additional security and must be utilized in signing payment receipts. The code name is to be utilized in place of the informant's true name in the field office payment records. Care must be taken to ensure that the choice of the code name does not tend to identify the informant's true name, occupation, or information which is unique to the informant.

(2) Upon the opening of an informant, all relevant data is to be entered into the Criminal Informant Management System (CIMS) within two business days. All other administrative information pertaining to the informant should be entered into CIMS as soon as it becomes available. The Criminal Informant Program Manager is responsible for ensuring that the data is entered into CIMS and that it is done in a timely manner.

(3) Upon entry in CIMS of the information from the opening memorandum concerning the informant in the suitability and pertinence inquiry, FBIHQ will place a "Wanted-Flash-Cancellation Notice" in the Criminal Justice Information Services Division. When the "Wanted-Flash-Cancellation Notice" is placed, the field office will be advised by FBIHQ of any National Crime Information Center (NCIC) inquiry about the informant. In the event there is no record, the field office will not receive a reply from FBIHQ. When the informant is closed, FBIHQ will automatically cancel any "Wanted-

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Flash-Cancellation Notice" which may have been placed. (See MIOG, Part II, 14-12.3.4.)

(4) Informants are not to be advised of their symbol number. Where an informant furnishes information which necessitates a change in the category designation (i.e., OC, C, D, WC, etc.), the symbol number previously furnished will remain the same; however, the suffix must be changed to indicate the appropriate program designation. The utilization of the suffix in the reporting of information derived from the source is unnecessary although suffix utilization should be continued for administrative purposes or to fulfill other existing needs.

(5) After entering the permanent symbol number from the opening memorandum into CIMS, subsequent communications should contain the informant's symbol number, rather than his/her true name. The informant's symbol number and true name should not appear on any communications which are not secure. All communications concerning an informant's development and/or operation must be submitted by secure teletype.

(6) If an informant was either born or previously domiciled outside the United States, the case Agent should consider sending a secure teletype to the appropriate Legat requesting a background check of the source.

(7) If it is determined that an individual is not suitable for use as an informant, he/she is to be immediately closed by the submission of a memorandum to the field informant file and entry of the data it contains in CIMS, to include a statement setting forth the specific reason for closing the individual and whether the individual should be considered for future use by the FBI.

(8) Upon the closing of an informant, the case Agent must prepare a memorandum stating whether the source's identity was ever made public, i.e., whether he/she ever testified in court. The purpose of this memorandum is to prevent unnecessary or overbroad disclosure of information provided by the informant through a Freedom of Information Act request. In the event that the informant did testify, the case Agent should set forth the general nature and subject matter of the testimony in the memorandum.

(9) Where it is necessary for an informant to be utilized in a field office other than his/her OO, the field OO should furnish the new OO with full background information, including a summary of information previously provided by him/her, descriptive data, payment

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records, mode of travel and any other information useful in the operation of the informant. Any information that reflects negatively upon the reliability of the informant is to be promptly furnished to the field office considering the use of his/her services. The new OO should ensure that the informant is closed in the original OO either prior to submitting an opening communication to FBIHQ or upon entering the information into CIMS.

(10) Whenever an individual is closed, regardless of his/her status, the field office must reinitiate an SI before they can again be operated as a fully operational informant. The opening communication should indicate that the individual is being reopened. The field office must use the same symbol number that was assigned in the previous SI when reopening an individual.

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137-10

INFORMANT COMMUNICATIONS (See MIOG, Part II, 10-10.5.1(2)(e); Correspondence Guide-Field, 2-11 & 3-19.)

(1) All correspondence relating to the development or operation of informants among field offices must be transmitted by secure teletype. The opening, conversion, closing, and extension of informants whose operation is not restricted by their occupation as in MIOG, Part I, 137-7.1 through 137-7.2, are to be documented by memoranda in the field office file. (See MIOG, Part I, 137-3.1.1(4), 137-3.1.1(5), & 137-3.1.2(2)). Any correspondence regarding additional payment authority, participation in extraordinary criminal activity, and unauthorized criminal activity are to be transmitted by secure teletype to FBIHQ. The only exceptions to this instruction are existing forms and FD-209s with accompanying inserts or FD-302s relating to investigative matters of interest to another field office. Surface mail and telephone conversations between field offices and resident agencies regarding informants should be strictly limited. All documents which either identify or tend to identify an informant or cooperative witness must be hand-carried by an Agent. All security concerns should be resolved in favor of hand-carrying sensitive information by an Agent.

(2) All correspondence among field offices and FBIHQ requesting payments to an informant, travel of an informant, or involving the operation of an informant, must be transmitted by secure

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teletype under the informant's symbol number caption and not under a substantive case caption.

(3) All information pertinent to FBI investigative responsibilities furnished by an informant must be promptly reviewed, evaluated, channelized, entered into CIMS and all other necessary action taken.

(4) In criminal cases positive information must be recorded either on investigative inserts or FD-302s. Positive information must not be recorded on FD-209s.

(a) USE OF INSERTS - Information provided by an informant that will not become testimony should be recorded on an investigative insert. The insert will contain the informant's symbol number and the date the information was provided. The original insert will be filed in the informant's subfile and a copy will be routed to the pertinent substantive case file. Information received on two or more substantive investigative matters must be recorded on separate inserts and filed only in the pertinent substantive investigative file. All information furnished by the informant must be filed in the informant's subfile.

(b) USE OF FD-302s - If the informant's information is of evidentiary value and likely to become the subject of testimony, the information must be recorded on an FD-302 in the same manner as if the information were received from any other witness. Three copies of the FD-302 will be prepared. The original of the FD-302 must reveal the identity of the informant, but the identity must be concealed on all copies. Also, the informant's file number must not appear on the original FD-302 or any copy. Transcripts of conversations of the informant will be handled in the same manner as an FD-302. If information from the informant is so singular in nature or reported in a manner which would tend to identify the informant, a succinct summary of the pertinent information should be filed in the substantive file. The following is an example of how an original FD-302 and copy should be prepared.

- ORIGINAL FD-302 -

- EXAMPLE -

(To be filed in informant's main file)

JOHN J. DOE, 123 Main Street, New York, New York,
furnished the following information:

On March 12, 1984, he saw a green tractor trailer bearing

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Pennsylvania license plate XYZ 111, loaded with cases of cigarettes at a garage at 789 West 11th Street, New York, New York. The cases were from the ABC WAREHOUSE, Winston-Salem, North Carolina, and were addressed to BELL DRUGS, 45 Maple Street, Philadelphia, Pennsylvania.

Investigation on 3/15/84 At New York City File # Substantive File
By AGENT'S NAME:typist's initials Date Dictated 3/16/84

- COPIES OF THE ABOVE FD-302 -
- EXAMPLE -

(To be filed in informant's subfile and in the
substantive case file without the true name)

An informant, who has provided reliable information in the past, furnished the following information:

On March 12, 1984, he/she saw a green tractor trailer bearing Pennsylvania license plate XYZ 111, loaded with cases of cigarettes at a garage at 789 West 11th Street, New York, New York. The cases were from the ABC WAREHOUSE, Winston-Salem, North Carolina, and were addressed to BELL DRUGS, 45 Maple Street, Philadelphia, Pennsylvania.

Investigation on 3/15/84 At New York City File # Substantive File
By AGENT'S NAME:typist's initials Date Dictated 3/16/84

(c) FD-209 - An FD-209 will be prepared as a cover sheet for inserts which are filed in the informant's subfile. The FD-209s must not accompany inserts routed to the substantive case file. An FD-209 must also be prepared in triplicate for each FD-302. The FD-209 is used in serializing the FD-302 into the informant's main file (original FD-302 bearing the informant's true name), the informant's subfile (copy of FD-302 identifying the informant only as an informant) and the substantive case file (copy of FD-302

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identifying the informant only as a Confidential Source). The FD-209 will be captioned with the informant's symbol number and bear the file number of the informant's file and the case caption of the substantive case. The following warning statement must appear on the FD-209: "Information contained herein was obtained confidentially. The informant's name is not to be disclosed in any form unless a conscious decision has been made to disclose his/her identity by an appropriate FBI official."

(d) The FD-209 will be used to document all negative contacts with an informant relating to his/her investigative activities as an informant. However, where the informant is contacted for the sole purpose of making payment for services and/or expenses, and they do not provide any information relating to investigative activities, there is no need to document the contact on an FD-209.

(5) Copies of FD-302s or inserts containing informant information which have been disseminated must not be filed in the dissemination control file. These FD-302s or inserts should be filed in the informant's subfile and the pertinent substantive file only. An FD-159 reflecting dissemination should be prepared. Copies should be placed in the informant's main file, and the field office dissemination control file.

(6) Informant information utilized in affidavits for Title III applications, search warrants, complaints, or any other court document must be reviewed by the field supervisor to ensure that the informant information in the document is contained in an insert or FD-302, in both the informant and substantive case files. On the file copy of the legal document in the substantive case file, the case Agent must note the substantive case file, serial number and page of the FD-302 or insert where the informant information can be found which was used in support of the legal document. This notation should be placed in the margins next to the informant's information in the legal document.

(7) Characterizations of informants utilized in affidavits or other legal documents described above should be updated at the filing of each legal document in which an informant's information is used. The serial number of the legal document containing the characterizations (from the substantive case file) must be documented in the informant's main file. This documentation is indexed to the FD-237 and is used in support of statistical accomplishments.

(8) All positive information obtained from an informant

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operated by one field office and which pertains to investigative matters in another field office must be immediately transmitted to that field office. Appropriate copies of FD-209s with accompanying inserts or FD-302s containing that information are to be sent to that field office as enclosures to an airtel under the substantive case caption. Copies of these outgoing communications must be maintained in the informant's main file.

(a) Those FD-209s and accompanying inserts or FD-302s are to be sent to the personal attention of the SAC, or his/her designee, in a sealed envelope. In instances where an entire informant's file, or a substantial portion thereof, is required in another field office, the file should be hand-carried by an Agent.

(b) In a situation wherein an informant is being temporarily operated by an office other than his/her OO, original FD-302s in which the informant is identified will be hand-carried by an Agent in a sealed envelope to the SAC of the informant's OO for inclusion in the informant's file. Nothing in or on the envelope should identify the FD-302s as being connected to an informant matter. The sending office will, however, advise the OO by teletype under the source's symbol number that the FD-302s are being sent.

(c) Any transmission by facsimile of any true name FD-302 or other document which tends to identify the informant must be done by secure facsimile.

(9) All statistics obtained as a result of an informant's information should be claimed on an FD-209 and this FD-209, with nothing attached, should be placed in the informant's main file. The FD-209, containing the substantive case title, file number and statistic claimed, should be indexed to the FD-237.

(10) In instances where a criminal informant reports information pertinent to the FBI's foreign counterintelligence or international terrorism mission, a Subfile B is to be created to maintain that information. The Subfile B is to be appropriately classified. Subsequently, the information should be disseminated to the proper substantive FCI/IT file. (See 137-11 (4)(c).)

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137-11 INFORMANT FILES AND INDICES (See MAOP, Part II, 2-5.1.)

(1) A separate and secure room is to be utilized for the maintenance of all informant and cooperative witness indices and pending informant and cooperative witness files. Where possible, all closed informant files should also be maintained in this room or otherwise maintained in a secure and locked condition. All pending and closed informant files are to be maintained under the personal authority of the SAC or a person designated by the SAC. Access to this room will be limited to necessary personnel and this space should be locked at all times when unattended. A log is to be maintained on persons requesting and reviewing informant files. Authority to review an informant's file should be restricted to the SAC, ASAC, the case Agent's supervisor, the Principal Legal Advisor, the case Agent, the alternate Agent, the co-case Agent, the Informant Coordinator, the CIMS Analyst and confidential file room clerk. The file will not leave the room, except for the express purpose of a file review by the supervisor or the handling Agent. Logs must have columns for "date," "file number," "signature of person reviewing file," and "time file charged out" and "in." Informant files should not be located outside this room after close of business hours.

(2) Individual files are to be maintained on all active informants and should be carried as pending. These files, as well as the closed informant files, should be bound in the green file cover and file back (designated as an FD-245a). These files are to be assigned to the Agent who is personally responsible for the development and operation of the informant.

(3) An FD-237 is to be used in the nature of a table of contents or index to indicate where particular data can be found in the file. The form should be carried as the top document in the informant's main file and should not be serialized. This form should be updated regularly as the required information changes.

(4) All informant files should be separated into two sections. Administrative and identifying data is to be maintained in the main file and all information, reports, etc., furnished by the informant should be maintained in the subfile.

(a) Main file items:

- Correspondence requesting approval to open
- 1A file items (photograph, fingerprint card, etc.).
- Indices checks (Local and FBIHQ).

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- NCIC inquiry and response.
- Criminal Justice Information Services Division

Report.

- Local arrest records.
- Credit checks.
- FD-302s in which the identity of the informant has been revealed.
- Inserts in which the identity of the informant is revealed.
- FD-209s used to claim statistical accomplishments.
- FD-209s used as a cover page for above-mentioned FD-302s.

that may tend to identify the informant.

- Payment request memos.
- Draft request forms.
- Signed payment receipts.
- Requests to FBIHQ for additional payment
- Requests to FBIHQ for lump-sum payment
- All other administrative-type correspondence.
- Any correspondence that identifies or tends to identify the informant.
- Documentation authorizing criminal activity.

authority.

authority.

(b) Subfile A items:

- FD-302s in which the identity of the informant is concealed.
- Inserts which conceal identity of the informant.
- FD-209s used as cover page for inserts.
- Negative contact FD-209s.

(c) Subfile B items:

- Classified FD-302s in which the identity of the informant is concealed.
- Classified inserts which conceal identity of the informant.
- Classified FD-209s used as cover page for inserts. (See 137-10(10).)

(5) Symbol number and code name.

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(a) Each informant should be assigned a permanent symbol number and code name unique to the field office. FBIHQ will be advised of the symbol number and the informant's code name through data entry in CIMS. The code name or pseudonym is assigned to the informant as a measure of additional security and is to be utilized in signing payment receipts. The code name is utilized in place of the informant's true name in the field payment ledger.

(b) The informant is not to be advised of his/her symbol number.

(c) The prefix of the symbol number should consist of the appropriate field office abbreviation. The suffix of the symbol number should identify the category of information which the informant is providing.

(d) Although the informant may subsequently furnish information requiring a change in designation, the number previously assigned will remain the same; however, the suffix should be changed to indicate the appropriate designation, i.e., C, OC, TE, WC, DT, D or CS. The utilization of the suffix in the reporting of information derived from the source is unnecessary although suffix utilization should be continued for administrative purposes or other need exists.

(e) After FBIHQ has been advised of the permanent symbol number through data entry in CIMS, and documented in the opening memorandum in the source file, subsequent communications should contain the informant's symbol number rather than the true name. The informant's symbol number and true name should not appear on any communications which are not secure. Any communications submitted to FBIHQ in connection with the operation or administration of the informant should be captioned under the assigned symbol number and not the substantive case caption.

(f) The use of symbol numbers should be restricted to informants and should not be used for any other investigative technique.

(6) Indexing

(a) The informant's true name, aliases and other identifying data are to be indexed into CIMS. A manual index is to be maintained in the confidential file room for those informants indexed prior to the establishment of CIMS.

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(b) No indexing to the general indices should be done from individual informant files. All such indexing should be done from substantive files.

(7) Indices

(a) All offices should maintain an alphabetical name index, a symbol number index, and a code name index for all informants not maintained in CIMS. These indices should be maintained as above in a separate and secure manner under the authority of the SAC or person designated by that official.

(b) SACs should ensure that all necessary searching of these separate indices is conducted.

(c) The result of a search of these indices, either positive or negative, should not be handled in a routine manner similar to a general indices review. Good judgment should be utilized consistent with security concerns. Notification of an informant reference should be coordinated with the appropriate supervisor having responsibility for the mail being searched.

(d) Other indices may be maintained in the confidential file room as deemed necessary by the office for convenience such as an index of informants in other divisions or an index broken down by activity or geographical area. Any such indices should be given the same security as the alphabetical, symbol number and code name indices.

(8) A Form FD-675 entitled, "Supervisor's 60-Day Informant File Review Log" is to be placed immediately underneath the FD-237 in the main informant file. It is to be used to document the Supervisor's review every 60 days as mandated by Bureau policy. It should not be serialized or destroyed. Place a new FD-675 on top of the old form if there is a need for additional certification space.

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137-12 ON-SITE REVIEWS

(1) To enhance the administrative efficiency of the Criminal Informant Program (CIP) at FBIHQ and in the field offices, an on-site review will be conducted periodically of the CIP of each field office.

(2) The purpose of the on-site review is to afford the Criminal Informant Unit an opportunity to review the field CIP from an overall program perspective, by identifying areas which may need attention, and to provide CID with the results of the on-site findings. Each informant's reliability and the action taken when reliability is in question are to be considered during the on-site review. This on-site review should not only be concerned with the number of informants but also with the quality of information furnished, the priority of the investigative programs in which information is provided, and the degree of compliance with FBI and Attorney General policies and guidelines. An on-site review should enable the Criminal Informant Unit to determine whether the field CIP is capable of supporting the investigative programs of the field office, to ensure the worthiness of each informant for continued operation, and to confirm that all informants are being operated within established operational parameters.

(3) Prior to an on-site review, each field office should rate each informant utilizing the scale set forth below by individual investigative program based on information furnished and provide an aggregate overall evaluation for each informant. The evaluation should be based on both contributions consisting of statistical accomplishments and intelligence concerning investigative efforts.

EXCELLENT

Furnishes information of high quality on a continuing basis which usually could not be obtained through other means and which contributes significantly to the FBI's investigative and intelligence gathering efforts.

VERY GOOD

Regularly furnishes quality information which contributes measurably to the investigative and intelligence-gathering efforts of the Bureau.

GOOD

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Furnishes sufficient worthwhile information to remain active and qualified as an informant.

FAIR

| Furnishes | some | information of value for an extended period.

POOR

Informants in this category have furnished no information of value and consideration should be given to closing them.

NEW

Too new to evaluate.

EFFECTIVE: 12/20/93

| 137-13 | ATTORNEY GENERAL'S GUIDELINES ON THE USE OF
INFORMANTS

| (1) Attorney General guidelines on FBI use of informants and confidential sources are included below in these 137 guidelines.

| (2) These guidelines on the use of informants and Confidential Sources are set forth solely for the purpose of internal FBI guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative and litigative prerogatives of the FBI. |

"ATTORNEY GENERAL'S GUIDELINES ON FBI USE OF
INFORMANTS AND CONFIDENTIAL SOURCES"

"A. Introduction

"(1) The courts have recognized that the government's use of informants and confidential sources is lawful and often essential to the effectiveness of properly authorized law enforcement investigations. However, use of informants and confidential sources to assist in the investigation of criminal activity may involve an

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element of deception, intrusion into the privacy of individuals, or cooperation with persons whose reliability and motivation can be open to question. It is proper for the FBI to use informants and confidential sources in appropriate investigations, but special care must be taken to carefully evaluate and closely supervise their use, and to ensure that individual rights are not infringed and that the government itself does not become a violator of the law. Though informants and confidential sources are not employees of the FBI, their relationship to the FBI can impose a special responsibility upon the FBI when the informant or confidential source engages in activity where he has received, or reasonably thinks he has received, encouragement or direction for that activity from the FBI.

"(2) To implement these guidelines, the FBI shall issue detailed instructions to all Special Agents responsible for dealing with informants and confidential sources.

"B. Definition of Confidential Source, Informant, and Continuing Basis

"(1) A confidential source, under these guidelines, is any person or entity furnishing information to the FBI on a confidential basis, where such information has been obtained as a result of legitimate employment or access to records and is provided consistent with applicable law.

"(2) An informant, under these guidelines, is any other person or entity furnishing information to the FBI on a confidential basis.

"(3) An informant or confidential source used on a "continuing basis" is one providing information or substantial operational assistance with some degree of regularity. This may be as infrequent as a few times per year, or as frequent as several times per week.

"C. General Authority

"(1) An informant or confidential source may be asked to provide information already in his possession, to provide information which comes to his attention, or to affirmatively seek out information, concerning criminal conduct or other subjects of authorized investigative activity. An informant or confidential source may also be asked to provide operational assistance to the FBI, including furnishing resources or facilities.

"(2) The FBI may only use informants or confidential sources in furtherance of its authorized investigative activities and law

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enforcement responsibilities. Informants and confidential sources may not be used or encouraged to commit acts which the FBI could not authorize for its Special Agents.

"D. Required Findings of Suitability and Pertinence For Any Informant or Confidential Source Used on a Continuing Basis, Any Informant Authorized to Associate in Activities, Participation in Which Otherwise Would be Criminal, and Any Informant or Confidential Source Providing Substantial Operational Assistance in an Undercover Operation

"(1) No informant or confidential source may be used to provide information on a continuing basis, no informant may be authorized to associate in activities, participation in which otherwise would be criminal, nor may any informant or confidential source be used to provide substantial operational assistance in an undercover operation, unless the supervisory FBI official designated below has made written findings:

"(a) that the informant or confidential source appears suitable for such use, and

"(b) that the information likely to be obtained or the operational assistance to be provided is pertinent to authorized FBI investigative activity or law enforcement responsibilities.

"Findings of suitability and pertinence shall be made by a supervisory agent designated by the Director except that in the case of a Domestic Security Investigation, the findings shall be made by a Headquarters official designated by the Director.

"(2) A finding of suitability should be preceded by a preliminary inquiry concerning the proposed informant or confidential source. A preliminary inquiry may only be used to assess suitability. It may not be used to develop information concerning an individual for the purpose of inducing him to become an informant or confidential source. A preliminary inquiry can use any lawful investigative technique except mail covers, access to tax information, any technique requiring probable cause, such as mail openings, nonconsensual electronic surveillance, or searches.

"(3) In determining the suitability of an informant or confidential source, the FBI shall weigh and consider the following factors:

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"(a) the nature of the matter under investigation and the importance of the information or assistance being furnished;

"(b) the seriousness of past and contemporaneous criminal activity of which the informant or confidential source may be suspected;

"(c) the motivation of the informant or confidential source, including any consideration sought from the government for his cooperation;

"(d) the likelihood that the information or assistance which an informant or confidential source could provide is not available in a timely and effective manner by less intrusive means;

"(e) the informant's or confidential source's reliability and truthfulness, or the availability of means to verify information which he provides;

"(f) any record of conformance by the informant or confidential source to Bureau instructions and control in past operations; how closely the Bureau will be able to monitor and control the informant's or confidential source's activities insofar as he is acting on behalf of the Bureau;

"(g) the risk that use of informants or confidential sources in the particular investigation may intrude upon privileged communications, or inhibit the lawful association of individuals or expression of ideas; and

"(h) any risk that use of informants or confidential sources may compromise an investigation or subsequent prosecution, including court-ordered disclosures of identity which may require the government to move for dismissal of the criminal case.

"(4) A preliminary inquiry and written determination regarding suitability and pertinence should be completed within 120 days from the date the inquiry began. FBI Headquarters may authorize one or more extensions beyond 120 days, stating in writing the facts and circumstances precluding an earlier determination.

"(5) Determinations of suitability and pertinence shall be reviewed at least every 90 days by a field supervisor and at least annually by FBI Headquarters.

"(6) If it is determined not to use a person or entity as an

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informant or confidential source, any information collected about the person or entity during the preliminary inquiry without the consent of the person or entity shall be promptly destroyed, unless it is or may become pertinent to authorized investigative activity or the person is a potential witness in a criminal prosecution. Any decision not to destroy all information about the person or entity shall be recorded with explanatory facts and circumstances in an investigative case file and shall be reviewed periodically by the SAC or designated field supervisor.

"(7) At any time the FBI learns an approved informant or confidential source is no longer suitable to provide information or operational assistance, his relationship with the Bureau shall be promptly terminated. FBI Headquarters shall maintain records of informant and confidential source terminations, including a detailed statement of the reasons for each termination. These records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources.

"E. Required Instructions to

"(1) Any Informant used on a Continuing Basis, Any Informant Authorized to Associate in Activities, Participation in Which Otherwise Would be Criminal, Any Informant or Confidential Source Suspected of Substantial Involvement in Unauthorized Past or Continuing Criminal Activities, and Any Informant or Confidential Source Providing Substantial Operational Assistance in an Undercover Operation:

"Each such person shall be advised that his relationship with the FBI will not protect him from arrest or prosecution for any violation of Federal, State, or local law, except where the FBI has determined pursuant to these guidelines that his association in specific activity, which otherwise would be criminal, is justified for law enforcement; and that in carrying out his assignments he shall under no circumstances participate in any act of violence, initiate or instigate a plan to commit criminal acts, or use unlawful techniques to obtain information (e.g., illegal wiretapping, illegal mail openings, breaking and entering, or criminal trespass). Such persons shall be readvised when necessary, at least annually, and at any time there is reason to suspect they are engaged in serious criminal activity.

"(2) Other Confidential Sources Used on a Continuing Basis:

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"In the place of the instructions in paragraph E(1) above, each such confidential source shall be advised that he is not acting as an agent or employee of the FBI, that he should use only lawful techniques to obtain information, and that he should provide information only in accordance with applicable law.

"(3) When the FBI learns that persons under investigation intend to commit a violent crime, any informants or confidential sources used in connection with the investigation shall be instructed to try, to the extent practicable, to discourage the violence.

"(4) A written record shall be made in each informant or confidential source file of the instructions noted above promptly after they are given.

"F. Authorized Participation by Any Informant in Criminal Activities

"An informant or confidential source shall not be authorized to engage, except in accordance with this paragraph, in any activity that would constitute a crime under state or federal law if engaged in by a private person acting without the authorization or approval of an appropriate government official. For purposes of this paragraph, such activity is referred to as 'otherwise criminal' activity.

"(1) A determination that participation by an informant in otherwise criminal activities is justified shall be made only by the supervisory FBI official designated in paragraphs F(2) and (3) below on the basis of his written finding that

"(a) the conduct is necessary to obtain information or evidence for paramount prosecutive purposes, to establish and maintain credibility or cover with persons associated with criminal activity under investigation, or to prevent or avoid the danger of death or serious bodily injury;

"(b) this need outweighs the seriousness of the conduct involved.

"(2) For purposes of these Guidelines there are two types of otherwise criminal activities -- 'extraordinary,' i.e., those involving a significant risk of violence, corrupt actions by high public officials, or severe financial loss to a victim, and 'ordinary.' A determination that participation in activities which, otherwise would be 'ordinary' criminal activities is justified as part of an informant's assignment shall be made by a field office supervisor or higher level official, and shall be recorded in writing

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in advance of any such activity, except that oral approval may be given in an emergency situation where confirmed thereafter in writing as soon as possible. The SAC shall review all such criminal activity by informants at least every 90 days.

"Determinations authorizing participation in such activities may concern a single instance of otherwise criminal activity or a specified group of otherwise criminal activities.

"The written determinations shall be submitted annually to Headquarters for review, and shall be subject to review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants.

"(3) A determination that participation in activities which otherwise would be 'extraordinary' criminal activities -- is justified as part of an informant's assignment shall be made only by the SAC and only after the SAC consults with and obtains the approval of the United States Attorney. The consultation shall be in a form suitable to protect the identity of the informant. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to a senior Headquarters official designated by the Director, and to the Assistant Attorney General in charge of the Criminal Division or his designee, in a form suitable to protect the identity of the informant.

"If the SAC reasonably determines that an emergency situation exists requiring informant participation in activities which otherwise would be extraordinary criminal activities before approval by the United States Attorney can with due diligence be obtained, in order to protect life or substantial property, to apprehend or identify a fleeing offender, or to prevent the imminent loss of essential evidence, the SAC may approve the participation on his own authority but shall immediately notify the United States Attorney, the appropriate senior Headquarters official, and the Assistant Attorney General in charge of the Criminal Division or his designee. In such an emergency situation the SAC shall attempt to consult by telephone with a senior member of the United States Attorney's office before approving participation.

"(4) Upon approving any participation in otherwise criminal activity, the FBI shall repeat to the informant the instruction specified in paragraph E(1).

"The FBI shall also seek, to the extent practicable, to provide:

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"(a) that the adverse effect of the activity on innocent individuals is minimized;

"(b) that the informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he will participate;

"(c) that the informant's participation in the activity is closely supervised by the FBI; and

"(d) that the informant does not directly profit from his participation in the activity.

"(5) Any proposal by a confidential source to engage in otherwise criminal activities in order to gather information changes the status of that individual from confidential source to informant.

"G. Notifying Appropriate Authorities of Unauthorized Criminal Activity by Any Informant or Confidential Source

"(1) While carrying out an FBI assignment, an informant or confidential source bears a relationship to the FBI such that his participation in any unauthorized activity in connection with the assignment associated with criminal activities, even of a minor character, should be carefully scrutinized and severely regarded. Hence, whenever a Special Agent learns that an informant or confidential source has participated in a criminal activity in connection with an FBI assignment which was not authorized pursuant to the procedures of paragraph F of these guidelines, the Special Agent shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In exceptional circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall promptly notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, what use will be made of any information gathered through the violation of law, and whether continued use will be made of the

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informant or confidential source.

"(2) Informants who are in a position to have useful knowledge of criminal activities often are themselves involved in a criminal livelihood. It is recognized that in the course of using an informant or confidential source, the FBI may receive limited information concerning a variety of criminal activities by the informant or confidential source, and that in regard to less serious participation in criminal activities unconnected to an FBI assignment, it may be necessary to forego any further investigative or enforcement action in order to retain the source of information. However, whenever a Special Agent learns of the commission of a serious crime by an informant or confidential source, he shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall immediately notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, and what use will be made of any information gathered through the violation of law. A determination to then continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division or his designee.

"(3) Each FBI field office shall immediately notify FBI Headquarters whenever it learns of participation by an informant or a confidential source in a serious act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. Detailed records shall be maintained at Headquarters regarding each instance of informant or confidential source participation in a serious act of violence, and these records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources. A determination to continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division.

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"(4) In determining whether to notify appropriate state or local law enforcement or prosecutive authorities of criminal activity by FBI informants and confidential sources, the FBI shall consider:

"(a) whether the crime is completed, imminent or inchoate;

"(b) the seriousness of the crime in terms of danger to life and property;

"(c) whether the crime is a violation of federal or state law, and whether a felony, misdemeanor, or lesser offense;

"(d) the degree of certainty of the information regarding the criminal activity;

"(e) whether the appropriate authorities already know of the criminal activity and the informant's or confidential source's identity;

"(f) the effect of notification on FBI investigative activity.

"(5) Under no circumstances shall the FBI take any action to conceal a crime by one of its informants or confidential sources.

"H. Informants and Confidential Sources Under the Obligation of a Legal Privilege of Confidentiality or Affiliated with the News Media

"(1) A person who is under the obligation of a legal privilege of confidentiality or who is affiliated with the news media may be used as an informant or as a confidential source only after express approval in writing by the Director or a designated senior Headquarters official, except that a field office supervisor may approve one-time receipt of information not collected at the request of the FBI where the particular information is unprivileged.

"The FBI shall promptly give written notice, or oral notice confirmed in writing, to the Assistant Attorney General in charge of the Criminal Division or his designee of any such Headquarters authorization. The notice shall include sufficient information to allow meaningful review, and shall set forth the reasons why the individual should be used as an informant or confidential source.

"(2) Any such person approved as an informant or confidential source shall be advised by the FBI that in seeking information from

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him, the FBI is not requesting and does not advocate breach of any legal obligation of confidentiality. A record shall be made and kept in the informant or confidential source file when the advice has been given. This advice shall be provided before accepting information on a continuing basis.

"(3) If, despite the advice to the informant or confidential source that revelation of privileged information is not requested or advocated, he offers to provide information that is privileged or arguably privileged, the offer shall not be accepted unless a field office supervisor determines that serious consequences would ensue from rejection of the offer, such as physical injury to an individual or severe property damage. A report concerning such information and the circumstances that warranted its acceptance shall be promptly forwarded to FBI Headquarters.

"If the information is spontaneously provided by the informant or confidential source, without any offer that would alert the Special Agent to the nature of the information, in circumstances which do not meet the standard serious consequences, the information may be recorded in suitable form for the purpose of establishing that the problem was recognized and that no use was made of the information in the conduct of any investigation.

"(4) Regardless of state law, the procedures of this section must be followed for any licensed physician, any person admitted to practice law in a court of a state, any practicing clergyman, and any member of the news media.

"I. Infiltration of Organization Activities by Informants
or Confidential Sources Used on a Continuing Basis

"(1) The lawful activities of legitimate organizations are, of course, not subject to investigation. However, individual members of such organizations may be independently involved in criminal activities. In order to assure that the privacy of constitutionally-protected activities will be respected, the FBI should carefully regulate use of informants and confidential sources who will make use of affiliations with legitimate organizations in order to gather information concerning the activities of individual members.

"In particular, when, to obtain information,

"(a) an informant or confidential source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or confidential source's

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formal affiliation will give him continued access to nonpublic information related to the legitimate purposes of the organization; or

"(b) an informant or confidential source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities,

the determination to use the person as an informant or confidential source on a continuing basis shall be made by the ASAC or SAC.

"(2) In determining whether the use of such an affiliated person as an informant or confidential source on a continuing basis is appropriate, the ASAC or SAC should consider:

"(a) the likelihood of responsible behavior by the informant or confidential source during the course of his organizational membership;

"(b) the ability of the FBI to focus the informant's or confidential source's reporting on members of the organization involved in criminal activities and to minimize adverse impact on innocent members of the organization; and

"(c) whether the use of the informant or confidential source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

"(3) In approving the use of such an affiliated person as an informant or confidential source on a continuing basis, the ASAC or SAC shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

"(4) Nothing in this paragraph limits the authority of the FBI to conduct otherwise proper investigations of illegitimate organizations or organizations engaged in unlawful activities. See the Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations, and on Domestic Security Investigations." (See MIOG, Introduction, Section 1-3 for updated AG Guidelines.)

"J. Minimization in Domestic Security Investigations

"In approving use of an informant or confidential source to

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infiltrate a group under investigation as part of a Domestic Security Investigation, or in recruiting a person from within such a group as an informant or confidential source, an FBI Headquarters official shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

"K. Persons Represented by Counsel

"Whenever an individual is known to be represented by counsel in a particular matter, the FBI shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel. The SAC or his designee and the United States Attorney shall consult periodically an applicable law and Department procedure.

"L. Coordination with United States Attorneys and Other Federal Prosecutors.

"In any matter presented to a United States Attorney or other federal prosecutor for legal action (including prosecution, grand jury investigation, application for a search warrant, or application for a wiretap), where the matter has involved the use of an informant or a confidential source in any way or degree, the FBI shall take the initiative to provide full disclosure to the federal prosecutor concerning the nature and scope of the informant's or confidential source's participation in the matter.

"If the FBI deems it necessary to withhold certain information to protect the informant's or confidential source's identity from possible compromise, it shall inform the prosecutor of the general nature of the information that is being withheld.

"M. Compensation for Informants and Confidential Sources

"(1) The FBI may pay informants and confidential sources a reasonable amount of money or provide other lawful consideration for information furnished, services rendered, or expenses incurred in authorized investigative activity. No payment of money or other consideration, other than a published reward, shall be conditioned on the conviction of any particular individual.

"(2) In investigations involving serious crimes or the expenditure of extensive investigative resources, the FBI may

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compensate informants or confidential sources with an extraordinary payment in excess of \$25,000. The Attorney General shall be informed of any such extraordinary payment as he deems necessary.

"(3) Where practicable, compensation agreements with informants or confidential sources in connection with a significant FBI undercover operation shall provide that compensation will depend on compliance with the obligation of confidentiality for investigative information, and shall further provide that any profits derived from a violation of the obligation shall be forfeited to the United States.

"N. Reservation

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

EFFECTIVE: 12/20/93

| 137-14 | REVISED AND MOVED -- SEE 137-4 (16) THROUGH (19) |

EFFECTIVE: 12/20/93

| 137-15 | DELETED |

EFFECTIVE: 12/20/93

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| 137-16 | REVISED AND MOVED -- SEE 137-13 |

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SECTION 138. | BACKGROUND INVESTIGATION - INTERNATIONAL
ORGANIZATIONS

| 138-1 | BACKGROUND INVESTIGATION - INTERNATIONAL ORGANIZATIONS

This classification, formerly entitled "Loyalty of Employees of the United Nations and Other Public International Organizations (LEUN)," was deleted in Fiscal Year 1990 in view of the fact the FBI no longer conducts these investigations. Previously, investigations in this classification stemmed from referrals from the Office of Personnel Management when questions or allegations were received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422. The FBI first opened this classification in 1953 to investigate the loyalty to the U.S. of U.S. employees of the United Nations and other international organizations.

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SECTION 139. INTERCEPTION OF COMMUNICATIONS

|| 139-1 STATUTES

Title 18, USC, Sections 2510, 2511, 2512, 2513 (Public Law 90-351, Omnibus Crime Control and Safe Streets Act of 1968, as amended by Public Law 99-508, the Electronic Communications Privacy Act of 1986); Title 47, USC, Section 605 (Communications Act of 1934, as amended); Title 47, USC, Section 501, (Penalties for violation Title 47, USC, Section 605).

EFFECTIVE: 11/23/87

139-1.1 Title 18, USC, Section 2510 - Definitions (See MIOG, Part I, 264-2.4.)

(1) WIRE COMMUNICATION - Any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication;

| See MIOG, Part II, 10-10.11.2 noting that radio communications transmitted over cordless telephones are included within the definition of "wire communication" and are therefore protected by Title III. |

(2) ORAL COMMUNICATION - Any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;

(3) ELECTRONIC COMMUNICATION - Any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio electromagnetic, photoelectronic or photooptical system that affects interstate or

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foreign commerce. "Electronic communication" is also specifically defined to exclude a wire or oral communication. Any and all forms of electronic communications, unless specifically exempted, are subject to the provisions of the statute.

For additional definitions refer to Chapter 119 of Title 18, USC.

EFFECTIVE: 06/03/96

139-1.2 Title 18, USC, Section 2511 - Interception and Disclosure of Wire, Oral, or Electronic Communications Prohibited

This section prohibits the interception and disclosure of wire, oral or electronic communications except as otherwise specifically addressed in Chapter 119 of Title 18, USC. Any person is in violation if that person-

(1) intentionally intercepts, endeavors to intercept or procures any other person to intercept or endeavor to intercept, any wire, oral or electronic communication;

(2) intentionally uses, endeavors to use or procures any other person to use or endeavor to use any electronic, mechanical or other device to intercept any oral communication, in circumstances detailed under this Section of Title 18, USC;

(3) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this subsection; or

(4) intentionally uses or endeavors to use, the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this subsection.

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139-1.2.1 Exceptions

(1) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire, oral or electronic communication, to intercept, disclose or use that communication in the normal course of his/her employment while engaged in any activity which is a necessary incident to the rendition of his/her service or to the protection of the rights or property of the provider of that service, except that a provider of wire or electronic communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks. Refer to Section 2511 for specific exemptions;

(2) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his/her employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Chapter 5, Title 47, USC, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained;

(3) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception;

(4) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state;

(5) It shall not be unlawful under this chapter or Chapter 121 of Title 18, USC, for any person-

(a) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

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(b) to intercept any radio communication which is transmitted-

1. by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

2. by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

3. by a station operating on an authorized frequency within the bands allocated to the amateur, citizen band, or general mobile radio service; or

4. by any marine or aeronautical communications system;

(c) to engage in any conduct which-

1. is prohibited by Section 633 of the Communications Act of 1934; or

2. is excepted from the application of Section 705(a) of the Communications Act of 1934 by Section 705(b) of that Act;

(d) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(e) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted;

(6) It shall not be unlawful under this chapter-

(a) to use a pen register or a trap and trace device (as those terms are defined for the purposes of Chapter 206 of Title 18, relating to pen registers and trap and trace devices); or

(b) for a provider of electronic communication

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service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service;

(7) A person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(8) A person or entity providing electronic communication service to the public may divulge the contents of such communication-

(a) as otherwise authorized in Title 18, USC, Section 2511 (2)(a) or Section 2517;

(b) with the lawful consent of the originator or any addressee or intended recipient of such communication;

(c) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(d) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

EFFECTIVE: 11/23/87

139-1.3 Title 18, USC, Section 2512 - Manufacture, Distribution, Possession, and Advertising of Wire, Oral or Electronic Communication Intercepting Devices Prohibited

Except as otherwise specifically provided in Chapter 119 of Title 18, USC, this section prohibits any person from intentionally-

(1) sending through the mail or sending or carrying in interstate or foreign commerce, any electronic, mechanical or other device, knowing or having reason to know that the design of such

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device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications;

(2) manufacturing, assembling, possessing or selling any electronic, mechanical or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(3) placing in any newspaper, magazine, handbill or other publication any advertisement of-

(a) any electronic, mechanical or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications; or

(b) any other electronic, mechanical or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral or electronic communications, knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce.

EFFECTIVE: 11/23/87

139-1.3.1 Exceptions

It shall not be unlawful for-

(1) a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communication; or

(2) an officer, agent, or employee of, or a person under contract with, the United States, a state or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device

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renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications.

EFFECTIVE: 11/23/87

139-1.4 Title 18, USC, Section 2513 - Confiscation of Wire, Oral or Electronic Communication Intercepting Devices

(1) This section provides that any electronic, mechanical or other device used, sent, carried, manufactured, assembled, possessed, sold or advertised in violation of Title 18, USC, Sections 2511 or 2512 may be seized and forfeited to the United States.

(2) The FBI has been delegated authority to institute civil forfeiture proceedings pursuant to Section 2513. The Forfeiture and Abandoned Property manual contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation.

EFFECTIVE: 11/23/87

139-1.5 Title 47, USC, Section 605 - Unauthorized Publication or use of Communications

Except as authorized by Chapter 119, Title 18, USC, no person receiving, assisting in receiving, transmitting, or assisting in transmitting any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect or meaning thereof, except through authorized channels of transmission or reception-

(1) To any person other than the addressee, his/her agent, or attorney;

(2) To a person employed or authorized to forward such communication to its destination;

(3) To proper accounting or distributing officers of the various communicating centers over which the communication may be passed;

(4) To the master of a ship under whom that person is

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| serving;

| (5) In response to a subpoena issued by a court of
| competent jurisdiction; or

| (6) On demand of other lawful authority.

No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his/her own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his/her own benefit or for the benefit of another not entitled thereto.

EFFECTIVE: 11/23/87

| 139-1.5.1 Exceptions

| (1) This section shall not apply to the receiving, divulging, publishing or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships in distress or which is transmitted by an amateur radio station operator or by a citizens band radio operator;

| (2) This section shall not apply to the interception or receipt by any individual or the assisting of such interception or receipt, of any satellite cable programming for private viewing if-

| (a) the programming involved is not encrypted;

| (b) a marketing system is established and the individuals receiving such programming have obtained authorization for private viewing under that system.

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EFFECTIVE: 11/23/87

139-2 POLICY

(1) Upon receipt of reliable information concerning an interception of communications violation falling within the 139A or 139B classification, the appropriate United States Attorney (USA) should be notified. The USA may request a preliminary investigation be conducted. Such should consist of interviews of complainants, victims and up to three witnesses, along with contact with the telephone company, when appropriate. Unless circumstances indicate otherwise, investigations should also include interviews of subjects. USA will review results and advise on merits of the case. USA is authorized by DOJ to request full-field investigation and initiate prosecution and forfeiture.

(2) There are a few narrow exceptions to the general rule that the contents of illegally intercepted communications must not be disclosed. Before ANY disclosure or use is made of an unlawfully intercepted communication, the Chief Division Counsel should be consulted, and the concurrence of the appropriate United States Attorney's office obtained and documented. Permissible disclosure and use of illegally intercepted information varies depending on caselaw controlling in the particular judicial district. See Title 18, USC, Section 2517.

(3) Allegations involving federal, state or local public officials as subjects or victims are classified as priority matters. Such matters require prompt and thorough investigation. Evidence should be collected in a timely and effective manner. The same applies to matters where it is alleged that a federal, state or local government agency is the victim. All other allegations concerning interception of communications violation, not otherwise described in (4) below, are classified as nonpriority. A declination policy should be established with the appropriate USA for nonpriority matters, to include response to such allegations involving domestic marital disputes.

(4) Upon receipt of reliable information concerning an interception of communications violation falling within the 139C or 139D classification (Signal Theft), an initial effort should be made to assess the scope of the activity. Investigations should be limited to persons or companies which manufacture equipment or modify existing commercially available equipment to facilitate the theft of

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communication signals by others. Resources should not be expended in the investigation of end users. These matters should be presented early for an initial prosecutive opinion and thereafter closely followed with the USA.

(5) Allegations involving the interception of cable, satellite or electronic communications for significant commercial gain are classified as priority matters. Significant commercial gain is defined as the manufacture, sale or advertisement to sell any device the design of which renders it primarily useful for the surreptitious interception of protected or encrypted communications, wherein the revenue accruing to the subject exceeds \$25,000. All other allegations involving interception of communication/signal theft matters are classified as nonpriority and should be covered in a declination policy with the USA.

(6) Significant allegations involving the theft of industrial or corporate proprietary information obtained as a result of the illegal interception of business electronic communications should be classified as Fraud By Wire (196 classification) or ITSP matters (87D classification) in lieu of handling under the IOC classification whenever applicable.

(7)



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(8) Agents who may be required to testify in wiretapping prosecutions should confer with the prosecuting attorney in order to formulate a plan for direct examination which would confine cross-examination and in order to be prepared with the appropriate objections to the exploration of matters on cross-examination which are not relevant and are objectionable under the rules of evidence.

(9) Attorney General Order No. 919-80, dated 12/18/80, sets forth procedures to be followed by officers and other employees

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of the Department when served with a subpoena or otherwise ordered to produce or disclose material or information contained in DOJ files or official information in the possession of its employees. Should Agents who are witnesses be compelled by the court, over objection, to give testimony concerning their training and experience, which testimony might reveal material and information within their official possession or contained in DOJ files with respect to confidential investigative techniques, provisions of Attorney General Order No. 919-80 should be invoked. If appropriate, the government's prosecuting attorney should advise the court that the Attorney General has prohibited disclosure of such information in other types of cases because revelation thereof would be inimical to national security and defense of the United States. FBIHQ must be kept promptly advised of all developments in each case where this problem might present itself. (See MIOG, Part II, 6-1.)

| (10) | If complaint is based solely upon "beeps" or other unusual noises upon a telephone line, no investigation should be conducted in absence of other information indicating existence of an unauthorized wiretap and FBIHQ need not be notified of receipt of complaint, unless some unusual circumstances exist that would make it desirable to notify FBIHQ.

| (11) | No violation exists where one party permits a third party to listen to a telephone conversation without the second party's consent unless done for wrongful purpose (commission of crime or tort).

| (12) | Surreptitious listening on a party line telephone and/or later divulgence of information obtained may be a violation and should be discussed with USA in same manner as complaints of other possible interception of communications violations.

| (13) | Generally recording telephone conversations by one party without the knowledge of another party is not a violation of this chapter.

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139-3

INVESTIGATIVE PROCEDURE

(1) Check identification records and Bureau files to determine if subjects have prior convictions under the Interception of Communication statutes set forth in this section. USA should be advised of the subjects' prior interception of communication convictions.

(2) In cases where full-field investigations are initiated-

(a) Evidence must be obtained to prove there was an unauthorized interception, use or disclosure of a communication.

(b) In 139A and B matters both parties to the intercepted conversation must be contacted to ensure that neither consented. On 139C and D matters, Agents should ensure that investigation establishes the requisite knowledge and intent on the part of the subject to violate the statute. This primarily applies to retailers and advertisers.

(c) Consider use of physical surveillances to identify subjects.

(d) Obtain photographs of installation and evidence of equipment used for submission to the Electronic Surveillance Technology Section, Signal Analysis and Processing Unit Information Resources Division. Normally, devices need not be sent to the [redacted] for examination until full-field investigation requested by USA. The same evidence handling and shipping procedures should be followed as in submitting evidence to the FBI Laboratory (See Part II, Section 13-6.7 of this manual).

(e) [redacted]

(f) [redacted]

(g) Handle search and seizures pursuant to Title 18, USC, Section 2513 in close cooperation and consultation with the USA. (See 139-1.4.)

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EFFECTIVE: 11/24/97

139-4 MISCELLANEOUS

(1) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his/her official duty to conduct electronic surveillance as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(2) Nothing contained in this chapter or Chapter 121, or Section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in Section 101 of such act, and the interception of domestic wire and oral communications may be conducted.

EFFECTIVE: 11/23/87

139-5 VENUE

Wherever an offense is committed, begun or completed.

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139-6 REPORTING PROCEDURES

(1) Advise FBIHQ, by appropriate teletype, the same day, when opening priority cases involving public officials and/or Federal, state or local government agencies. In such matters, an LHM (original and three copies) must be sent to FBIHQ within ten working days of the opening of the case. This communication should include facts predicated the case, USA's opinion and initial investigative steps contemplated. Additional status communications are at the discretion of the SAC or at the request of FBIHQ. A closing LHM must be prepared for all investigations involving public officials and/or government agencies. This final LHM must restate the predication for opening the investigation, summarize investigative findings and detail the disposition of the investigation. The USA's opinion will be included where that office declines prosecution. Any prosecutive action should be detailed from indictment, information or complaint, through plea acceptance, trial disposition, and/or sentencing, as appropriate.

(2) Upon receipt of complaints alleging violations, not involving public officials and/or government agencies, FBIHQ should be promptly notified by airtel, or by more expeditious means if good judgment so dictates, based on the specific circumstances. Questionable status should contain recommendations of SAC as to action desired. If no investigative action is requested by the USA, the initial airtel should indicate that the investigation has been closed. Confirm USA's opinion by letter. If investigation is requested, investigative results should be furnished to FBIHQ for dissemination to DOJ, Criminal Division, by LHM and/or prosecutive summary report. The original and three copies of an LHM should be forwarded. If prosecutive summary report deemed advisable, two copies should be forwarded to FBIHQ.

EFFECTIVE: 11/23/87

139-7 PENALTY - MAXIMUM

(1) Title 18, USC, Section 2511 - fine or five years' imprisonment or both. In addition to criminal penalties, civil penalties may be applied. See Title 18, USC, Section 2511 for specific circumstance where criminal and civil penalties apply.

(2) Title 18, USC, Section 2512 - fine up to \$10,000 or imprisonment up to five years or both.

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(3) Title 47, USC, Section 605 - for first offense, fine up to \$25,000 or imprisonment up to 1 year or both. For subsequent offenses, fine up to \$50,000 or imprisonment up to 2 years or both.

In accordance with the above sections, there is a sliding scale of penalties in conjunction with the nature of the offense and contingent upon other contributing factors. The above code sections should be referred to for specific penalty considerations.

EFFECTIVE: 11/23/87

139-8

COMPUTATION OF POTENTIAL ECONOMIC LOSS PREVENTED (PELP)
VALUES IN SIGNAL THEFT MATTERS

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EFFECTIVE: 08/27/90

|| 139-9 | CHARACTER - INTERCEPTION OF COMMUNICATIONS

EFFECTIVE: 08/27/90

| 139-10 SUBCLASSIFICATIONS

See MAOP, Part II, 3-1.1, "FBI Classifications and Subdivided Classifications."

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SECTION 140. |OFFICE OF PERSONNEL MANAGEMENT - REFERRAL; -
EMPLOYEES; - OTHER|

140-1 GENERAL INSTRUCTIONS REGARDING GOVERNMENT EMPLOYEE
SECURITY REFERRAL INVESTIGATIONS (140A AND 140C) | (See
MIOG, Part I, 46-1.11(3).) |

These instructions supplement those contained in Part II,
Section 17 of this manual.

(1) The first group of investigations in this category stems from referrals from OPM or other Government agencies wherein a question or allegation has been received regarding the applicant's or employee's loyalty to the Government as described in Section 8(d) of EO 10450. Referrals from OPM (handled under the 151 classification until Fiscal Year 1990) originate at (a) Peace Corps (ACTION-OPM), (b) Department of Energy (DOE-OPM), (c) National Aeronautics and Space Administration (NASA-OPM), (d) Nuclear Regulatory Commission (NRC-OPM), (e) U.S. Arms Control and Disarmament Agency (ACDA-OPM), and (f) U.S. Information Agency (USIA-OPM), and are covered under Public Law 298 and other public laws when an allegation has been received regarding the applicant's loyalty to the Government. Referrals are handled on a headquarters level only. Upon receipt of a referral, FBIHQ forwards it to the Office of the General Counsel of the Department of Justice, where a determination is made as to whether the referral falls within the guidelines of EO 10450. If a request from another agency is received on the field level, the requesting agency should be informed that these investigations are initiated and correlated at FBIHQ and the request must be at the headquarters level. Conduct no investigation in absence of FBIHQ approval. FBIHQ will advise the field concerning the scope of these investigations. | (See MIOG, Part I, 151-1.) |

(2) If substantive information described in Section 8(d) of EO 10450 is received from complainant, or is located in office files, or is developed during other investigation, include such information in LHM to FBIHQ for dissemination to OPM or interested agency in event they desire FBI full field investigation.

(3) If derogatory information requiring no FBI investigation is received (Section 8(a) (1) of EO 10450), submit LHM to FBIHQ suitable for dissemination and also consider local dissemination to concerned agency.

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EFFECTIVE: 09/09/94

140-1.1 Preliminary Inquiries

When a Name Check received at FBIHQ from OPM or other Government agency, and identity of individual with same or similar name cannot be resolved from information available in FBIHQ files, a preliminary inquiry is ordered by FBIHQ. This will consist of checking field offices' files and in some cases employment or police records in an effort to determine identity and significance of available information.

EFFECTIVE: 04/19/91

140-1.2 Interviews

If asked why individual is being investigated in OPM security referral case, state that under an EO Government employees or applicants are checked as part of the Federal employee security program. Mr., Mrs., Miss, or Ms. _____ is being checked under this program.

EFFECTIVE: 04/19/91

140-1.3 Dissemination of Reports

If a request is received in the field for copies of OPM security referral reports, advise that these investigations are supervised and correlated at FBIHQ and such requests should be directed to FBIHQ. NO LOCAL DISSEMINATION OF THESE REPORTS SHOULD BE MADE.

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140-1.4 Full Field Investigations of Army, Navy and Air Force
Civilian Personnel

(1) At inception of investigation, appropriate office should notify intelligence representative of interested department that investigation is being conducted by FBI under EO 10450. However, no local dissemination of reports or investigative results should be made without prior specific FBIHQ approval.

(2) Notification may be in any form most convenient to field office.

(3) Office file must show notification given and what information furnished.

EFFECTIVE: 04/19/91

140-2 | GENERAL INSTRUCTIONS REGARDING SUITABILITY REFERRAL
INVESTIGATION (140B)

A second group of investigations in this category also stems from referrals from OPM or other Government agencies wherein a suitability background investigation is being requested concerning key employees. No question or allegation of the applicant's or employee's loyalty to the Government has surfaced.

These instructions supplement those contained in Part II, Section 17 of this manual.

EFFECTIVE: 04/19/91

140-3 | SUBDIVIDED CLASSIFICATIONS

(1) 140A - Office of Personnel Management - Referral (Key Government Employees)

(2) 140B - Office of Personnel Management - Employees (Key OPM or Government Employees)

(3) 140C - Office of Personnel Management - Other (Other Government Employees)

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EFFECTIVE: 04/19/91

||140-4| PRIVACY ACT - REQUIREMENTS

(1) When interviewing individuals under this classification for information concerning themselves or their activities, the interviewing Agent must follow the procedures described in Part I, 190-5 (2) and (3) of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7 of this manual.

EFFECTIVE: 04/19/91

||140-5| CHARACTER - |OFFICE OF PERSONNEL MANAGEMENT - REFERRAL; -
EMPLOYEES; - OTHER|

EFFECTIVE: 04/19/91

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SECTION 141. FALSE ENTRIES IN RECORDS OF INTERSTATE CARRIERS

141-1 STATUTES

Title 47, USC, Section 220(e); Title 49, USC, Section
20(7)(b); Title 49, USC, Section 20(7)(f)

EFFECTIVE: 06/26/91

141-1.1 Title 47, Section 220(e)

Violations by employees of telephone, telegraph and radio
companies

EFFECTIVE: 06/26/91

141-1.1.1 Elements

"Any person who shall willfully make any false entry in
the accounts of any book of accounts or in any record or memoranda
kept by any such carrier, or who shall willfully destroy, mutilate,
alter, or by any other means or device falsify any such account,
record, or memoranda, or who shall willfully neglect or fail to make
full, true, and correct entries in such accounts, records, or
memoranda of all facts and transactions appertaining to the business
of the carrier . . ."

EFFECTIVE: 06/26/91

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141-1.1.2 Other Provisions

| (1) | The carriers covered are telephone, telegraph, and radio companies engaged as common carriers for hire in interstate or foreign commerce; those engaged in radio broadcasting are not deemed to be common carriers. Title 47, USC, Section 153(h).

| (2) | Jurisdiction over violations by the carriers to contravene provisions of this section rests with the Federal Communications Commission.

| (3) | The Bureau has investigative jurisdiction only over violations by employees who attempt to defraud the employing carriers.

| (4) | Note that this statute defines the violation as a misdemeanor.

EFFECTIVE: 06/26/91

141-1.1.3 Investigative Procedure

These cases will arise out of embezzlements by employees of the interstate carriers who attempt to conceal their shortages by failing to record transactions, reporting them falsely, or by destroying records. The exact nature of the records used by the carriers should be ascertained in order that the Special Agent can properly show where entries are false. Some of these cases may require the services of an accountant, as it may be necessary to examine the records in a manner similar to that used in the Financial Institution Fraud cases.

EFFECTIVE: 06/26/91

141-1.1.4 Policy

If prosecution has already been initiated in the state courts for embezzlement or similar offenses, the investigation should be held in abeyance pending a decision of the USA as to whether he/she will authorize prosecution in Federal court.

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EFFECTIVE: 06/26/91

141-1.2 Title 49, Section 20(7)(b)

Violations by employees of railroads, etc.

EFFECTIVE: 06/26/91

141-1.2.1 Elements

"Any person who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, or in the accounts of any book of accounts or in any records or memoranda kept by a carrier, or required under this section to be kept by a lessor or other person, or who shall knowingly and willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such accounts, records, or memoranda, or who shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, lessor, or person, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, or shall knowingly or willfully file with the Commission any false report or other document..."

EFFECTIVE: 01/31/78

141-1.2.2 Other Provisions

The carriers covered are railroads, pipeline companies, express companies, sleeping car companies, and suburban electric lines. Such carriers must be engaged in interstate commerce to come within the paragraph. The paragraph does not cover water or steamship lines, motor freight lines, or bus companies. It is contemplated that few cases will come to the Bureau's attention except those arising out of irregularities by employees of railroads.

Note that this statute defines the violation as a misdemeanor.

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EFFECTIVE: 01/31/78

141-1.3 Title 49, Section 20(7)(f)

Violations by special agents, accountants, or examiners of
Interstate Commerce Commission

EFFECTIVE: 01/31/78

141-1.3.1 Elements

"Any special agent, accountant, or examiner who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this section, except insofar as he may be directed by the Commission or by a court of judge thereof"

EFFECTIVE: 01/31/78

141-1.3.2 Other Provisions

Very few cases will arise concerning violations of this particular subsection. However, since the Criminal Division of the Department has advised that this subsection is within the Bureau's jurisdiction, the pertinent subsection is quoted above. Note that subsections a, c, d, and e of Section 20(7) are not within the Bureau's jurisdiction.

According to the Antitrust Division of the Department, the words "any special agent, accountant, or examiner" refer to agents, accountants, or examiners in the employ of the Interstate Commerce Commission.

Note that this statute defines the violation as a misdemeanor.

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EFFECTIVE: 01/31/78

141-2 PENALTIES

(1) Title 47, Section 220(e) - A fine of not less than \$1,000 nor more than \$5,000 or imprisonment for a term of not less than one year nor more than three years, or both (misdemeanor).

(2) Title 49, Section 20(7)(b) - A fine of not more than \$5,000 or imprisonment for not more than two years, or both (misdemeanor).

(3) Title 49, Section 20(7)(f) - A fine of not more than \$500 or imprisonment for not exceeding six months or both (misdemeanor).

EFFECTIVE: 01/31/78

141-3 CHARACTER - FALSE ENTRIES IN RECORDS OF INTERSTATE
CARRIERS (FERIC)

EFFECTIVE: 01/31/78

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SECTION 142. ILLEGAL USE OF RAILROAD PASS

142-1 STATUTE

Title 49, USC, Section 1 (7)

EFFECTIVE: 01/31/78

142-1.1 Elements

Free transportation for passengers prohibited; exceptions:

"No common carrier subject to the provisions of this chapter, shall, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees, its officers, time inspectors, surgeons, physicians, and attorneys at law, and the families of any of the foregoing; to the executive officers, general chairmen, and counsel of employees' organizations when such organizations are authorized and designated to represent employees in accordance with the provisions of the Railway Labor Act;" (Sections 151-163 and 181-188 of Title 45) "to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail-service employees and persons in charge of the mails when on duty and traveling to and from duty, and all duly accredited agents and officers of the U. S. Postal Service and the Railway Mail Service and postal inspectors while traveling on official business, upon the exhibition of their credentials; to customs inspectors, and immigration officers; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: Provided, that this provision shall not be

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construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: And provided further, that this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this chapter: Provided further, that the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and exemployees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died, while in the service of any such common carrier."

EFFECTIVE: 01/31/78

142-1.1.1 Other Provisions

"Jurisdiction of offenses under this provision shall be the same as that provided for offenses in Sections 41, 42, and 43 of Chapter 2 of this Title."

Venue: "Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein."

Violations of the above statute come within the Bureau's primary investigative jurisdiction.

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EFFECTIVE: 01/31/78

142-1.1.2 Investigative Procedure

Most violations of this nature are brought to the attention of the Bureau by special agents of the various railroads. Usually these individuals have made a complete investigation of the alleged violation and are in possession of all pertinent facts. Accordingly, much investigative effort can be eliminated by contacting these officials early in the course of the investigation and obtaining the available data they have compiled.

EFFECTIVE: 01/31/78

142-2 PENALTIES

Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than \$100 nor more than \$2,000, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty.

EFFECTIVE: 01/31/78

142-3 CHARACTER - ILLEGAL USE OF A RAILROAD PASS

EFFECTIVE: 01/31/78

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SECTION 143. INTERSTATE TRANSPORTATION OF GAMBLING DEVICES

143-1 STATUTES

Title 15, USC, Sections 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180. Effective date of this legislation was originally 1-2-51 and further amended effective 12-17-62 following passage of the "Gambling Devices Act of 1962" (Public Law 87-840).

EFFECTIVE: 01/31/78

143-1.1 Section 1171 Definitions

"As used in this chapter--

"(a) The term 'gambling device' means--

"(1) any so-called 'slot machine' or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

"(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

"(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

"(b) The term 'State' includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

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"(c) The term 'Possession of the United States' means any Possession of the United States which is not named in paragraph (b) of this section.

"(d) The term 'interstate or foreign commerce' means commerce (1) between any State or Possession of the United States and any place outside of such State or Possession, or (2) between points in the same State or Possession of the United States but through any place outside thereof.

"(e) The term 'intrastate commerce' means commerce wholly within one State or Possession of the United States."

EFFECTIVE: 01/31/78

143-1.2 Section 1172 - Transportation of Gambling Devices as
Unlawful; Exceptions; Authority of Federal Trade
Commission

"It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a Possession of the United States from any place outside of such State, the District of Columbia, or Possession: Provided, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to any licensed gambling establishments where betting is legal under applicable State laws" (Nevada and New Jersey are the only states which have so exempted themselves): "Provided further, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State. "Nothing in this Act shall be construed to interfere with or reduce the authority, or the existing interpretations of the authority, of the Federal Trade Commission under the Federal Trade Commission Act, as amended (15 USC 41-58)."

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EFFECTIVE: 06/10/88

143-1.3 Section 1173 - Registration of Manufacturers and Dealers;
Numbering Devices; Maintenance of Records; Transfer or
Possession of Unnumbered Devices; Alteration of Numbers or
Marks on Devices; False Entries; Inspection and Access to
Records

"(a) (1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

"(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

"(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

"(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his place of business in any State or possession of the United States, (C) the address of a place of business in any State or Possession of the United States in which such a place of business is located, where he will keep all records required to be kept by him

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by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

"(b) (1) Every manufacturer of a gambling device defined in paragraph (a)(1) or (a)(2) of the first section of this Act shall number serially each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

"(2) Every manufacturer of a gambling device defined in paragraph (a)(3) of the first section of this Act shall, if the size of such device permits it, number serially each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

"(c) (1) Every person required to register under subsection (a) of this section or any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of-- "(A) each gambling device manufactured, purchased, or otherwise acquired by him, "(B) each gambling device owned or possessed by him acquired or in his custody, and "(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

"(2) Such record shall show-- "(A) in the case of each such gambling device defined in paragraph (a)(1) or (a)(2) of the first section of this Act, the information which is required to be affixed on such gambling device by subsection (b)(1) of this section; and "(B) in the case of each gambling device defined in paragraph (a)(3) of the first section of this Act, the information required to be affixed on such gambling device by subsection (b)(2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location. "Such record shall also show (i) in the case of any such gambling device described in paragraph (1)(A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1)(C) of this subsection, the name and address of the buyer and consignee thereof

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and the name and address of the carrier.

"(d) Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a)(4)(C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

"(e) (1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

"(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

"(f) Agents of the Federal Bureau of Investigation shall, at any place designated pursuant to subsection (a)(4)(C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the U.S. district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

EFFECTIVE: 06/10/88

143-1.4 Section 1174 - Labeling and Marking of Shipping Packages

"All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package."

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EFFECTIVE: 01/31/78

143-1.5 Section 1175 - Specific Jurisdiction in which
Manufacturing, Selling, Repairing, etc., Prohibited

"It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any Possession of the United States, within Indian country as defined in Section 1151 of Title 18 (of the USC) or within the special maritime and territorial jurisdiction of the United States as defined in Section 7 of Title 18 (of the USC.)"

EFFECTIVE: 01/31/78

143-1.6 Section 1176 Penalties

"Whoever violates any of the provisions of Sections 1172, 1173, 1174 or 1175 of this Act shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

EFFECTIVE: 01/31/78

143-1.7 Section 1177 - Confiscation of Gambling Devices and Means
of Transportation; Laws Governing

"Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this Act shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable and not inconsistent with the provisions hereof: Provided, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure

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and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws be performed with respect to seizures and forfeitures of gambling devices under this Act by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General."

EFFECTIVE: 01/31/78

143-1.8 Section 1178 Separability of Provisions

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

EFFECTIVE: 01/31/78

143-1.9 Section 1179 Exceptions

"None of the provisions of this Act shall be construed to apply--

"(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting:

"(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

"(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or state fairs."

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EFFECTIVE: 01/31/78

143-1.10 Section 1180 Effective Date

"The amendments made by this Act shall take effect on the sixtieth day after the date of its enactment." (December 17, 1962)

EFFECTIVE: 01/31/78

143-2 ELEMENTS

EFFECTIVE: 01/31/78

143-2.1 Section 1172

(1) A gambling device covered by the Act, subassembly, or essential part thereof is transported into any state, District of Columbia, or possession of the U.S.

(2) The state has not exempted itself from provisions of this act and this section does not apply to any gambling device transported to any licensed gambling establishments where betting is legal under applicable state law, or

(3) The state in which the gambling device is transported in interstate or foreign commerce has specifically enumerated as lawful by state statute the gambling device so transported.

EFFECTIVE: 01/31/78

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143-2.2 Section 1173

(1) Failure of manufacturer to register with the Attorney General.

(2) Failure during any calendar year of any person engaged in business of repairing, reconditioning, buying, selling, leasing, or using gambling devices to register with the Attorney General if he sells, ships, delivers, buys, or receives such device knowing it will be introduced into interstate or foreign commerce.

(3) Failure of person required to register to set forth -

(a) His name and each trade name under which he does business.

(b) Address of each place of business in any state.

(c) The address of where he will keep all records required to be kept by Section 1173.

(d) Each activity he intends to engage in during the calendar year.

(4) Failure of manufacturer to number serially each gambling device so manufactured and permanently affix on each device such number, his name, trade name if different, and date of manufacture.

(5) Failure of any person engaged in business of repairing, reconditioning, buying, selling, leasing, or using any gambling device to number serially each gambling device and permanently affix on each device such number, his name, trade name if different, and date of manufacture.

(6) Failure of every person required to register to maintain record by calendar month of -

(a) Each gambling device manufactured, purchased, or acquired.

(b) Each gambling device owned, possessed, or in his/her custody.

(c) Each gambling device sold, delivered, or shipped in intrastate, interstate, or foreign commerce.

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(7) Failure to maintain records required to be maintained at the required location for a period of five years.

(8) Unlawful for person required to be registered to sell, deliver, or ship in intrastate, interstate, or foreign commerce, or have in custody any gambling device which is not marked and numbered as required or to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon.

(9) Unlawful to make or cause to be made any false entry in any record required to be kept under this Section.

EFFECTIVE: 06/18/87

143-2.3 Section 1174

(1) To ship or transport any gambling device.

(2) The gambling device or package containing the device is not clearly labeled or marked showing the name and address of the shipper and consignee and nature of the article or the contents of the package from an inspection of the outside of the package.

EFFECTIVE: 06/18/87

143-2.4 Section 1175

(1) To manufacture, recondition, repair, sell, transport, possess, or use any gambling device.

(2) In the District of Columbia, in any possession of the U.S., within Indian country, or within the special maritime and territorial jurisdiction of the U.S.

EFFECTIVE: 06/18/87

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143-2.5 Section 1177

(1) A gambling device may be seized if this device is trans-ported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the statute.

(2) The seized gambling device shall be forfeited to the U.S.

(3) The FBI has been delegated authority to institute civil administrative forfeiture proceedings pursuant to Section 1177. The Forfeiture and Abandoned Property manual contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation.

EFFECTIVE: 06/18/87

143-3 EXCEPTIONS

Section 1179 sets forth exceptions concerning certain machines or mechanical devices which are exempted from provisions of this Act.

EFFECTIVE: 06/18/87

143-4 INSPECTION OF RECORDS

Section 1173 authorizes that Agents of the FBI shall at all reasonable times have access to and the right to copy any of the records kept by a person required to register. In case of refusal of any person so registered to allow inspection in copying such records, the U.S. district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

EFFECTIVE: 10/16/90

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143-5 POLICY

(1) Section 1177 of the statute provides that gambling devices transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of the Act shall be seized and forfeited to the U.S. This wording of the statute makes it mandatory that these gambling devices be seized; however, as a matter of policy the facts of each case should be discussed with the USA for his/her opinion and authorization for the seizure of the gambling devices.

(2) Deleted

(3) Gambling devices on board foreign vessels entering U.S. ports constitute a violation of Title 18, USC, Section 1172. The Department has requested that any violation developed on the part of foreign ships be presented to it for an opinion as to prosecution prior to the seizing of any gambling devices. Any violations developed in this regard should be immediately referred to FBIHQ for presentation to the Department for a decision.

(4) Leads to check the records of the Attorney General to determine if a person required to be registered is so registered in accordance with the provisions of Public Law 87-840 should be set out for the Washington|Metropolitan|Field Office.

(5) When investigations indicate a possible violation of Section 1173 (registration section), the facts should be presented to the USA as early as possible to determine if the activity of the individual or company involved would fall within the purview of the registration section of the statute.

(6) Gambling wheels (a device sometimes known as a wheel of fortune), commonly utilized at fairs and carnivals, are designed primarily for use in connection with gambling. The interstate transportation of such devices would be in violation of Title 15, USC, Sections 1171-1180. When complaints are received concerning gambling wheels, develop the facts and promptly contact the USA for his/her prosecutive opinion.

(7) Any information developed concerning the existence of gambling devices which are not in violation of the interstate transportation of gambling devices statute but whose existence may constitute a violation of state law should be referred to responsible local authorities having jurisdiction.

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(8) The interstate transportation of gambling devices statute (Public Law 906, 81st Congress), when mentioned in responding to press inquiries or in making press releases, should be described as the Johnson-Preston Act.

EFFECTIVE: 10/16/90

143-6 INVESTIGATIVE PROCEDURE

b2
b7E
(1) The development and utilization of adequate confidential informants and sources of information coverage is essential to the development of cases in this category. [REDACTED]

(2) The appearance of gambling devices in an area or any noticeable increase in the prevalence of these machines should be made the subject of an immediate investigation to determine if a violation of the act has occurred in connection with these devices.

(3) [REDACTED]

(4) Title 15, USC, Section 1172, specifies that it shall not be unlawful under this section to transport in interstate or foreign commerce any gambling device into any state in which the transported gambling device is specifically enumerated as lawful in a statute of that state. Each office must be fully aware of state statutes applicable to gambling as they relate to definitions of gambling devices which are lawful under the state law. The office having within its territory the state capital is responsible for following this matter and in those instances in which a state is covered by more than one field office coordinating the results with other offices having jurisdiction within the state. FBIHQ should also be advised of any changes in state statutes which would make specific gambling devices lawful under state statutes.

EFFECTIVE: 10/18/88

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143-7 VENUE

(1) The Department has advised that venue for failure to register would in all probability be in the District of Columbia. When omission to act constitutes a crime, the venue is the jurisdictional locality where the act should have been performed.

(2) Where the offense consists of the failure to file a document, it is committed in the place where the document should have been filed, and not elsewhere.

(3) The Department has further advised concerning venue that the failure to register may be prosecuted in any district in which the person required to be registered committed any act in violation of the statute, such as transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, bought, leased, or used. Prosecution may be entertained for transporting gambling devices in any district from which the devices were transported, through which they were transported, or into which they were transported in violation of the statute.

EFFECTIVE: 10/18/88

143-8 REPORTING PROCEDURES

(1) In 143A cases involving LCN members and/or associates, or 143B cases involving other organized crime groups (i.e., Asian organized crime, Sicilian Mafia, etc.), submit an airtel to FBIHQ within 60 days of opening the case. This communication should include facts predicated the case and sufficient identification data on the subject(s) for indexing purposes.

(2) A progress letter should be submitted every 180 days restating the predication and summary of the investigation.

(3) The results and/or summary of investigation should be reported by airtel.

(4) In 143C cases, no reporting to FBIHQ is required.

EFFECTIVE: 10/18/88

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||143-9| CHARACTER - INTERSTATE TRANSPORTATION OF GAMBLING DEVICES

EFFECTIVE: 10/18/88

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SECTION 144. INTERSTATE TRANSPORTATION OF LOTTERY TICKETS

144-1 STATUTE

Title 18, USC, Section 1301

EFFECTIVE: 01/31/78

144-1.1 Section 1301. Importing or Transporting Lottery Tickets

"Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined not more than \$1,000 or imprisoned not more than two years, or both."

Note: Punishment provision was rewritten to eliminate reference to punishment under the former section for a second offense.

EFFECTIVE: 01/31/78

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144-2 VIOLATIONS

(1) Bringing into or causing to be brought into the U.S. any lottery ticket, advertisement of, or list of prizes drawn or awarded by means of such lottery.

(2) Knowingly depositing or causing to be deposited with any express company or other common carrier any such lottery ticket, advertisement, or list of prizes for carriage in interstate or foreign commerce.

(3) Carrying any such lottery ticket, advertisement, or list of prizes in interstate or foreign commerce.

(4) Knowingly taking or receiving or causing to be taken or received any lottery ticket, advertisement, or list of prizes which have been so brought, deposited, or transported as outlined above.

The word "carries" contained in (Title 18, USC, Section 1301) in effect makes the interstate or foreign transportation of lottery tickets by any means whatsoever a criminal violation. The terms "interstate commerce" and "foreign commerce" are defined in Title 18, USC, Section 10.

EFFECTIVE: 01/31/78

144-3 JURISDICTION

(1) Title 18, USC, Section 1301, is within the investigative jurisdiction of the Bureau. Title 18, USC, Section 1302, is within the investigative jurisdiction of the U.S. Postal Service.

(2) Section 1305 of Title 19, USC, which is included in the Tariff Act of 1930, also prohibits the importation of lottery tickets into the U.S. Violations of Section 1305 are within the jurisdiction of Customs authorities.

EFFECTIVE: 01/31/78

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144-4 INVESTIGATIVE PROCEDURE

(1) Investigations should not be restricted to determining the activities of isolated individuals engaged in selling lottery tickets as prosecution of small-scale vendors does not disrupt the operations of a large lottery organization. Every effort should be expended to ascertain the identities of the promoters, printers, and main distributors who comprise the lottery "ring." In this connection, the possibility of obtaining prosecution on conspiracy charges should always be kept in mind.

(2) It is particularly important to determine the location of the lottery headquarters and the method and extent of distribution of the lottery tickets. It is essential that proof of interstate or foreign transportation be secured.

(3)



b2
b7E

The name of the official competent to present the documents in evidence should be ascertained.

(4)



(5)



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XXXXXXFEDERAL BUREAU OF INVESTIGATION
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EFFECTIVE: 10/18/88

144-5 PULL BOARDS, TIP BOARDS, AND PUNCHBOARDS

(1) Numerous investigations conducted in the field have focused attention upon the problem of whether so-called pull boards, tip boards, punchboards, jackpot pools, baseball, football, bowling, and other types of chance boards which are capable of being used in a lottery come within the scope of the Federal lottery statute, Title 18, USC, Section 1301.

(2) The Department has furnished an opinion regarding such cases in which it is stated that manufacturers, salespeople, or users of such devices cannot be prosecuted for operating a lottery in violation of Section 1301. This ruling is predicated on two legal requirements stipulating:

(a) That at the time of transportation of such devices there must be actually in existence an active lottery. It is not sufficient that the device is capable of being used in a lottery or may, in fact, be so used after it moves in interstate commerce. The tickets do not become a part of, or represent, shares in a lottery until the individual pool-hall or beer-parlor operator, to whom such tickets are sold or delivered after interstate transportation, establishes his/her own lottery.

(b) The lottery devices do not in and of themselves purport to be or represent a ticket, chance, or share in a lottery. They can, like dice or playing cards, be used for gambling or other illegal purposes, but they may never be used at all or they could possibly be used innocently.

EFFECTIVE: 10/18/88

144-6 VENUE

In the judicial district from which the tickets are transported or any judicial district through or into which they are carried (Title 18, USC, Section 3237).

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EFFECTIVE: 10/18/88

| 144-7 | REPORTING PROCEDURES

(1) In 144A cases involving LCN members and/or associates or 144B cases involving other organized crime groups (i.e., Asian organized crime, Sicilian Mafia, etc.), submit an airtel to FBIHQ within 60 days of opening the case. This communication should include facts predicated the case and sufficient identification data on the subject(s) for indexing purposes.

(2) A progress letter should be submitted every 180 days restating the predication and a summary of the investigation.

(3) The results and/or summary of investigation should be reported by airtel.

(4) In 144C cases, no reporting to FBIHQ is required.

EFFECTIVE: 10/18/88

| |144-8| | CHARACTER - INTERSTATE TRANSPORTATION OF LOTTERY
TICKETS

EFFECTIVE: 10/18/88

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SECTION 145. INTERSTATE TRANSPORTATION OF OBSCENE MATTER;
SEXUAL EXPLOITATION OF CHILDREN; BROADCASTING
OBSCENE LANGUAGE

145-1 STATUTE

Title 18, USC, Sections 1462, 1464, 1465, 1466, 1467,
1468, 1469, 2251, 2252, 2253, 2254, 2256, and 2257.

EFFECTIVE: 07/26/89

145-1.1 Section 1462. Importation or Transportation of Obscene
Matters

"Whoever brings into the United States, or any place
subject to the jurisdiction thereof or knowingly uses any express
company or other common carrier, for carriage in interstate or foreign
commerce--

"(a) any obscene, lewd, lascivious, or filthy book,
pamphlet, picture, motion-picture film, paper, letter, writing, print,
or other matter of indecent character; or

"(b) any obscene, lewd, lascivious, or filthy phonograph
recording, electrical transcription, or other article or thing capable
of producing sound; or

"(c) any drug, medicine, article, or thing designed,
adapted, or intended for producing abortion, or for any indecent or
immoral use; or any written or printed card, letter, circular, book,
pamphlet, advertisement, or notice of any kind giving information,
directly or indirectly, where, how, or of whom, or by what means any
of such mentioned articles, matters, or things may be obtained or
made; or

"Whoever knowingly takes from such express company or
common carrier any matter or thing the carriage of which is herein
made unlawful--

"Shall be fined not more than \$5,000 or imprisoned not
more than five years, or both, for the first such offense and shall be

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fined not more than \$10,000 or imprisoned not more than ten years, or both, for each such offense thereafter."

EFFECTIVE: 07/26/89

145-1.1.1 Elements

(1) Bringing or causing to be brought into the United States or any place subject to the jurisdiction thereof any obscene matter

(2) Knowingly using any express company or other common carrier for carriage of obscene matter in interstate or foreign commerce

(3) Knowingly taking or causing to be taken from an express company or other common carrier any matter or thing, the carriage of which is made unlawful by the act

In order to establish a violation of this section, it must be shown that an express company or other common carrier was used for the interstate transportation of obscene material. The interstate transportation of such material by privately owned motor truck or by automobile does not come within the purview of this section.

EFFECTIVE: 07/26/89

145-1.2 Section 1464. Broadcasting Obscene Language

"Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

EFFECTIVE: 07/26/89

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145-1.2.1 Elements

- (1) Whoever utters language
- (2) That is obscene, indecent or profane
- (3) By means of radio communication

EFFECTIVE: 07/26/89

145-1.3 Section 1465. Transportation of Obscene Matters for Sale
or Distribution

"Whoever knowingly transports in interstate or foreign commerce for the purpose of sale or distribution, or knowingly travels in interstate commerce, or uses a facility or means of interstate commerce for the purpose of transporting obscene material in interstate or foreign commerce, any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

"The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

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145-1.3.1 Elements

(1) Whoever knowingly transports in interstate or foreign commerce or knowingly travels in interstate commerce of uses a facility or means of interstate commerce for the purpose of transporting any obscene matter

(2) Two or more copies of obscene publication or two or more of any article of obscene character or a combined total of five publications and articles create presumption obscene items are for sale or distribution, such presumption rebuttable

(3) The use of a "facility or means" of commerce includes interstate highway systems, federally financed highways, and interstate railroads. Interstate commerce now can take place using motor vehicles, boats and airplanes and

(4) It would not be necessary to demonstrate that obscene material actually traveled interstate but only that a "facility or means" of interstate commerce or foreign sale was used

EFFECTIVE: 07/26/89

145-1.4 Section 1466. Engaging in the Business of Selling or Transferring Obscene Matter

"(a) Whoever is engaged in the business of selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than five years or by a fine under this title, or both.

"(b) As used in this subsection, the term 'engaged in the business' means that the person who sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or

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more such publication and articles, shall create a rebuttable presumption that the person so offering them is 'engaged in the business' as defined in subsection (b)."

EFFECTIVE: 07/26/89

145-1.4.1 Elements

(1) Prohibits the receipt or possession with intent to sell obscene matter.

(2) The obscene matters has been shipped or transported in interstate or foreign commerce by any means by a person so engaged in the business.

EFFECTIVE: 07/26/89

145-1.5 Section 1467. Criminal Forfeiture

"(a) Property subject to criminal forfeiture. A person who is convicted of an offense involving obscene material under this chapter shall forfeit to the United States such person's interest in -

"(1) any obscene material produced, transported, mailed, shipped, or received in violation of this chapter;

"(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense.

"(b) Third party transfers. All right, title and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered

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forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section."

(1) See the Federal Criminal Code and Rules, Title 18, USC, Section 1467, for further information concerning protection orders, warrant of seizure, order of forfeiture, execution, disposition of property, authority of Attorney General, bar on intervention, jurisdiction to enter orders, dispositions, third party interests, and substitute assets.

(2) Prior to proceeding with any criminal forfeiture, the case Agent should contact the respective division's Forfeiture Analyst for assistance. If needed, further help can be obtained from the Forfeiture and Seized Property Unit, Property Procurement and Management Section, Finance Division.

EFFECTIVE: 03/07/94

145-1.6 Section 1468. Distributing Obscene Material by Cable or Subscription Television

"(a) Whoever knowingly utters any obscene language or distributes any obscene matter by means of cable television or subscription services on television, shall be punished by imprisonment for not more than 2 years or by a fine in accordance with this title, or both.

"(b) As used in this section, the term 'distribute' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, or to produce or provide material for such distribution.

"(c) Nothing in this chapter, or the Cable Communications Policy Act of 1984, or any other provision of Federal law, is intended to interfere with or preempt the power of the States, including political subdivisions thereof, to regulate the uttering of language that is obscene or otherwise unprotected by the Constitution or the distribution of matter that is obscene or otherwise unprotected by the Constitution, of any sort, by means of cable television or

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| subscription services on television."

EFFECTIVE: 07/26/89

| 145-1.7 Section 1469. Presumptions

"(a) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in interstate commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured in one State and is subsequently located in another State shall raise a rebuttable presumption that such matter was transported, shipped, or carried in interstate commerce.

"(b) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in foreign commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured outside of the United States and is subsequently located in the United States shall raise a rebuttable presumption that such matter was transported, shipped, or carried in foreign commerce."

EFFECTIVE: 07/26/89

|| 145-1.8 | Section 2251. Sexual Exploitation of Children

| "(a) Any|person|who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other|person|to engage in, or who transports any minor in interstate or foreign commerce or in any Territory or Possession of the United States, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such|person|knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

| "(b) Any parent, legal guardian, or|person|having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other|person|to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct

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shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

"(c) (1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering-

"(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

"(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct; shall be punished as provided under subsection (d).

"(2) The circumstance referred to in paragraph (1) is that-

"(A) such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce by any means including by computer or mailed; or

"(B) such notice or advertisement is transported in interstate or foreign commerce by any means including by computer or mailed

"(d) Any individual who violates this section shall be fined not more than \$100,000, or imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this section, such individual shall be fined not more than \$200,000, or imprisoned not less than five years nor more than 15 years, or both.

"Any organization which violates this Section shall be fined not more than \$250,000."

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||145-1.8.1| Elements

(1) Any|person|or organization who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other|person|to engage in, or who transports any minor in interstate or foreign commerce or in any Territory or Possession of the United States, with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(2) Any parent, legal guardian,|person,|or organization having custody or control of a minor who knowingly permits such minor to engage in, or assist any other|person|to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(3) Any person, who makes, prints, or publishes, or causes to be made, printed, or published any notice or advertisement seeking or offering to receive, exchange, buy, produce, display, distribute, reproduce or participate, in any visual depiction if the production of visual depiction is of and involves the use of a minor engaging in sexually explicit conduct.

(4) Knows or has reason to know that such visual depiction or notice or advertisement of such will be or had actually been transported in interstate or foreign commerce|by an means including by computer|or mailed, or knowingly reproduces any visual depiction or notice or advertisement for distribution in interstate or foreign commerce|by any means including by computer|or through the mails.

EFFECTIVE: 07/26/89

|145-1.9 |Section 2251A. Selling or Buying of Children

"(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor or offers to sell or otherwise transfer custody of such minor either

"(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in sexually explicit conduct: or

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"(2) with intent to promote either

"(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

"(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

"(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either

"(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in sexual explicit conduct; or

"(2) with intent to promote either

"(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

"(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

"(c) The circumstances referred to in subsections (a) and (b) are that

"(1) in the course of the conduct described in such subsections, the minor or the actor traveled in or was transported in interstate or foreign commerce;

"(2) any offer described in such subsections was

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communicated or transported in interstate or foreign commerce by any means including by computer or mail; or

"(3) the conduct described in such subsections took place in any territory or possession of the United States."

EFFECTIVE: 07/26/89

145-1.9.1 Elements

(1) Prohibits the parent, legal guardian or other person having "custody or control" of a minor who sells or otherwise transfers custody or control of such minor

(a) with knowledge that the minor will be used in the production of child pornography or

(b) "with intent to promote" the minor's sexually explicit conduct in order to produce a visual depiction of the conduct.

(2) This section would also punish the person who "purchases or otherwise obtains custody of" the minor with such knowledge or intent.

(3) Federal jurisdiction is premised on travel or transportation in interstate or foreign commerce involving either the offer, minor or on conduct that takes place in a U.S. territory or possession.

(4) "Custody or control" includes temporary supervision over or responsibility for a minor, whether legally or illegally obtained. This would include persons such as teachers and day care center employees, as well as a kidnaper.

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145-1.10 Section 2252. Certain Activities Relating to Material
Involving the Sexual Exploitation of Minors

"(a) Any person who-

"(1) knowingly transports or ships
in interstate or foreign commerce by any means, including by
computer or mails any visual depiction, if-

"(A) the producing of such visual depiction
involves the use of a minor engaging in sexually explicit conduct; and
"(B) such visual depiction is of such

conduct; and

"(2) knowingly receives, or distributes any
visual depiction that has been mailed, or has been shipped or
transported in interstate or foreign commerce, or which contains
materials which have been mailed or so shipped or transported, by any
means including by computer, or knowingly reproduces any visual
depiction for distribution in interstate or foreign commerce by any
means including by computer or through the mails, if-

"(A) the producing of such visual depiction
involves the use of a minor engaging in sexually explicit conduct; and
"(B) such visual depiction is of such conduct;

"(3) either -

"(A) in the special maritime and territorial
jurisdiction of the United States, or on any land or building owned
by, leased to, or otherwise used by or under the control of the
Government of the United States, or in the Indian country as defined
in section 1151 of this title, knowingly sells or possesses with
intent to sell any visual depiction; or

"(B) knowingly sells or possesses with intent to
sell any visual depiction that has been mailed, or has been shipped or
transported in interstate or foreign commerce, or which was produced
using materials which have been mailed or so shipped or transported,
by any means, including by computer, if -

"(i) the producing of such visual depiction
involves the use of a minor engaging in sexually explicit conduct; and
"(ii) such visual depiction is of such

conduct; or

"(4) either -

"(A) in the special maritime and territorial
jurisdiction of the United States, or on any land or building owned
by, leased to, or otherwise used by or under the control of the
Government of the United States, or in the Indian country as defined
in section 1151 of this title, knowingly possesses 3 or more books,
magazines, periodicals, films, video tapes, or other matter which

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contain any visual depiction; or

"(B) knowingly possesses 3 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if -

"(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

"(ii) such visual depiction is of such conduct; shall be punished as provided in subsection (b) of this section.

"(b)(1) Whoever violates paragraph (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not more than ten years, or both, but, if such person has a prior conviction under this section, such person shall be fined under this title and imprisoned for not less than five years nor more than fifteen years.

"(2) Whoever violates paragraph (4) of subsection (a) shall be fined under this title or imprisoned for not more than five years, or both."

EFFECTIVE: 12/10/91

145-1.10.1 Elements

(1) Any person who knowingly transports, ships, receives, distributes, or knowingly reproduces any visual depiction for distribution, in interstate or foreign commerce by any means, including by computer or mails, of any visual depiction, if the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct, and such visual depiction is of such conduct.

(2) Title III of the Crime Control Act of 1990 known as the "Child Protection Restoration and Penalties Enhancement Act of 1990" effectively made possession of child pornography a Federal offense. Section 2252 was modified to allow prosecution when an individual knowingly possesses three or more items which were produced using materials which traveled in interstate commerce.

(a) The pornography does not have to travel in interstate commerce.

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(b) The material used to produce the pornography has an interstate character. This can be proven by showing the photographic paper, video tape material, camera utilized or any other item was manufactured outside the state. Alternatively, a showing that no such material is manufactured in the state is sufficient to show an interstate nexus.

(c) Three or more items of child pornography means three or more photographs, three or more videos, three or more computer disks, etc., or any combination of three.

EFFECTIVE: 12/10/91

145-1.11 Section 2253. Criminal Forfeiture

"(a) Property subject to criminal forfeiture. A person who is convicted of an offense under this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter shall forfeit to the United States such person's interest in

"(1) any visual depiction described in sections 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of this chapter;

"(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense."

(1) See the Federal Criminal Code and Rules, Title 18, USC, Section 2253, for further information concerning protective orders, warrant of seizure, order of forfeiture, execution, disposition of property, authority of Attorney General, bar on intervention, jurisdiction to enter orders, depositions, third party interests and substitute assets.

(2) Prior to proceeding with any criminal forfeiture, the case Agent should contact the respective division's Forfeiture Analyst

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for assistance. If needed, further help can be obtained from the Forfeiture and Seized Property Unit, Property Procurement and Management Section, Finance Division.

EFFECTIVE: 03/07/94

145-1.12 Section 2254. Civil Forfeiture

"(a) Property subject to civil forfeiture. The following property shall be subject to forfeiture by the United States:

"(1) any visual depiction described in sections 2251, 2251A, or 2252 or this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any visual depiction, which was produced, transported, mailed, shipped, or received in violation of this chapter.

"(2) any property, real or personal, used or intended to be used to commit or to promote the commission of an offense under this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(3) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) Seizure pursuant to supplemental rules for certain admiralty or maritime claims. Any property subject to forfeiture to the United States under this section may be seized by the Attorney General, the Secretary of the Treasury, or the U.S. Postal Service upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a

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search under a search warrant or incident to an arrest. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

"(c) Custody of Federal official. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, Secretary of the Treasury, or the U.S. Postal Service, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General, Secretary of the Treasury, or the U.S. Postal Service may

"(1) place the property under seal;

"(2) remove the property to a place designated by the official or agency; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) Other laws and proceedings applicable. All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for the purpose by the Attorney General, the Secretary of the Treasury, or the U.S. Postal Service, except to the extent that such duties arise from seizures and forfeitures affected by any customs officer.

"(e) Sections 1606, 1613, 1614, 1617, and 1618 of title 19, United States Code, shall not apply with respect to any visual depiction or any matter containing a visual depiction subject to

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forfeiture under subsection (a)(1) of this section.

"(f) Disposition of forfeited property. Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and, with respect to property described in paragraph (2) or (3) of subsection (a), may

"(1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, state, or local agency pursuant to section 1616 of title 19;

"(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or

"(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law. The Attorney General, Secretary of the Treasury, or the U.S. Postal Service shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State and local law enforcement agency, so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by an official or agency pursuant to paragraph (1) shall not be subject to judicial review. With respect to a forfeiture conducted by the Attorney General, the Attorney General shall forward to the Treasurer of the United States for deposit in accordance with Section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter. With respect to a forfeiture conducted by the Postal Service, the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter shall be deposited in the Postal Service Fund as required by section 2003(b)(7) of title 39.

"(g) Title to property. All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(h) Stay of proceedings. The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

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"(i) Venue. In addition to the venue provided for in section 1395 of title 28 or any another provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought."

EFFECTIVE: 12/10/91

145-1.13 Section 2255. Civil Remedy for Personal Injuries

"(a) Any minor who is a victim of a violation of section 2251 or 2252 of this title and who suffers personal injury as a result of such violation may sue in any appropriate U.S. District Court and shall recover the actual damages such minor sustains and the cost of the suit, including a reasonable attorney's fee. Any minor as described in the preceding sentence shall be deemed to have sustained damages of no less than \$50,000 in value.

"(b) Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability."

EFFECTIVE: 07/26/89

145-1.14 Section 2256. Definitions for Chapter

"For the purposes of this chapter, the term -

- "(1) 'minor' means any person under the age of 18 years;
- "(2) 'sexually explicit conduct' means actual or simulated

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

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"(D) sadistic or masochistic abuse; or

"(E) lascivious exhibition of the genitals or pubic area of any person;

"(3) 'producing' means producing, directing, manufacturing, issuing, publishing, or advertising;

"(4) 'organization' means a person other than an individual;

"(5) 'visual depiction' includes undeveloped film and videotape;

"(6) 'computer' has the meaning given that term in Section 1030, of Title 18, USC; and

"(7) 'custody or control' includes temporary supervision over or responsibility for a minor whether legally or illegally obtained."

EFFECTIVE: 07/26/89

145-1.15 Section 2257. Record Keeping Requirements

"(a) Whoever produces any book, magazine, periodical, film, videotape, or other matter which

"(1) contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct; and

"(2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce shall create and maintain individually identifiable records pertaining to every performer portrayed in such visual depiction.

"(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct -

"(1) ascertain, by examination of an identification

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document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

"(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

"(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

"(c) Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe, and shall make such records available to the Attorney General for inspection at all reasonable times.

"(d) (1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used, as evidence against any person with respect to any violation of law.

"(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this section or for a violation of any applicable provision of law with respect to the furnishing of false information.

"(e) (1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located.

"(2) If the person to whom subsection (a) for this section applies is an organization, the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

"(f) It shall be unlawful -

"(1) for any person to whom subsection (a) applies

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to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

"(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make any false entry in or knowingly to fail to make an appropriate entry in any record required by subsection (b) of this section or any regulation promulgated under this section;

"(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection; and

"(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produce in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, which -

"(A) contains one or more visual depictions made after the effective date of this subsection of actual sexually explicit conduct; and

"(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce; which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept.

"(g) The Attorney General shall issue appropriate regulations to carry out this section.

"(h) As used in this section -

"(1) the term 'actual sexually explicit conduct' means actual but not simulated conduct as defined in subparagraphs (A) through (D) of paragraph (2) of section 2256 of this title;

"(2) 'identification document' has the meaning given that term in section 1028(d) of this title;

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"(3) the term 'produces' means to produce, manufacture, or publish any book, magazine, periodical, film, video tape or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity which does not involve hiring, contracting for managing, or otherwise arranging for the participation of the performers depicted; and

"(4) the term 'performer' includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, actual sexually explicit conduct.

"(i) Whoever violates this section shall be imprisoned for not more than 2 years, and fined in accordance with the provisions of this title, or both. Whoever violates this section after having been convicted of a violation punishable under this section shall be imprisoned for any period of years not more than 5 years but not less than 2 years, and fined in accordance with the provisions of this title, or both."

EFFECTIVE: 12/10/91

| 145-1.15.1 | Deleted |

EFFECTIVE: 12/10/91

145-1.16 Racketeer Influenced and Corrupt Organizations (RICO),
Title 18, USC, Section 1961

(1) The Comprehensive Crime Control Act of 1984 amended Title 18, USC, Section 1961(1)(A) and (B) to include "Dealing in Obscene Matter" as part of the RICO Statute.

| (2) | Deleted |

(3) A detailed discussion of the RICO Statute can be found in Part I, Section 183 of this manual.

EFFECTIVE: 12/10/91

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145-2 POLICY

(1) Upon taking possession of evidence purported to be obscene, the local prosecuting jurisdiction should be immediately contacted for a prosecutive opinion. Personnel at FBIHQ, either in the investigative divisions or the Laboratory, are not to render an opinion as to whether an item is obscene.

(2) Deleted

(3) For instructions on submitting a case for latent fingerprint examination, see Part II, 15-2.1 of this manual.

(4) Obscene material is submitted to the Laboratory in order that it may be:

(a) Deleted

(b) forwarded to the Latent Fingerprint Section, Laboratory Division for latent fingerprint search/comparison

(c) Deleted

(5) All obscene material sent to FBIHQ should be forwarded under obscene cover and the address label on the outside of the package must be clearly marked for the attention of the FBI Laboratory. It should be accompanied by a cover|electronic communication|identifying the|evidence|and clearly stating the source of the material. If they are further needed by the submitting field office for use as evidence or as an investigative aid, such should be clearly indicated. In this instance, the|evidence|will be promptly returned to the field, together with a laboratory report. See MAOP, Part II,|2-4.4.11.)|

(6) Deleted

(7) Deleted

(8) Each obscene literature investigation possesses potential publicity value because of the very nature of the investigations. Every SAC should closely follow obscene matter investigations in order that consideration may be given to obtaining proper publicity in appropriate cases. Where it is contemplated that publicity will result from the Bureau's investigation of an obscene matter case, it is the responsibility of the SAC to make certain that FBIHQ is notified in advance of any contemplated arrest, arraignment,

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or other development prior to the time that any publicity is released.

(9) During the course of the investigation of most obscene matter cases, it becomes necessary to interview the subject and obtain obscene evidence from him/her. Such obscene material is generally obtained in Bureau cases through one of the following methods:

(a) Voluntarily surrendering the evidence by the subject in conjunction with an interview and the obtaining of a signed statement

(b) Through a search of the subject or his/her premises incidental to an arrest

(c) Through a written waiver consenting to a voluntary search of the subject's premises

(d) Through the authority of a formal search warrant obtained from the USA

(10) At the time possession of obscene material is acquired from any source, a complete release should be obtained, if possible, authorizing the Bureau to destroy the material or dispose of it in any other appropriate manner.

(11) Section 1464 applies to all audio transmissions by means of radio communication which will include commercialized radio broadcasts, such as utilized by utility companies, taxicab companies, and the like.

(12) In *ROADEN V. KENTUCKY*, 413 U.S. (1973) the Supreme Court held that a film may not be seized without a prior judicial determination of obscenity. The Department advised it appears that unless it can be shown that evidence will be unavailable without immediate action to preserve it, a warrant must be served to justify seizure.

EFFECTIVE: 10/16/96

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| 145-2.1 | Deleted |

EFFECTIVE: 03/21/95

145-3 JURISDICTION

(1) Since Title 18, USC, Sections 1462, 1465, 1466 or 1468, do not specifically designate the investigations of violations of these sections to any specific Federal investigative agency, such investigations properly come within the general investigative activity of this Bureau. The U.S. Postal Service investigates violations of Title 18, USC, Sections 1461 and 1463, which deal with the transmission of obscene matter through the mail. The jurisdiction of the U.S. Postal Service is derived from the fact that it has general investigative jurisdiction in all cases involving a use of the U.S. mails, and since these sections specifically deal with the transmission of obscene matter through the mails the U.S. Postal Service exercises jurisdiction. Title 19, USC, Section 1305, which is included in the Tariff Act of 1930, also prohibits the importation of obscene matter into the United States. Violations of Section 1305 are within the jurisdiction of Customs authorities.

(2) Although the Federal Communications Commission (FCC) has certain regulatory powers over its licensees, the Department has ruled that the investigative jurisdiction under Section 1464 was vested in the Bureau.

(3) FBI has primary investigative jurisdiction over Title 18, USC, Section 2251 (Sexual Exploitation of Children). The Department of Justice (DOJ) agreed with FBIHQ's observation regarding Title 18, USC, Section 2252 (Transportation of Child Pornography) in that investigative jurisdiction would be shared with the U.S. Postal Service depending upon whether the material in question is shipped in interstate or foreign commerce by computer or other means or is mailed. If the child pornography is transmitted in the U.S. mail, investigative jurisdiction would be with the Postal Service.

(4) If during the course of an investigation of a mailing offense by the Postal Service, pursuant to Title 18, USC, Section 2252 (Mailing of Child Pornography), evidence is developed of a violation of the Child Exploitation Statute (Title 18, USC, Section 2251), the

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Postal Service would acquire ancillary jurisdiction over Title 18, USC, Section 2251, provided the Postal Service keeps the FBI informed as to the status of the investigation.

EFFECTIVE: 12/10/91

145-4 INVESTIGATIVE PROCEDURE

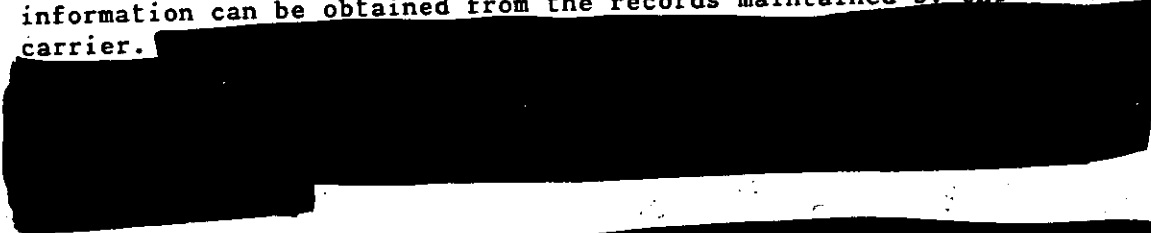
EFFECTIVE: 12/10/91

145-4.1 Section 1462. Importation or Transportation of Obscene Matters

(1) In order to prove an interstate transportation of the type prohibited by the statute, it is necessary to determine whether the transporting agency is an express company or other common carrier. Certain types of motor truck carriers are classed as common carriers. Accordingly, if the transportation occurs by this means, it is necessary to ascertain whether the trucking company is operating as a common carrier, thus bringing the transportation within the provisions of the statute.

(2) In addition to determining this factor, it is also necessary to ascertain the identity of all parties participating directly or indirectly in the transportation. This requires the identification of the consignor and consignee of the shipment. Such information can be obtained from the records maintained by the carrier.

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(3)



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b2
b7E

[REDACTED]

(4) Peddlers of obscene material who have been arrested by local police departments should be questioned by Bureau representatives whenever possible in order to determine the identities of the manufacturers and principal distributors of salacious literature from whom the itinerant vendors obtain their supplies. Previous investigation has revealed that several large "rings" are engaged in large-scale distribution of obscene matter and the Bureau is greatly desirous of curtailing the interstate operations of these combines.

b2
b7E

(5) When an individual peddler of obscene material becomes known to the investigator in the field, consideration should be given to an endeavor to [REDACTED]

[REDACTED] every effort should be made to identify the manufacturers and printers of this material and no investigation should ever be concluded with the mere identification of a single peddler.

[REDACTED]

(6) To facilitate the identification of itinerant peddlers of obscene material, FBIHQ encourages the free exchange between field offices of photographs of peddlers and/or distributors of pornographic material who are known to operate on a rather extensive scale and are suspected of making deliveries or shipments interstate. Photographs of these individuals should be exhibited to witnesses and confidential informants where the identity of the purveyor of pornographic material has not been established.

(7) This section was amended, effective 8-28-58, in such a way that the violation is the use of an express company or other common carrier for transportation of the obscene material rather than the depositing of the matter for carriage. In this way the violation was made a continuing offense and prosecution can follow in any judicial district from, through, or into which the obscene matter is carried. The amendment to the statute did not affect investigative procedures set forth above but enhanced the possibilities for

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prosecutions under this statute to stem the flow of obscene matter in interstate commerce. It is apparent that the facts may be presented for prosecutive opinion not only at the point from where the obscene material was shipped but at the place of address or delivery, or in any judicial district through which such matter passes.

EFFECTIVE: 12/10/91

145-4.2 Section 1464. Broadcasting Obscene Language

(1) Appropriate liaison should be effected with FCC field representatives in each field office so that violations reported to that agency under this section will be promptly referred to this Bureau for appropriate investigation. All cases under this section should be immediately investigated and promptly submitted to the appropriate USA for his/her consideration as to prosecution.

(2) The FCC has instructed its personnel as to the proper method of handling complaints of violations of Title 18, USC, Section 1464. These are as follows:

(a) In all instances based solely on complaints received from third parties (as contrasted with FCC personnel), the complaint should be promptly turned over to the nearest office of the FBI, together with all pertinent information relative to the alleged violation, including any intercepts submitted by the complainant.

1. In the more serious complaints, the FCC engineer in charge, on his/her own initiative and if warranted, may monitor the activities of the alleged violator inasmuch as the FCC may have an interest in taking possible administrative action (asking the violator to show cause as to why its license should be continued or possible revocation of the license) against the violator.

2. In this connection, the FCC will monitor the broadcast activities of the more serious violators at the request of the FBI. However, such requests should be kept to an absolute minimum.

(b) FCC field offices will refer complaints obtained as a result of monitoring radio broadcasts directly to FBI field offices, if in the opinion of FCC the complaint would warrant criminal prosecution. In less serious cases, FCC will admonish station operators by letter or will take action to have FCC licenses suspended

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depending on the circumstances.

(c) If FCC field offices have knowledge that a local FBI office is investigating an alleged violation by a specific radio station and intercept a profane broadcast by the same station, regardless of its degree of seriousness, this information will be furnished to the interested local FBI office.

EFFECTIVE: 12/10/91

145-4.3 Section 1465. Transportation of Obscene Matters for Sale or Distribution

(1) The instructions set out above relating to Section 1462 generally apply to investigations under this section. It is to be noted that transportation under this section may be by any means.

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(2)



(3) In *Heller v. New York*, (413 U.S. (1973)), the Supreme Court held a seizure may be made pursuant to a warrant obtained ex parte after a determination of probable obscenity by a neutral magistrate. Following the seizure, however, a prompt judicial determination of the obscenity issued in an adversary proceeding is available at the request of any interested party. The case should be coordinated with the USA's Office to ensure prompt notification of all interested parties they have the right to request an adversary hearing of the court.

(4) The likelihood of the involvement of organized criminal elements should be considered when conducting investigations of these matters. Aggressive efforts should be made to determine the identity of those involved in such operations and the scope of their activities to develop prosecutable violations against these individuals.

(5) To prove a violation of Section 1465, it is no longer necessary to demonstrate that the obscene material travelled

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interstate but only that a facility or means of interstate commerce is used for the purpose of transporting obscene material in interstate or foreign commerce. Therefore, the use of a facility of interstate commerce, such as a Federal interstate highway, to transport obscene material from a place of publication or production in one state to a place of distribution in the same state would violate this section.

EFFECTIVE: 12/10/91

145-4.4 Section 1466. Engaging in the Business of Selling or Transferring Obscene Matter

This section makes it unlawful for any person who is engaged in the business of selling or transferring obscene matter to knowingly receive or possess with intent to distribute any obscene matter which has been shipped or transported in interstate or foreign commerce. This section also creates a rebuttable presumption that the person who offers for sale, at one time, two or more copies of any obscene publication is engaged in the business of selling or transferring obscene matter.

EFFECTIVE: 12/10/91

145-4.5 Section 1467. Criminal Forfeiture

(1) This section is patterned in part after a similar forfeiture section concerning controlled substances and requires a person convicted of an offense in Chapter 71 of Title 18 (pertaining to obscenity) to forfeit such person's interest in (1) any obscene material and (2) any property consisting or traceable to proceeds obtained from the offense. Property used to commit or promote commission of the offense is to be forfeited "if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense." Section 1467 requires the Government to prove "beyond a reasonable doubt" that the relevant category of property is subject to forfeiture.

(2) This forfeiture section is a very powerful tool which can be utilized to seize the property of a producer/distributor of adult obscenity, if after conviction on a Federal obscenity charge, the Government can show that the property was constituted or traceable

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to proceeds of the offense.

(3) Every FBI ITOM investigation should not only focus on the elements of the criminal violation but also attempt to establish the property that the subject(s) have obtained from the proceeds of their obscenity trafficking. Upon conviction of an ITOM violation, the case Agent should ensure that the criminal forfeiture provisions of this section are instituted.

EFFECTIVE: 12/10/91

145-4.6 Section 1468. Distributing Obscene Material by Cable or Subscription Television


(1) This section supports the Cable Communications Policy Act of 1984, Section 639 of Title 47, which presently prohibits the transmission over any "cable system any matter which is obscene." This new section proscribes the utterance of obscene but not indecent matter by means of cable TV or subscription TV.

(2) Prior to proceeding with any investigation of this section, the material believed to be obscene should be presented to the appropriate Assistant United States Attorney for review and a preliminary opinion should be obtained as to whether the material meets the three-pronged obscenity test set forth in Miller vs. California.

EFFECTIVE: 12/10/91

145-4.7 Sections 2251, 2252, 2253, 2254, 2255, and 2257

Instructions set forth in Sections 1462, 1465, 1466, 1467 and 1468 generally apply to investigations under this section.

(1) 

*b2
b7c*
The material being distributed by these individuals is particularly offensive, and Congress, in enacting the Child Protection Act of 1984 (Public Law

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98-292), has evidenced, as noted above, a particular concern with this problem.

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(2) [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(3) Investigations have shown that many individuals who import or consensually exchange child pornography for their own collections do so repeatedly and with full knowledge that it is illegal to do so. In addition, many of these individuals regularly engage in sexual child abuse. Many of these same people are also involved in occupations which bring them into frequent contact with children. Extreme caution should be exercised in conducting an investigation against a suspected child molester, and at no time should a child be allowed to enter a location if it is believed that the child may be molested.

(4) Field offices are encouraged to coordinate all SEOC investigations with local law enforcement, U.S. Customs Service and the U.S. Postal Inspectors, as necessary and appropriate.

(5) Deleted

(6) Deleted

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EFFECTIVE: 12/10/91

145-4.8 Investigative and Prosecutive Priority of Sexual
Exploitation of Children Statute

(1) The DOJ has advised the USA's Office that prosecutive priority should be given to matters involving violations of Title 18, USC, Sections 2251-2257. FBI priority should continue to be given to any investigative matters involving such use of children.

(2) If there are any indications that child abuse is present, the FBI should ensure that the matter is called to the attention of local investigators and prosecutors.

(3) Generally, the comments and guidelines furnished to the USA's Offices pertain to the below discussed areas and affect investigations conducted by the Federal agencies who have an investigative interest in these matters.

(4) Prosecutive priority should be given to cases involving large-scale distributors, multistate operations, and cases in which there is evidence of involvement by known organized crime figures. However, prosecution of cases involving relatively small distributors not meeting the above criteria, particularly distributors of especially offensive material or who are the subjects of numerous citizen complaints, can have a deterrent effect and should dispel any notion that distributors are insulated from prosecution if their operations fail to exceed a predetermined size, or if they fragment their activity into small-scale operations. Therefore, the occasional prosecution of such distributors may be appropriate.

(5) Special priority should be given to cases involving the use of minors engaging in sexually explicit conduct for the purpose of producing any visual depiction of such conduct or cases involving the mailing or interstate or foreign shipment of material depicting minors engaging in sexually explicit conduct (Title 18, USC, Sections 2251-2257).

(6) Because of the nature of the violators and the difficulties frequently encountered by local prosecutors, serious consideration should be given to Federal prosecution of a noncommercial child pornography case if one or a combination of the following factors exists:

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- at one time
- (a) More than three seizures over the past year;
 - (b) A large quantity of child pornography imported
 - (c) An arrest history of crimes against children;
 - (d) Known membership in a family sex group;
 - (e) Employment involving children;
 - (f) Photographs depicting the recipient involved in the sexual activity with children;
 - (g) Correspondence with other pedophiles or undercover Agents relating to sexual involvement with children;
 - (h) Distribution of material.

Each case should be examined individually by the USA's Office to see if prosecution is warranted.

EFFECTIVE: 12/10/91

145-4.9 Contacts with U.S. Customs Service Relative to Sexual Exploitation of Children Statute

(1) In addition to the FBI and U.S. Postal Inspection Service, the U.S. Customs Service has investigative interest and jurisdiction in the importation of pornographic material into the United States. The U.S. Customs Service is able to seek forfeiture of the pornographic materials that are exported or imported under Title 19, USC, Section 1305. The U.S. Customs Service Child Pornography and Protection Unit located at their Washington, D.C., Headquarters maintains a "seizure list" of suspected recipients of imported and prohibited pornographic material and of the foreign shippers of this material. In most instances, the materials seized by the U.S. Customs Service are held until forfeiture proceedings are completed and thereafter the materials are destroyed.

(2) Experience to date has revealed that a large portion of commercial child pornography is produced in either Europe or third world countries and is then exported to the United States where it is

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frequently duplicated. When materials seized by U.S. Customs Service are destroyed, valuable intelligence data for technical laboratory comparisons is lost. The U.S. Customs Service should be contacted periodically through liaison in your local field office to see if the material can be provided to the FBI and a court order obtained indicating that the FBI Laboratory will destroy the material after its usefulness is completed.

(3) Deleted

refer [REDACTED]

EFFECTIVE: 03/21/95

145-5

POSSIBLE APPLICATION OF INVOLUNTARY SERVITUDE AND SLAVERY
STATUTES

When conducting Sexual Exploitation of Children investigations, Agents should be alert to facts indicating that the victims of such schemes may have been held or sold into conditions of involuntary servitude or slavery through use of force, threat of force, or coercion. Such situations may constitute violations of the Involuntary Servitude and Slavery and related statutes. Full details of these laws, as well as FBI policy and procedure, are set forth in Part I, Section 50 of this manual.

EFFECTIVE: 12/10/91

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145-6 VENUE

(1) Section 1462 - Under the statute as amended 8-28-58, where obscene matter is brought into the United States, or any place subject to the jurisdiction thereof, venue will lie for this offense not only at the port of entry but also in each successive state or territory into which the importer carried the obscene matter. Where an express company or other common carrier has been used for the transportation of the obscene matter in interstate or foreign commerce in violation of the statute, venue will lie at the place from which the prohibited matter is sent, at the place of address or delivery, or in any judicial district through which such matter passes.

(2) Section 1464 - In the judicial district in which the offense is committed

(3) Sections 1465 and 1466 - In any district from, through, or into which the obscene material has been transported (Title 18, USC, Section 3237)

(4) Section 1468 - In any district in which the obscene matter was broadcast from or in which it was received

(5) Sections 2251, 2252, 2253, 2254, 2255, and 2257 - With respect to venue in these matters, DOJ has indicated that cases under the obscenity statutes may be prosecuted in the district where the material is mailed or deposited with a facility of interstate commerce, the district of receipt or any intermediate district through which the material passes (see Title 18, USC, Section 3237). In cases where there are complaints by postal patrons about the unsolicited receipt of obscene material, the district of receipt would appear to be the appropriate choice of venue. On the other hand, in cases involving numerous mailings by a distributor into various districts, the district of origination may be the appropriate venue for the case. If a case is to be based solely upon test purchases by investigators, it will be venued in the district of origination of the obscene mailing rather than some other district, unless the Government has some information showing that there were prior mailings into the recipient district by the individual involved. Prosecutions will not be brought in jurisdictions through which obscene material passes in transit except with the concurrence of the General Litigation and Legal Advice Section, DOJ.

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EFFECTIVE: 12/10/91

145-7 CHILD EXPLOITATION AND OBSCENITY SECTION (CEOS),
DEPARTMENT OF JUSTICE

(1) CEOS consists of Special Attorneys assigned to assist in the prosecution of adult obscenity and child pornography cases.

(2) The Violent Crimes/Fugitive Unit has primary liaison responsibilities with CEOS. The Violent Crimes/Fugitive Unit should be immediately advised if CEOS representatives directly contact a field office. All contacts with CEOS by FBI Agent personnel should be directed through the Violent Crimes/Fugitive Unit.

EFFECTIVE: 07/17/95

145-8 REPORTING PROCEDURES

(1) All offices should advise FBIHQ, CID, Violent Crimes/Fugitive Unit whenever a child pornography case is opened. Thereafter, the Office of Origin (OO) should submit a detailed summary Letterhead Memorandum (LHM) of investigation conducted every six months and when the case is closed.

(2) In all other ITOM cases the OO should submit a summary communication to the Violent Crimes/Fugitive Unit after the case has been opened a total of 120 days. Thereafter, a detailed summary LHM of investigation conducted should be submitted by the OO every six months and when the case is closed.

(3) Any office which seizes any child pornography or adult obscenity which is unique or might be of training value should contact the Critical Incident Response Group's Child Abduction and Serial Killer Unit, prior to destroying the material.

EFFECTIVE: 07/17/95

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145-9 CHARACTER - INTERSTATE TRANSPORTATION OF OBSCENE MATTER;
 SEXUAL EXPLOITATION OF CHILDREN; BROADCASTING OBSCENE
 LANGUAGE

EFFECTIVE: 12/10/91

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SECTION 146. INTERSTATE TRANSPORTATION OF PRISON-MADE GOODS

146-1 STATUTES

Title 18, USC, Sections 1761 and 1762.

EFFECTIVE: 10/23/86

146-1.1 Section 1761. Transportation or Importation

"(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"(b) This chapter shall not apply to agricultural commodities or parts or the repair of farm machinery, nor to commodities manufactured in a Federal, District of Columbia, or State institution or use by the Federal Government, or by the District of Columbia, or any State or Political subdivision of a State.

"(c) In addition to the exceptions set forth in subsection (b) of this section, this chapter shall also not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners participating in a program of not more than twenty pilot projects designated by the Director of the Bureau of Justice Assistance and who-

"(1) have, in connection with such work, received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed, except that such wages may be subject to deductions which shall not, in the aggregate, exceed 80 per centum of gross wages, and shall be limited as follows:

"(A) taxes (Federal, State, local);

"(B) reasonable charges for room and board as

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determined by regulations which shall be issued by the Chief State correctional officer;

"(C) allocations for support of family pursuant to State statute, court order, or agreement by the offender;

"(D) contributions to any fund established by law to compensate the victims of crime of not more than 20 per centum but not less than 5 per centum of gross wages;

"(2) have not solely by their status as offenders, been deprived of the right to participate in benefits made available by the Federal or State Government to other individuals on the basis of their employment, such as workmen's compensation. However, such convicts or prisoners shall not be qualified to receive any payments for unemployment compensation while incarcerated, notwithstanding any other provision of the law to the contrary;

"(3) have participated in such employment voluntarily and have agreed in advance to the specific deductions made from gross wages pursuant to this section, and all other financial arrangements as a result of participation in such employment.

"(d) Notwithstanding any law to the contrary, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code."

EFFECTIVE: 10/23/86

146-1.2 Section 1762. Marking Packages

"(a) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the

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outside of such package.

"(b) Whoever violates this section shall be fined not more than \$1,000, and any goods, wares, or merchandise transported in violation of this section or section 1761 of this title shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law."

EFFECTIVE: 06/18/87

146-2 POLICY

| (1) | Contact should be maintained with reliable prison authorities, wardens of individual prisons, interstate shippers, and other reliable sources in order that each field office will be currently advised of violations of the interstate transportation of prison-made goods statutes. Upon the receipt of complaints involving a violation, the appropriate investigation should be immediately undertaken. The USA should be contacted early during the investigation for an opinion as to prosecution and the extent and scope of the investigation desired.

| (2) | The FBI has been delegated authority to institute civil administrative forfeiture proceedings pursuant to Section 1762. The FORFEITURE AND ABANDONED PROPERTY MANUAL contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation. |

EFFECTIVE: 06/18/87

146-3 VENUE

In the district from which the prison-made goods are transported or the district through or into which they are carried (Title 18, USC, Section 3237).

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EFFECTIVE: 06/18/87

146-4 CHARACTER - INTERSTATE TRANSPORTATION OF PRISON-MADE GOODS

EFFECTIVE: 06/18/87

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SECTION 147. FRAUD AGAINST THE GOVERNMENT - DEPARTMENT
OF HOUSING AND URBAN DEVELOPMENT | (SEE MIOG,
PART I, SECTION 46.) |

| 147-1 | BACKGROUND

| The 147 classification was eliminated and reclassified in
Fiscal Year 1996 as 46B (Fraud Against the Government - Housing and
Urban Development). See MIOG, Part I, Section 46. |

EFFECTIVE: 07/31/97

| 147-1.1 | Deleted |

EFFECTIVE: 07/31/97

| 147-2 | DELETED |

EFFECTIVE: 07/31/97

| 147-3 | DELETED |

EFFECTIVE: 07/31/97

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| 147-4 | DELETED |

EFFECTIVE: 07/31/97

| 147-5 | DELETED |

EFFECTIVE: 07/31/97

| 147-6 | DELETED |

EFFECTIVE: 07/31/97

| 147-7 | DELETED |

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| 147-8 | DELETED |

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| 147-9 | DELETED |

EFFECTIVE: 07/31/97

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SECTION 148. INTERSTATE TRANSPORTATION OF FIREWORKS

148-1 STATUTE

Title 18, USC, Section 836

EFFECTIVE: 11/08/78

148-1.1 Elements

"Whoever, otherwise than in the course of continuous interstate transportation through any State, transports fireworks into any State, or delivers them for transportation into any State, or attempts so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such State specifically prohibiting or regulating the use of fireworks, shall"

EFFECTIVE: 11/08/78

148-1.1.1 Other Provisions

(1) "This section shall not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of fireworks into a State for the use of Federal agencies in the carrying out or the furtherance of their operations.

(2) "In the enforcement of this section, the definitions of fireworks contained in the laws of the respective States shall be applied.

(3) "As used in this section, the term 'State' includes the several States, Territories, and possessions of the United States, and the District of Columbia."

(4) Section 3 of the act provides that Section 836 shall not be effective with respect to --

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(a) "(1) the transportation of fireworks into any State or Territory for use solely for agricultural purposes,

(b) "(2) the delivery of fireworks for transportation into any State or Territory for use solely for agricultural purposes, or

(c) "(3) any attempt to engage in any such transportation or delivery for use solely for agricultural purposes, until sixty days have elapsed after the commencement of the next regular session of the legislature of such State or Territory which begins after the date of enactment of this Act."

EFFECTIVE: 11/08/78

148-1.1.2 Policy

(1) Note that Title 18, USC, Section 836, states the laws dealing with fireworks of the respective states shall be applied in the enforcement of the statute. In each field office there is a digest of the state laws governing the sale, use, or prohibition of fireworks in the states covered by that division for use in evaluating complaints alleging violations of the ITF statute. Each field office is required to maintain liaison with the appropriate state attorney general's office to be advised of any change in the state law relative to fireworks since these state laws are an integral part of Title 18, USC, Section 836. Upon receipt of an allegation, immediately determine if the fireworks are such that are by state law prohibited or regulated in the state involved. If the complaint involves fireworks alleged to be used solely for agricultural purposes, determine whether the state law exempts fireworks used for such purposes. If an investigative report is submitted it should, in all instances, identify and cite the state statute prohibiting or regulating the use of fireworks that is the basis of this Bureau's investigation.

(2) Upon receipt of information indicating a violation of this statute, sufficient investigation should be conducted to establish the facts. The matter should then be referred to the appropriate USA for a prosecutive opinion prior to conducting extensive investigation. The opinion of the USA relative to interpretation of state laws governing use of fireworks as it applies to Title 18, USC, Section 836, should be secured in each instance.

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EFFECTIVE: 11/08/78

||148-2 VENUE|

Venue lies in the district from which or into which the interstate shipment is made. The Department has advised that, as a general rule, prosecution should be initiated in the state and district into which the shipment is made.

EFFECTIVE: 11/08/78

||148-3 REPORT WRITING RULES

(1) Forward to FBIHQ copy of any prosecutive summary report prepared in this classification of investigation for the USA's Office, utilizing current Bureau guidelines for the preparation of such reports.

(2) No report need be forwarded under any other circumstances unless it is determined to be the most logical means to disseminate the results of investigation accumulated, or when it is decided that a report is the best means to disseminate such results to other Federal agencies through FBIHQ rather than via an LHM.

EFFECTIVE: 11/08/78

||148-4| PENALTY

A fine of not more than \$1,000 or imprisonment for not more than one year, or both.

EFFECTIVE: 11/08/78

||148-5| CHARACTER - INTERSTATE TRANSPORTATION OF FIREWORKS

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EFFECTIVE: 11/08/78

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SECTION 149. DESTRUCTION OF AIRCRAFT OR MOTOR VEHICLES

| 149-1 STATUTES | (See MIOG, Part I, 160-1.1.1(1); II, 15-8.5.) |
| Title 18, USC, Sections 31 through | 37 |

EFFECTIVE: 01/08/96

149-1.1 Elements

EFFECTIVE: 07/11/85

149-1.1.1 Destruction of Aircraft or Aircraft Facilities (Section 32)

| "(a) Whoever willfully-

| "(1) sets fire to, damages, destroys, disables, or wrecks any aircraft in the special aircraft jurisdiction of the United States or any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce;

| "(2) places or causes to be placed a destructive device or substance in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any such aircraft, or any part or other materials used or intended to be used in connection with the operation of such aircraft, if such placing or causing to be placed or such making or causing to be made is likely to endanger the safety of any such aircraft;

| "(3) sets fire to, damages, destroys, or disables any air navigation facility, or interferes by force or violence with the operation of such facility, if such fire, damaging, destroying, disabling, or interfering is likely to endanger the safety of any such aircraft in flight;

| "(4) with the intent to damage, destroy, or disable

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any such aircraft, sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any appliance or structure, ramp, landing area, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance loading, unloading, or storage of any such aircraft or any cargo carried or intended to be carried on any such aircraft;

"(5) performs an act of violence against or incapacitates any individual on any such aircraft, if such act of violence or incapacitation is likely to endanger the safety of such aircraft;

"(6) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safety of any such aircraft in flight; or

"(7) attempts to do anything prohibited under paragraphs (1) through (6) of this subsection;

"(b) Whoever willfully-

"(1) performs an act of violence against any individual on board any civil aircraft registered in a country other than the United States while such aircraft is in flight, if such act is likely to endanger the safety of that aircraft;

"(2) destroys a civil aircraft registered in a country other than the United States while such aircraft is in service or causes damage to such an aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight;

"(3) places or causes to be placed on a civil aircraft registered in a country other than the United States while such aircraft is in service, a device or substance which is likely to destroy that aircraft, or to cause damage to that aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight; or

"(4) attempts to commit an offense described in paragraphs (1) through (3) of this subsection;

"(c) Whoever willfully imparts or conveys any threat to

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do an act which would violate any of paragraphs (1) through (5) of subsection (a) or any paragraphs (1) through (3) of subsection (b) of this section, with an apparent determination and will to carry the threat into execution...."

EFFECTIVE: 07/11/85

149-1.1.2 Destruction of Motor Vehicles or Motor Vehicle Facilities
(Section 33)

"Whoever willfully, with intent to endanger the safety of any person on board or anyone who he believes will board the same, or with a reckless disregard for the safety of human life, damages, disables, destroys, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to, any motor vehicle which is used, operated, or employed in interstate or foreign commerce, or its cargo or material used or intended to be used in connection with its operation; or

"Whoever willfully, with like intent, damages, disables, destroys, sets fire to, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to any garage, terminal, structure, supply, or facility used in the operation of, or in support of the operation of, motor vehicles engaged in interstate or foreign commerce or otherwise makes or causes such property to be made unworkable, unusable, or hazardous to work or use; or

"Whoever, with like intent, willfully disables or incapacitates any driver or person employed in connection with the operation or maintenance of the motor vehicle, or in any way lessens the ability of such person to perform his duties as such...."

EFFECTIVE: 07/11/85

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149-1.1.3 Imparting or Conveying False Information (Section 35)

"(a) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter or chapter 97 (Section 1991 - Entering Train to Commit Crime, and Section 1992, Federal Train Wreck Statute) or chapter 111 (Sections 2271 through 2279, relating to destruction of water-borne vessels including military vessels) of this title."

"(b) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by this chapter or chapter 97 or chapter 111 of this title," specific sections as noted in (a) above.

EFFECTIVE: 07/11/85

149-1.1.4 Violence at International Airports (Section 37)

"(a) Offense. - A person who unlawfully and intentionally, using any device, substance, or weapon-

"(1) performs an act of violence against a person at an airport serving international civil aviation that causes or is likely to cause serious bodily injury (as defined in Section 1365 of the U.S.C.) or death; or

"(2) destroys or seriously damages the facilities of an airport serving international civil aviation or a civil aircraft not in service located thereon or disrupts the services of the airport,...."

"(b) Jurisdiction - There is jurisdiction over the prohibited activity in subsection (a) if-

"(1) the prohibited activity takes place in the United States; or

"(2) the prohibited activity takes place outside

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the United States and the offender is later found in the United States.

"(c) It is a bar to Federal prosecution under subsection (a) for conduct that occurred within the United States that the conduct involved was during or in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed. For purposes of this section, the term "labor dispute" has the meaning set forth in section 2(c) of the Norris-La Guardia Act, as amended (29 U.S.C. 113(c))."

EFFECTIVE: 01/08/96

||149-1.1.5| Definitions (Section 31) | (See MIOG, Part I, 15-4(10),

26-4.6(1).)|

"When used in this chapter the term 'aircraft engine,' 'air navigation facility,' 'appliance,' 'civil aircraft,' 'foreign air commerce,' 'interstate air commerce,' 'landing area,' 'overseas air commerce,' 'propeller,' 'spare part,' and 'special aircraft jurisdiction of the United States,' shall have the meaning ascribed to those terms in sections 40102(a) and 46501 of title 49."

"'Motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property; or property or cargo;

"'Destructive substance' means any explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or matter of a combustible, contaminative, corrosive, or explosive nature;

"'Used for commercial purposes' means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit.

"'In flight' means any time from the moment all the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation. In the

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case of a forced landing the flight shall be deemed to continue until competent authorities take over the responsibility for the aircraft and the persons and property on board; and

"In service' means any time from the beginning of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight."

Paragraph one above makes reference to the Federal Aviation Act of 1958. Pertinent definitions set forth in the Federal Aviation Act are as follows:

"Aircraft engine' means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

"Air navigation facility' means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

"Appliances' means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

"Civil aircraft' means any aircraft other than a public aircraft.

"Public aircraft' means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying person or property for commercial purposes.

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"'Interstate air commerce,' 'overseas air commerce,' and 'foreign air commerce,' respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively -

"(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the air space over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

"(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

"(c) a place in the United States and any place outside thereof, whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

"'Landing area' means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

"'Propeller' includes all parts, appurtenances, and accessories thereof.

"'Spare parts' are all parts, other than aircraft engines or propellers, maintained for installation or use in an aircraft, engine, or propeller, but which, at the time, are not yet installed therein or attached thereto."

EFFECTIVE: 01/08/96

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149-2 OTHER PROVISIONS

Venue is in district where act committed or, in case of continuing transportation of a destructive device in interstate commerce, may be any district where transportation continued. Venue under Title 18, USC, Sections 32(b) and (c) shall be in the district in which the offender(s) is arrested or first brought; but if such offender(s) is not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender(s), or if no such residence is known, the indictment or information may be filed in the District of Columbia (Title 18, USC, Section 3238). Prosecution under Title 18, USC, Section 35(a), which contains civil penalties, should be initiated in the district of the offender's residence and not in the district in which the offense occurred. Prosecution under Section 35(b) will be in the district in which the offense occurred.

EFFECTIVE: 07/11/85

149-3 POLICY

(1) Accept for investigation all cases involving violations of Title 18, USC, Sections 32(a) (c), 33, 35, and 37 (the DAMV Statute). In conjunction with requests for investigations of violations of Section 32(b) (non-United States aircraft outside of the United States), Bureau authority must be obtained prior to instituting any inquiry. In this regard, any such requests received directly by a field office should be immediately submitted, with complete background and opinion/recommendation of an Assistant United States Attorney (AUSA), to FBI Headquarters.

(2) Technically, a bomb threat (or actual device) aboard an aircraft is a violation of Title 18, USC, Section 35 (DAMV) and Section 37 (Violence at International Airports), as well as Title 49, USC, Section 46507. However, as a matter of policy, all false reports (or actual instances) of a bomb aboard an aircraft unrelated to an aircraft hijacking incident should be investigated and reported under the DAMV (149) classification. Any incidents of this nature involving an aircraft hijacking incident should be carried under the Crime Aboard Aircraft (164) classification. The foregoing is to create uniformity in the Time Utilization and Recordkeeping (TURK) records, as well as to maintain program segregation.

(3) All violations relating to aircraft are to be

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reported as detailed below depending on the magnitude of the incident.

(a) Immediately advise FBIHQ by telephone or teletype, depending upon the exigency of the circumstances, of all cases where there is loss of life, danger to public safety, or widespread public interest. Each complaint should receive prompt and expeditious investigative attention.

(b) In all violations, a succinct LHM (original and four copies) should be submitted to FBIHQ by FD-365 within ten working days of receipt of initial complaint. (See MAOP, Part II, 10-4.3, & Correspondence Guide-Field, 2-5.5.11.) Upon receipt of the LHM, FBIHQ will disseminate to the following agencies:

1. Director Civil Aviation Security,
ACS-1
Federal Aviation Administration
Room 319
800 Independence Avenue, Southwest
Washington, D.C. 20591
2. United States Secret Service
Intelligence Division
1800 G Street, Northwest
Washington, D.C. 20223

(c) The appropriate regional office of FAA should be promptly advised upon receipt of all complaints with close liaison being maintained during the course of each investigation.

(d) In all cases, the field office is to disseminate additional copies of the LHM within ten working days to the nearest Civil Aviation Security Field Office (CASFO), FAA Regional Office, United States Secret Service Field Office, and to the FBI field office which covers the subject's residence. Other interested agencies, such as the National Transportation Safety Board (NTSB), Office of Special Investigations, etc., should likewise be advised locally when appropriate. Depending upon the exigency of the matter, immediate notification to the above agencies may be necessary.

(e) In those cases wherein the USA's office declines prosecution, defers prosecution to state or local authorities or refers the matter to FAA for civil enforcement; or wherein it is known that state or local prosecution is declined upon USA deferral, the initial LHM should so indicate. One copy of this LHM should be directed to the USA confirming the USA's opinion in lieu of a separate

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confirmation letter.

(f) In all cases, dissemination is to be indicated on the FD-365 which transmits the LHM to FBIHQ with the LHM identifying those individuals and agencies already notified of the violation.

(g) To assist in gathering the information, the optional administrative Form FD-653, Motor Vehicle Inspection Inventory Record, may be used and retained in the 1-A exhibit envelope (FD-340 and/or FD-340b). (See MIOG, Part I, 26-2.5(2)(c), 26-2.7(2).)

(h) When additional investigation is required, record results so they may be later incorporated into the prosecutive report. Four copies of these should be submitted to FBIHQ. In each instance, reports should set forth full facts including field office file numbers, complete descriptive and background data concerning each subject (best descriptive information available of an unknown subject should also be set forth), data concerning mental stability, the air carrier, flight number, origin and destination, time and place of offense, number of passengers and crew, weapons used, type of aircraft involved, and any injuries.

(i) In order that the FBIHQ substantive case file may reflect the final outcome of each violation, the following FBIHQ notification policy should be followed by the office of origin.

1. In those cases wherein the initial LHM submitted to FBIHQ by FD-365 reflects the final outcome, no further notification is necessary.

2. Deleted

3. In all other cases, including those cases in which a USA declination or deferral was rendered subsequent to the initial LHM/FD-365 submission and those unsolved cases closed under SAC authority, a closing|electronic communication|should be directed to FBIHQ which clearly sets forth the basis for closing.

(4) It is incumbent upon SAC to have appropriate arrangements with transportation facilities and law enforcement officials to make certain all incidents are promptly reported so that immediate investigation may be instituted and Bureau will have effective coverage over this violation.

(5) In case of report that a bomb has been placed on

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aircraft or vehicle, or that similar attempt will be made to destroy aircraft or vehicle, immediately notify Federal Aviation Administration and transportation facility involved in case of aircraft; local authorities and transportation facility involved in case of motor vehicle. Protection of aircraft or vehicle and passengers is responsibility of transportation company and local authorities. Decisions as to grounding aircraft or stopping vehicles and making searches will not be made by FBI. Agents, with the exception of Laboratory explosives specialists and active FBI bomb technicians, are not to participate in searches for suspected bombs on aircraft or vehicles. Render safe responsibilities for located bomb devices rest with the public safety bomb squad or military Explosive Ordnance Disposal (EOD) unit.

(6) Aircraft disasters involving commercial aircraft will be the subject of inquiry by NTSB. In view of the importance of major commercial aircraft disasters and their resultant tragic loss of life, it is necessary that the Bureau be in a position to investigate any violations arising from such disasters efficiently and aggressively. Therefore, the SAC should immediately proceed to disaster scene, establish liaison with NTSB, personally take command in relation to Bureau's interests, and develop any information indicating a federal violation within Bureau's jurisdiction. FBIHQ expects the SAC to personally take command in these instances; however, necessary action cannot be delayed due to SAC's absence.

(7) Department has stated that mere statement that an aircraft is going to crash, even if false, is not a violation in the absence of any false information regarding one of the specific acts enumerated in the law.

(8) Public Law 87-810 amended Section 1105 of Federal Aviation Act of 1958, as amended (Title 49, USC, Section 1505), to provide NTSB authority to avail itself of assistance of FBI or any investigatory or intelligence agency of the United States with respect to an investigation of the activities of any person in connection with a civil aircraft accident. Applicable even though no violation indicated. Requests from NTSB under Section 1105 should be referred to FBIHQ for approval prior to conducting any investigation.

EFFECTIVE: 12/23/96

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149-4 INVESTIGATIVE PROCEDURES

EFFECTIVE: 02/15/82

149-4.1 Aircraft Disasters

EFFECTIVE: 02/15/82

149-4.1.1 Major Commercial Aircraft Disaster - SAC Responsibility
| (See MIOG, Part II, 15-8.5.) |

(1) Immediately advise FBIHQ by telephone and if appropriate request assistance of FBI Laboratory and/or FBI Disaster Squad.

(2) Immediately thereafter proceed to the scene of the disaster in order to develop any information indicating a federal violation within the Bureau's jurisdiction. To this end SAC will:

(a) Establish close liaison with local law enforcement officers and NTSB authorities in order to ensure that evidence is properly identified and protected. This will materially aid those responsible for examining the evidence among whom will be a representative of the Bureau Laboratory.

(b) Closely follow investigation by NTSB authorities to ensure that full scale Bureau investigation is initiated immediately upon receipt of indication that a violation has occurred.

(c) Arrange to obtain a passenger manifest and initiate whatever inquiries are necessary to determine sufficient background data concerning each passenger so that an immediate and efficient check may be made of FBIHQ indices and the indices of the field office covering the residence of the passenger. This action will assist the Bureau Disaster Squad in its efforts to positively identify passengers killed or injured in the crash, and develop at the earliest possible moment pertinent data in Bureau files indicating the possibility of an actual violation.

(d) Personally direct appropriate investigative activity of any matters within our jurisdiction to ensure same is handled expeditiously.

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(e) Afford on-the-spot direction to logical immediate investigative activity pertinent to determining whether a violation within Bureau's jurisdiction has occurred. Consideration should be given to preparation of appropriate photographs and sketches of the scene of the crash and photographs of pertinent portions of the aircraft and to interviews with survivors, eyewitnesses, and individuals who heard the plane before the crash.

(f) Media inquiries should be handled by the SAC by indicating that he/she has arrived at the scene to develop any information indicating a federal violation and that he/she is extending the cooperative facilities of the FBI Laboratory.

EFFECTIVE: 04/08/96

149-4.1.2 Major Commercial Aircraft Disaster - FBI Laboratory Action

- (1) Accompany Bureau's disaster squad to scene.
- (2) Effect technical liaison with interested Government representatives.
- (3) Render all possible assistance on the scene to such authorities and where desired arrange for the use of the facilities of the FBI Laboratory.
- (4) In relation to the Bureau's interests, evaluate technical problems associated with Laboratory matters and evidence at the scene.
- (5) Keep the SAC advised of pertinent developments in the technical investigation so that if a violation is indicated investigation may be initiated at the earliest possible moment.

EFFECTIVE: 01/31/78

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149-4.2 Investigation of a Commercial Aircraft Crash

The following full investigative procedure is to be utilized when a preliminary inquiry indicates a Federal violation in any commercial aircraft crash covered by the statute, including those not considered major disasters:

- (1) Thorough crime scene search.
- (2) Insure evidence properly identified and protected.
- (3) Make any necessary photographs and sketches showing:

various angles

- (a) Entire crash scene and close-up views from
- (b) Photographs of parts torn loose
- (c) Photographs of instruments and levers in cockpit
- (d) Photographs of marks made by aircraft on ground

interview: (4) In connection with establishing cause of crash,

- (a) crew members and other survivors
- (b) Eyewitnesses
- (c) Persons who heard the plane before the crash
- (d) NTSB or other radio operators in contact with plane before crash
- (e) Ground crew members and mechanics who serviced the plane

(5) In connection with establishing a possible motive, appropriate investigation should be conducted with regard to:

- (a) Crew members (complete background, including mental and physical condition)
- (b) Passengers (background, business connections, personal contacts, insurance data)

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(c) Source and content of all cargo (mail, express, freight, baggage)

(6) Liaison should be maintained with local authorities who would have concurrent jurisdiction where death or injury occurred.

(7) Liaison should be established with coroner who will certify cause of death and can testify as to cause of death in later court proceedings.

(8) Bear in mind that capital offense may be involved and that evidence will be subject to close scrutiny; therefore, chain of evidence must be carefully preserved.

(9) In investigating all types of incidents, be alert to possible use of FBI Laboratory facilities in establishing exact method and cause of explosions, fires, etc.

EFFECTIVE: 01/31/78

149-4.3 Motor Vehicle Incidents

(1) Complete, thorough crime scene search should be conducted immediately.

(2) Make photographs and sketches of scene.

(3) Interview local authorities who may have investigated incident.

(4) Conduct thorough neighborhood investigation where applicable.

(5) Consider possibility of disgruntled employees or labor disputes.

(6) In case of actual destruction through bomb or similar device of bus or other commercial passenger vehicle, check background of passengers for motive as outlined above.

EFFECTIVE: 01/31/78

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149-4.4 Incidents Involving False Reports (Title 18, USC, Section 35 (b))

(1) Many such reports are received through anonymous telephone calls. Each field office should consider opening a control file setting forth information concerning individuals who are known to have made "nuisance calls."

(2) [REDACTED]

b2
b7E
(3) When call is believed to have originated from juvenile, attempt to obtain information through cooperative school officials and other juvenile authorities.

(4) Immediately conduct investigation at the airport if caller alleges a bomb is on a plane, preferably while plane is still on ground; attempt to locate possible suspects who may have come to the airport to observe the confusion created by the call.

(5) Interview airport personnel concerning any person, particularly juveniles, loitering in the area for no apparent reason.

(6) Consider checking with police department and telephone company for person known to have made "crank" telephone calls.

(7) [REDACTED]

(8) When there is an indication that the caller may have been intoxicated, make an immediate check in bars and cafes near the airport.

(9) Immediately conduct any other logical investigation depending on the circumstances under which false report was received.

EFFECTIVE: 07/11/85

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PROSECUTION

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EFFECTIVE: 07/11/85

| 149-5.1 Title 18, U.S. Code, Sections 32(a) (b) | (c), 33 and 37 |

(1) In cases in which jurisdiction is questionable, present to USA early in investigation.

(2) Under Section 32(b), Bureau authority must be obtained before instituting an investigation. All requests for investigation under this subsection should be submitted to FBI Headquarters and this submission should contain the USA's opinion with respect to the prosecutive potential of the matter.

(3) Under Section 33, the phrase "property or cargo" was added to Title 18, USC, Section 31 to cover trucks. As a result, a person who destroys or damages a truck with intent to endanger the driver or another person on board, or with reckless disregard for their safety, can now be prosecuted under this section.

Previously, this section applied only to motor vehicles conveying passengers--typically buses.

(4) For policy considerations, DOJ has advised that the term "motor vehicle" is not intended to "federalize" every attack upon a truck which endangers persons on board. Damaging a truck with the intent of injuring the driver would violate a number of state laws, and it is the intent of the Congress that state authorities continue to play the principal role in this area. Offices should reach understandings with local and state authorities, through their law enforcement coordinating committees, reflecting the limited nature of the federal role. | (See MIOG, Part I, 15-4, 26-4.6.) |

EFFECTIVE: 01/08/96

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149-5.2 Title 18, U.S. Code, Section 35 (a) and (b)

| (1) | As soon as practicable, full facts should be presented to the USA in the district in which the offense occurs in order to determine if there exists a possible violation of Section 35 (b) (criminal). Should the USA determine that the offense does not constitute a violation punishable by criminal penalties, a prosecutive report should be submitted, a copy of which should be furnished the USA's Office covering the district in which the offense was committed and copies forwarded to the field office responsible for the area in which the offender resides with a copy designated for the USA in that area.

| (2) | The Department has advised that in those instances in which civil penalties are applicable, Section 35 (a), prosecution should be initiated in the district of the offender's residence, not in the district in which the offense occurred. Further, the Criminal Division has advised that civil complaints and summonses should be utilized in civil actions under Title 18, USC, Section 35 (a), rather than informations and warrants of arrests as employed in criminal cases. Should the USA in the district of residence decide civil sanctions are warranted, it will be his/her responsibility to initiate same under established Department procedures. No requests by USAs for investigation relative to civil offenses shall be accepted by field offices without prior FBIHQ authority.

EFFECTIVE: 07/11/85

149-5.3 Prosecution Under the Hobbs Act

Consideration should also be given to use of the Hobbs Act as a vehicle of prosecution where an extortionate demand is made directly or indirectly upon a commercial air carrier which would obstruct, delay, or affect commerce. The Department has instructed all USAs that when such an extortionate situation is encountered wherein it may be desirable to charge a violation under the Hobbs Act, the Department must be consulted.

EFFECTIVE: 07/11/85

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149-6 PENALTIES

(1) Section 32(a)(b) - not more than \$250,000 fine (see Title 18, USC, Section 3571) or imprisoned not more than 20 years, or both.

(2) Section 32(c) - not more than \$250,000 fine (see Title 18, USC, Section 3571) or imprisoned not more than 5 years, or both.

(3) Section 33 - not more than \$250,000 fine (see Title 18, USC, Section 3571) or imprisoned not more than 20 years, or both.

(4) Section 34 - Penalty when death results - "whoever is convicted of any crime prohibited by this chapter, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life."

(5) Section 35(a) - Civil penalty of not more than \$1,000 recoverable in a civil action brought in the name of the United States.

(6) Section 35(b) - not more than \$250,000 fine (see Title 18, USC, Section 3571) or imprisoned not more than 5 years, or both.

(7) Section 37 - not more than \$250,000 fine (see Title 18, USC, Section 3571) or imprisoned not more than 20 years, or both; and if the death of any person results from conduct by section 37(a), shall be punished by death or imprisoned for any term of years or for life.

EFFECTIVE: 01/08/96

149-7 CHARACTER - DESTRUCTION OF AIRCRAFT OR MOTOR VEHICLES

Where incident is potential violation of Section 35, use above character followed by (False Report).

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SECTION 151. BACKGROUND INVESTIGATION - OFFICE OF PERSONNEL
MANAGEMENT (OPM)

151-1 BACKGROUND INVESTIGATION - OFFICE OF PERSONNEL MANAGEMENT
(OPM)

This classification was deleted in Fiscal Year 1990 due to the similarities between it and classification 140. Therefore, cases referred to the FBI from OPM regarding an applicant's loyalty to the Government should be handled under classification 140, "Office of Personnel Management - Referral; - Employees; - Other." See Part I, Section 140 of this manual, for appropriate instructions.

EFFECTIVE: 04/19/91

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SECTION 152. SWITCHBLADE KNIFE ACT

152-1 STATUTES

Title 15, USC, Sections 1241, 1242, 1243 and 1244.

EFFECTIVE: 01/31/78

152-1.1 Section 1241. Definitions

"The term 'interstate commerce' means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

"The term 'switchblade knife' means any knife having a blade which opens automatically--

"by hand pressure applied to a button or other device in the handle of the knife, or

"by operation of inertia, gravity, or both."

EFFECTIVE: 01/31/78

152-1.2 Section 1242. Interstate Commerce Violations

"Whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

EFFECTIVE: 01/31/78

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152-1.2.1 Elements - Section 1242

- (1) The person must have the specific criminal intent to
- (2) Introduce or manufacture for introduction into interstate commerce, or transport, or distribute in interstate commerce any switchblade knife
- (3) The knife itself must come within the specific definition of a switchblade as set out in Section 1241
- (4) That the violator not come within one of the four exceptions set forth in Section 1244.

EFFECTIVE: 01/31/78

152-1.3 Section 1243. Within Specific Jurisdiction

"Whoever, within any Territory or possession of the U.S., within Indian country (as defined in Section 1151 of Title 18, USC), or within the special maritime and territorial jurisdiction of the U.S. (as defined in Section 7 of Title 18, USC), manufactures, sells, or possesses any switchblade knife, shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

EFFECTIVE: 01/31/78

152-1.3.1 Elements - Section 1243

- (1) Specific criminal intent to
- (2) Manufacture, sell, or possess any switchblade knife
- (3) Within any territory or possession of the U.S., within Indian country (as defined in Section 1151 of Title 18, USC), or within the special maritime and territorial jurisdiction of the U.S. (as defined in Section 7 of Title 18, USC)
- (4) The knife itself must come within the specific definition of a switchblade knife as set out in Section 1241
- (5) That the violator not come within one of the four

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exceptions set forth in Section 1244.

EFFECTIVE: 01/31/78

152-1.4 Section 1244. Exceptions to Sections 1242 and 1243

These sections shall not apply to--

"(1) any common carrier or contract carrier, with respect to any switchblade knife shipped, transported, or delivered for shipment in interstate commerce in the ordinary course of business;

"(2) the manufacture, sale, transportation, distribution, possession, or introduction into interstate commerce, of switchblade knives pursuant to contract with the Armed Forces;

"(3) the Armed Forces or any member or employee thereof acting in the performance of his duty; or

"(4) the possession, and transportation upon his person, of any switchblade knife with a blade three inches or less in length by any individual who has only one arm."

EFFECTIVE: 01/31/78

152-2 MISCELLANEOUS

This act also provides for an amendment to Section 1716 of Title 18, USC, which provides that switchblade knives are nonmailable items. Violations of this part of the act are subject to investigation by the Inspection Division of the U.S. Postal Service.

EFFECTIVE: 01/31/78

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152-3 POLICY

Upon receipt of a complaint where the facts are clear and definite, present the matter immediately to the appropriate USA for an expression of his views as to prosecution in the event the allegations can be successfully substantiated by further investigation. If necessary, conduct a preliminary inquiry to develop the allegations so that the view of the USA may be obtained at the earliest possible time. If the USA expresses the view that prosecution is not warranted, discontinue investigation and close administratively with a confirming letter to the USA. Where juvenile subjects are involved, the facts should be promptly discussed with the USA for his prosecutive opinion. The USA should be furnished with such background information on the juvenile as his prior arrest record, membership in antisocial juvenile gangs, aggravated circumstances of the instant offense, past and present juvenile status with local authorities, and other such special background data. The obtaining of the juvenile's background should not occasion any delay in the prompt and timely presentation of the case.

Complaints involving shipment of switchblade knives by mail only should be referred to the nearest office of a postal inspector.

FBIHQ should be promptly advised upon receipt of complaints and allegations indicating the possibility of large-scale manufacture, sale, or distribution of switchblade knives in interstate or foreign commerce, as well as on Government reservations.

When complaints are received alleging violations of Section 1243, refer to the Manual of Investigative Operations and Guidelines for general information and FBI policy pertaining to the special maritime and territorial jurisdiction of the U.S., and investigative procedure to be followed in these types of cases.

In all investigations be alert to the possibility of ascertaining the origin of the knife or knives involved and investigation should be conducted to identify the manufacturers, importers, distributors, and others engaged in traffic on a large scale.

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152-4 VENUE

In prosecutions against those who manufacture switchblade knives for the purpose of introducing them into interstate commerce, venue would lie in the district of manufacture, or, as in prosecutions against a shipper who "introduces" such articles into commerce, at the place of their delivery to the common or contract carrier for shipment.

The offenses involving transportation in interstate commerce being continuing offenses, they may be prosecuted pursuant to the provisions of Title 18, USC, Section 3237, "in any district from, through, or into which such commerce...moves." Offenses committed within the special maritime and territorial jurisdiction of the U.S., should be prosecuted, as provide in Title 18, USC, Section 3238, "in the district where the offender is found, or into which he is first brought."

EFFECTIVE: 01/31/78

152-5 CHARACTER - SWITCHBLADE KNIFE ACT

EFFECTIVE: 01/31/78

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SECTION 153. AUTOMOBILE INFORMATION DISCLOSURE ACT

153-1 STATUTES

Title 15, USC, Sections 1231, 1232 and 1233

EFFECTIVE: 11/12/80

153-1.1 Definitions (Title 15, USC, Section 1231)

"For the purposes of this Act --

"(a) The term 'manufacturer' shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles.

"(b) The term 'person' means an individual, partnership, corporation, business trust, or any organized group of persons.

"(c) The term 'automobile' includes any passenger car or station wagon (pickup trucks are exempt from Statute sticker requirement).

"(d) The term 'new automobile' means an automobile the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

"(e) The term 'dealer' shall mean any person resident or located in the United States or any Territory thereof or in the District of Columbia engaged in the sale or the distribution of new automobiles to the ultimate purchaser.

"(f) The term 'final assembly point' means --

"(1) in the case of a new automobile manufactured or assembled in the United States, or in any Territory of the United States, the plant, factory, or other place at which a new automobile is produced or assembled by a manufacturer and from which such

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automobile is delivered to a dealer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such automobile, whether or not such component parts are permanently installed in or on such automobile; and

"(2) in the case of a new automobile imported into the United States, the port of importation.

"(g) The term 'ultimate purchaser' means with respect to any new automobile, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale.

"(h) The term 'commerce' shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

EFFECTIVE: 11/12/80

153-1.2 Label and Entries Required (Title 15, USC, Section 1232)

"Every manufacturer of new automobiles distributed in commerce shall, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, securely affix to the windshield, or side window of such automobile a label on which such manufacturer shall endorse clearly, distinctly and legibly true and correct entries disclosing the following information concerning such automobile --

"(a) the make, model, and serial or identification number or numbers;

"(b) the final assembly point;

"(c) the name, and the location of the place of business, of the dealer to whom it is to be delivered;

"(d) the name of the city or town at which it is to be delivered to such dealer;

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"(e) the method of transportation used in making delivery of such automobile, if driven or towed from final assembly point to place of delivery; and

"(f) the following information:

"(1) the retail price of such automobile suggested by the manufacturer;

"(2) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to such dealer, which is not included within the price of such automobile as stated pursuant to paragraph (1)

"(3) the amount charged, if any, to such dealer for the transportation of such automobile to the location at which it is delivered to such dealer;

"(4) the total of the amounts specified pursuant to paragraphs (1), (2), and (3)."

EFFECTIVE: 11/12/80

153-1.3 Elements

(1) Section 1232

(a) A manufacturer of any newly manufactured or imported automobile distributed in interstate or foreign commerce

(b) Prior to delivery of the automobile to a dealer, or at or prior to the introduction date

(c) Willfully fails to affix a label to the windshield or side window disclosing information as provided for in Section 1232, or

(d) Willfully fails to endorse clearly, distinctly, and legibly any label as required by Section 1232, or

(e) Makes a false endorsement of any such label.

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(2) Section 1233

(a) A person willfully removes, alters, or renders illegible any label fixed to a new automobile pursuant to Section 1232

(b) Prior to the time automobile is delivered to the actual custody and possession of the ultimate purchaser, except

(c) Where the manufacturer relabels the automobile in instances in which it is rerouted, repurchased, or reacquired by the manufacturer.

EFFECTIVE: 01/31/78

153-1.4 Other Provisions

Venue in offenses involving prosecution of a manufacturer would lie in the district of manufacture or in any district in which such offense was begun, continued, or completed.

In offenses involving the removal or alteration of the label by an individual, venue would lie in the district where the offense took place.

EFFECTIVE: 01/31/78

153-2 POLICY

(1) Upon receipt of a complaint involving a possible violation, promptly obtain the pertinent facts involved. In many cases this will consist of examining suspect cars and the interview of persons in custody of the automobiles. Photographs of the automobiles and Automobile Information Disclosure Act (AIDA) labels should be considered. Keep in mind that the offender is he who has altered the label or removed it and not he who is merely in possession of an automobile without a label or with an altered label. Be impartial and objective during investigation. Make clear our jurisdiction and responsibilities under the statute to those contacted.

(2) During the investigation of the case, any problems with regard to the physical examination of the automobiles and labels involved, particularly regarding the conducting of a legal search,

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should be promptly discussed with the USA for his views. In some cases in which there may be a refusal to execute a consent to search, the USA may desire to proceed on the basis of a search warrant.

The appropriate USA should be promptly contacted as soon as possible after sufficient facts have been developed upon which to base a prosecutive opinion. Bear in mind that prosecutive action in these cases can in all instances be initiated by the USA by filing an information in view of the fact that violations of this act are considered misdemeanors.

Be certain in each case, when discussing the facts with the USA for the purpose of obtaining a prosecutive opinion, to fully inform the USA with regard to prior AIDA violations on the part of the subject, particularly in those instances in which the USA may have declined on a particular subject because he was a first offender.

(3) The most common violation arises out of the so-called bootlegging operation. Bootlegging in the automobile trade involves the obtaining of a new model car by nonfranchised independent used-car or new car dealers. Keep in mind the fact that when a new car goes from a franchised to a nonfranchised dealer it is still a new car under the definition in the statute as the car has not yet reached an "ultimate purchaser." The used-car dealer will oftentimes alter or remove the AIDA label in an effort to protect the identity of the franchised dealer from whom he obtained the car and thus protect his source of supply. The franchised dealer too has an interest in having his identity concealed and he may be equally involved in the violation. The Department has held that willful tampering with the AIDA label for the purpose of concealing the identity of the original dealer to whom the automobile was sold and delivered constitutes a violation of this act and evidence that the alteration of labels is motivated by a desire to frustrate the disclosure of certain information on such labels would be sufficient from which to infer the element of willfulness. Be alert during investigations of this type of violation to any indication that a real or fictitious person or firm is being used as a "middle man" in the transaction between the new car and used-car dealer. Obtain evidence that such a "middle man" is not actually an "ultimate purchaser" and that his existence is merely to provide a cover for the transaction. One of the common techniques utilized is the automobile rental or leasing technique where in many cases it has been shown that there was no actual intent to lease or rent automobiles and the person or firm existed only to provide a vehicle between the new and used-car dealer for the sale of new automobiles.

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EFFECTIVE: 01/31/78

153-3 PENALTIES (Section 1233)

(1) Any manufacturer of automobiles distributed in commerce who willfully fails to affix to any new automobile manufactured or imported by him the label required shall be fined not more than \$1,000. Such failure with respect to each automobile shall constitute a separate offense.

(2) Any manufacturer of automobiles distributed in commerce who willfully fails to endorse clearly, distinctly and legibly any label as required or who makes a false endorsement of any such label, shall be fined not more than \$1,000. Such failure or false endorsement with respect to each automobile shall constitute a separate offense.

(3) Any person who willfully removes, alters, or renders illegible any label affixed to a new automobile, or any endorsement thereon, prior to the time that such automobile is delivered to the actual custody and possession of the ultimate purchaser of such new automobile, except where the manufacturer relabels the automobile in the event the same is rerouted, repurchased, or reacquired by the manufacturer of such automobile, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. Such removal, alteration, or rendering illegible with respect to each automobile shall constitute a separate offense.

EFFECTIVE: 01/31/78

153-4 CHARACTER - AUTOMOBILE INFORMATION DISCLOSURE ACT

EFFECTIVE: 01/31/78

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SECTION 154. INTERSTATE TRANSPORTATION OF UNSAFE REFRIGERATORS

154-1 STATUTES

Title 15, USC, Sections 1211, 1212, 1213, 1214

EFFECTIVE: 01/31/78

154-1.1 Elements

Section 1211 makes it unlawful for any person to introduce or deliver for introduction into interstate commerce any household refrigerator manufactured on or after 10-30-58, unless it is equipped with a device, enabling the door thereof to be opened from the inside which conforms to the standards prescribed pursuant to Section 1213.

EFFECTIVE: 01/31/78

154-1.1.1 Other Provisions

Under Section 1213 the Secretary of Commerce shall prescribe and publish in the "Federal Register" commercial standards for devices which, when used in or on household refrigerators, will enable the doors thereof to be opened easily from the inside; and the standards first established under this Section shall be so prescribed and published not later than one year after August 2, 1956.

Note: These standards were published by the Secretary of Commerce in the "Federal Register" dated 8-1-57, Volume 22, Number 148.

Section 1214 defines "interstate commerce" as used in this chapter to include commerce between one State, Territory, possession, the District of Columbia or the Commonwealth of Puerto Rico and another State, Territory, possession, the District of Columbia or the Commonwealth of Puerto Rico.

Venue lies in any district from, through, or into which transportation occurs or in the District of Columbia, or Territory or

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possession of the U.S. wherein such transportation occurs.

EFFECTIVE: 01/31/78

154-1.1.2 Policy

(1) The Department of Commerce is specifically charged with the regulatory provisions of this act.

(2) The Bureau will not make inspections of manufacturing plants to insure compliance with the Department of Commerce regulations.

(3) Inquiries received relative to whether a device installed on a refrigerator complies with the standards set out by the Department of Commerce should immediately be referred to the Department of Commerce.

(4) Upon receipt of a complaint under Section 1211 of this act, said complaint should immediately be discussed with the appropriate USA to determine whether the complaint is sufficient to warrant investigation and prosecution.

EFFECTIVE: 01/31/78

154-2 PENALTY

Imprisonment for not more than one year or a fine of not more than \$1,000 or both. (Section 1212 - misdemeanor).

EFFECTIVE: 01/31/78

154-3 CHARACTER - INTERSTATE TRANSPORTATION OF UNSAFE REFRIGERATORS

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SECTION 155. NATIONAL AERONAUTICS AND SPACE ACT OF 1958

155-1 BACKGROUND

The National Aeronautics and Space Act of 1958 was approved by the President on July 29, 1958, known as Public Law 85-568. Section 304 (c) of this law amends Chapter 37 of Title 18, USC, entitled "Espionage and Censorship." A new Section, 799, has been added to this Chapter.

EFFECTIVE: 01/31/78

155-2 STATUTE

Title 18, USC, Section 799, reads as follows:

"Violation of regulations of National Aeronautics and Space Administration

"Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base, or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined not more than \$5,000, or imprisoned not more than one year, or both."

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155-3 DEPARTMENTAL POLICY AND INVESTIGATIVE JURISDICTION

(1) The Department has advised that the responsibility for enforcement and prosecution for an offense arising under Title 18, USC, Section 799 is assigned to the Internal Security Section of the Criminal Division of the Department. Since Section 799 is part of Chapter 37 of Title 18, relating to espionage and the protection of defense installations, investigation of an alleged violation is within the FBI's investigative jurisdiction.

(2) The Department noted that although Section 799 prohibits the violation of any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration (NASA) where such regulation or order deals with the protection or security of its facilities, not every technical infringement should be investigated by the FBI. It is expected that the administrative enforcement of its own regulations would be handled in the first instance by NASA with only the more serious violations being referred to the FBI for its investigative attention.

(3) In pursuing any criminal investigation of an alleged violation of Section 799, the FBI should keep in mind that it would be necessary to establish that any transgression was not merely technical or inadvertent, but a willful or purposeful violation having prosecutive merit. Where any doubt exists, the matter should be discussed with the Department.

EFFECTIVE: 01/31/78

155-4 NASA INSTALLATIONS COVERED BY THIS REGULATION

Alabama

George C. Marshall Space Flight Center, Marshall Space
Flight Center, Alabama 35812

California

Ames Research Center, Moffett Field, California 94035

Flight Research Center, P. O. Box 273, Edwards, California

93523

KSC Western Test Range Operation Division, P. O. Box 425,

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Lompoc, California 93436

NASA Pasadena Office, 4800 Oak Grove Drive, Pasadena,
California 91103

Florida

John F. Kennedy Space Center, Kennedy Space Center,
Florida 32899

Louisiana

Michoud Assembly Facility, P. O. Box 29300, New Orleans,
Louisiana 70129

Maryland

Goddard Space Flight Center, Greenbelt, Maryland 20771

Mississippi

Mississippi Test Facility, Bay St. Louis, Mississippi
39520

New Mexico

JSC White Sands Test Facility, P. O. Drawer MM, Las
Cruces, New Mexico 88001

New York

Goddard Institute for Space Studies, 2880 Broadway, New
York, New York 10025

Ohio

Lewis Research Center, 21000 Brookpark Road, Cleveland,
Ohio 44135

Texas

Lyndon B. Johnson Space Center, Houston, Texas 77058

Virginia

Langley Research Center, Langley Station, Hampton,

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Virginia 23665

Wallops Flight Center, Wallops Island, Virginia 23337

EFFECTIVE: 01/31/78

155-5

INVESTIGATIVE PROCEDURES

(1) Upon receipt of any information from a NASA security officer concerning a possible violation of attempted violation of Title 18, USC, Section 799, promptly furnish available facts to FBIHQ in form suitable for dissemination, for referral to the Department for review. Should information indicating a violation be received from any other source, advise NASA security officer attached to appropriate NASA installation of information and, thereafter, submit same to FBIHQ as above.

(2) Conduct no active investigation unless instructed to do so by FBIHQ.

EFFECTIVE: 01/31/78

155-6

CHARACTER - NATIONAL AERONAUTICS AND SPACE ACT OF 1958

EFFECTIVE: 01/31/78

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SECTION 156. EMPLOYEE RETIREMENT INCOME SECURITY ACT

156-1 STATUTES

- | (1) | Title 29, USC, Sections 1021-1029, 1111, 1131, 1141
- | (2) | Title 18, USC, Sections 664, 1027, 1954

EFFECTIVE: 05/28/85

156-1.1 Title 29, USC, Section 1111

EFFECTIVE: 05/28/85

156-1.1.1 Elements

| Prohibition against holding position - Persons convicted of certain crimes prior to October 12, 1984, are prohibited from serving as any officer, fiduciary, trustee, custodian, counsel, agent, employee or representative of any employee benefit plan, or as any adviser, decision-maker, or compensated consultant for such benefit plan for five years after date of final conviction or end of imprisonment, whichever is the latter. The Comprehensive Crime Control Act of 1984 provides that for convictions after October 12, 1984, the disqualification extends to 13 years after conviction or end of imprisonment, whichever is later. Exceptions to this are when citizenship rights have been fully restored or when the U.S. Parole Commissioner gives approval to serve in the position. The Act also prohibits any person from knowingly permitting any other convicted person to serve in a prohibited position. |

EFFECTIVE: 05/28/85

156-1.2 Title 29, USC, Section 1131

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EFFECTIVE: 05/28/85

156-1.2.1 Elements

(1) Willful failure to prepare description of plan and annual financial report according to requirements in Act.

(2) Willful failure to publish description of plan and annual financial report by:

(a) Not making them available for examination of any participant or beneficiary at principal office of plan

(b) Not mailing them to any participant or beneficiary upon written request

(c) Not filing them with the Secretary of Labor (Title 29, USC, Sections 1021-1029)

EFFECTIVE: 05/28/85

156-1.3 Title 29, USC, Section 1141

EFFECTIVE: 05/28/85

156-1.3.1 Elements

Interference with rights - Use of fraud, force, or violence (or threat thereof) to interfere with or prevent exercise of any right to which participant or beneficiary may become entitled, under the benefit plan, Title III, Section 3001 of ERISA, or the former Welfare and Pension Plans Disclosure Act.

EFFECTIVE: 05/28/85

156-1.4 Title 18, USC, Section 664

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EFFECTIVE: 05/28/85

156-1.4.1 Elements

Embezzlement or theft - Any person who embezzles, steals, abstracts, or converts to his/her own use or to the use of another any of monies, funds, securities, premiums, credits, property, or other assets of any plan subject to the Act.

EFFECTIVE: 05/28/85

156-1.5 Title 18, USC, Section 1027

EFFECTIVE: 05/28/85

156-1.5.1 Elements

Any person who knowingly makes false statement or representation of fact, conceals, covers up, or fails to disclose any fact, in

| (1) | Any document required by the Act to be published by the plan

| (2) | Any records required by the Act to be kept by the plan which are necessary to verify or otherwise check for accuracy and completeness of any document required by the Act to be published by the plan

| (3) | Any information required by the Act to be certified to the administrator of the plan

EFFECTIVE: 05/28/85

156-1.6 Title 18, USC, Section 1954

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EFFECTIVE: 05/28/85

156-1.6.1 Elements

(1) Kickbacks - Any person listed below who receives or agrees to receive or solicits any fee, kickback, commission, gift, loan, money, or thing of value because of, or with intent to be influenced with respect to any of his/her actions, decisions, or other duties relating to any question or matter concerning a plan

(a) Administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare benefit plan or employee pension benefit plan; or

(b) An officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan; or

(c) An officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan; or

(d) A person who, or an officer, counsel, agent, or employee of an organization which, provides benefit plan services to such plan

(2) Any person who directly or indirectly gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value prohibited by this section

Exception: Bona fide salary, compensation, or other payments made for goods or facilities actually furnished, or for service actually performed in the regular course of duties of any person mentioned above.

EFFECTIVE: 05/28/85

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156-2 | SIGNIFICANT EXCLUSIONS IN COVERAGE (TITLE 29, USC,
SECTION 1003)

(1) Governmental Plans

(a) Title I of ERISA excludes from coverage of any employee benefit plan which is established or maintained by any Government (Federal, state, or local) or any agency of Government.

(b) General Exceptions to (a)

1. If an employee benefit plan covers any participant who is employed by a private employer, it may be covered by ERISA.

2. A determination can be made as to whether or not a plan is covered by ERISA by contact with the U.S. Department of Labor (DOL) to ascertain if the plan files an annual report.

(2) Church Plans

(a) Benefit plans maintained and established for its employees, by a church which is exempt from Federal income tax, are excluded from coverage by ERISA.

(b) General Exception to (a) - Employees of churches who are employed in trades or businesses unrelated to the primary activities of the church may be covered (such as a situation where a church owns a business and the employee works for the business).

(3) Workmen's Compensation Funds - A plan that is maintained solely for the purpose of complying with workmen's compensation and unemployment laws is not covered by ERISA.

EFFECTIVE: 06/09/80

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||156-3| POLICY

(1) Memorandum of Understanding executed between Department of Justice and Labor provides as follows:

(a) Investigation of alleged failure to disclose information or improper reporting (Title 29, USC, Section 1131) by welfare or pension plans to plan members or to Department of Labor as required (Title 29, USC, Sections 1021-1029) will be conducted by Labor and matter will be referred to Department of Justice for consideration of criminal prosecution

(b) Investigations of following alleged violations will be conducted by FBI:

1. Prohibition against holding positions (Title 29, USC, Section 1111)
2. Interference with rights (Title 29, USC, Section 1141)
3. Embezzlement (Title 18, USC, Section 664)
4. False statements (Title 18, USC, Section 1027)
5. Kickbacks (Title 18, USC, Section 1954)

(2) Whenever allegations of violation handled by the Department of Labor are received, full information is to be furnished to that agency in writing.

(3) Complaints concerning violations as listed in (1) (b) above:

Discuss complaints immediately with USA to obtain opinion whether information received contains sufficient indication of violation to justify investigation.

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156-4

INVESTIGATIVE PROCEDURE

(1) Prohibition against holding positions (Title 29, USC, Section 1111) Document by Identification Record and certified copies of judgment of conviction and official record of release from imprisonment that person was convicted or imprisoned for violation cited in statute (robbery, bribery, extortion, embezzlement, fraud, etc.) and develop evidence to establish that the person is serving with the plan in a prohibited position (administrator, officer, trustee, custodian, etc.)

(2) Disclosure or reporting (Title 29, USC, Section 1131)
No investigation to be conducted by FBI since Department of Labor has jurisdiction; however, information received should be forwarded FBIHQ promptly for dissemination in LHM under cover of airtel.

(3) Interference with rights (Title 29, USC, Section 1141) Ascertain specific rights of participant or beneficiary reportedly interfered with and develop evidence establishing means allegedly used to cause interference (fraud, force, violence, or threat thereof).

(4) Embezzlement (Title 18, Section 664)

(a) Embezzlement investigation should develop in detail shortages in funds of welfare or pension plan, and independent evidence should be secured to prove the person or persons responsible for shortage. Besides minute examination of accounting or other records of plans, persons who are indicated to have knowledge of shortages and who would be possible witnesses to establish the responsibility of certain persons for the shortages, should be interviewed. Funds involved in shortages should be traced wherever possible into the possession of the subject. Consideration should be afforded to checking records, such as bank and other business accounts, into or through which funds or other assets may have passed. Such action will be pertinent in those instances in which records of the plans are altered or destroyed or for some other reason are unavailable.

(b) Be alert to determine facts which specify alleged embezzlement pertains to funds of welfare or pension plans since embezzlement of other money or assets of company or labor union is not covered by act. Labor union welfare and pension plans are often established in the form of trusts, the funds of which are contributed by employer, and such funds are utilized for hospitalization, insurance, or pension benefits payable to union

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members or their beneficiaries. These funds are separate from monies in the treasury of a labor union or its locals. Embezzlement of labor union money is covered under the Labor Management Reporting and Disclosure Act of 1959 (Section 159 of this manual).

(5) False Statements (Title 18, USC, Section 1027) - False statements investigations should be handled similar to normal fraud against the Government matter in accordance with procedure outlined in Section 46 of this manual.

(6) Kickbacks (Title 18, USC, Section 1954)

(a) Investigations regarding kickbacks relate generally to any offer, payment, solicitation, or acceptance of a fee or commission in any form which is allegedly involved in transactions of a welfare or pension plan. Any indication of such irregularities in plan operation should be thoroughly explored in order to establish participation of each and every person involved. Particular attention should be afforded to detecting any means used to disguise kickbacks which may be manipulated through middlemen who act as go-betweens in the scheme of the principals involved.

(b) Allegations to be alert for involve fees, kickbacks, commissions, etc., being paid in order that funds of a plan will be loaned or invested. Investigation of such allegations regarding loans made by a plan for financing construction work requires accounting for all disbursement of proceeds of such loans and tracing any questionable items which may be considered subterfuge in order to conceal kickback. Likewise, investigation of investments made by a plan requires complete verification in order to uncover any portions of such investment which may be diverted into a kickback.

EFFECTIVE: 04/24/90

156-5

INTERVIEW WITH UNION OFFICIALS

These interviews may be conducted on the authority of the SAC, provided all of the following circumstances exist:

(1) Files of field office where interview to be conducted contain no information to indicate such interview would be inadvisable.

(2) Interview is not premature and other available

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sources of information desired from union official have been exhausted.

(3) Interview is absolutely necessary in interest of conducting complete and thorough investigation.

(4) The interview must be discussed with and approved by the USA.

(5) The field office must ensure that the interview will not interfere with any other investigation of the official or union.

(6) In the event an auxiliary office is to conduct the interview, that office must ensure their files contain no information to indicate the interview would be inadvisable.

(7) FBIHQ must be notified in advance in the event the interviewee is prominent, extremely controversial, or of such stature to focus national attention on the investigation.

EFFECTIVE: 10/18/88

156-6

REPORTING PROCEDURES

(1) |An initial airtel with accompanying LHM (original and three copies) should be submitted to FBIHQ within 60 days if the investigation involves LCN members or associates. The LHM should contain the preliminary opinion of the USA and sufficient identification data on the subject(s) for indexing purposes. |

(2) |A progress letter should be submitted to FBIHQ every 180 days containing a summary of investigation conducted to date and a statement regarding investigation contemplated during the next 180 days. |

(3) |A closing airtel should be submitted to FBIHQ with an LHM restating the predication for opening the investigation, summarizing the investigative findings and detailing the disposition of the investigation. The LHM should include the final opinion of the USA. |

(4) |If the investigation involves non-LCN groups (i.e., Asian organized crime, Sicilian Mafia, etc.), advise FBIHQ by airtel with accompanying LHM, as described above, within 60 days. The

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results and/or summary should be reported by LHM (original and three copies).|

EFFECTIVE: 10/18/88

156-7 PENALTIES

(1) Title 29, USC, Section 1111 - \$10,000 or not more than five years, or both

(2) Title 29, USC, Section 1141 - \$10,000 or not more than one year, or both

(3) Title 18, USC, Section 664 - \$10,000 or five years or both

(4) Title 18, USC, Section 1027 - \$10,000 or five years or both

(5) Title 18, USC, Section 1954 - \$10,000 or three years or both

EFFECTIVE: 10/18/88

156-8 CHARACTER - EMPLOYEE RETIREMENT INCOME SECURITY ACT

EFFECTIVE: 10/18/88

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SECTION 157. CIVIL UNREST

157-1 RESPONSIBILITY OF THE BUREAU

The responsibility of the Bureau under this section is based on the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest, which became effective April 5, 1976.

EFFECTIVE: 01/31/78

157-1.1 Categories for Reporting

Under these guidelines, the FBI is responsible for reporting information on civil disturbances or demonstrations in four categories:

- (1) Investigating violations of Federal criminal law directed explicitly at civil disorders (e.g., Title 18, USC, Sections 231, 2101); and investigating violations of Federal criminal law of general applicability occurring during civil disorders.
- (2) Providing information and assistance, upon request of the Secret Service, to aid in carrying out its protective responsibilities under Title 18, USC, Sections 112, 970, 3056 and P. L. 90-331. Information relating to the protective responsibilities of the Secret Service which is acquired incidentally in the course of carrying out FBI responsibilities should be reported to the Secret Service. It should be noted, however, investigations for the purpose of assisting the Secret Service in its protective responsibilities should not be undertaken without a specific request from the Director of Secret Service or his designee made or confirmed in writing.
- (3) Providing information concerning actual or threatened civil disorders which may require the presence of Federal troops to enforce Federal law or Federal court orders (Title 10, USC, Sections 332, 333) or which may result in a request by state authorities to provide Federal troops in order to restore order (Title 10, USC, Section 331).
- (4) Providing information relating to demonstration

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activities which are likely to require the Federal Government to take action to facilitate the activities and provide public health and safety measures with respect to those activities.

EFFECTIVE: 01/31/78

157-2 POLICY REGARDING REPORTING OF CIVIL DISORDERS

The Bureau's responsibilities in reporting Civil Disorders are as follows:

(1) Information relating to actual or threatened civil disorders acquired by the FBI from public officials or other public sources or in the course of its other investigations, should be reported to the Department of Justice. In this connection it should be noted that under the Attorney General's guidelines for reporting on civil disorders and demonstrations there is no prohibition against alerting sources, including appropriate law enforcement officials and established informants, of the Bureau's continuing interest in civil disorders and demonstrations.

(2) Investigations should not be undertaken to collect information relating to actual or threatened civil disorders except upon specific request of the Attorney General or his designee. Investigations will be authorized only for a period of 30 days but the authorization may be renewed, in writing, for subsequent periods of 30 days.

(3) Information should be collected and reported pursuant to paragraphs (1) and (2) above, for the limited purpose of assisting the President in determining whether Federal troops are required and determining how a decision to commit troops shall be implemented. This information should be based on such factors as:

(a) The size of the actual or threatened disorder - both in number of people involved or affected and in geographic area;

(b) The potential for violence;

(c) The potential for expansion of the disorder in light of community conditions and underlying causes of the disorder;

(d) The relationship of the actual or threatened disorder to the enforcement of Federal laws or court orders and the

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likelihood that state or local authorities will assist in enforcing those laws or orders;

(e) The extent of state or local resources available to handle the disorder.

(4) Investigations undertaken, at the request of the Attorney General or his designee, to collect information relating to actual or threatened civil disorders should be limited to inquiries of:

(a) Field office and FBIHQ files and indices;

(b) Public records and other public sources of information;

(c) Federal, state, and local records and officials;

(d) Established informants or other established sources of information.

Interviews of individuals other than those listed above, and physical and photographic surveillance should not be undertaken as part of such an investigation except when expressly authorized by the Attorney General or his designee.

EFFECTIVE: 01/31/78

157-3 REPORTING OF DEMONSTRATIONS

The reporting of demonstrations should conform to and include the following:

(1) Information relating to demonstration activities which are likely to require the Federal Government to take action to facilitate the activities and provide public health and safety measures with respect to those activities, which is acquired incidentally by the Bureau in the course of carrying out its responsibilities, should be reported to the Department of Justice.

(2) Investigations should not be undertaken to collect information with respect to such demonstrations except upon specific request of the Attorney General or his designee.

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(3) Information collected and reported pursuant to (1) and (2) above, should be limited to that which is necessary to determine:

(a) The date, time, place, and type of activities planned;

(b) The number of persons expected to participate;

(c) The intended mode of transportation to the intended site or sites and the intended routes of travel;

(d) The date of arrival in the vicinity of the intended site and housing plans, if pertinent;

(e) Similar information necessary to provide an adequate Federal response to insure public health and safety and the protection of First Amendment rights. This is intended to encompass such additional facts affecting the Federal responsibility as unusual health needs of participants, counterdemonstrations planned which may increase safety needs, or possible inability of participants to arrange return transportation.

(4) Investigations undertaken to collect information relating to demonstrations pursuant to (2) above should be limited to determining the information described in (3) above. Such information should be collected only by a check of:

(a) Field office and FBIHQ files and indices;

(b) Public records and other public sources of information;

(c) Federal, state, and local records and officials;

(d) Persons involved in the planning of the demonstration, provided that in conducting interviews with such persons, they be initially advised of the authority to make the inquiry and the limited purpose for which it is made.

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157-4 PHOTOGRAPHIC SURVEILLANCES

Photographic Surveillances should not be conducted in carrying out Bureau responsibilities in collecting and reporting information on demonstrations.

EFFECTIVE: 01/31/78

157-5 DISSEMINATION OF DATA PERTAINING TO CIVIL DISORDERS AND DEMONSTRATIONS

Under the Attorney General's Guidelines for reporting on both civil disorders and demonstrations, information concerning criminal offenses within the investigative jurisdiction of another Federal agency which is acquired incidentally in the course of Guidelines' implementation, should be reported to the Federal agency having jurisdiction. Information concerning serious criminal offenses within the investigative jurisdiction of state or local agencies should be reported to the appropriate lawful authorities. In this regard, reference to serious offenses would exclude such matters as: drunkenness, vagrancy, loitering, disturbing the peace, disorderly conduct, adultery, fornication and consensual homosexual acts, false fire alarm, nonspecific charges of suspicion or investigation, traffic violations and juvenile delinquency.

Information obtained relating to both civil disorders and demonstrations, which comes within the purview of the Attorney General's Guidelines, should be furnished to the United States Attorney locally. Civil disorder information may also be reported to Federal, state, or local officials at the location of the actual or threatened disorder who have a need for the information in order to carry out their official responsibilities in connection with such a disorder.

By memorandum dated 7/26/76, the Attorney General set forth additional guidelines relating to the routine dissemination of information on both civil disorders and demonstrations to CIA and also dissemination of this type information to CIA and other Federal agencies on specific request. Routine dissemination to CIA is restricted to that which relates directly to the security or safety of CIA installations, personnel or operations. These additional guidelines also pointed out that on the other hand, it may be proper to furnish CIA or any other Federal agency upon its specific request, information concerning earlier civil disorders or demonstrations,

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whether or not they directly related to the agency, if that information will be useful in determining the extent to which present activities pose a threat to the security of the agency's facilities, personnel or operations. For example, if a Government facility is, or is about to be, the target of a demonstration by a particular group, information in FBI files concerning prior demonstrations by that group which resulted in violence or illustrated the group's ability to prevent violence would be relevant to a determination as to whether a security threat exists. Such information might properly be furnished upon request.

The Attorney General's memorandum of 7/26/76 further sets forth it is important that the very limited nature of the Federal Government's interest in both civil disorders and demonstrations be recognized not only in the acquisition of information but also in its dissemination to other departments and agencies and unless the information indicates that some action or response by the agency involved is likely to be required routine dissemination should not be made.

EFFECTIVE: 01/31/78

157-6 REPORTING PROCEDURES TO BE UTILIZED IN CIVIL DISORDERS AND
DEMONSTRATIONS

Information obtained which comes within the purview of the Attorney General's Guidelines for gathering and reporting information on civil disorders and demonstrations should be furnished to FBIHQ and interested agencies, including the United States Attorney locally, by most timely means warranted under the circumstances. Actual or threatened riots, disturbances, or disorders should be reported to FBIHQ by teletype unless circumstances warrant telephone call, in which event call should be confirmed by teletype. Teletypes should be in form suitable for dissemination and where possible information relating to those items specifically referred to in 157-2 (3)(a) through (e) and 157-3 (3)(a) through (e) above should be included. All administrative data, including reference should be at end under "Administrative" heading; classify if warranted, etc. Teletypes need not be followed by LHMs unless investigation of the disorder or demonstration has been specifically requested by the Attorney General or his designee. Include in details of teletype identities of local and Federal agencies notified. Record in field file identities of persons who were contacted at the notified agencies, time and date and identities of FBI personnel making contacts.

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157-7 CHARACTER

The title of the case should be descriptive of activities involved followed by character "Civil Unrest."

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