U.S. Department of Justice
Drug Enforcement Administration

DEA AGENTS MANUAL

DEA SENSITIVE

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DEA
Agents Manual

The procedures, guidelines and other provisions of the Drug Enforcement Administration (DEA) Agents Manual 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. Except for purposes of internal DEA procedure and discipline, these guidelines do not place any limitations on otherwise lawful investigative or litigative prerogatives of the DEA, its employees, or the Department of Justice (DOJ).

CHAPTER 61 GENERAL

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Subchapter 611 Authority and Conduct

6111 AUTHORITY

A. Special Agents of the Drug Enforcement Administration have been delegated authority under 21 USC 878 to:

1. Carry firearms.
2. Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under authority of the United States.
3. Make arrests without warrants:

a. For any offense against the United States committed in their presence.

b. For any felony, cognizable under the laws of the United States, if they have probable cause to believe that the person arrested has committed or is committing a felony.

4. Make seizures of property pursuant to the provisions of Public Law 91-513.
5. Perform such other law enforcement duties as the Attorney General may designate.

B. Furthermore, 28 CFR, Appendix R, delegates authority to DEA Special Agents to: exercise all of the powers of enforcement personnel granted by 21 USC 876 and 879; serve subpoenas, administer oaths, examine witnesses, and receive evidence under 21 USC 875; execute administrative inspection warrants under 21 USC 880; and seize property under 21 USC 881.

C. In addition to their authority under 21 USC 878 and 28 CFR, Appendix R, Special Agents may also have arrest authority under State law (see 6641).

6112 CONDUCT

Each DEA employee is expected to promote public confidence in the integrity and dependability of DEA. His manner will be dignified, tactful, courteous, and diplomatic. While on official duty, he will dress appropriately for the activity in which he is engaged (accepted business attire except when circumstances warrant another mode of dress; e.g., range or undercover surveillance). Each employee will be thoroughly knowledgeable of and be held accountable under the DEA Standards of Conduct set forth in Appendix A.

6113 ACCUSATIONS OF CONSTITUTIONAL RIGHTS VIOLATIONS

6113.1 PERSONAL LIABILITY OF AGENTS

A. The rights of a citizen are based on 18 USC 241 and 242, which read in part:

1. SECTION 241 - "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same...shall be fined not more than $5,000 or imprisoned not more than 10 years, or both."

2. SECTION 242 -"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishment, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both."

B. DEA agents may be charged with and held personally liable for violating a citizen's Constitutional rights. The principal consideration in deciding the agent's culpability in a given situation is whether he was acting in good faith and with reasonable belief that his actions were lawful.

6113.2 GOVERNMENT REPRESENTATION OF EMPLOYEES

A. A general policy of the Justice Department is to afford counsel and representation to government employees in civil, congressional, and non-Federal criminal proceedings. This policy will only apply where:

1. The employee was acting within the scope of his employment when the matter in question occurred.
2. The employee is not the target of Federal criminal investigation.

B. Should an employee desire representation by the Justice Department in a matter which he believes meets the foregoing criteria, he should consult with the Office of Chief Counsel.

6113.3 REPORTING ACCUSATIONS OF VIOLATIONS. Accusations by defendants or other persons that a DEA employee violated their civil rights, together with the circumstances and details of the situation that led to such allegations (e.g., resistance to arrest or use of force by DEA agents), will be handled in the same manner as in 6114.

Anytime a DEA employee receives a summons or complaint, whether in person or by mail, in connection with a civil lawsuit arising from a job-related activity, he should immediately notify his supervisor. The supervisor will immediately consult with the U.S. Attorney's Office and the Office of Chief Counsel who will coordinate an appropriate course of action. The employee should not acknowledge receipt of mailed process unless so instructed.

6114 SHOOTING INCIDENTS AND ASSAULTS

A. The following instructions apply to any discharge of a firearm by an employee (whether on or off duty) or officer of another

agency during a joint investigation with DEA. Excluded from this are discharges of a sporting firearm in a recreational situation or a firearm discharged during training or practice on a firing range. This also applies to any assault on a DEA employee, DEA informant, or DEA Task Force Officer stemming from a job-related circumstance, or a DEA facility.

B. Any such incident will be immediately reported through the chain of command to the SAC (or equivalent management official). If circumstances warrant, local authorities should also be notified.

C. The SAC will in turn immediately notify, via telephone, Headquarters *(PI)* and appropriate drug section. The Headquarters Communications Center will be used as a conduit for this purpose if the incident occurs during nonbusiness hours. Within 24 hours of the incident (or by the next workday), the SAC will submit a teletype to *PI*, PR, *Firearms Training Unit/TR*, the appropriate drug section, *and the Board of Professional Conduct (BC)*, subject: "Discharge of Firearm," or "Assault on _____". The teletype will contain the following information:

1. Circumstances of incident (including case number and G-DEP code, if applicable).
2. Date, time, and place of incident.
3. Identity of individuals involved and/or witnessing the incident.
4. If a shooting, type of firearm and number of rounds fired. If an assault, its nature (e.g., bomb, firearm, etc.).
5. Identity of injured parties, if any, and the nature and severity of their injuries.
6. Property damage, if any.

D. Depending upon the circumstances, *PI* may conduct an investigation of the incident, or direct the SAC to conduct an investigation, monitored by *PI*.

6115 THREATS AGAINST DEA EMPLOYEES, FACILITIES, INFORMANTS, TASK FORCE OFFICERS, JUDGES, PROSECUTORS, OR OTHER LAW ENFORCEMENT OFFICERS

A. DEA Employees

1. Any threat received, or allegedly made, against DEA personnel will be reported, through the chain of command, to the SAC or Office Head immediately. The SAC or Office Head will immediately assign a case agent to ensure that appropriate investigation is initiated, conducted, and completed. The SAC or Office Head will then report the threat by telephone to the Office of Security Programs (PS) to be followed by teletype to PS, the Operations Division (DO), and the Office of International Programs (OF) if the threat involves a foreign based agent or office.
2. The information in the teletype should include the following:

a. NAME, title, and location of person(s) threatened.
b. CASE AGENT NAME and contact numbers (home and office).

* Revision

c. DATE OF THREAT and background to same (provide possible motivation and summarize preliminary efforts to corroborate).

d. NATURE OF THREAT (who allegedly made it, his record and location if known; who reported it and what is the reliability of the source).

e. LOCAL SECURITY MEASURES that will be taken to enhance the security of the employee(s). If physical security enhancements (i.e., floodlights, alarm service, or guard, etc.) are anticipated, provide local estimates of cost.

[redacted]

g. REMARKS: Include family situation (to include ages of dependents whose safety could be in jeopardy), spouse employment, or other conditions affecting relocation.

3. The SAC or Office Head will ensure that the investigation of a threat against a DEA employee is given the highest priority and brought to fruition as quickly as possible. Threat investigations will be documented under Headquarters Program General File 9020 either as a file number or cross-filed, if carried under a regular drug investigation file number. A follow-up Report of Investigation (DEA-6) will be submitted to PS, DO and OF (if foreign) every 30 days after the date of the initial reporting until the threat has been resolved. Case agents will confer with PS before closing any threat investigation.

4. All security enhancement equipment purchased by DEA (under 2e above) for the residence of a DEA employee, as a result of a threat, is accountable property for the employee and office of assignment. In all cases, once the threat has been resolved, the equipment must be reconciled with PS or returned to stock for future employment.

[redacted]

B. DEA Informants. Report as in 2a above and contact the appropriate prosecutor's office for possible application of the Victim and Witness Protection Act. For individuals who warrant some measure of protection but do not qualify for the Witness Protection Program, see 6612.43C of the Agents Manual. While the investigation of a threat against an informant does not merit the priority basis of a threat against a DEA employee, all reasonable efforts should be made to resolve the threat. One additional Report of Investigation must be forwarded to PS within 45 days of the initial reporting.

C. DEA Task Force Officers. Report as in 2a above, with the SAC ensuring that the officer's parent agency is also notified immediately. DEA will provide all reasonable assistance; however, the officer's parent agency must assume primary responsibility for

resolving the threat and providing appropriate security for the officer and his family.

D. DEA Facility or Property. Report as in 2a above. PS will coordinate with appropriate Headquarters elements. SAC's and Office Heads will also notify GSA if it is a Federal building.

E. Judges or Prosecutors. Report as in 2a above. PS will notify the U.S. Marshals Service, the Department of Justice, and appropriate Headquarters elements.

F. Law Enforcement Officer (Non-Task Force). Any information received or developed by a DEA office regarding a threat to other law enforcement personnel should be reported directly to that agency by the SAC, Office Head, or DEA first line supervisor. Such notifications will be documented on a Report of Investigation and reported under a program general file as appropriate and forwarded to PS.

6116 COMPROMISE OF A DEA INVESTIGATION, INFORMANT OR WITNESS

A. Information developed which indicates the possible compromise of a DEA investigation, informant, or witness will be immediately reported through the chain of command to the SAC (or equivalent management official).

B. The SAC will in turn notify Headquarters (PR and the appropriate drug section) via teletype within 24 hours (or by the next working day). The teletype will set forth as many details as are known at that point.

C. Depending upon the circumstances, PR may conduct an investigation, or direct the SAC to initiate an investigation to fully develop all the facts and assure that appropriate follow up measures are taken.

6117 VACANCY ANNOUNCEMENT (GS/GM-1811-14)

6117.1 GENERAL. The standard criteria for Vacancy Announcements for Criminal Investigator GS-1811-14 and Supervisory Criminal Investigator GM-1811-14 are contained in the following sections. This information is to be used in conjunction with published/telegraphic vacancy announcements. Any exceptions or particulars will be noted on the actual announcement of a specific vacancy. (See also Personnel Manual Subchapter 2250.4.)

6117.2 DOMESTIC POSITIONS

A. Qualifications. Criminal Investigators GS/GM-13 and GS/GM-14 are invited to apply. GS/GM-13 Criminal Investigators must have completed one year at the grade GS/GM-13 level by the closing date of announcement.

B. Rating Criteria. Knowledge, Skills and Abilities (Diversity of Experience, Leadership/Supervisory Experience, Complex Enforcement Experience, Special Skills) - 55 points maximum; Awards - 5 points maximum; Training - 5 points maximum; Performance - 35 points maximum.

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

DEA

NOTICE

CLASSIFICATION CODE
Chapter 61

Upon revision of t
Agents Manual

SUBJECT: 6115 THREATS AGAINST DEA EMPLOYEES, FACILITIES, *COOPERATING INDIVIDUALS*, TASK FORCE OFFICERS, JUDGES, PROSECUTORS OTHER LAW ENFORCEMENT OFFICERS

This Notice provides the current guidelines and procedures for the various program areas in Chapter 61.

A. Paragraphs A thru A.5 remain the same.

B. DEA *Cooperating Individuals.* Report as in *A2* above **except code numbers of cooperating individuals will be used in lieu of their names,** and contact the appropriate prosecutor's office for possible application of the Victim and Witness Protection Act. For individuals who warrant some measure of protection but do not qualify for the Witness Protection Program, see 6612.42C of the Agents Manual. *Any threat against a cooperating individual will be handled in an appropriate manner. One additional Report of Investigation must be forwarded to HS within 45 days of the initial reporting.*

C. DEA Task Force Officers. Change report as in 2A above to report as in *A2* above.

D. DEA Facility or Property. Change report as in 2A above to report as in *A2* above.

E. Judges or Prosecutors. Change report as in 2A above to report as in *A2* above.

Note: There are no other changes in this section.

* Revision
** Addition

Distribution: H-1,2,3C,3D,4,5
F-1 through 7

Originated by: HDS DAC

DEA Form [illegible] – 48

Note: Open only to agents participating in the management career path. If selection represents incumbent's initial supervisory or managerial assignment in the federal sevice, a 1-year probationary period is required.

C. Duties

1. Unit Chief, Office of Training. Incumbent is responsible for providing entry-level, specialized, and advanced training programs for DEA core discipline personnel. Establishes training objectives and curricular design of each specific program of training within the unit. Responsibile for formulating and revising objectives to meet the training goals of the unit's training program.

2. Mobile Unit Chief. Incumbent is responsible for providing a broad range of training programs for law enforcement officers. Position involves advance trips to foreign countries to determine training needs. Designs program for training use in the U.S. and foreign countries.

3. Watch Commander. Incumbent supervises the special operations functions of the El Paso Intelligence Center (EPIC) in support of a multiplicity of program areas involving air, marine, surface narcotics and other trafficking, designed to facilitate the dissemination of "real time" intelligence to field elements of DEA, participating Federal agencies, and state and local agencies.

4. Group Supervisor. Incumbent provides technical and administrative supervision over criminal investigators primarily involved in planning and conducting investigations of individuals suspected of engaging in large scale drug trafficking operations.

5. Resident Agent in Charge. Incumbent directs Resident Office operations, develops criminal investigations of potential illicity narcotics and dangerous substances activities and supervises assigned staff.

6. Chief, Technical Operations. Incumbent plans, organizes and coordinates the technical operational aspects of criminal investigations within the area. Assigns Criminal Investigators, Electronic Technicians, Investigative Assistants, etc., to specific portions of the investigations. Provides background information, suggests procedures and leads, monitors investigators progress and activities, and assumes prime responsibility for the integrity of the group.

7. Intelligence Group Supervisor. Directs group operations; participates in and directs the development, coordination, and evaluation of the organized crime and intelligence program for the Division. Implements programs targeted at the effective collection, evaluation and dissemination of tactical and strategic intelligence data to support investigative efforts.

8. Task Force Group Supervisor. Supervises a unit of Task Force officers including Special Agents in the field Division carrying out in-depth criminal investigations of major concerns to the agencies involved. Assumes prime responsibility for the integrity of the units and coordinates overall aspects of the investigations.

9. OCDE Task Force Coordinator. Positions are located in 13 core cities of the President's Organized Crime Drug Enforcement Task Force Program. Incumbents of these positions coordinate DEA's participation in the program and coordinate the activities of agents assigned to the task forces.

6117.2 DOMESTIC POSITIONS. Paragraphs A thru C9 remain the same.

*10. Aviation Area Supervisor. Incumbent provides technical and administrative supervision over Criminal Investigator/Pilots and plans, organizes, and coordinates operational aspects of aviation support to criminal investigations of a national or international scope.**

Make the following pen-and-ink changes to the various program areas.

6118.4 AUTHORIZED EXERCISE PROGRAM. Paragraphs A thru B remain the same.

C. Cross out the first sentence in this paragraph.

6135 RECOVERED FUNDS (Also see 6663.67.)

Paragraph A remains the same.

Cross out paragraph B.

6142 MONTHLY REPORTS.

Change office symbol FES to PAS.

6142.1 MONTHLY ASSET REMOVAL AND DEA-7 "INFORMATION ONLY" PACKAGE. Cross out this subsection.

6142.4 MONTHLY ACTIVITY SUMMARY (DEA FORM 455). Cross out this subsection.

6143.2 OTHER QUARTERLY REPORTS. Paragraphs A thru D remain the same.

E. Quarterly Firearms Seizures Reports. see *6663.61(G).*

Note: There are no other changes in Chapter 61.

Revision
Addition

6117.3 FOREIGN POSITIONS

A. Qualifications. Same as domestic positions.

B. Assignment Information. See Vacancy Announcement for tour length. Knowledge of host country language may be required or applicant must be willing to attend FSI language training (see Vacancy Announcement). Selected employees and dependents are required to pass physical examinations given by State Department. Candidates should familiarize themselves with living conditions by reviewing State Department Post Reports. Education of dependents through high school is provided or paid by the U.S. Government. Dependents in college are allowed one trip to the overseas location each 12 months. Medical expenses and hospitalization are provided for most illnesses incurred in line of duty. Housing allowance is provided. Up-to-date State Department Post Reports and information on available housing, furnishings, and appliances is available from AMGT upon request.

C. Rating Criteria. Same as domestic positions.

D. Duties

1. Country Attache. Incumbent represents DEA on the Ambassador's staff (at the Ambassador's discretion and in a diplomatic status) and serves as advisor to the host country on international narcotic and dangerous drug trafficking matters.
2. Resident Agent in Charge (Foreign). Responsible for providing criminal investigative expertise and assistance to a foreign law enforcement agency on narcotic and dangerous drug control programs. Plans, organizes and conducts complex criminal investigations, directs the activities of the foreign narcotic agents as may be required and approved by foreign officials and establishes and maintains effective liaison with the highest officials of the host country narcotic enforcement agency and the U.S. Military Command.
3. Enforcement Supervisor (Foreign). Supervises a group of Senior Criminal Investigators who provide expertise and assistance to foreign agencies and enforcement officials on narcotics and dangerous drug enforcement and control programs; plans and organizes DEA programs in the host country; conducts complex criminal investigations involving international criminal conspiracies and identifies primary GEO-DEP class violators; establishes and maintains liaison with host country and counterpart foreign law enforcement officials.

6118 PHYSICAL FITNESS PROGRAM

6118.1 PURPOSE

A. The general purpose and goals of the Physical Fitness Program are to:

1. Raise the health and fitness level of the DEA workforce.
2. Promote lifestyle changes which are designed to increase productivity, increase morale and decrease disability within the DEA workforce.
3. Develop future health and fitness maintenance standards for Special Agents.

B. Research in the area of coronary artery disease as well as other physical disabilities has determined that certain occupational groups are prone to become victims of stress-related illness. Law enforcement officers suffer one of the highest incidences of heart disease and lower-back disability when compared to other occupational groups. It has also been demonstrated that the law enforcement community is, on the average, higher in body fat, serum cholesterol, and lower in strength, endurance, and flexibility than many other groups.

Risk factors associated with coronary artery disease such as emotional stress, physical inactivity, improper diet, shift-work, overtime and travel are characteristics inherent to this occupational group.

Aerobic conditioning, anaerobic exercise (musculoskeletal strength training) and stretching exercises coupled with a prudent diet are preventive measures available to our employees which effectively counterbalance these occupational characteristics.

6118.2 GENERAL

A. The DEA Physical Fitness Program consists of three phases: Phase I, Health and Medical Screening; Phase II, Field Assessment Testing; and Phase III, Fitness Coordinator recognized/individualized exercise and nutrition program (see 6118.3). Participation in Phase I, and if cleared, Phase II, is mandatory for all Special Agents, and voluntary for non-agent personnel. Special Agents are encouraged to establish and sustain a high level of physical fitness. Physical fitness enables Agents to cope more readily with the stress of a law enforcement career and handle critical contingencies readily and confidently. The success of the program, in terms of benefits to the individual and to DEA, depends on the professionalism of each Agent participant and the management of the program by our Headquarters Office Heads, SAC's, ASAC's, field supervisors and Fitness Coordinators.

B. Participation in the Physical Fitness Program means that Special Agents are required to participate in Phase I (health & medical screening) and, if cleared, Phase II (fitness assessment) every six months. Special Agents will be screened and assessed every six months to develop the following information:

1. Determine the health and fitness progress of our Agent workforce;
2. Inform Special Agents of their individual progress;
3. Compare the health and fitness level of DEA Special Agent workforce to other law enforcement communities as well as the general population; and
4. Develop a data base to establish future health and fitness maintenance standards for our Special Agent workforce.

C. Involvement in Phase III (a Fitness Coordinator-recognized exercise and nutrition program) is totally voluntary for all Special Agent and non-Agent personnel. However, to encourage Special Agents to maintain a regular fitness program, the Administrator has authorized three (3) hours of official time per week to enable participation in Phase III. Non-agent personnel will not be authorized administrative leave for exercise activity.

Both Agent and non-agent personnel will be authorized administrative leave for actual meetings with Fitness Coordinators for screening, assessment and counseling.

6118.3 RESPONSIBILITIES

A. The Personnel Manual (paragraph 2792.21) defines the DEA Health and Protection Program and states that periodic physical examinations are mandatory for all Special Agent personnel.

B. Paragraph 2792.22A1 states that physical examinations will be performed annually for those Special Agents 40 years of age and older; and every 3 years for those under 40, unless in the opinion of the examining physician more frequent examinations are indicated in certain cases.

C. In addition to periodic physical examinations, all Special Agents must submit to the bi-annual health/medical screening and, if cleared, fitness assessment phases of the Physical Fitness Program. At this time, Special Agents who are not medically cleared will not be adversely affected by their inability to advance through the fitness assessment phase of the program. Also, Special Agents who are able to participate in the fitness assessment phase will not be required to pass any portion of the assessments and will not be adversely affected by this final score.

D. SAC's will ensure that all Special Agents participate in Phase I and, if medically cleared, Phase II.

Phases I and II of the Physical Fitness Program will be conducted during March-May and *September-November* of each calendar year in accordance with the following procedures:

1. Phase I - Health/Medical Screening. The objective of this phase is to determine the extent to which an individual can safely participate in Phase II and perform strenuous exercise.

a. The responsible Fitness Coordinator obtains certain data from the individual to determine whether that person could be at risk for coronary heart disease. This data includes, but is not limited to:

(1) A review and update of the individual's Health History.
(2) A review of the individual's bloodwork data.
(3) A review and update of the individual's exercise and nutrition assessment.
(4) Recording skinfold measurements.
(5) Recording the resting heart rate.
(6) Recording the blood pressure reading.
(7) Recording the recovery heart rate (through the administration of the three-minute step test), unless contraindications to exercise testing have been discovered up to this point.

Based on the projected risk level, the individual is either cleared or not cleared for further participation in the program.

* Revision
** Addition

b. Those Special Agents with a questionable medical history or medical problem which prevents clearance for Phase II are to pursue one of the following courses of action to improve his/her condition and enable them to participate in Phase II during future assessment cycles:

(1) Obtain a physician's clearance to continue to Phase II assessments. A physician clearance form is provided by the Health Services Unit as part of the Special Agent medical package or can be obtained from the Fitness Coordinator.

(2) Begin an exercise/nutrition program under a physician's supervision designed to increase the individual's health and fitness status to a level which will allow re-entry into the program and completion of Phase II.

(3) Obtain a physician's clearance to begin a "starter" exercise/nutrition program developed by the DEA Fitness Coordinator and designed to increase the individual's health and fitness status to a level which will allow participation in Phase II. Significant medical findings may necessitate private physician referral for follow-up examination and/or treatment. The costs for such must be borne by the Agent or his/her health benefits carrier. However, authorization for additional diagnostic tests is handled on a case-by-case basis by DEA's Health Services Unit.

Special Agents are expected to take whatever steps are necessary toward the ultimate improvement of their current health status. To ensure that proper medical treatment is received by those Special Agents with significant medical problems, DEA's Health Services Unit will periodically review the medical files of those Special Agents who have been unable to advance through the fitness assessment phase of the program. Additional medical examinations may be required in accordance with the guidelines set forth in Subsection 2339.1 of the Personnel Manual.

2. Phase II - Fitness Assessment. The objective of this phase is to determine the individual's present fitness level and to ensure safe participation in Phase III of the program.

a. Assessments are conducted by the responsible Fitness Coordinator covering the following key fitness areas through the administration of (but not limited to) the following testing procedures:

1. Aerobic Capacity - 1.5 Mile Run/Walk Test
2. Flexibility - Sit and Reach Test
3. Strength - One-minute Timed Push-up Test
   - One-minute Timed *Curl-up* Test.

b. The results of Phase I screening and Phase II assessments are recorded by the Fitness Coordinator *on Health and Fitness Data forms supplied by Headquarters Fitness Staff. Completed Health and Fitness Data forms are to be signed by the Fitness Coordinator and forwarded to the division office Fitness Coordinator representative for assembly. Forms are then submitted to the Headquarters Fitness Staff with a cover memorandum from the SAC as part of the Biannual Physical Fitness Program Report (6145.1)*

* Revision

E. Involvement in Phase III (a Fitness Coordinator-recognized exercise and nutrition program, see 6118.4) is entirely voluntary. The objective of this phase is to provide guidance to the individual in development of an appropriately individualized fitness program which sets realistic and achievable goals towards maintaining an acceptable level of fitness conducive to good health and effective job performance.

1. An appropriate individualized fitness program is one that addresses the four key fitness areas (aerobic capacity, flexibility, strength and body composition) in accordance with the current fitness level of that individual.

2. Realistic and achievable goals are those based on the results of the screening and assessment phases of the program. These goals will reflect where each individual ranks in comparison to both the general population and members of the DEA Agent workforce in his/her sex and age category.

3. An acceptable level of fitness is that which is considered the minimum level required to safely and efficiently carry-out the investigative responsibilities required by the agency.

6118.4 AUTHORIZED EXERCISE PROGRAM. Involvement in a Fitness Coordinator-recognized exercise program authorizes the Special Agent three one-hour exercise periods per week according to the following guidelines.

A. Authorization remains contingent upon the demands of the division/office in which the Special Agent works and is subject to approval by the supervisor in charge of that division or office.

B. Activities that will be permitted for on-duty time will relate directly to the individual exercise programs recognized by the Fitness Coordinator.

C. Exercise periods are not to be taken during the first or last hour of the official working day. AUO guidelines prohibit claiming exercise periods as overtime. Workouts may be coupled with lunch periods.

D. Workouts are not to be conducted in a country club atmosphere. Recreational sports such as bowling, badminton, and golf are not authorized. Competitive team sports should not be a substitute for an individualized exercise program. Aerobic conditioning exercises (such as running, exercycling, handball, racquetball, and swimming) and anaerobic exercises (such as musculoskeletal strength training) are authorized in YMCA/health club settings under the discretion of the SAC or Office Head. The SAC or Office Head is responsible for the management and success of the program within the division/office.

The DEA Fitness Coordinators are directed to publicize benefits of participation in the program to encourage maximum participation. These benefits include, but are not limited to, such areas as the following: decreasing the risk of coronary heart disease through the lowering of blood pressure, decreasing pulse rate and cholesterol levels, improving emotional and physical well being, and increasing energy, alertness, and productivity. Suggestions, recommendations, or requests of a specific nature should be directed to the Headquarters *Health Services Unit Fitness Staff.*

* Revision

6118.5 **OGV USE IN PHYSICAL FITNESS PROGRAM ACTIVITIES

The use of OGVs by Special Agents for physical fitness activities is authorized only during the authorized three one-hour, on-duty exercise periods per week specifically described in subsection 6118.4 above. Special Agents are allowed to use their OGVs for travelling to and from fitness facilities for the purpose of undertaking the authorized three one-hour, on-duty exercise periods.

Saturdays, Sundays, leave days, and holidays are not considered official work days, thereby prohibiting the use of OGVs for physical fitness activities on those days. Futhermore, since the use of an OGV for physical fitness purposes is limited to use while a Special Agent is taking his/her specifically designated one-hour fitness periods and since these periods are to occur during the official working day but not the first or last hour of the official working day, the use of an OGV is also prohibited for fitness activities undertaken before or after the regular 8-hour work day. Since the three one-hour exercise periods per week are authorized only the DEA Special Agents particiapting in a DEA authorized exercise program, prior written approval by the SAC or Country Attache is required for a Special Agent to utilize an OGV in this regard.

Only DEA Special Agents can be authorized the use of an OGV for participation in physical fitness activities. Office Heads are to ensure that all personnel under their supervision are aware of this policy.

6118.6 PHYSICAL FITNESS PROGRAM REQUIREMENTS FOR FOREIGN OFFICES

A. Foreign offices which have trained DEA Fitness Coordinators in place are expected to comply with all program requirements.

B. Participation in Phase I and II is required prior to departure to an overseas tour of duty.

1. Participation in Phase I and II should be accomplished while on scheduled trips to a domestic office (home leave, R&R, return for training, court of operational matters) or to a foreign office which has trained DEA Fitness Coordinators in place.
2. Scheduling of travel by foreign personnel (by CA or Office of International Programs (OF)) to a domestic office or to a foreign office which has trained DEA Fitness Coordinators in place should include meetings with available Fitness Coordinators to ensure that Phase I and II program requirements are met.
3. The DEA Fitness Coordinator will screen and assess foreign TDY personnel and provide the required file documents and data captured by the results of the Phase I and II screening and assessment process to the Headquarters Fitness Staff (AHMH) for retention in the fitness files. Documents will be submitted by registered mail, return receipt requested.
4. The Country Attache, or his designee, is to certify and be responsible for compliance to the program.

** Addition

C. Participation in Phase III of the established program (to include utilization of health club memberships) is voluntary while posted at foreign missions.

D. All foreign offices are expected to comply with existing policy guidelines regarding procurement and utilization of health club memberships.**

6118.7 BI-ANNUAL PHYSICAL FITNESS PROGRAM REPORT (See 6145.1)

** Addition

Subchapter 612 Equipment

(Also see Administrative Manual Chapter 03.)

6121 IDENTIFICATION

6121.1 POCKET COMMISSION AND BADGE

A. Issuance. At the completion of Special Agent basic training, each agent will receive a DEA badge and a pocket commission identifying the agent by name, signature and color photograph, and bearing the appropriate authority and signature of the Administrator.

B. Use. These credentials (commission and/or badge) will be presented as evidence of authority when requested or when necessary for identification purposes. Generally, the commission should be used for these purposes when dealing with the public or other authorities. Agents will keep their commission and badge in their immediate personal possession at all times on official duty, except when possession may compromise an undercover assignment.

C. Alteration. Any change or alteration of the commission or badge is expressly prohibited and may result in disciplinary action.

D. Loss/Theft. Agents must exercise caution to prevent the loss or theft of credentials to preclude their improper use. Loss/theft will immediately be reported to the SAC/CA/Office Head, who will immediately advise Headquarters PR and PS. Within 48 hours the SAC/CA/Office Head will follow up the initial notification to PS and PR with a teletype to PS, PR, BC, and AMG containing the same information required in 6122.7G.

E. Replacement

1. Commission. New commissions bearing a current photograph of the agent will be issued every 5 years, or whenever required by wear or damage. New photographs will be obtained locally and forwarded to the Office of Security Programs (PS), who will prepare the new commission. Upon receiving the replacement, the Agent will surrender the old commission to the Office Head (or his designee), who will forward it to PS for disposal. PS will maintain records of accountability and disposal.

2. Badges. Badges requiring repair or replating will be sent to PS by registered mail. PS will repair or replace the badge as appropriate and return it to the requesting office. No changes, alterations, or additions to the basic design and color are allowed.

F. Surrender. Upon separation from the service, the Agent will surrender his commission and badge to the Office Head (or his designee), who will forward them to PS for appropriate disposition. The agent's supervisor is responsible for reconciling outstanding credentials, and any other DEA property, with property records.

6121.2 PERSONAL BUSINESS CARDS. The use of personal business cards is optional, within the following policy guidelines.

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

CLASSIFICATION CODE
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DEA
NOTICE

Upon next revision of the Agents Manual

SUBJECT: USE OF DEADLY FORCE AND OFFICIAL GOVERNMENT VEHICLES

A. This notice updates the current guidelines and procedures for Sections 6122.13 and 6124.

B. These changes will be incorporated into the next revision of Chapter 61 of the Agents Manual.

6122.13 USE OF DEADLY Force

A. Agents are not to shoot any person except in self-defense, when they reasonably believe they or another person are in danger of death or grievous bodily harm.*

B. Firing warning shots is expressly prohibited. Agents will not fire at fleeing suspects except *when there is probable cause to believe the suspect poses a significant threat of death or serious physical injury to self or others.*

C. Shooting at a moving vehicle, tires, etc., with the intent of rendering it incapable of being operated poses a formidable danger to innocent parties and is prohibited. *This does not preclude firing at suspects inside the vehicle when there is probable cause to believe the suspect poses a significant threat of death or serious physical injury to self or others;* but the hazard of an uncontrollable moving vehicle must be taken into consideration.

D. Firearms will not be used to intimidate or coerce suspects or defendants who are not threatening an agent or another person. Agents will not brandish or unnecessarily display *firearms* in public areas. This does not preclude drawing a firearm in a situation *that* is threatening or potentially threatening. Agents will always use sound judgment in displaying firearms.

* Revision

Distribution: H-1,2,3C,3D,4,5
F-1 through 7

Initiated by: HQ OMC

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A. Authorization. Personal business cards are authorized only for use in business, professional, and law enforcement contacts. They may not be furnished to informants, defendants, or suspects. Personal business cards are authorized for:

1. Headquarters Agents occupying a position of Section Chief or higher within the organizational structure.
2. Field personnel occupying a position of Assistant Special Agent in Charge (ASAC), Special Agent in Charge (SAC), Resident Agent in Charge (RAC), or Group Supervisor.
3. Any Agent, with the approval of the SAC or Headquarters Office Head.
4. All foreign-based DEA Agents.

B. Design. Have the card printed in black ink on white card stock, containing the following data: the name of the individual, position title, "United States Department of Justice," "Drug Enforcement Administration," the office address and the office telephone number. The DEA seal may be used.

C. Cost. Expenses incurred in printing business cards are not reimbursable and must be borne by the individual.

**6121.3 AGENTS MANUAL. The Agents Manual is an accountable, DEA Sensitive document that shall be issued and handled in accordance with provisions of Subchapter 866 of the Planning and Inspection Manual. Public disclosure of its contents is not authorized, and care must be taken to ensure that it is accessed only by persons with the appropriate status, position and need to know.

A. Issuance. All DEA Special Agents and State and local officers assigned to DEA program funded or provisional task forces will be issued an Agents Manual and shall be responsible for conformance with the policies and procedures set forth therein. SACs, Country Attaches and Headquarters Office Heads may, at their carefully considered discretion, issue Agents Manual to:

1. DEA employees whose positions and functions require knowledge of the manual or portions thereof.
2. Cross designated U.S. Customs, Border Patrol or other Federal Agents detailed to DEA offices and working under DEA supervision.
3. FBI Special Agents detailed to DEA offices and working under DEA supervision.
4. DEA deputized State and local officers working case specific assignments under DEA supervision.
5. State and local officers assigned to DEA offices under the Intergovermental Personnel Act (IPA).

Issuing officials will obtain a signed receipt for each manual issued. Old manuals will be returned upon issuance of new editions, and manuals will be returned upon completion of assignment with DEA.**

** Addition

6122 FIREARMS POLICY

6122.1 GENERAL

6122.11 Statutory Authority to Carry Firearms. 21 USC 878 Authorizes DEA Special Agents to carry firearms.

6122.12 Carrying Firearms. *Agents will carry their weapons on their person holstered and with an adequate supply of ammunition. Deviations must have SAC approval.*

B. Non-Agent DEA Employees. Except for officers or employees of the Drug Enforcement Administration authorized by the Administrator pursuant to 21 USC 878 and 28 CFR 0.100 to carry firearms, no DEA employee may carry or possess any firearm on DEA-contolled premises or carry or possess any firearm while in the performance of his/her official duties. (See Standards of Conduct, Section 2735 in the Personnel Manual.)

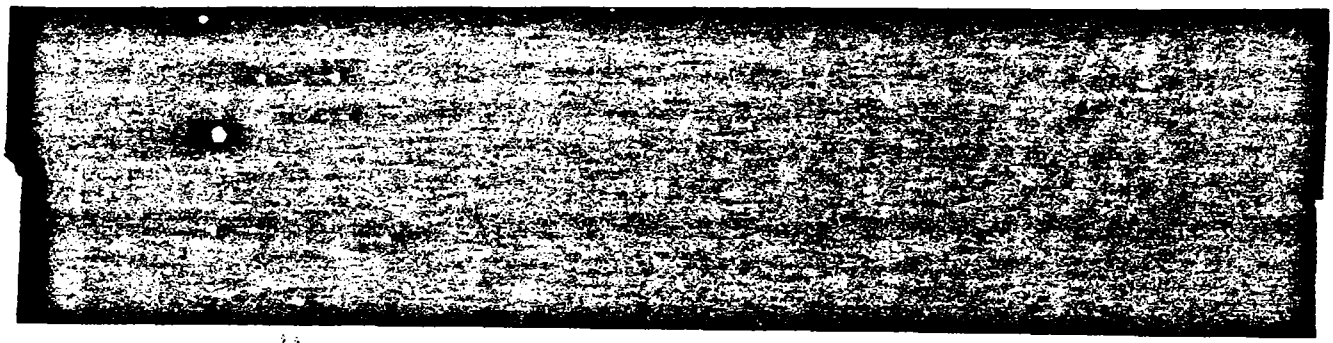
6122.13 Use of Deadly Force

A. Agents *or Task Force Officers* are not to shoot any person except in self-defense, when they reasonably believe they or another person are in danger of death or grievous bodily harm.

B. Firing warning shots is expressly prohibited. Agents will not fire at fleeing suspects or subjects except when the circumstances of self-defense exist, i.e., fear of death or grievous bodily harm exists.

C. Shooting at a moving vehicle, tires, etc., with the intent of rendering it incapable of being operated poses a formidable danger to innocent parties and is prohibited except in extreme circumstances. However, this does not preclude firing at persons inside the vehicle when justified; but the hazard of an uncontrollable moving vehicle must be taken into consideration.

D. Firearms will not be used to intimidate or coerce suspects or defendents who are not threatening an Agent or another person. Agents will not brandish or unnecessarily display a firearm in public areas. This does not preclude drawing a firearm in a situation which is threatening or potentially threatening. Agents will always use sound judgment in displaying firearms.



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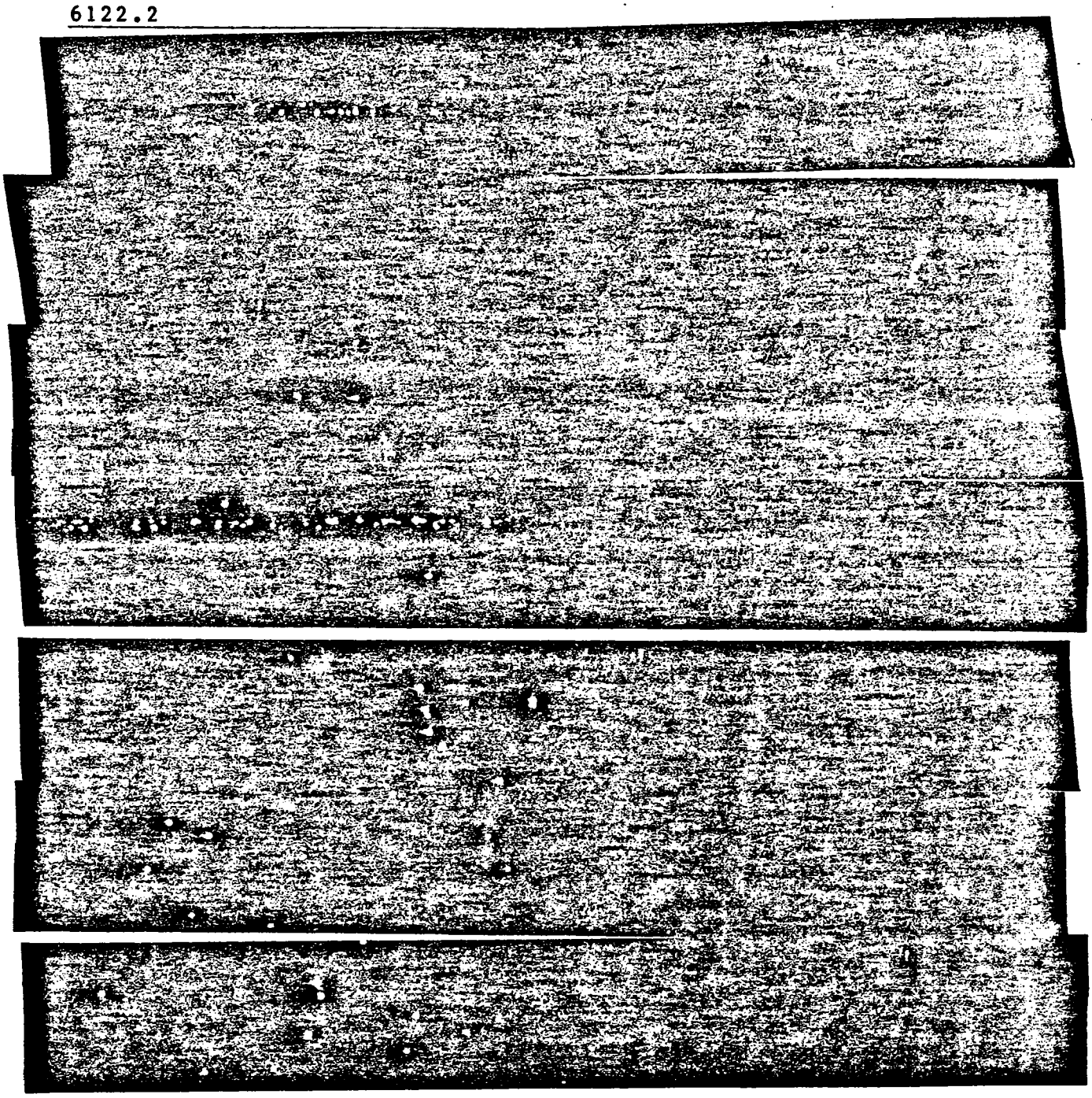

6122.4 FIREARMS TRAINING AND QUALIFICATION

A. Qualifications. All Agents will attend firearms training quarterly and will formally qualify semi-annually with their DEA-issued firearm *and/or* any personally-owned firearm they seek authorization to carry. Agents will also fire familiarization courses with other DEA-authorized shoulder weapons and must qualify with these weapons before specific authorization is granted to carry these special purpose shoulder weapons

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** Addition

operationally. Agents with authorization to use submachine guns must qualify every 60-days, **if the weapon is unblocked and every 90-days if the weapon is blocked.**

Agents assigned to Headquarters *staff positions will be required to qualify semi-annually.*

B. Firearms Training and Specialty Courses of Fire. Firearms training will be conducted on a quarterly basis. Specialty Courses, to include stress, decision, reduced light and night firing will be fired during these training periods. Instructions regarding this training and the speciality courses to be fired will be published in an Annual Firearms Training Directive prepared and distributed by the FTU.

C. During all training sessions, the Division Firearms Officers and their Assistants will exercise functional supervision *over the range, all participants and personally inspect all weapons for safety and authorized use prior to firing.

D. An Agent's certification of qualification and authorization to carry an authorized DEA or personally-owned firearm will be documented on DEA-279. Division Firearms Officers are responsible for the maintenance and update of DEA-279 for each authorized weapon with which the Agent is qualified.

E. Failure to Qualify. An Agent will not carry a firearm with which he/she has failed to qualify. Failure to qualify will be noted on the DEA-279 and immediately reported to the SAC, RAC and Headquarters Office Head by the respective Division's Primary Firearms Officer.

The SAC, RAC and Headquarters Office Head will suspend an Agent's authorization to carry that weapon with which he/she has failed to qualify until such time as remedial assistance by the Division Firearms Officer is provided and a passing qualification score is achieved.

An Agent failing to qualify with his/her issued firearm will be placed on limited duty until remedial training results in achievement of a passing qualification score.

An Agent failing to attend three consecutive quarterly firearms training sessions will be placed on limited duty by the SAC until firearms training and qualification is completed. SAC's may establish more stringent policy in this regard if they deem appropriate.

F. Reporting Requirements. Each SAC will notify the Firearms Training Unit by memorandum, the results of the quarterly training/qualification sessions within ten (10) calendar days following each session. The following information is required:*

1. Dates of training
2. **Type of session - qualification, training**
3. Ranges used

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4. Name of instructors
5. Names of Agents who have missed firearms training and make-up sessions
6. Specific reasons why training was missed
7. Names of Agents failing to qualify
8. Effective date of limited duty for Agents failing to attend training sessions or qualify or SAC's personal explanation as to why such action was not taken.

6122.5 SHOOTING

6122.51 Reporting Shootings

A. The following instructions apply to any discharge of a firearm by an employee (whether on or off duty) or officer of another agency during a joint investigation with DEA. Excluded from this are discharges of a sporting firearm in a recreational situation or a firearm discharged during training or practice on a firing range. This also applies to any assault on a DEA employee, DEA informant, or DEA Task Force Officer stemming from a job-related circumstance, or a DEA facility.

B. Any such incident will be immediately reported through the chain of command to the SAC or equivalent management official. If circumstances warrant, local authorities should also be notified.

C. The SAC will, in turn, immediately notify by telephone Headquarters Office of *Inspections (PI)* and the appropriate drug section. The Headquarters Communications Center will be used as a conduit for this purpose if the incident occurs during non-business hours. Within 24-hours of the incident (or by the next workday), the SAC will submit a teletype to *PI*, PR, Firearms Training Unit/*TR*, the appropriate drug section, **and the Board of Professional Conduct (BC)**, subject: "DISCHARGE OF FIREARM" or "ASSAULT ON _____." The teletype will contain the following information:**

1. Synopsis of incident (including case number and G-DEP classification, if applicable).
2. Date, time, and place of incident.
3. Identity of individuals involved and/or witnessing the incident.
4. Type of firearm and number of rounds fired (if an assault, its nature, e.g., bomb, firearm, etc.).
5. Identity of injured parties, if any, and nature and severity of their injuries.
6. Property damage, if any.

D. Every such incident will require an investigation and report. Depending upon the circumstances, *PI* may conduct an investigation of the incident, or direct the SAC to conduct an investigation, monitored by *PI*. **Any decision by the Office of Training (TR) to separately investigate the incident for possible impact on training programs must be coordinated with PI.**

E. FTU/TR will provide each Division and Country Firearms Officer with *DEA-485* (Report of Shooting Incident) to be completed and submitted within 10 days of the shooting incident to FTU/TR.

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F. **After a field Division advises PI of a shooting, an investigative PI case number will be issued, and that case number will be reflected on all reports. If the investigation is conducted by the field, within 10 working days the SAC will forward a complete shooting incident investigation report (original and two copies) including interviews and statements of participants and witnesses, diagrams, photographs and a copy of the Agent's current DEA-279 to PI. PI will review the package for completeness and then send one copy to the Office of Training (TR) and one copy to the Board of Professional Conduct (BC). TR will review and evaluate the material as a future instructional resource. BC will review the package for evidence of possible misconduct.**

6122.52 Post Shooting Requirements. *SACs and Country Attaches are to personally assure that when Agents are involved in shooting incidents, the incidents are handled in a proper and expeditious manner, and that:

1. Affected personnel receive immediate medical assistance if necessary.
2. Appropriate supervisors are on the scene or have been dispatched.*
3. The Division Trauma Team Member(s) (TTM's) are dispatched immediately to the scene of the incident.

a. TTM's have been trained to survey the scene and assess the number of victims.
b. TTM's maintain employee profiles on all Division employees which include their stated preference as to who they wish to notify, their spouse, parents and/or significant others. Employee's wishes must be respected. If the Agent's condition permits, encouragement is provided to have the Agent contact the family directly.
c. In instances when the Agent is injured, the TTM will follow procedures established for injured Agents. The TTM maintains a list of shock trauma units and other emergency medical resources in the geographic area of his Division.

4. Involved Agents are removed from the shooting scene as soon as possible.
5. Any statements required to be made by an Agent involved in a shooting will be in the presence of a DEA supervisor or higher DEA authority and only after the Agent has been afforded reasonable time to regain composure and is capable of understanding his or her rights.
6. **Involved Agents surrender weapons, if necessary, only to the on-scene DEA supervisor or other DEA management official. Only SACs may authorize the transfer of weapons to State or local authorities for evidence or ballistics tests.
7. Names of involved Agents are not released to news media personnel.
8. The shooting scene is secured; weapons of affected personnel collected, if necessary; evidence is properly preserved; and news media personnel do not interfere with the scene or with involved Agents.
9. Agents are assigned to accompany any injured suspect to record statements, admissions and declarations voluntariy made and to ensure security of injured suspect/defendant pending transfer of custody to USMS or state/local authorities.

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10. Appropriate supervisor, ASAC or SAC discusses legal ramifications for affected Special Agents with the Deputy Chief Counsel.
11. Affected Agents are to be seen by the area clinician within 48 hours of the incident as is required by agency policy in Personnel Manual Subsection 2792.4**
12. The EAP Program Manager will be contacted immediately and briefed on the incidence to ensure appropriate assistance is provided to the Agent and the Agent's family in a timely manner, and to provide clinical direction to the area clinician and guidance to the TTM.
13. **Affected personnel and their families are made aware of their entitlements, i.e., life and health insurance benefits, Workman's Compensation benefits, recovery of personal property, etc.
14. Security, if necessary, is provided for affected personnel and their families.
15. Appropriate and timely briefings are held for prosecutive, media and office personnel.**

*6122.53 Remedial Training for Accidental Weapon Discharge

A. To further enhance firearms handling, safety and proficiency, the following requirements apply whenever an accidental discharge of a firearm occurs by an employee of DEA, whether on or off duty.

1. SACs and Country Attaches should ensure the Office of Training is immediately notified whenever an employee is involved in a accidental shooting incident. The Office of Training will then arrange for remedial training to be conducted within the next 30 days at Quantico.
2. Normally SACs and Country Attaches will place employees involved in accidental discharge shooting incident on immediate limited duty. Such limited duty will continue until the employee has successfully completed the remedial training course. The maximum period of limited duty status of each occurrence is set at 30 days. SACs and Country Attaches have discretionary authority regarding placing the employee on limited duty and may, in some cases, elect to continue the employee in a duty status. Such decisions will be transmitted to the Deputy Administrator after the fact for information purposes and to ensure that they are exceptions to normal procedures.
3. SACs and Country Attaches will ensure that the weapon utilized in the accidental discharge is immediately sent to the Firearms Training Unit at Quantico for inspection by a qualified gunsmith to ensure the weapon did not malfunction. Any decision not to forward the weapon to Quantico for inspection must be approved by the Special Agent in Charge of Training.
4. At the discretion of the SAC of Training, after consultation with the Division SAC or Country Attache, remedial training may be conducted in the field by the Primary Firearms Instructor.

B. Any circumstances SACs or Country Attaches believe to be outside the scope of this policy should be discussed with the SAC of Training for concurrence prior to placing an employee on limited duty.*

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6122.6 RESPONSIBILITIES

6122.61 DEA Firearms Training Unit. It is the policy of DEA that all Agents are to be well trained and maintain a high level of proficiency in the use and safety of authorized firearms.

To ensure this level of proficiency and safety, Headquarters has established the Firearms Training Unit, Office of Training (Quantico). *The Firearms Training Unit is responsible for* the overall direction and coordination of all aspects of the DEA Firearms Program; monitoring DEA policy in firearms and related issues; and continually upgrading and improving training in firearms, tactics and safety as related to the duties of DEA Agents. The FTU will:

A. Standardize firearms training in domestic and foreign offices
B. Standardize weapons and ammunition used by DEA to ensure that DEA Agents are equipped to perform their enforcement duties
C. Establish policies and procedures for Division Firearms Officers and monitor field and foreign office implementation of the Annual Firearms Training Directive and any other policy directives regarding firearms issues.
D. Provide minimum standards of qualification and training with all DEA-issued or authorized weapons.
E. Centralize firearms and ammunition inventory and *develop* inventory guidelines and procedures for the Division Firearms Officers to follow.
F. Research, test, and evaluate firearms, ammunition, and *firearms* related equipment, and make recommendations regarding their use. **To ensure continuity of this program the FTU will be the sole DEA entity responsible for this function,**
G. Procure, assign, and distribute all firearms, ammunition, other equipment, and training aids to all domestic and foreign offices.
H. *Conduct firearms training and qualification for Headquarters staff and other members of the law enforcement community as require herein. Headquarters Primary Firearms Officer has been assigned to participate in this requirement.*
**I. Conduct all remedial firearms training for accidental discharges unless approved by SAC Training for field Division Remedial Training.
J. Certify and recertify all DEA Firearms Instructors.**

6122.62 SAC Responsibility. Division SACs and Country Attaches will ensure that firearms policy and training requirements as set forth herein and *outlined in* the Annual Firearms Training Directive from the Office of Training are adhered to by all Special Agents under their supervision.

6122.63 Division Firearms Officer

A. Each *field Division will have a designated Primary Firearms Officer (PFI) to assist the SAC in implementing DEA's Firearms Program. As set forth herein, and in accordance with the Annual Firearms Training Directive, the Primary Firearms Officer will:*

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1. Act as an extension of the Firearms Training Unit, Office of Training, and conduct quarterly firearms training, *and semi-annually qualification sessions and weapons inpections for all assigned Agent personnel; and ensure compliance with the Annual Firearms Training Directive regarding the Firearms Program.*
2. Conduct an annual physical inventory of *all stock issued and* personally-owned firearms authorized for use within their respective Divisions.
3. **Conduct an annual inspection and inventory of ballistic protective garments.
4. As required, advise the Firearms Training Unit through their SAC or Country Attache, of their annual requirements for firearms, ammunition, target materials and related equipment required for operational use and training.
5. Submit annual inventory and inspection reports for weapons and ballistic protective garments on July 1 of each year.
6. Prepare for SAC, Quarterly Firearms Training/Qualification Reports for submission to the Office of Training, TRDG by 10th calendar day following each session.**
7. Report any malfunction of firearms or ammunition to the Chief, Firearms Training Unit, Office of Training.
8. Advise Division SACs/Country Attaches of Agents failing to attend quarterly training sessions or failing to qualify.
9. Conduct other training or perform other firearms related duties at the direction of the SAC or request of the Office of Training, to include training in defensive tactics, arrest/raid planning and other enforcement techniques.
10. **Ensure that all purchases of firearms related equipment by field offices are approved by the Office of Training.**

B. *Only those DEA firearms officers currently certified by the FTU will conduct training/qualification sessions.*

C. DEA Firearms instructors must maintain an enhanced level of proficiency in order to conduct effective field firearms training programs. The Office of Training will conduct Firearms Instructor Recertification Training on a continuing basis. The course of instruction will consist of 80 hours of training over a 2-week period. Divisional Primary Firearms Instructors must recertify at least once annually in order to remain current on training techniques, tactical trends, firearms policy and firearms related equipment. Assistant Firearms Instructors must recertify at least once every 3-years. Firearms Instructors failing to recertify may be decertified by the Office of Training and prohibited from conducting firearms training. Firearms instructors assigned to overseas posts-of-duty are not required to recertify until return to CONUS.

6122.64 Special Agent Responsibility

A. Special Agents are required to maintain a high level of proficiency in the use and safety of DEA-authorized firearms. It is the responsibility of each Agent to attend quarterly training sessions. All Agents are required to *qualify with their respective authorized weapon(s) semi-annually and achieve the

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UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

DEA

NOTICE

CLASSIFICATION CODE
6122.65

Expiration: Upon next revision of the Agents Manual

SUBJECT: FOREIGN WEAPONS PROGRAM

A. This notice updates the current guidelines and procedures for the foreign weapons program.

B. These changes will be incorporated into the next revision of the Agents Manual.

6122.65 Foreign Weapons Program

A. The laws governing importing, possessing, carrying, or using firearms vary from one country to another. The Country Attache will ensure compliance with firearms policy as outlined in Subsection 6122 of the Agents Manual in addition to those established by the host country and provide agents under his direction with firearms and ammunition allowable under host country law. Upon assignment to a foreign post-of-duty, the agent may elect to surrender his issued firearm to the appropriate domestic firearms officer. **It should be noted that Federal law and regulations governing the export of firearms allow the consignment of firearms and ammunition approved by the U. S. Diplomatic Mission in the host country to U. S. Government employees provided such firearms and ammunition are for personal use and not for resale or transfer of ownership. DEA personnel assigned to foreign posts-of-duty are prohibited from selling or otherwise transferring ownership of firearms while abroad.**

B. Special Agents assigned to foreign posts-of-duty are exempt from the requirements outlined in the Annual Firearms Training Directive and the Agents Manual as to firearms qualification. However, upon home leave, court or other CONUS assignments, these agents will coordinate with OF and TR in order to arrange to qualify at the nearest DEA office.

** Addition

Distribution: A-1,2,3C,3D,4,5
F-1 through 7

Originated by: HQ ONG

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standards for qualification as mandated in the Annual Firearms Training Directive.* Failure to attend firearms training sessions and/or qualify can result in the Agent being placed on limited duty, loss of AUO and other sanctions. In unusual circumstances, documented in writing, such as extended TDY or sick leave, SACs may authorize additional make-up sessions or remedial training within 30 days after the Agent returns to duty.

B. Special Agents are personally responsible for the security, cleanliness, and maintenance of their issued firearms and all DEA approved personally-owned weapons.

C. Agents may carry authorized firearms while in an unofficial duty status. However, all policies governing their use and handling in an official duty status will apply.

6122.66 Aboard Aircraft

A. Public Law 87-197 prohibits unauthorized persons from carrying weapons aboard aircraft. Special Agents are excepted from this law. When traveling by air on official business, Agents should carry their firearm on their person. If in an extremely unusual situation an Agent must transport a firearm in checked baggage, the Agent will so advise the airline and declare orally or in writing that it is unloaded. The firearm must be transported in a locked container or bag, which can be opened only by the Agent, and be inaccessible to other passengers. The container may not be kept in the crew compartment.

In all instances, credentials must be displayed to appropriate airline officials and notification given prior to entering boarding areas where metal detecting equipment may be in operation. Under no circumstances will Agents surrender their firearm to airline personnel.

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Agents will act with utmost discretion to avoid displaying their weapon and giving cause for alarm to aircraft personnel or passengers. Agents will not consume any alcoholic beverages aboard the aircraft while armed.

B. When armed and operating in an undercover capacity, the Agent should not attempt to "deceive" airline or airport security personnel to maintain the Agent's cover. When necessary, surveillance Agents should prearrange the Agent's clearance through scanning devices.

C. Should an Agent be aboard an aircraft and a hijack situation develops, the Agent will take no enforcement action unless specifically asked to do so by the captain, and only then if in the Agent's judgment such action would not jeopardize the safety of other passengers.

6122.7 SECURITY SAFEGUARDS

A. Firearms Officers will ensure that all unissued firearms and ammunition are stored in a safe and secure manner when not in use. *The number of unissued (stock) handguns will not exceed 10 percent of the Division work force and/or one extra handgun in offices with less than ten Agents.*

B. Agents who are absent from official duty in excess of 30 *consecutive days are required to temporarily surrender custody of a DEA-issued firearm to the Firearms Officer and/or office head for safekeeping.*

C. When not being carried, a firearm *will be stored in a secure place.* Firearms will not be stored in an unoccupied vehicle.

D. Prior to processing a defendant or entering a detention area, the Agent will remove and secure all firearms from his person. In these instances, a second Agent will be present to assist the first Agent.

E. When storing a firearm at home, the Agent will take precautions to safeguard the firearm and the safety of others. All members in the household should be instructed in the danger of firearms.

F. All offices will have a safe, prescribed area removed from the presence of non-Agent employees, for loading, unloading, and examining firearms. If the weapon is not being worn/carried on the Agent's person in the office, it should be secured in *a safe* condition within a locked desk or cabinet. Dry firing of weapons is prohibited in DEA offices.

G. Any loss or theft of a DEA-issued or authorized firearm will be immediately reported to the SAC, who in turn will immediately advise Headquarters PR. The SAC *will then notify via teletype PR, TRDG, AMP, and the appropriate property custodian detailing the following: date of loss or theft; detailed description of the lost or stolen item, including identifying number, and a brief

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synopsis of the circumstances of the loss or theft. The SAC will assure that every measure is taken to recover the item; conduct appropriate investigation; and forward the investigative report to PR. Recovered DEA stolen weapons shall be returned to TRDG Quantico for thorough examination by the DEA Gun Vault prior to return to active service in the field.*

To account for lost/stolen weapons and remove same from DEA inventory of accountable property, a Board of Survey is required pursuant to Section 0314.3 of the Administrative Manual.

6122.8 **CRITICAL INCIDENTS AND FIREARMS POLICY REVIEW COMMITTEE. This committee will review all firearms policy issues, shooting incidents and other critical incidents or crises occurring in DEA. The committee will be composed of the following members:

Special Agent in Charge, Office of Training (Chairman)
Deputy Assistant Administrator, Office of Inspections (Vice Chairman)
Chief, Management Staff (OMG)
Chief, Investigative Support Section
Chief, Firearms Training Unit, Office of Training
Office of Chief Counsel Representative
Operational Support Division Representative

Depending upon the nature of the incident under review, the Administrator or the Chairman of the committee may appoint ad hoc members. The committee will meet after receipt of the final PI investigative report of any critical incident, TR report, or any other relevant materials. Within 30 days after the committee convenes, a final report will be issued to the Administrator.**

6123 OTHER EQUIPMENT

This section covers policies and procedures concerning miscellaneous law enforcement equipment. The most common items are included here. If an agent, in the course of his activities, encounters a new type of *firearm and/or firearm related equipment which may be of use to DEA, he should recommend it in writing through the chain-of-command to the SAC, Office of Training. The recommendation should include a description of the equipment; its application and benefit to DEA; and, if possible, the name and address of the manufacturer.*

6123.1 OTHER DEFENSIVE EQUIPMENT

A. Handcuffs. A set of handcuffs and a handcuff key will be issued to each Agent upon completion of basic training. Handcuffs will be routinely carried by agents when engaged in any type of enforcement activity (excluding undercover work). Policy as to the use of handcuffs is set forth in 6641.22. The use of thumbcuffs or "come along" claws is prohibited.

B. Binoculars and Cameras. Field offices will have an adequate supply of binoculars and camera equipment to meet enforcement needs. Binoculars may be assigned to Agents for any length of time. Camera equipment, due to its value and limited quantity, will be issued on an as-needed basis. The issuance and return of both binocular and camera equipment will be properly receipted.

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C. Battering Rams, Sledge Hammers, etc. Field management may authorize the purchase and use of battering rams, sledge hammers, and similar equipment as necessary to meet enforcement needs. **All procurement request must have FTU concurrence to ensure continuity.**

D. *Impact Weapons. Blackjacks, batons, and other similar impact weapons may be authorized by field management. They may be either purchased by the field office or personally owned. The impact weapon that is recommended for use and will be issued to basic agents as part of their equipment is the ASP Model 616 Expandable Baton.

Those agents carrying an impact weapon must obtain certification of training in its use from a DEA certified defensive tactics instructor. The batons are to be used in subduing a resisting or attacking individual. Each field office utilizing impact weapons will schedule routine training in their use to ensure a high level of proficiency and safety.*

E. Tear Gas, Mace, etc. The use of tear gas, mace or related products is prohibited. Should an enforcement situation develop in which tear gas may be necessary, field office management will make appropriate arrangements with State or local authorities to obtain the equipment and personnel trained in its use.

[redacted] A protective garment is available to each Agent. GM-14 and below will be issued a vest and are required to wear one of these garments in arrest and search situations. Proper maintenance of these garments includes periodic washing in cold water and drip drying.* Do not place them in automatic dryers or expose them to any other source of excessive heat, as this lessens the effectiveness of the garment.

G. Operations Jackets. In arrests, searches, and similar enforcement situations, it is important that members of the enforcement team (1) are all readily recognizable to each other, and (2) project an appearance of authority.

The normal attire for these activities will be business clothing with official DEA badges prominently displayed. If all team members are normally attired and familiar with each other, then the use of operations jackets will be at the supervisor's discretion. Where all members of the team cannot be so attired, or where all members of the team are not familiar with each other, then DEA operations jackets will be used.

In certain unusual situations where, in the supervisor's opinion, the wearing of operations jackets might increase danger to team members, they need not be used. Only sworn DEA personnel on official DEA business may wear operations jackets.

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Each Agent will be issued an operations jacket. When not in use, these jackets will be stored in secure locations. The loss or theft of a DEA operations jacket will be handled in the same manner as that of Agent credentials (see 6121.1D).

6123.2 COMMUNICATIONS EQUIPMENT

A. Radio Communications. The following broad policy guidelines will be adhered to throughout DEA. Field office managers may develop more specific policies for their areas.

1. All communications will be professional and businesslike, and in conformity with FCC regulations.
2. Messages will be as brief as possible, and only for necessary purposes.
3. Communications by radio are subject to interception. Assume that any message sent will be intercepted. Transmit sensitive information by telephone, or use one-time codes for specific operations.
4. For those Divisions that have voice privacy capability: when practicable radio users will transmit all messages in the coded mode. Exigent circumstances will dictate when clear mode transmissions are necessary.
5. All radio equipment will be maintained in proper working condition. This responsibility rests with the Agent to whom the equipment is assigned.
6. All radio equipment will be handled and stored in as secure a manner as possible.
**7. When making a call, radio users will identify themselves first by using their own call sign and then identify the party called by using that party's call sign.
8. To enhance brevity and uniformity, use the following designators whenever possible:**

10-1	Unable to understand message.
10-2	Transmission is loud and clear.
10-4	Acknowledged - message understood.
10-5	Relay messages.
10-6	Stand-by.
10-7	Out of service (give location and/or telephone messages).
10-8	In service.
10-9	Repeat.
10-10	Prisoner present (note time in log).
10-15	Informant present (note time in log).
10-19	Return to _____.
10-20	Location.
10-21	Call _____ by telephone.
10-22	Disregard.
10-25	Meet with _____.
10-28	Vehicle registration information.
10-29	Check records.
10-30	Subscriber information.
10-33	Emergency traffic.
10-99	Emergency - agent needs assistance.

9. When spelling words or giving alpha-numeric numbers, use a phonetic alphabet when necessary:

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A	Alfa	N	November
B	Bravo	O	Oscar
C	Charlie	P	Papa
D	Delta	Q	Quebec
E	Echo	R	Romeo
F	Foxtrot	S	Sierra
G	Golf	T	Tango
H	Hotel	U	Uniform
I	India	V	Victor
J	Juliet	W	Whiskey
K	Kilo	X	X-Ray
L	Lima	Y	Yankee
M	Mike	Z	Zulu

B. Telephone Communications. (See the Administrative Manual, Subchapter 092.) Except in cases of emergency, the use of DEA-leased telephones for personal business is prohibited. The approved method of making long-distance official calls is through the Federal Telecommunications System (FTS). The FTS Users Guide contains instructions for using this system.

6124 OFFICIAL GOVERNMENT VEHICLES

See also the Administrative Manual, Subchapter 032. An official government vehicle (OGV) is any vehicle acquired by DEA through lease, purchase, or forfeiture.

** Addition

6124 OFFICIAL GOVERNMENT VEHICLES

See also the Administrative Manual, Subchapter 032. An official government vehicle (OGV) is any vehicle acquired by DEA through *purchase, forfeiture, lease or ~~interagency transfer. Vehicles leased for periods of 60 days or more shall be assigned DEA identification numbers and handled in full accord with the provisions of this subchapter.~~*

6124.1 ASSIGNMENT

A. OGV's will be assigned to field offices in accordance with Section *0320.2* of the Administrative Manual. With the exception of designated pool vehicles, field offices will assign OGV's to individual employees. Such assignments will be in the interest of DEA and are not an employee prerogative.

B. An OGV may not be assigned to or operated by any employee who does not possess a valid state operator's license.

*C. Upon placement into service, the Property Management Unit (AMPP) will classify every DEA vehicle as follows:

1. Special Purpose

a. Those vehicles which are not of general utility [redacted] or those which are valued at $30,000 or more at the time they are placed into domestic service (e.g., certain luxury-type cars whose only purpose is for undercover use).

b. With the exception of those vehicles assigned to GS 1802 investigative assistants for technical operations, special purpose vehicles will not be assigned to individual employees, nor will they be used for purposes other than that for which th were placed into service.

c. Special care must be taken with regard to those vehicles whose purpose is to facilitate undercover work or cove surveillance. These should be kept in a [redacted] secure location and removed only for their intended purpose or for maintenance/servicing purposes.

d. A log book will be kept for these vehicles. Each time the vehicle is used, a log entry will be made. The log bc will have the following headings:

* Revisi

Date
Employee utilizing vehicle
Synopsis of activity
Case number
locale of use
Beginning mileage
Ending mileage

The log book should not be kept in the vehicle but in a central, secure location.

2. Nonstandard

Those vehicles which when new were valued at $30,000 or more, but due to age, mileage or condition are worth less than this at the time they are placed into service.

Nonstandard vehicles should not be assigned to SACs or ASACs, used to transport outside dignitaries or visiting officials, or used in other manners that may create an erroneous appearance of agency largesse.

3. Standard. Those vehicles purchased under GSA/State Department contract, or any seized or transferred vehicles not meeting the criteria for 1 or 2 above.

D. Standard and nonstandard vehicles, because of their general utility, are grouped under the heading "Primary" vehicles for the purpose of establishing vehicle ceilings (See Administrative Manual 0320.2). Special purpose vehicles are not counted against field office ceilings. However, ARP will monitor the number, types and utilization of special purpose vehicles in the field and make adjustments as necessary to assure appropriate utilization. Instructions for requesting conversion of a special purpose vehicle to a primary vehicle, or the converse, are found in section 0320.1 C and D of the Administrative Manual. Barring exceptional circumstance, all vehicles assigned to foreign offices will be considered primary vehicles.

E. Limited production vehicles such as the Rolls Royce, Maserati, Ferrari, Clenet, Zimmer, Lamborghini, Delorean, etc., will not be placed into official use. These and similar vehicles are exceptionally expensive to maintain and so distinctive it is not in DEA's best interest to place them into official use.

F. It is absolutely forbidden to use a seized vehicle prior to notification by Headquarters that forfeiture proceedings have been completed and the assignment of a DEA vehicle identification number.

6124.2 VEHICLE IDENTIFICATION

A. Upon placement into official use (or, in the case of a leased vehicle, where the lease is to extend beyond 60 days), AMPP will assign a specific seven character identification number to each vehicle. Once assigned, this number will be recorded on all documents related to the use of this vehicle (e.g., maintenance records, repair bills, gasoline receipts, etc.).

B. All DEA vehicles will be registered and inspected in full accordance with the laws of the State in which they are assigned.

C. Liaison should be established with appropriate state authorities such that DEA vehicles can be registered in a manner not subject to compromise in security (i.e., the fact that they are DEA vehicles is not discloseable to routine inquiry).

[redacted]

E. DEA vehicles will not bear any markings identifying them as such. A DEA Official Business placard may be used for parking in those situations where such use would not compromise security. DEA Official Business placards may only be used for DEA vehicles.*

6124.3 USE

6124.31 Unauthorized Use. (See Appendix A.)

6124.32 Travel Between Domicile and Work

A. GOV's will not be used for routine commuting to and from work. *No Special Agent may utilize an GOV for home to work transportation unless he or she is duly certified to do so. Special Agents and Investigative Assistants assigned to Technical Operations Units may be certified for home-to work use of an GOV provided their duties require they be continually available for communications and recall to duty, that their duties would be rendered inefficient or unsafe without home-to-work transportation, or that the activities performed by them would be adversely affected by lack of home to work transportation.*

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1. Requests to use an OGV for home-to-work transportation will be made on a DEA Form 349b. *This form must be completed annually at the start of the calender year. It must also be completed whenever there is a change in home address or whenever an OGV is first assigned or reassigned to an agent.*

**2. The continuing need for home-to-work transportation must be recertified by the SAC, ASAC or Country Attache every 90 days. This may be accomplished by issuing a single comprehensive memorandum rather than through individual forms 349b. The memorandum must list the name of each employee to be certified, the office or group to which assigned and the OGV number. The memorandum must contain the following certification:

> I have personally reviewed the duties and activities of the following personnel from the perspective of their involvement in criminal investigations. I have determined that their duties require them to be continually available for recall to duty, that their duties would be rendered ineffective or unsafe without home-to-work transportation, or that the activities performed by these personnel would be adversely affected by lack of home-to-work transportation.
>
> (list names, office/groups and OGV numbers)
>
> I therefore certify that home-to-work transportation is necessary for the above named employees for the safe and effective performance of criminal law enforcement duties.

The memorandum must be signed by the SAC, ASAC or Country Attache and filed with the forms DEA-349b in a master file at the issuing office.

3. In assessing the request for certification for home-to-work utilization of an OGV, the SAC, ASAC or Country Attache will review duties and activities of the requesting employee to personally assure himself or herself that the above criteria are met. It is also necessary to determine if the employee's residence is located within the maximum allowable distance established for the particular office to which the employee is assigned (see Number 4 below).

4. Federal regulations (41 C.F.R. 101-6.402) state that, "Each Federal Agency shall consider the location of the employee's residence prior to authorizing home-to-work transportation. Such transportation shall be authorized only

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within the usual commuting area for the locale of the employee's place of employment. Accordingly, SACs and Country Attaches will publish division orders or office directives establishing a maximum home-to-work distance policy for each office under their supervision. He/she will ensure that all employees newly assigned to the division or office are informed of the policy prior to relocation.

Any requests for exceptions to the maximum distance policy should be rare and must be fully supported and justified to be considered. Such requests should be forwarded through the chain of command to the SAC or County Attache. If the SAC or Country Attache concurs, the request will be forwarded to the Deputy Assistant Administrator for Operations (DO) for approval or non-approval.

SACs and Country Attaches will review and update their maximum home-to-work distance policies, and submit these annually to Headquarters, Property Management Unit(AMPP).**

6124.33 Operating Safety

A. Field office management will arrange for appropriate training programs in defensive driving. *All employees are expected to drive in a defensive manner and obey all traffic laws.

B. In certain enforcement situations agents may have to violate traffic or parking laws. However, safety of the public and the agent have higher priority than any enforcement activity. Traffic and parking laws will not be violated to the detriment of public and personal safety.*

C. Traffic and parking citations will be reported to the employee's supervisor within 48 hours. Field office management will establish liaison with appropriate area officials to handle citations arising out of official activities. In each instance, the circumstances causing the citation will be reviewed. Any indication that an employee is abusing his authority will be cause for him to assume personal responsibility for the citation. DEA is prohibited from paying fines for traffic violations.

D. **"Emergency driving" is generally described as the need for agents to drive from one place to another in an expeditious manner to respond to what they reasonably believe to be an emergency. "Pursuit driving" generally refers to the following of a suspect vehicle for the purpose of making an apprehension. High-speed pursuit or emergency driving, in general, occurs when

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posted speed limits are exceeded and/or other traffic laws are justifiably violated. Except in extraordinary circumstances (i.e., the life of an agent or another person is at stake), high-speed pursuits of fleeing suspects or high-speed emergency responses are expressly prohibited. In the event that an extraordinary circumstance necessitates a high-speed pursuit or emergency response, variables including, but not limited to, the following must be considered prior to and throughout the pursuit or response:

1. The actual severity of the offense committed or emergency situation.

2. The probability of locating/apprehending the violator(s) at a later time if the pursuit is discontinued.

3. Weather and road conditions.

4. The volume of vehicular and pedestrian traffic.

5. The time of day (daylight or darkness).

6. The OGV's capabilities versus that of the violator's vehicle.

7. The availability and/or accessibility of emergency lights and sirens for OGV's.

8. The availability of uniformed police officers in marked patrol cars to conduct or assist in the pursuit.

If, in the judgement of the driver(s) of the OGV(s) involved, the potential risks outweigh the benefits to be derived from continuing a pursuit or emergency response, such pursuit or response should be terminated. Agents who operate an OGV in a high-speed pursuit or emergency response will drive with due regard for the safety of all persons. Agents must be familiar with and adhere to the applicable state statutes governing the operation of emergency vehicles (i.e., the provisions authorizing operators of emergency vehicles to exceed posted speed limits, proceed past stop signals, disregard regulations governing the direction of movement or turning in specific directions, park in restricted zones, etc.).

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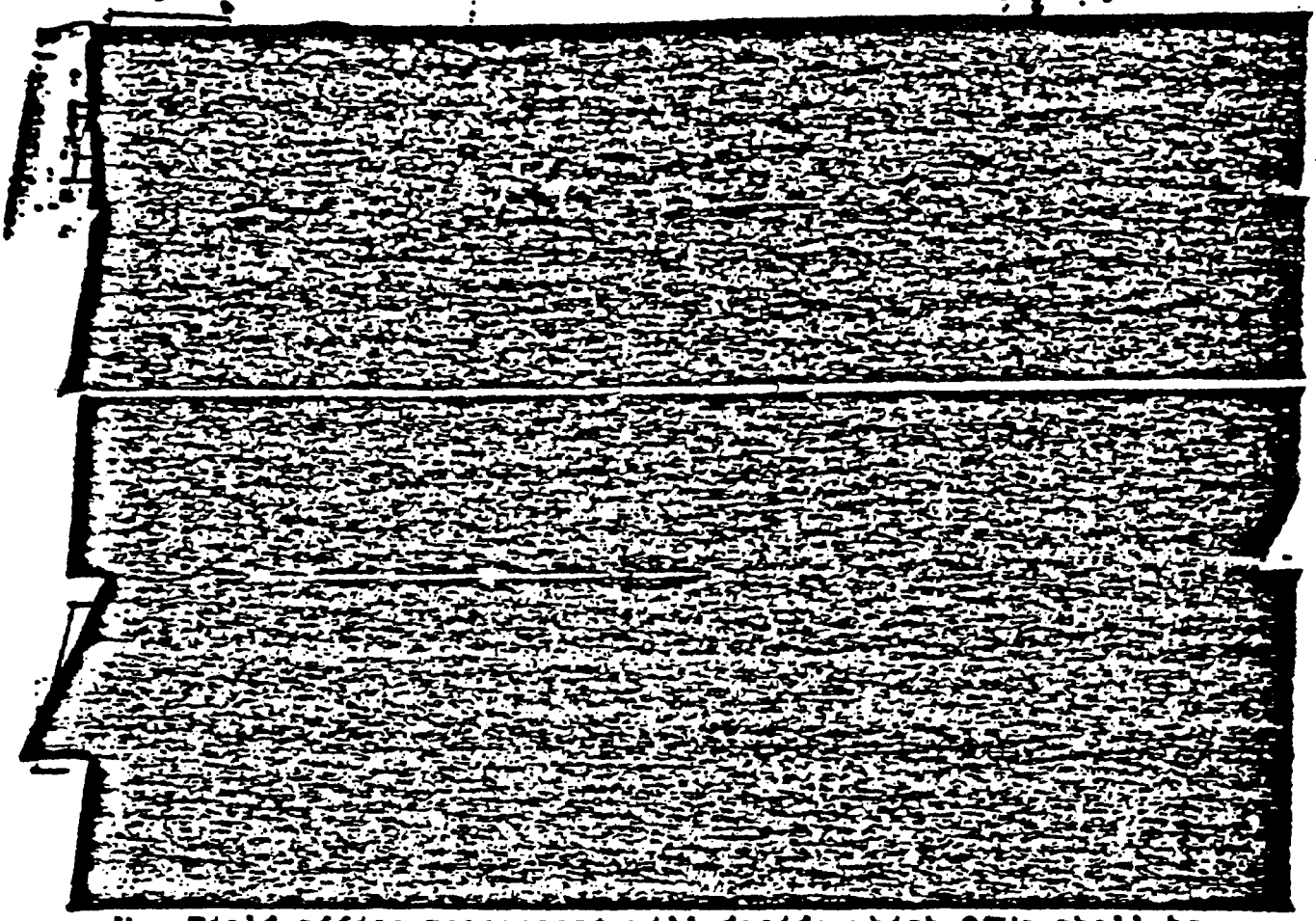

H. Field office management will decide which OGVs shall be equipped with emergency lights and/or sirens, based upon operational requirements. Field office management will purchase and install this equipment according to state and/or local ordinances. (The use of personally owned emergency equipment is prohibited.) This equipment may only be used in the following situations:

1. To stop a vehicle for the purpose of making an arrest or executing a search warrant.

2. **During a high-speed pursuit or emergency response.**

3. As a warning device **at a road block or** when the OGV i disabled along the roadside (lights only).

4. *In other enforcement situations in which the use of emergency equipment is justified.*

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When utilizing emergency lights and sirens during a high-speed pursuit or emergency response, the equipment should be activated continuously throughout the pursuit or emergency response, and the driver of an OGV utilizing such equipment must never assume or expect that vehicular or pedestrian traffic will always yield the right of way to the OGV. Agents will utilize emergency lights and sirens in accordance with applicable state and/or local statutes.

I. Field office management will ensure that the following equipment is purchased, maintained in operating order, and placed in each OGV:

1. Good spare tire.
2. Jack and lug wrench in good working condition.
3. Dry-type fire extinguisher.
4. Flares.
5. First aid kit.
6. Flashlight.

J. Federal regulations and DEA policy require all front seat occupants of OGVs to wear seat belts. Disciplinary action may be taken for violation.

§124.34 Use by Non-DEA Personnel

(No change under this section)

§124.35 Use in a Foreign Country

(No change under this section)

**§124.36 Maintenance and Repairs

It is the responsibility of the employee to whom an OGV is assigned to assure that all required maintenance service is performed at the appropriate intervals. Failure to do so could result in disciplinary action or personal liability for damages attributable to neglect. Instructions concerning the maintenance and repairs of OGV's are set forth in section 0322 of the Administrative Manual. All Special Agents are to be familiar with these instructions.**

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6124.4 THEFT AND VANDALISM

A. Employees will assure that unattended OGV's are properly secured and locked. *Equipment left in the OGV will be limited to basic tools and equipment of a nonsensitive nature, and these will be locked in the trunk. Portable radios, camera, technical equipment and similar sensitive and costly equipment will not be left in an unattended OGV.*

B. Official funds will not be stored in an unattended vehicle.

C. **Sensitive documents and notes will not be stored in an unattended vehicle.

[redacted]

E. *Vandalism to or a theft of the OGV or any equipment in the vehicle will be reported to field office management immediately, and management will ensure that appropriate local authorities and, if applicable, the FBI are promptly notified. Theft or vandalism to an OGV will be reported in the same manner as an accident (see 6124.51 below) except that forms SF-91, OF-91A, SF 94 and OF-26 do not apply. Thefts or damage to property valued in excess of $100 will be reported and processed in accordance with the Personal Property Negligence/Liability Assessment Process (LAP) as set forth in DEA Notice 0317. A finding of negligence on the part of the employee may result in disciplinary action and/or personal liability. Efforts taken to apprehend the perpetrator(s) and/or recover the property should be included in the DEA-29 and accompanying memoranda. If a stolen vehicle is subsequently recovered, this fact should be reported via teletype to Headquarters (AMPP and BC).*

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B. Official funds will not be stored in an unattended vehicle.

C. In a Government garage or other commercial facility where the car doors must be left unlocked, all equipment will be kept in a locked trunk, inaccessible to the garage operators. Vandalism to or a theft of the OGV itself, or any equipment in the vehicle, will be reported to field office management immediately, followed by a detailed memorandum of the circumstances within 48 hours. Field office management will notify all appropriate authorities (Headquarters (PR), local police, FBI, etc.). Thefts or damage to property valued in excess of $100 will be reviewed by a Board of Survey (see 031 of the Administrative Manual). A finding of negligence on the part of the employee may result in disciplinary action and/or personal liability.

*6124.5 Accidents. (See also Administrative Manual 0327 and Personnel Manual Section 2735.) The following procedures apply to all DEA-controlled conveyances whether owned, leased, rented, or borrowed for official use by DEA, a DEA employee, or assigned/contract employee, including: land vehicles (car, truck, bus, motorcycle, etc.); aircraft (fixed wing, helicopter, glider, etc.); or marine vessels (boat, barge, etc.).

6124.51 Reporting

A. Should an accident involving a DEA-controlled conveyance occur, regardless of the amount of damage, the employee-operator will take the following steps. If the employee-operator, due to injury, cannot perform these tasks, then the senior employee at the scene will do them.

1. Take appropriate measures to see that injured persons are tended to, and that the scene does not create a hazard to passing traffic.
2. Notify local authorities (and if applicable NTSB, FAA, or the U.S. Coast Guard); if not notified, explain in SF-91 or in DEA-6.
3. Avoid making statements to any witnesses or other parties to the accident as to cause or fault.
4. Obtain the identities of participants and witnesses.
5. Notify immediate supervisor as soon as possible (i.e., as soon as the circumstances of the accident will permit the employee to do so).

B. All accidents involving a DEA-controlled conveyance will be reported by the supervisor to the SAC/CA/Office Head in whose territory the accident occurred, within 24 hours. The SAC/CA/-Office Head will in turn notify the Office of Professional Responsibility (PR), Board of Professional Conduct (BC), the Property Management Unit (AMPP), the DEA Safety Manager (AHMH), and Office of International Programs (OF) and Investigative Support Section (OS), if appropriate, within 1 working day by teletype. Immediate notification of the SAC/CA/Office Head, and OF, if applicable, is required if any of the following conditions exist:

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1. An arrest or lawful detention of the DEA operator.
2. Any indication or allegation that the employee was operating the conveyance under the influence of alcohol or drugs, leaving the scene of the accident, or operating outside the scope of employment.
3. Where there is a recognized potential for adverse publicity.

C. The employee/operator (or the supervisor) will submit an accident package to the SAC/CA/Office Head within 10 working days for investigation. All prepared reports should be completed according to Agents Manual, Subsection 6211.1. The accident package will include:

1. Completed SF-91, Operator's Report of Motor Vehicle Accident. Insurance and policy numbers for nongovernment controlled conveyances involved will be reported in Item VI on the SF-91 after estimated amount of damage; use for aircraft and vessel accidents also.
2. One (1) estimate, if damages are under $1,000, and three (3) estimates if damages are over $1,000.
3. OF-26, Data Bearing Upon Scope of Employment of Motor Vehicle Operator; used by pilots and vessel operators also. (Form requires specific detailed information; i.e., purpose of trip). The signature of the operator and supervisor certifies that the data is accurate and that use was for official purposes unless otherwise indicated.
4. If applicable, a copy of the CA-1, Federal Employees Notice of Traumatic Injury and Claim for Compensation.
5. If necessary, a DEA-6 setting forth any extenuating circumstances (e.g., statement by other driver, witness statement, etc.).

D. The SAC/CA/Office Head will initiate an investigation of all accidents involving all DEA-controlled conveyances by assigning an investigator promptly after receiving the package, taking into consideration that all aircraft-related accidents must be investigated by a DEA-certified Special Agent Pilot, vessel-related accidents must be investigated by DEA-certified Special Agent Boat Handlers, and the investigator must be of equal or higher rank than the operator. The investigator will conduct interviews, complete, obtain, and submit:

1. SF-91a, Investigation Report of a Motor Vehicle Accident. Use for aircraft and vessel accidents also.
2. SF-94, Statement of Witness, from each witness and participant including drivers/passengers of all involved vehicles.
3. Photographs of the accident scene and damage to the Government-controlled conveyance and any other damaged property.
4. Obtain a copy of the reports prepared by local authorities, including a code sheet identifying entries on reports, if applicable, NTSB and FAA (aircraft accidents) and the U.S. Coast Guard (vessel accidents), and citations issued, if any.
5. If personal injuries were involved, interview the attending physicians; where possible, obtain written statements or copies of treatment records.
6. Determine the cost of repairs of damages sustained by non-Federal vehicle(s) or property. Obtain a copy of estimates, if possible, or a paid receipt for the repaired damages.

7. DEA-6: if injuries/death are involved; local authorities were not notified; property other than Government-controlled was damaged; witness refuses to give a written statement but makes oral statement as to cause or liability; or extenuating circumstances exist which cannot be fully covered in the SF-91a. DEA-6 must also include:

a. Identifying contributing factors identified in official reports;
b. Statement of the causes of the accident identified in official reports;
c. Attempts to resolve conflicting statements/facts; and
d. Explanation of failure to provide any of the data required and/or failure to meet established deadlines, if appropriate.

8. Copies of any SF-95's, Claim for Damage, Injury, or Death, that have been filed.

E. The accident investigation will be completed within 10-working days of assignment. The accident package, containing all available original documents and required copies listed above, will be forwarded by the SAC/CA/Office Head by cover memorandum entitled "Accident, (Date), (DEA Conveyance Identification Number or rental license tag number)" to the Board of Professional Conduct (BC), with a copy of the entire package to the Chief Counsel (CC), and Property Management Unit (AMPP). Send a copy to the Operations Division, Investigative Support Section (OS), if the accident involved an aircraft or vessel. All reports must be legible, translated if appropriate, and submitted to Headquarters within thirty (30) days of the accident.

F. Subsequent material concerning the accident received or generated will be distributed in the same manner.

Note: Completed files on accidents will be maintained by BC, CC, AMPP, and the SAC/CA/Office Head. Sufficient copies of each document will be made to supply these files. These files will be disposed of according to Administrative Manual Appendix 0750A, (FFS: 1040-01.)

G. The Board of Professional Conduct will review all accidents, determine culpability, issue a clearance/caution letter, and propose disciplinary or adverse action as appropriate. In the case of a non-DEA employee, BC will review the accident, and send appropriate notification of its findings to the SAC/CA/Office Head. Upon completing its review, BC will return its copy of the package to the SAC/CA/Office Head. The SAC/CA/Office Head will transmit a copy of the accident package to the appropriate senior-level official of the officer's parent agency, recommending review and action according to that agency's policies.

H. That SAC/CA/Office Head shall also review each accident from a safety and preventative standpoint, and institute remedial measures where appropriate. The DEA Safety Manager (AHMH) will exercise a parallel responsibility from a DEA-wide standpoint.*

6124.6 MAINTENANCE, SERVICE, AND REPAIR. (See 0327 in the Administrative Manual.)

* Revision

Subchapter 613 Official Funds

6131 GENERAL

This subchapter is a guide for employees handling official funds in routine activities. Field management, at its discretion, may impose additional requirements as appropriate.

In general, DEA will pay for all just and proper expenses incurred by an employee in the course of official duties, provided the employee adheres to these requirements. Expenses incurred outside these requirements may result in nonreimbursement. The use of official funds for personal or unofficial purposes may result in disciplinary/adverse action.

6132 TRAVEL EXPENSES

(See DEA Supplement to DOJ Order 2200.11.)

NOTE: Prior to any operational travel to another Division, the ASAC of the originating Division must confer with the appropriate ASAC of the receiving Division for concurrence. The Originating Office will submit to the receiving Division a brief cable or memorandum outlining the Operational Plan and projected itinerary at the earliest opportunity. The involved ASACs will agree on an operational plan and proposed travel submitted by an originating office. Both ASACs will make every effort to assure overall goals of DEA are adhered to and parochialism is not a factor in the planning. The receiving ASAC will consider such factors as significance of the violators, feasibility of the operational plan, and availability of manpower and resources in the receiving Division.

The receiving Division will have authority to accept or reject operational travel from other Divisions. When concurrence for travel is given, the receiving Divisions will be responsible for field decisions relating to any activities within their area based upon their familiarity with local problems, violators, safety and other priorities.

6133 NONTRAVEL EXPENSES

6133.1 INVESTIGATIVE EXPENSES

6133.11 General

A. Investigative expenses are those authorized expenditures incurred by agents while in an undercover environment or surveillance. They must directly relate to the continuing development of an investigation and/or to established informants.

B. Investigative expenses may be paid either from a standing advance, or through funds advanced by a DEA Form 12, or through the personal funds of the agent. Investigative expenses will be claimed on an SF-1012, Travel Voucher, or an SF-1164, Claim for Reimbursement for Expenditures on Official Business. The voucher will include a statement as to how these expenses were necessary to the investigation. By signing the voucher, the approving

official is attesting to the validity and necessity for all items on the voucher.

C. Each Agent will voucher his own investigative expenses rather than submit one collectively for several agents. The only exception to this is where the expenses were incurred during an undercover meeting with a suspect, where keeping track of individual costs could hinder the investigation or otherwise be too difficult.

D. The circumstances surrounding the incurrence of investigative expenses will be fully documented via the DEA Form 6 reporting the situation in which they were incurred.

6133.12 Meals and Beverages

A. Expenditures for food or beverages based solely upon an employee having to work unusual hours, or stemming from liaison conferences, are not reimbursable. An exception to this is expenses incurred when debriefing foreign law enforcement officials in a foreign country. In this instance, reasonable expenses may be reimbursed provided the debriefing is directly related to a specific case.

B. Meal and beverage costs will be listed separately in the voucher, unless they were incurred in a manner which makes this impractical. The voucher must show the number of drinks purchased, the total costs of all drinks, the names and law enforcement affiliation of each individual included in the cost, the case and/or informant number, the name and address of the premises, and the times of day when the costs were incurred.

C. Costs of beverages purchased during a surveillance in other than a commercial establishment, such as in an automobile, cannot be reimbursed unless a suspect is present as a passenger and the purchase can be justified as being vital to the investigation.

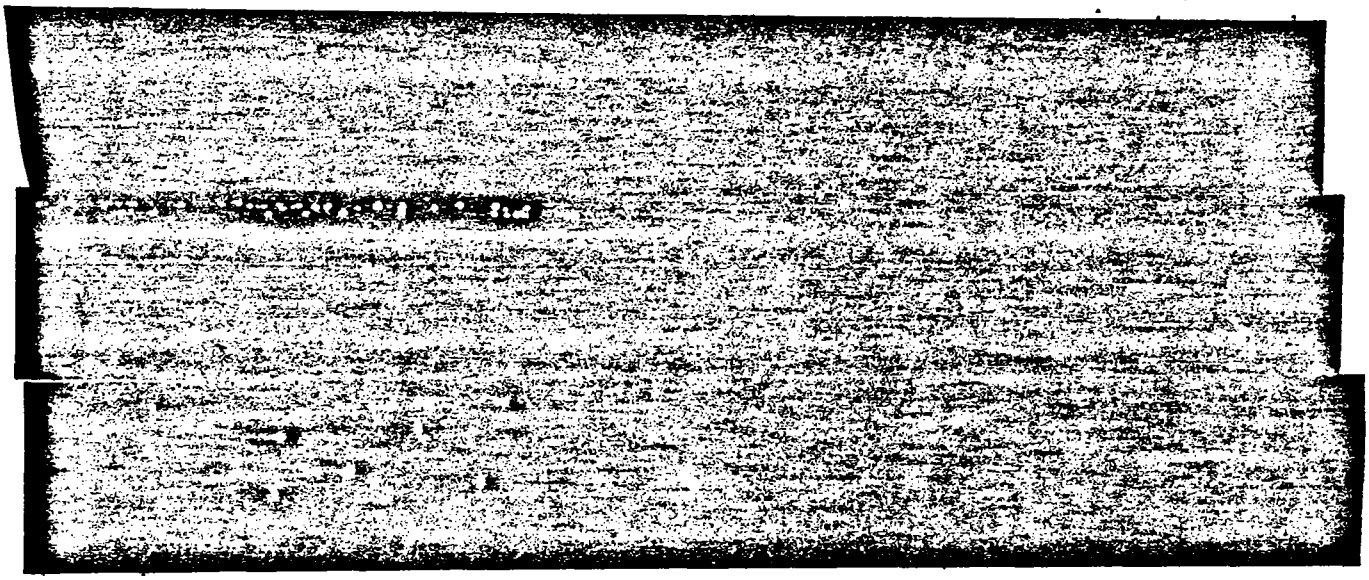
D. The cost of meals consumed by an undercover agent during normal meal times which exceeds what he would ordinarily spend is reimbursable, but only the excess cost will be allowed. If the Agent is TDY, he may claim the entire meal as an investigative expense, but his per diem will be reduced by an equivalent amount.

6133.13 Other Undercover Expenses. Rentals, purchases, and services required to further an investigation must be authorized by the Group Supervisor or RAC. This includes such expenses as: the short-term rental of undercover post office boxes, undercover hotel rooms or vehicles; the installation and operation of an undercover telephone; etc. These expenses must be receipted unless doing so would jeopardize the investigation. Where an undercover room, used by an Agent for lodging, is vouchered as an investigative expense, no separate claim for lodging may be made. If the agent is TDY, and does not use the room for lodging, he may claim separate lodging, provided he makes a statement to this effect on the voucher.

The costs of personal comfort items such as toiletries, prescriptions, clothing, luggage, etc., are not reimbursable.

6133.14 Gambling Losses. Official funds expended on undercover gambling activities are reimbursable if these activities were authorized beforehand. If the amount of the stake is to exceed $100, authorization must be obtained from the SAC (or higher authority, depending on the amount). Participation in minor gambling pool halls or at low stake card games requires only the prior authorization of the RAC or Group Supervisor. Any such expenses must be clearly necessary to developing an investigation.

NOTE: Any winnings from gambling, or any other gains incurred as a result of an undercover activity, must be surrendered to DEA. Submit the gains, as received, to the Imprest Fund cashier, who will document receipt on a DEA Form 12.



6133.2 MISCELLANEOUS EXPENSES. Claims for reimbursement of miscellaneous expenses incurred in connection with official duties (e.g., telephone call, temporary parking fee, film development, etc.), which could otherwise be claimed on an SF-1012, may be claimed on an SF-1164, Claim for Reimbursement for Expenditures on Official Business. Except in an emergency, an SF-1164 may not be used for claims exceeding a total of $250. Expenses exceeding a total of $150 will normally be claimed on an SF-1012. Upon submitting an approved SF-1164, the employee will be reimbursed in cash.

6133.3 PE/PI EXPENDITURES. (Also see Chapter 05 of the Administrative Manual.)

6133.31 General. "PE/PI" is the budgetary category for those funds appropriated for the purchase of evidence (PE) and the payment of information (PI).

Special accounting and control procedures govern the use and handling of these funds, as described below.

A. It is important that expenditures which conceptually should be charged to PE/PI are in fact so charged. It is only in this

manner that these funds can be properly managed at all levels, and accurate forecasts of projected needs be made.

B. In most instances, whether or not an expenditure is chargeable to PE/PI is self-evident. However, there are several gray areas in which a judgment by management may be necessary. One involves the travel expenses of an informant; the other when official advanced funds (OAF) are used to purchase evidence, but are recovered shortly thereafter.

1. Depending upon circumstances, travel expenses of an informant could be charged to either PE/PI or operating accounts. The rule-of thumb shall be as follows:

(a) PE/PI: When the expense is a form of payment for services rendered.
(b) Operating: Where the expense is necessary to further an ongoing investigation.

2. The second situation, involving the recovery of OAF shortly after release in the purchase of evidence, is discussed in 6135E.

6133.32 Allowances

A. Each Division and Country Office receives an annual PE/PI allowance, apportioned on a quarterly basis, based upon the number of core employees in the Division Table of Organization, as well as its anticipated impact on DEA's priority objectives. If it appears that a quarterly allowance will not meet enforcement needs through the end of the quarter, the SAC (or Country Attache) may request a supplemental allowance from Headquarters (DO). If funds are available, this supplemental allowance will be furnished. Also see 6671 for one-time resource enhancement and Special Enforcement Operations.

B. Each Division and Country Office will apportion its PE/PI allowance among its field offices, and delegate authority to approve PE/PI expenditures among its field office managers, as it deems appropriate.

6133.33 Authorizations

A. SACs and Country Attaches may authorize PE expenditures up to 20% of their quarterly allowance or the balance of their unobligated quarterly allowance, whichever is less, per instance. Expenditures per investigation beyond this amount must be approved by Headquarters (contact appropriate Drug Section Chief).

B. SACs and Country Attaches may authorize PI expenditures up to [redacted] per informant per quarter. Expenditures beyond this amount must be approved by Headquarters (contact Drug Section Chief).

C. In exercising his authority to approve these expenditures, the SAC will consider: (1) the significance of the investigation; (2) the need for this expenditure to further that investigation; and (3) anticipated expenditures in other investigations.

Additional criteria for foreign office expenditures are: (1) if the drugs are destined for ultimate delivery to or affect the drug traffic in the United States; or (2) the expenditure will result in our obtaining information on the location of a laboratory or a significant quantity of drugs.

D. Flashrolls are the temporary advance, use, and return of OAF, and therefore are not "expenditures." However, a control system is in effect for flashrolls which parallels that for PE/PI expenditures. See Section 6623 of the Agents Manual and Section 0553 of the Administrative Manual.

6133.34 Procedures. (See also 6612.4 and 6622.)

A. Funds for PE/PI expenditures will be advanced to the DEA Special Agent for a specific purpose. If they are not expended for that purpose, they must be returned to the Imprest Fund Cashier. They may not be used for another purpose without first returning them and repeating the authorization and advance process based on the new purpose.

B. Funds for a PE/PI expenditure are advanced on a DEA Form 12. A DEA-103 shall be used to document funds used in the purchase of evidence or funds paid or advanced to an informant. Instructions for completing this form are found in Administrative Manual Section 0551.

C. For security purposes there is a 48-hour limit on the amount of time funds advanced for PE/PI expenditure may be held outstanding. If it becomes apparent at any point within the 48-hour period that the expenditure will not materialize, then the funds should be returned to the advancing cashier as soon as possible. An extension to the 48-hour limit may be granted by the level of management that approved the advance. Factors to consider in granting such an extension are the amount of funds involved, the degree of security under which the funds are being held, how long an extension is required, and the significance of the expenditure. Such extensions should be limited to 48 hours. Beyond this, the funds should be returned and readvanced if necessary. Regardless of circumstances, within 48 hours of the advance, the Imprest Fund Cashier will be presented with either the unexpended funds, an executed DEA Form 103, or written notification by management that an extension has been granted.

6134 HEADQUARTERS APPROVAL OF HIGH COST INVESTIGATIONS

The following requirement shall apply, notwithstanding the provisions of 6133 above or any other part of this Manual. Any investigation, or series of parallel investigations, directed against the same targetted group, in which it is anticipated that projected expenditures will exceed $500,000 through any combination of PE/PI and operating costs, shall only be continued subject to prior Headquarters approval. This approval will be sought at that point in the investigation where this cost projection becomes apparent. (Do not factor flashrolls into this calculation.)

Approval will be sought by written proposal (memorandum, teletype, or--in exigent circumstances--by telephone, followed in writing) to the appropriate Drug Section Chief, The Drug Section Chief will coordinate this proposal with AA and CC.

Approval levels are as follows:

$500,000 to $1,000,000:	AO
$1,000,000 to 1,500,000:	AD
$1,500,000 or more:	A

6135 RECOVERED FUNDS (Also see 6663.67.)

A. All funds acquired through enforcement activities, whether through seizure or some similar circumstance, will be checked via the DATS automated money list to determine whether they are previously expended OAF.

An exception to this is where a sum of OAF is expended and subsequently recovered in toto, under circumstances where checking against DATS is obviously unnecessary (i.e., the money list has not yet been entered). In this instance, however, the recovered money will still be checked against the handwritten money list.

B. Foreign offices may submit money lists to Headquarters (OMG) for DATS screening (U.S. currency only).

C Once a DEA Form 103 has been submitted documenting an expenditure of OAF, any subsequent recovery of that OAF must be processed as "recovered funds."

D. A flashroll situation (i.e., the OAF does not leave DEA custody) does not constitute an expenditure, and therefore the returned OAF will not be processed as recovered money. However, certain situations arise which are of neither a purely flashroll nor purely expenditure nature, but rather somewhere in between. In these instances, the following guidelines shall apply:

1. If at any point the funds leave the DEA-controlled environment and are subsequently recovered, they should be handled as a recovered expenditure (a DEA-controlled environment may be defined as one in which the funds and/or the violator possessing them are under continuous observation, with DEA having the capability to retake possession of them at any time). Or
2. If the prosecutor determines that the funds have evidentiary value as being "recovered" from the defendant, they should be handled as a recovered expenditure (regardless of whether the actual funds or photocopies of them are held as evidence).

E. Unexpended OAF is returned to the advancing office's PE/PI account. Recovered OAF, on the other hand, is processed through the Headquarters central account for subsequent reallocation. Based upon relative needs and priorities, this reallocation may or may not be to the expending office's account. It is important that this procedure not influence an office's decision per D. above, as it is only through expenditures that PE/PI utilization can be tracked vis-a-vis G-DEP, and accurate forecasts of future needs be projected.

F. The evidentiary value of recovered funds should be discussed with the prosecutor. Where it is determined that the actual funds are not needed as evidence, then they should be processed into the central account for reuse. When the prosecutor determines there to be compelling need to preserve the actual funds for trial, then they must be held as an exhibit pending adjudication.

6136 LOSS OF OFFICIAL FUNDS

(See also Administrative Manual Chapter 05.)

6136.1 LIABILITY. There is a distinction between liability for loss of funds advanced for travel versus nontravel purposes. The employee is financially liable for any loss of travel advances, regardless of circumstances. In a loss of funds advanced for nontravel purposes, the employee may or may not be financially liable, depending on these factors:

A. Whether the employee was acting within the scope of his employment when the loss occurred.

B. Whether the loss was attributable to fault or negligence on the part of the employee. (NOTE: Negligence is presumed to exist in an unexplained loss.)

6136.2 LOSS REPORTING AND INVESTIGATION

A. In any activity involving the use of official funds advanced for nontravel purposes, a key element of its planning and execution will be safeguarding the funds so as to prevent loss. When a loss does occur, every reasonable and legitimate effort will be made to recover them. Any loss of official funds will be immediately reported through the chain of command to the SAC, who will notify Headquarters (appropriate drug section, DO, PR, and ACV) by teletype. Within 24 hours of the loss, a written report (DEA Form 6, Report of Loss of Official Funds) will be submitted by each agent involved, setting forth in detail all circumstances of the loss.

B. The SAC will appoint a Board of Investigation within 10 days of the loss. The Board (based upon reports submitted, interviews, or whatever else may be necessary) will determine the following:

1. Whether the employee was acting within the scope of his employment.
2. Whether his actions surrounding the loss were in accordance with established policies, procedures, and/or supervisory instructions.
3. Whether the loss was attributable to fault or negligence by the employee.

C. The Board will submit its findings via memorandum to the SAC. Such findings must be explicitly documented. A package consisting of copies of all reports generated or associated with loss will be submitted to Headquarters (DO) via cover memorandum within 20 days of the loss. The cover memorandum will contain the SAC's recommendation on liability. DO, after review, will forward it to AC for determination on liability.

D. Losses of OAF in a foreign country will be handled in either of two ways:

1. Where the funds were advanced by a domestic field office in furtherance of a domestic investigation, the loss will be handled in the same manner as a domestic loss.

2. When the funds were advanced by a foreign field office in furtherance of a foreign investigation, the Country Attache has responsibility for notification per paragraph A. The Deputy Assistant Administrator for Operations has responsibility for the actions set forth in B and C.

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

DEA

NOTICE

CLASSIFICATION CODE
6141

Cancellation Upon revision of the Agents Manual

SUBJECT: BIWEEKLY ACTTIVITY REPORT, DEA FORM 352

This notice provides the current guidelines and procedures for the various program areas.

6141 BIWEEKLY ACTIVITY REPORT, DEA FORM 352

6141.1 GENERAL. This form will be completed by all agent personnel, regardless of assignment or organizational level. **Senior Executive Service (SES) Special Agents are not required to complete DEA Form 352.** *Agents assigned to Intelligence will complete the DEA Form 421 instead.*

6142.3 MONTHLY WORK HOURS SUMMARY (DEA FORM 444)

A. Each domestic and foreign field office, as well as each Headquarters office having assigned GS-1811 personnel (except **Senior Executive Service (SES) Special Agents and** the Office of Intelligence), will summarize its GS-1811 work-hours on the DEA Form 444. Data for completing this form will be drawn from DEA Forms 352 submitted for the month.

The remaining of this Subchapter remains unchanged.

* Revision
** Addition

Distribution: H-1,2,3C,3D,4,5
F-1 through 7

Initiated by: HQ OMG

6141 BIWEEKLY ACTIVITY REPORT, DEA FORM 352

6141.1 GENERAL. This form will be completed by all agent personnel, regardless of assignment or organizational level. The only exception to this will be agents assigned to Intelligence, who will complete the DEA Form 421 instead.

6141.2 PREPARATION

6141.21 General

A. Entries on the DEA Form 352 will be handwritten in ink. The reporting period will correspond to official pay periods in conjunction with the DOJ Form 296, Time and Attendance Report.

B. Time reported under the various categories will be rounded to the nearest half hour. Enter the appropriate dates directly under the preprinted days of the week.

C. After making the final entry for the pay period, total each horizontal line and enter the sum in the total column.

D. Any claimed Administratively Uncontrollable Overtime (AUO), leave, scheduled overtime, or scheduled night, holiday, or Sunday hours, must be reported by actual clock-hours, on the back of the original copy of the form.

6141.22 Form Heading

Name. Enter last name, first name, and middle initial.

Social Security Number. Self-explanatory.

Reporting Period. See 6141.21A above.

Office Designator. Enter the office designator (see Appendix G) of the office to which the agent is permanently assigned.

Office. Enter the office name to which the agent is permanently assigned.

Group. Enter the group number to which the agent is permanently assigned, if appropriate.

Place an "X" in the appropriate block to indicate nature of duties.

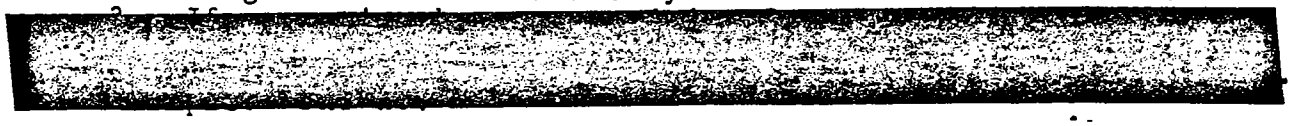
1. Hq. Staff (Headquarters Staff). Headquarters staff and agents on special Headquarters staff assignments will check this block.
2. Fld-Supr. (Field Supervisor). Field supervisors at group supervisor level and above will check this block
3. Non-Supr. (Nonsupervisory Agents). Field nonsupervisory agents will check this block.

6141.23 Form Body

A. Case Number/G-DEP Identifier. Report any investigative effort, including travel, report writing, file review, time spent

in court, etc., directly related to an investigation identified by a DEA case file number. Use the current G-DEP Identifier for each case file number.

1. Show the number of hours expended in each 24-hour period for each case file number and general file number.
2. If the G-DEP Identifier of a case changes during the period, the agent will correct that part of the G-DEP Identifier to reflect the new status by crossing through that portion changed and entering the new data directly above in the same column.



B. Other Criminal Investigations. Use this category for time expended on non-G-DEP investigations or other nondrug investigative activity.

C. Integrity/Misconduct Investigations. Enter time expended only if a Headquarters file number has been assigned to the investigation.

D. Compliance-Regulatory. Enter the time expended in the regulatory compliance program.

E. Intelligence. Enter the time expended in developing broad intelligence related to national and international illicit drug traffic (including travel) in this activity. Report time expended on tactical intelligence related to a specific investigation with the case file number.

F. Liaison. Enter the time spent visiting Federal, state, and local law enforcement agencies to encourage cooperation, enforcement of state drug laws, or exchange of resources in this activity. Include travel time relative to these activities.

G. Training -- Other Enforcement Officers. Enter the time expended in the preparation, travel, presentation and evaluation of training programs administered to non-DEA law enforcement officers in this activity.

H. Training -- DEA Agents. Enter the time expended in the preparation, travel, presentation, and evaluation of training programs administered to DEA Agents in this activity.

I. Training Received. Enter the time expended in training or developing job-related skills, attending agent meetings, sessions, or firearms practice in this activity. Also enter courses taken on official time at nongovernment institutions in this activity. Record time expended in on-the-job training in the actual activity being performed.

J. Public Appearances/Prevention. Enter time expended in traveling, preparing, delivering, and evaluating preventive speeches or other preventive programs involving nonlaw-enforcement groups in this activity.

K. Administration

1. Headquarters staff and field supervisory personnel will report the hours expended on supervisory, management, and staff activities in this category.

2. Nonsupervisory personnel will report in this category the time expended on administrative and logistical activities such as preparing noninvestigative reports, studies, maintaining official automobiles and equipment, attending staff meetings, etc.

L. Leave. Enter in item R1 the clock hours taken. Compute the daily number of hours and enter the total for this activity. To identify the type of leave reported, preface the entry with an "A" to denote annual leave (e.g., A-8), an "S" for sick leave, and an "O" for other leave. Explain entries for other leave, such as administrative leave, in the Remarks section.

M. All Other Activities. Report time unaccounted for in activities A through K in this category. If the expended time for this category is of significant proportion, explain the expenditure in the Remarks section. Enter holidays falling within the work-week (Monday-Friday) as H-8.

N. Total (By Day). Enter total hours worked for activities A through M for each day of the period.

NOTE: Hours reported below will be extracted from the hours reported daily in the activities A through M.

Example: On Monday of the first week, 2 hours were spent receiving training and entered in activity I, and 10 hours were spent in the investigation of case C1-78-0023 [redacted] and entered in activity A. The daily total (activity N) would be entered as 12 hours. Since 4 hours of this total constitutes AUO, the clock-hours of the AUO will be recorded in item S.1, and the number 4 will be entered in activity Q.

O. Administratively Uncontrollable Overtime (AUO). Enter the clock hours of AUO worked for each day. Compute the daily number of hours and enter the total for the appropriate day in this activity.

P. Scheduled Overtime for Period Covered. Enter the clock hours of overtime worked in conjunction with scheduled duty shifts, such as duty agent tours of Title III shifts which extend beyond 8 hours. Compute the daily number of hours and enter the total for the appropriate day in this activity.

Q. Scheduled Night, Holiday, and Sunday Hours. Enter the clock hours of work for which night, holiday, or Sunday pay are applic able, such as for a scheduled duty agent tour. Compute the daily number of hours and enter the total for the appropriate day in this activity.

R. Temporary Duty (TDY). If one-half day or more was spent in TDY status (duty outside the geographic limits of the permanent duty station), place an "X" in this block. Briefly explain the TDY assignment in the Remarks section.

S. Clock Hours, Premium Pay (Back of Original Only). The instructions for completing item S appear on the back of the original of DEA Form 352.

6141.24 Distribution. Upon completing the DEA Form 352 for the current period, the agent will sign and submit it to the first-line supervisor for review and signature. Upon approval, copy 2 will be returned to the agent. The original will be used to prepare the Time and Attendance Report, DOJ Form 296, and filed with it in the office Time and Attendance files. Copy 1 will be used to prepare the monthly work-hour summary. Upon office level approval of the work-hour summary, copy 1 may be destroyed.

6142 MONTHLY REPORTS

All reports in this section will be submitted via registered mail, return receipt requested to Headquarters PES, unless indicated otherwise, by the 15th working day of the following month.

6142.1 MONTHLY ASSET REMOVAL AND DEA-7 "INFORMATION ONLY" PACKAGE. See 6245.3E and 6662.32B. This package will be submitted to PES by the domestic and foreign offices.

6142.2 PRECURSOR REPORTING. Reserved.

6142.3 MONTHLY WORK HOURS SUMMARY (DEA FORM 444)

A. Each domestic and foreign field office, as well as each Headquarters office having assigned GS-1811 personnel (except the Office of Intelligence), will summarize its GS-1811 work-hours on the DEA Form 444. Data for completing this form will be drawn from DEA Forms 352 submitted for the month.

B. District and Resident Offices will submit their summaries to the Division Office for assembly (not consolidation) and submission to Headquarters PES (due the 15th working day of the following month). Foreign Resident Offices will likewise submit their summaries to the Country Office for assembly and submission.

C. Headquarters Offices will submit their summaries directly to PES by the 15th working day of the following month.

D. Parallel summaries will also be prepared from the Compliance Bi-Weekly Activity Report (DEA Form 351) and the Intelligence Bi-Weekly Activity Report (DEA Form 421). Instructions for those summaries are contained in the corresponding Diversion Investigators Manual (Section 5257) and in Section 6811 of this manual.

6142.4 MONTHLY ACTIVITY SUMMARY (DEA FORM 455). This form will be submitted by all domestic field Divisions. Instructions for completing this form are found on its front.

6142.5 MONTHLY ACTIVITY REPORT OF DEA VESSEL USAGE (DEA-463). See 6673.5D.

6143 QUARTERLY REPORTS

All reports in this section will be submitted by *the 15th working day after the end of each quarter. Classified material should not be included. If classified information is required to fulfill the reporting requirement, it should be submitted via teletype to the appropriate office in accordance with Subchapter 865 of the Planning and Inspection Manual.*

* Revision

6143.1 *Quarterly Trends in the Traffic. Each quarter all SACs and Country Attaches will submit a summary of the drug use/availability/trafficking situation for their area of responsibility in the appropriate format described below. The report should be submitted to the Assistant Administrator for Operations (AO) who will forward the report to the Office of Intelligence (OI) for Headquarters distribution.

A. Domestic Divisions Quarterly Trends in the Traffic. This report should be prepared as a narrative assessment highlighting the drug situation in each district and resident office, as well as, the division office itself. The report should be four to ten pages in length and should address each of the five major drug areas, heroin, cocaine, cannabis, dangerous drugs (clandestine laboratory activity), and diversion of legitimate drugs. The report should include and reference DEA sources, as well as, local law enforcement, health, and treatment sources. Questions/items to be considered in preparation of the narrative are as follows:

1. Availability/Use

a. What drugs are available and to what extent are they available; i.e., readily or limited? In what areas are they available? (Note specific areas within cities, population groups and specific type of drug, such as black tar heroin, crack cocaine and blotter LSD.)

b. Are drugs encountered more available, less available, or stable since the last reporting period?

c. What are retail prices/purities for each drug and how are drugs packaged?

d. Which drugs are "drugs of choice"?

e. Describe new drug use patterns that have emerged since the last reporting period.

f. What drug combinations are most commonly seen?

g. Describe the factors that are impacting on the retail drug situation (e.g., law enforcement efforts, health issues).

2. Trafficking of Illicit Drugs

a. In general, are the cities/areas in the division sources of manufacture, points of importation, and/or transshipment areas? What are the areas of origination and/or destination?

b. (The following requirement is for cannabis only.) Describe the extent of cannabis cultivation within the division; include type of cannabis (ditchweed, cultivated, or sinsemilla), estimated production of each variety, eradication programs, and agencies involved. List herbicides, if any, used in eradication. Describe current methods of production, including plot sizes, use of greenhouses or other indoor facilities, etc.

c. Describe the groups (organized crime/ethnic, etc.,) that are trafficking in drugs. Who or where are their sources, both at the wholesale and retail level?

d. Describe quantities that are being trafficked (kilograms, pounds, ounces, grams), and the prices and purities at each level. Note source/type variations, such as Southeast Asian heroin, domestic sinsemilla marijuana, etc.

e. Are there any changing trends in the traffic being observed?

* Revision

3. Financial

a. Describe money laundering methods by groups (organized crime, ethnic, etc.)

4. Diversion of Legitimate Drugs

a. Describe significant developments in the diversion/trafficking/use of legitimately manufactured controlled substances, including changes in trends.
b. What individuals or groups are trafficking these substances? What are the most common methods used to divert these drugs to the user? What are prices of legitimately manufactured drugs in the illicit traffic?

5. Impact

a. Describe the impact that current DEA, DEA cooperative, other Federal, and state/local programs are having on the abuse/trafficking money/laundering situation.

B. Country Offices Quarterly Trends in the Traffic. The Country Office report should be prepared as a narrative assessment reflecting the significant developments in the traffic, to include any changes since the last report. The narrative should cover each country of relevance within the Country Office's jurisdication. Questions/items to be considered in the preparation of the narrative area as follows:

1. Availability/Use

a. What is the local drug use/availability situation?

2. Trafficking

a. Describe, if applicable, the cultivation of opium, coca, or cannabis to include the areas cultivation, methods of cultivation, and yields. Describe and assess related eradication efforts.
b. What drugs are trafficked?
c. What individuals or groups are trafficking?
d. What smuggling methods and shipment/transshipment routes are being used for drugs, as well as precursors?
e. Assess significant seizures.
f. Describe illicit refining or manufacturing of both drugs and precursors.
g. What are drug prices at the various stages of the traffic (from farmer to wholesaler)?
h. What is the involvement or significance of other groups (e.g., terrorist groups, weapons dealers)?
i. Discuss utilization of the country's established or informal banking system to launder or hold trafficker's money.
j. Discuss status of legislative initiatives dealing with money laundering, asset seizures, or bank secrecy.

3. Diversion of Legitimate Drugs and Chemicals

a. Drugs
b. Briefly describe in-country diverison trafficking and drug abuse.

c. Address the role of each country under your geographic responsibility if it is a supplier of legitmately manufactured drugs to the illicit international drug market and describe the situation. Include drugs which are being clandestinely tabletted, or counterfeited from legitimately produced bulk powder.

(1) Discuss trafficking patterns, methods of diversion, routes, and estimates the quality diverted.
(2) Describe any action being taken by host governments to curb this trafficking.
(3) If possible, assess or estimate the potential for these diverted drugs to be trafficked to the United States.

4. Describe any significant national drug control initiatives involving drugs of abuse.

C. Chemicals. Countries that manufacture and export essential and/or precursor chemicals should report significant developments regarding diversion of these chemicals for use in the production of illicit drugs. Primary emphasis should be on those chemicals now controlled under the United Nations "Convention against Illicit Traffic in Narcotics and Psychotropic Substances."

Countries used as staging or transitting areas of these chemicals should also address the following:

1. Discuss trafficking patterns, methods of diversion, trends and routes.
2. Describe any action being taken by host governments to curb this trafficking.
3. Describe actions taken to encourage local governments to establish monitoring/tracking system and methods to verify legitimacy of customers for chemicals exported, especially to countries where known clandestine laboratories exist.
4. In those countries where clandestine processing or manufacturing occurs (i.e., cocaine, heroin), describe efforts to determine source of seized precursor and essential chemicals.

D. Impact

1. What new or ongoing international agreements are effecting trafficking?
2. Describe the role/impact of host governments in combatting traffic.*

6143.2 OTHER QUARTERLY REPORTS

A. Quarterly Review of Cases: see 6214.22.
B. Quarterly Review of Informants: see 6612.62.
C. Quarterly Task Force Summary Report: see 6331.5.
D. Quarterly *Intelligence Project Summary: see 6813.
E. Quarterly Firearms Seizures Report: see 6662.61(G).

* Revision

6144 ANNUAL REPORTS

6144.1 FIELD MANAGEMENT PLANS

**A. Field Management Plans (FMP) will be prepared annually by each domestic field Division and submitted to Headquarters by Office of Planning and Evaulation by November 15. The FMP will address all critical areas of the division's responsibilities. FMP development and implementation should be based upon a sound planning process that involves a broad spectrum of division management.

B. FMPs will address each Strategic Objective contained in DEA's Strategic Plan, and will be prepared in accordance with a standard, prescribed format. FMPs will contain the following elements:

1. DISCUSSION. A narrative assessment of current efforts and resources, strategy (the direction in which the division wants to go), and methodology (how the division intends to implement its strategy).
2. IMPACT STATEMENTS. Brief statements regarding how the strategy (including resource enhancements) is expected to alter the current situation.
3. OBJECTIVES. (For each of three fiscal years). Action items that are specifc, challenging, and address the primary activities of the division. Each objective is accompanied by an anticipated completion date and statements regarding resources required to accomplish it.

C. Subsequent to Headquarters review and approval, the FMPs become effective on April 1. Field Divisions are held accountable for FMP implementation. Progress towards meeting objective is monitored by the Office of Planning and Evaluation.

D. FMPs are shared with other agencies of the U.S. Government. Senstive information should be reported as a separate addendum.**

6144.2 FOREIGN SITUATION REPORT (FSR)

6144.21 General

A. This report will be submitted by all Country Attaches to Headquarters (OF) by February 15. It will report on events, situations, and assessments developing over the previous calendar year.

B. Although the information furnished by DEA representatives in the FSR should be compatible with that furnished to other mission elements for their preparation of the State Department "Annual Narcotic Status Report" and "Annual Report to the Congress" (as required by the Hawkins-Gilman Amendment), we expect the FSR to be oriented more directly towards DEA's program objectives, and be more reflective of DEA's assessments of the subjects covered.

** Addition

C. As DEA FSRs are shared with other U.S. agencies in Washington, sensitive in-house information should be segregated and reported on a separate administrative page. Tactical information concerning ongoing investigations should not be included in the FSR. Although occasional reference may be made to an earlier FSR, the FSR should be composed essentially from a "stand-alone" perspective.

D. The FSR will be classified by paragraph (up to and including "secret") and handled in accordance with Subchapter 856 of the Planning and Inspection Manual.

6144.22 Format. The FSR will be in memorandum format, addressed to the Deputy Assistant Administrator, Office of International Programs. Begin at the top of a new page for each country within the country office's jurisdiction. If a particular country is not a factor in the international drug traffic and thus of no tangible interest to DEA, a short statement to this effect will suffice. Otherwise, provide a full narrative assessment under each of the following *nine* topics:

(A) Agricultural Production of Opium, Coca, or Marijuana (if applicable):

(1) Location of current growing area(s), as well as indication of their expansion or relocation.
(2) Estimates on current planting, acreage, and yield per acre.
(3) Planting and harvesting methods.
(4) Condition of crops based upon agricultural factors (e.g., drought, flood, insects, etc.).
(5) If growth is legal, estimate the acreage and yield being grown legally vs. illegally, and the amounts being diverted from licit growth/harvesting/processing.
(6) Estimates on legal and illegal stockpiles, as well as the amounts exported vs. the amounts kept for domestic use.
(7) Description and assessment of host government control efforts, including crop control, income/crop substitution programs, rural development strategies, measurement/statistical methods, eradication programs, and any other factors deemed pertinent.

(B) Illicit Refining/Manufacturing (if applicable)

(1) Location and estimated number of laboratories.
(2) Refining/manufacturing processes used.
(3) Origin of unprocessed drugs, including methods and routes.
(4) Origin of essential chemicals, including methods and routes.
(5) Destination of product, including holding areas, methods and routes.
(6) Description and assessment of host government control efforts.

* Revision

(C) Transshipment (if applicable)

(1) Origin and destination of drugs.
(2) Methods and routes used.
(3) Estimates on the volume of drugs involved.
(4) Description and assessment of host government control efforts.

(D) Major Trafficking Networks Involved

(1) Identification of major trafficking groups, including their ethnic composition, modus operandi, associations with groups in other countries.
(2) Other criminal activities engaged in by these groups.
(3) Description and assessment of host government control efforts.

(E) Involvement by Terrorist Groups

(1) Identification, ideology, objectives.
(2) Impact on the country's economic, social, and political infrastructure.
(3) Extent of their involvement in drug trafficking, the nature and methods employed, their sources and distribution of drugs.
(4) Their connections with other terrorist/criminal groups, both internal and external to the host country.
(5) Description of assessment of the host government control efforts.

(F) Host Government

(1) Host government position on illicit trafficking, including any new or planned initiatives.
(2) Identification of agencies engaged in controlling the licit/illicit drug markets, including *the names and biographical data of top officials,* the sphere of responsibility, resources, and any other pertinent factors for each.
(3) Assessment of interagency cooperation within the country and between this country and other pertinent countries. Include multilateral/bilateral/regional programs to which the country is (or is not) a party, and its relative support for those programs.
(4) Assessment of corruption and its impact on host country control efforts. Identities of specific individuals, or otherwise sensitive information, should be reported on a separate administrative page.
(5) Assessment of *in-country narcotics laws,* both current and planned.
(6) Assessment of current forms of U.S. (and other country) assistance, and identification of additional assistance needs.
(7) Explanation of current treaties with the U.S.

* Revision
** Addition

(G) Internal Drug Problem

(1) Nature of abuser population (i.e., estimated number, ethnic composition, geographic area, age groups).
(2) Drugs abused (i.e., identification of drugs, sources of drugs, retail purity or dosage strength, methods of abuse, overdoses/injuries in the reporting period).
(3) Full assessment of abuse by U.S. military personnel (if applicable).
(4) Extent of visitation by foreigners to abuse or obtain retail quantities of drugs.
(5) Attitude of host government towards drug abuse. Include here a description of treatment programs or any other forms of rehabilitation or prevention programs.
(6) Attitude of public towards drug abuse. Include here an assessment of positions taken by media.

**(H) International Diversion of Licit Drugs and Chemicals

(1) If applicable, describe role of each country under geographic responsibility in terms of source of legitimately manufactured drugs to the illicit international drug market. Include information on trafficking patterns, methods of diversion, routes, etc. (It is intended that drugs which are being clandestinely tabletted/counterfeited from legitmately produced bulk powder be addressed in this section.)
(2) If possible, assess or estimate the potential for these diverted drugs to be trafficked to the United States.
(3) If applicable, describe significant developments in diversion of precursor and essential chemicals. Describe the impact of U.S. manufactured chemicals in the production of illicit drugs in your geographic area of responsibility and the impact of locally produced chemicals on the U.S. Describe trafficking patterns, methods of diversion as well as actions being taken by local governments to curtail the illicit trafficking in chemicals.**

(I) Financial

(1) Description of methods by which drug trafficking is financed, including laundering techniques, use of international banking mechanisms, etc.
(2) Identification of weaknesses in host country banking mechanisms that facilitate or encourage the financing of illicit activities.
(3) Attitude of host government towards international cooperation in uncovering illicit financial transactions.

6144.23 Use of 9000-Series "Country" Files

A. Appendix H contains a series of 9000-series program general file titles. A block of these file titles is devoted to individual countries.

** Addition

B. Foreign offices should use these files as a means of reporting and collating information germane to those topics covered by the FSR. When such information is generated in an activity being conducted under another file number (case or general), it should be crossfiled to the appropriate 9000 series country file. Where such information is generated in an activity not being conducted under another file number, the report should be written directly to the appropriate 9000 series country file.

C. Proper use of these files will serve two purposes:

1. Alleviate the need for "interim" FSRs for significant developments between reporting cycles (i.e., Headquarters will track such developments through its copies of these DEA-6's).
2. Facilitate the Country Office's preparation of future FSRs by having a ready source of reference material at hand.

D. The present list of 9000 series "country" files is not all encompassing. To establish a new file title, contact OF. OF will coordinate the matter with appropriate Headquarters elements.

6144.3 RIGHT TO FINANCIAL PRIVACY ACT. For yearly reporting requirements, see paragraph 6614.63D.

6145 BIANNUAL REPORTS

6145.1 BIANNUAL PHYSICAL FITNESS PROGRAM REPORT. The Biannual Report for the Physical Fitness Program will be submitted by registered mail, return receipt requested, to the Headquarters *Health Services Unit Fitness Staff* (unless indicated otherwise) by the 31st of May and *30th of November* following the March-May and *September-November* assessment cycles, respectively.

A. Each domestic field office, as well as Headquarters offices having assigned GS/GM-1811 personnel, will capture data provided by the results of the Phase I and II screening and assessment process on the Health and Fitness Data Forms to be supplied by Headquarters. DEA Fitness Coordinators are responsible for collecting *data for every agent assigned to their division.*

B. District and Resident Office Fitness Coordinators will submit their Health and Fitness Data Forms to the Division Office Fitness Coordinator Representative for assembly (not consolidation). The forms will be submitted to *Headquarter's Office of Personnel, Health Services Unit, Fitness Staff* with a cover memorandum from the SAC which states the status of Phase I and II assessments within the Division for that particular 6-month time frame. *Health and Fitness Data Forms and SAC cover memos are due May 31st and November 30th.*

C. Headquarters offices will submit their Health and Fitness Data Forms directly to the *Office of Personnel, Health Services Unit, Fitness Staff.*

D. The Headquarters *Health Services Unit Fitness Staff* will consolidate Phase I and II data from all field Divisions and prepare an annual report to the Administrator of DEA on the entire Physical Fitness Program.

* Revision

6145.2 24-HOUR TELEPHONE COVERAGE REVIEW. SACs are to review their Division's 24-hour telephone coverage on a biannual basis. The review is to include an evaluation of coverage and results of briefings/NADDIS checks on answering service personnel. Submit a memorandum reporting the review to Headquarters (OMG) by the 15th of January and July.

CHAPTER 62 INVESTIGATIVE REPORTING SYSTEM

CHAPTER 62 INVESTIGATIVE REPORTING SYSTEM

Subchapter 621 General Policies

6211 REPORT WRITING AND REVIEW

6211.1 GENERAL. Written reports are vital to the conduct of DEA operations. They are our formal means of communicating among ourselves, with other agencies, and with the court. In composing an investigative report, the agent should remember that it will be read by someone else, and most likely form the basis for action or inaction by the reader. The report may also be read by someone seeking to discredit its contents or the Agent himself.

Investigative reports should describe whatever is to be reported --fully, exactly, and plainly--without opinion or exposition.

6211.2 SUBMISSION OF REPORTS. Investigative reports will be completed within 5 working days after concluding the investigative activity or collecting the information being reported. The only exceptions are those reports for which a separate submission date has been established, or where the event being reported is time-sensitive or the event itself is sensitive to the point where the report must be completed in less than 5 days (e.g., a shooting incident).

6211.3 SUPERVISORY REVIEW. The immediate supervisor of the Agent making the report will review it for accuracy and adequacy of content, and proper reporting procedure. Normally, the immediate supervisor will enter his written approval, except in those instances where a higher level of management approval is mandated. In these instances, the supervisor will initial next to the reporting agent's signature. (See also 6214.21.)

6211.4 DISTRIBUTION. Investigative reports and administrative correspondence related to an investigation will be distributed by the originating office to all concerned DEA offices and Headquarters. Generally, this distribution will consist of copies to the matching files in the Division Office (if the originator is a Resident Office) and Headquarters. In those instances where a Resident Office reports to a District Office, then distribution will include that District Office as well as the Divisional Office. It will also include any DEA office that may have an interest in the report due to its containing a potential investigative lead or intelligence information pertaining to that office's responsibilities or jurisdiction. Additional distribution will be made as appropriate.

NOTE: For the purpose of responding to requests for information under the Freedom of Information Act, the Headquarters copy of the investigative file will be considered "the official agency file." For this reason, it is important that the Headquarters file contain copies of all documents, papers, records, etc., filed in the originating office file.

6211.5 INTER-OFFICE INVESTIGATIVE REQUESTS

A. All requests, and all responses to requests, will be in writing on a DEA Form 6. In time-sensitive situations (less than 30 days), requests and/or responses may be via teletype. In very time-sensitive situations, requests and/or responses may be via

telephone between supervisory personnel, followed by a supporting DEA Form 6 or teletype.

Generally, a teletype need not be followed by a supporting DEA Form 6. An exception to this is where pertinent information is not included in the teletype due to the need for brevity in telegraphic messages.

B. Routine requests should be completed within 30 days of receipt. Shorter completion dates may be established with the approval of supervisory personnel at the requesting office. In this instance, the teletype should contain a notation as to the date the action or information is needed.

C. Requesting offices will not circumvent other DEA offices by direct contact with other agencies. Exceptions to this are emergency situations in which the responsible DEA office cannot be contacted in time, or requests of a minor nature (e.g., motor vehicle registration checks), which are made with the general concurrence of the responsible office.

D. The handling of an investigative request from another office will be given the same degree of care and effort as would be given an intra-office action. At the same time, offices making requests should bear in mind that each one represents, to some degree or other, a disruption of routine at the receiving office. Requests should be limited to only those deemed necessary and important. This does not include unevaluated shopping lists.

6211.6 PRESERVATION OF INVESTIGATIVE NOTES

A. Rough notes taken by an Agent while interviewing a potential Government witness, an informant, a suspect, or a subject of an investigation are subject to discovery. Failure to produce these notes, even due to good faith loss or destruction, could result in dismissal of the case. Agents will therefore preserve any such notes, even though their contents have been subsequently reported on a DEA Form 6.

B. The term "notes" includes handwritten notes, original tapes, or other work papers made during the interview of a potential Government witness, or any such documents made outside the interview from which the witness was directly questioned. Original tapes will be handled as nondrug evidence (see 6663.66).

C. Other court decisions require that DEA retain surveillance notes in the same manner as interview notes. Thus, all notes made during surveillance operations which contain information that may ultimately be included in formal reports, or which record events about which agents may later testify, must be retained. This requirement does not extend to the retention of investigative leads or lists of tag numbers which are checked and found to be unrelated to any investigation or suspected illegal activity.

D. This preservation requirement extends to notes taken by an informant and given to DEA. Further, where an informant has taken notes to assist in his reporting something to DEA, make every effort to obtain these notes for retention.

E. Rough draft DEA Form 6's need not be retained unless the rough draft is the Agent's first written record of an interview or surveillance. When this occurs, the rough draft itself becomes the agent's original notes and must be retained.

F. Conflicting information within these notes, or between the notes and the ultimate DEA Form 6, will likely be exploited by the defense. Thus, notetaking will be done with care. The Agent should be prepared to explain any inaccuracies or contradictions that exist. Each page of notes will be signed and dated by the Agent, and the pages stapled together. Notes made by different Agents will be separated by stapling. The notes will be preserved in an envelope attached to the case file.

G. Written notes may be destroyed only upon closing the case. A statement to this effect will be included in the case closing DEA Form 6. No handwritten investigative notes or routing slips will be placed in the case file except as provided above.

6211.7 ADMINISTRATIVE MEMORANDA (OF-10)

A. Administrative memoranda may be used for case management instructions, conclusions, recommendations, and essential administrative details. They will not be used to request or provide investigative or intelligence information. Administrative memoranda will be identified by file number and filed in the file jacket. However, names appearing in administrative memoranda will not be indexed or serialized.

B. Administrative memoranda are for the internal use of DEA. They may be appended to an investigative report, but not incorporated or referenced in the report itself. They will not be attached to copies of reports distributed outside DEA (prosecutor, etc.).

6212 DOCUMENT SECURITY

(See the Planning and Inspection Manual, Subchapters 866, 865, 825, and 872.)

6212.1 CLASSIFIED DOCUMENTS

A. DEA has authority to classify documents through Top Secret. However, only upper management level officers have been delegated this authority. Should an Agent encounter information which he believes warrants classification, he should discuss it with his supervisor. If the supervisor concurs, then the procedures set forth in Subchapter 865 of the Planning and Inspection Manual will be followed.

B. Information concerning any of the following topics, the unauthorized disclosure of which could reasonably be expected to cause at least identifiable damage to national security, will be protected, processed, and disseminated in accordance with Subchapter 865 of the Planning and Inspection Manual.

1. Military plans, weapons, or operations;
2. The vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;

3. Foreign government information;
4. Foreign intelligence activities, or intelligence sources or methods;
5. Foreign relations or foreign activities of the United States;
6. Scientific, technological, or economic matters relating to the national security;
7. United States Government programs for safeguarding nuclear materials or facilities;
8. Cryptology;
9. A confidential source supplying information in any of these areas of information; or
10. Other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have been delegated original classification authority by the President.

C. DEA employees have been properly cleared as a condition of employment, and have levels of clearance appropriate to their assignment. While proper clearance is a prerequisite to access, it does not authorize blanket access; there must exist a clear need-to-know in each instance. Under no circumstance will any employee be given either access to or custody of classified material without the appropriate clearance, or without his being thoroughly familiar with the provisions of Chapters 82 and 86 of the Planning and Inspection Manual. Field office management will hold periodic reviews of these provisions with employees and will strictly enforce them. Any violations will be brought to the attention of the SAC, who will notify Headquarters (PS). The SAC, in consultation with PS, will initiate appropriate follow-up measures.

6212.2 INVESTIGATIVE REPORTS

A. All nonclassified DEA investigative reports and records, including NADDIS printouts, are designated "DEA-Sensitive," whether or not the material itself is so marked. This material will be secured under lock and key when unattended. Access to them is on a need-to-know basis. This includes the documents themselves, as well as their storage facilities and DATS terminals.

Access by Department of Justice personnel will be on a need-to-know basis, and upon verification of a required National Security clearance. Access by other officials and agencies, including foreign officials, will be on a need-to-know basis provided:

1. The person has an appropriate security clearance.
2. The disclosure is in accordance with 632.
3. The person is escorted by a DEA employee throughout the period of access.

NOTE: NADDIS printouts, or portions thereof, will not be removed from the DEA office or the control of a DEA employee outside the office. The only exception to this will be where the FBI makes an inquiry on a subject of record under the provisions of the FBI/DEA cooperative guidelines. In such instances, a permanent copy of the subject's NADDIS record may be furnished to the FBI if this is the most expeditious means of fulfilling the request. Such

printouts may be released to FBI Special Agents only, and on a hand-delivered basis.

B. Investigative files will never be removed from their official storage station without being charged to a specific individual.

C. Copies of unclassified investigative reports may be kept by an agent for convenient reference, provided that all such reports are fully integrated and contained in the official filing system. Any employee choosing to maintain reference copies of reports is responsible for their security, for all disclosure limitations as set forth in Subchapter 632, and any appropriate requirements of 6213.

6213 NONPUBLIC RECORDS AND EXPUNGEMENTS

6213.1 BACKGROUND. 21 USC 844(a) cites the penalty for simple possession of a controlled drug. 21 USC 844(b)(1) provides for the records of a conviction under (a) to be made "nonpublic" under certain conditions. 21 USC 844(b)(2) provides for these records to be expunged altogether under certain other conditions.

DOJ Order 2710.7B provides instructions as to how the Department of Justice will implement 21 USC 844(b)(1) and (2). The following procedures apply to DEA's implementation of these provisions.

6213.2 NONPUBLIC RECORDS

A. Should a court issue an Order of Dismissal and Discharge under 21 USC 844(b)(1), the U.S. Attorney receiving the Order will make his records "nonpublic" and forward a copy of the Order to the Department. The Department will forward it to DEA Headquarters AMRI for the necessary action at the Headquarters level. This will include making the Headquarters files (including the individual's NADDIS record) nonpublic, and notifying all appropriate DEA field offices by memorandum to do the same.

B. The information to be made nonpublic is limited to a specific conviction, plus all investigative information on that individual which led to that conviction. Information on the individual outside these parameters, or on other individuals in the same case, will not be affected by the Court Order.

C. Once made nonpublic, information will not be releasable to any outside agency or party, including those making requests under the Freedom of Information Act.

D. Upon receipt of a memorandum from Headquarters to make certain records nonpublic, the field office will do the following:

1. File the Headquarters memorandum in the front of the case file jacket.
2. Mark the file jacket with the following notation: "Information in this file on (name) is a nonpublic record."
3. If the field office has an index card on the individual, mark it "nonpublic record." If there is more than one file reference on the index card, mark it "Information on subject in (case number) is a nonpublic record." If the subject index record

is on microfilm, a label will be placed on the microfilm cartridge with the following notation: "Information in this microfilm cartridge on the following individual has been designated as nonpublic information: (name), (file number)." Headquarters will label their copies of the microfilm cartridge as above.

4. If copies of the pertinent reports were distributed to DEA offices or outside agencies other than those listed in "Distribution" on the Headquarters memorandum, then send a copy of the Headquarters memorandum to each, requesting appropriate action.

6213.3 EXPUNGEMENT. Expungement orders will be handled essentially as in 6213.2 above. Upon receipt of a memorandum from Headquarters to expunge a record, the field office will do the following:

A. Obliterate the individual's name from all reports and documents which pertain to the particular case.

B. If his index card, fingerprint card or any other document contains information pertaining only to that particular individual in that particular case, destroy the entire document.

C. Obliterate the individual's name on the Headquarters memorandum directing the expungement (but file the memorandum in the front of the file jacket as above).

D. If copies of the pertinent reports were distributed to DEA offices or outside agencies other than those listed in "Distribution" on the Headquarters memorandum, then send a copy of the memorandum to each, requesting appropriate action.

E. If the individual's index record is on microfilm, obliterate the record (frame) by scraping the emulsion with a sharp instrument.

F. Complete the certificate of expungement (attached to the Headquarters memorandum) and return it to AMRI.

G. If no record can be found of the individual, enter "No Record" on the certificate and return it to AMRI.

6213.4 STATE AND LOCAL COURT ORDERS FOR EXPUNGEMENT

A. The handling of an expungement order from a state or local court will depend on whether or not DEA has any records to expunge and if so, whether they are DEA records or those received from another agency.

B. If there are no pertinent records to expunge (i.e., no record on the individual's involvement in that particular state or local investigation), then return the order to the appropriate official with the explanation that DEA has no record on the individual's involvement in the case.

C. If there are records which indicate the individual's involvement in the particular case, and they are DEA records, they will be treated as nonpublic rather than expunged. Forward a copy of the order to AMRI (identifying the record), who will initiate the necessary action.

D. If there are records which indicate the individual's involvement in the particular case, and they are from another agency, then the expungement order will be fully complied with. Forward a copy of the order to AMRI (identifying the record) for implementation of the procedures in 6213.2 or 6213.3 above.

6214 REPORTING/CASE CONTROL REQUIREMENTS

6214.1 GENERAL. The following requirements are based upon the Domestic Operations Guidelines, the FBI/DEA Concurrent Jurisdiction Guidelines, and internal DEA policy. Although the Domestic Operations Guidelines do not formally apply to DEA's foreign operations, foreign offices will fully adhere to the following reporting and case control requirements unless specifically exempted from doing so by Headquarters (DO). Any such exemption must be fully justified, and as limited in scope as possible.

6214.2 REVIEW AND CONTINUATION OF INVESTIGATIONS

6214.21 Immediate Supervisor

A. The immediate supervisor is responsible for assuring that all investigative activity conducted under his command is in compliance with the provisions of this section. Factors that will be routinely considered by the immediate supervisor in carrying out this responsibility include:

1. That a case file will be opened in a timely manner for any investigative activity meeting the criteria for case file opening (see 6232).
2. That a Case Initiation Report (and a DEA Form 202 on the leading subject) is prepared for each case file opening as set forth in 6232.
3. That the status reporting requirements set forth in 6232.31 are followed.
4. That investigative activities conducted under a case file are properly oriented towards achieving the stated objectives, and toward the stated targets.
5. That should the targets or objectives change, this change be properly documented through reports written to the case file.
6. That the resources used in the investigation (manpower, informants, official funds, and equipment) are sufficient to the task but not excessive, are properly deployed toward the stated targets and objectives, and are used in accordance with any applicable requirements under the Domestic Operations Guidelines.
7. That any appropriate requirements pertaining to review by the SAC, the U.S. Attorney, DEA Headquarters, or the Department of Justice, are met insofar as it is his responsibility to do so.
8. That all necessary coordination with the FBI is carried out in a full and timely manner. As part of this coordination, DEA Domestic Field Offices will submit a copy of the Case Initiation DEA Form 6 to the corresponding local FBI field office within 5 days after the initiation of the investigation. Significant progress and the identities of additional subjects will be provided to the local FBI office by copies of pertinent DEA Form 6's. During regularly scheduled file reviews, supervisors will determine if all pertinent information has been

exchanged and that this exchange is documented. Similar information received from the FBI will be assigned the Headquarters program general file number 9038, Referrals from FBI, with the local DEA field office using their office designator in the general file number. DEA field offices will forward the pink copy, or a photostat copy with "Headquarters File Copy" boldly written in the lower right hand corner to AMRI for NADDIS indexing.

9. That a determination be made whether a classified information issue exists in a case referred for prosecution.
10. That the Office of Intelligence be contacted for assistance when the existence of classified information cannot be determined at the local level.
11. That the prosecutor be made aware of the existence, but not the substance or content, of classified information relating to the case.
12. That the Special Intelligence Unit, Office of Intelligence be notified by telephone that a case with classified information was referred for prosecution.

There will be no separate reporting system by which the supervisor documents his adherence to the foregoing. His signature on investigative reports will signify that these factors were considered, endorsed, and/or complied with.

B. Each investigation in an active status (see 6232.31) will be reviewed by the immediate supervisor as significant events occur, or at maximum intervals of 30 days. Based on this review, he will direct one of the following courses of action:

1. Where evidence exists sufficient to arrest at least one individual, but further investigation is necessary to further implicate this or another individual(s), he will direct that the investigation continue.
2. Where evidence does not exist sufficient to arrest at least one individual, he will direct that the case be closed. He may direct that the investigation continue only when, in his judgment:

a. In DEA-controlled cases, there is a substantial reason to believe that continued efforts will result in the prosecution of one or more significant violators, or result in significant seizure of drugs or a laboratory.
b. In non-DEA-controlled cases, there is a need for continued participation, and the initial rationale for participation is valid.

Should a case be closed under either of these requirements, and new developments occur which would warrant renewed investigation, then a new file will be opened.

The immediate supervisor's signature, on either the 30-day status report or other reports written under the case file throughout the period the investigation is in an active status, will signify that supervisory reviews and decisions were made in accordance with these requirements.

6214.22 Special Agent in Charge/Country Attache

A. On a quarterly basis, the SAC/CA (or Assistant SAC/CA) will review all active cases with the immediate supervisors under his command. Through this review, the SAC/CA (or Assistant SAC/CA) will determine, to his satisfaction, that the immediate supervisors are meeting their responsibilities under 6214.21 above.

B. **The M204 Case Status System (CAST) will then be updated to reflect the result of the SAC/CA review. The justification required in this review will be recorded in the field name Status with the following codes: A=Active; J-Judicial Pending; D=Drug Destruction Pending; C=Civil Action Pending; P=Pending Appeal; F-Fugitive Pending; NC=Normally Closed; and AC=Administratively Closed. This status should be revised as the justification changes. Possession cases (see 6232.25) and scheduled regulatory investigations (see 6232.11B) are exempt from the Domestic Operations Guidelines and therefore this reporting requirement.

C. On a quarterly basis, the SAC/CA will prepare a brief memorandum to AO certifying that CAST reflects the current status of cases and justification resulting from the Quarterly Review of Cases.**

6214.23 Coordination with United States Attorney

A. The U.S. Attorney's Office will be notified on a timely basis of all DEA cases for which they will have prosecutive responsibility. Depending upon the needs of the U.S. Attorney, such notification may be verbal, written, or may consist of submitting copies of all investigative reports in the case. The SAC, in concert with the U.S. Attorney will establish general coordinative mechanisms to facilitate this requirement. This coordination by the SAC will also encompass the U.S. Attorney's declination and referral criteria.

B. Exceptions to U.S. Attorney notification are:

1. State and local cooperation cases (C) which will not be prosecuted in Federal court, unless deemed appropriate by the supervisor.
2. Or, in conformance with blanket declination or referral policies established by the U.S. Attorney's Office.

C. Responsibility for assuring that appropriate notification is made in a particular instance rests with the immediate supervisor.

D. The following shall be reported to the U.S. Attorney's Office:

1. Any Federal Class 1 or 2 case: Upon SAC concurrence of the violator level.
2. Any Federal case: Upon the existence of probable cause to make an arrest (whether or not the arrest is made).

* Revision
** Addition

3. Any Federal arrest: Prior to and immediately after (in exigent circumstances where prior notification is not possible, this may be waived). A copy of the DEA Form 6, Report of Arrest, shall be submitted to the U.S. Attorney's Office within 5 working days.

4. Any Federal seizure without a warrant (other than incidental to arrest or civil seizures): Copy of the DEA Form 6, Report of Seizure, shall be submitted to the U.S. Attorney's Office within 10 working days.

5. Any use of electronic surveillance: With due regard for trial preparation.

6. Compensation paid to or consideration furnished to an informant: With due regard for trial preparation.

7. Any Federal seizure of narcotics or dangerous drugs in excess of the threshold amount (see Agents Manual Section 6662.46) or a quantity of marijuana in excess of the representative sample (see Agents Manual Section 6662.51). The U.S. Attorney will be advised in writing by the SAC that the amount of substance seized in excess of the threshold amount (or, in the case of marijuana, the representative sample) will be destroyed after 60 days unless a written notice is received from the U.S. Attorney requesting that the drug not be destroyed. (See Agents Manual Section 6662.46).

6214.24 Coordination With the Department of Justice

A. All coordination between DEA and the Department of Justice (Narcotics and Dangerous Drugs Section) will be carried out at the Headquarters level, including issues of venue or other significant investigative or prosecutive concerns.

B. Coordination with the Internal Security Section, Criminal Division, regarding prosecution of cases involving classified information will be handled by the Office of Intelligence (OI). OI will represent DEA in resulting meetings to identify discovery or other problems which may exist.

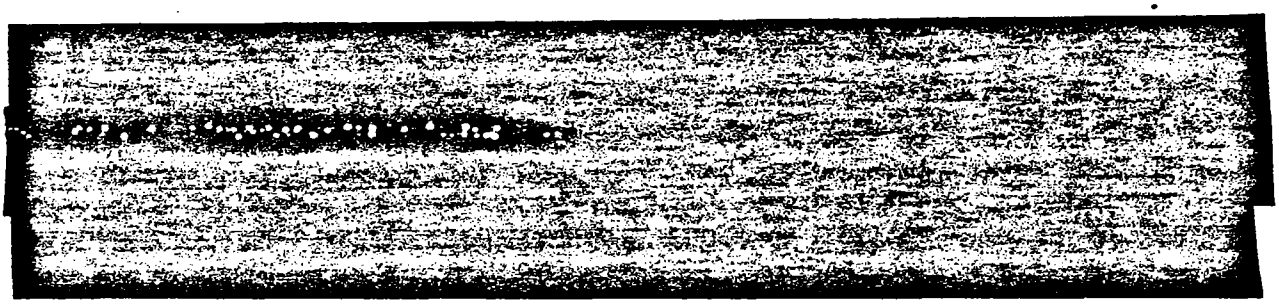
** Addition

*SUBCHAPTER 622 GEO DRUG ENFORCEMENT PROGRAM (G-DEP)

6221 GENERAL

A. The Geo-Drug Enforcement Program is a vital component of DEA management of resources and activities to assure they are properly focused. Externally, this system is used by the Executive and Legislative branches of Government to evaluate DEA's collective productivity in pursuit of mission objectives. It is vital, therefore, that employees and managers be thoroughly familiar with all procedures involved with this system, and that they follow each of them completely and accurately.

B. The system functions by assigning an identifier to all reported investigative activities. This identifier contains five characters:



C. A G-DEP identifier will be assigned to a criminal case file at the time it is opened. See 6223. A G-DEP identifier will not be assigned to a scheduled regulatory investigation (i.e., preregistrant, cyclic, or security) unless or until evidence of a criminal violation is developed.

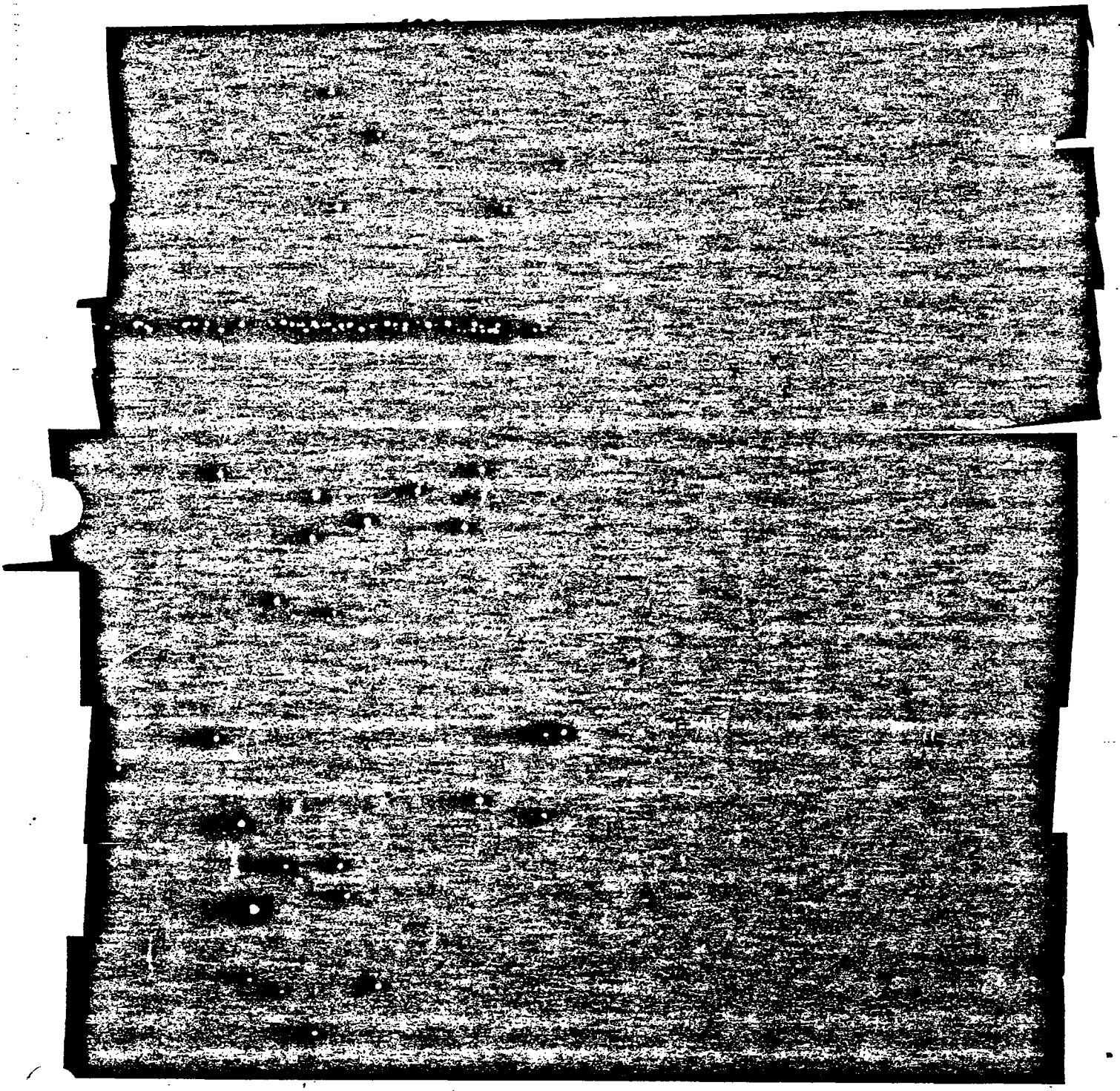
D. The identifier assigned to an investigation may be changed at any point where facts or circumstances so warrant. The change will be accomplished by submitting a separate DEA Form 6 entitled "Change in G-DEP Identifier" (except for Kingpin and Local Impact cases: see 6223.1). Include a terse rationale for the change in the report narrative. If the change concerns the fifth character of the identifier, the DEA Form 6 should be accompanied by a supporting DEA Form 202. Any change in identifier should be promptly entered in CAST, and be reflected in all subsequent correspondence relating to the investigation.

NOTE: Where an investigation is formally accepted under the OCDETF program, it is <u>essential</u> that its G-DEP identifier be changed accordingly, as it is the agency's only means of identifying subsequent expenses for reimbursement. The DEA Form 6 should include the formal date of OCDETF acceptance.

E. A "zero identifier" (one in which the fifth character is "0"), will be assigned to all General File investigative and

* Revision

administrative correspondence; or to case files opened to report a forfeiture action when there is no parallel criminal investigation, i.e., a forfeiture without any DEA defendants (e.g., adopted seizures).



SUBCHAPTER 623 INVESTIGATIVE FILES

*6230 INTRODUCTION

DEA's Investigative Filing System consists of two major types of files: General Files and Case Files. Ancillary to these are Informant Files (see Section 6612), as well as the NADDIS index system for information tracking and retrieval.

6231 GENERAL FILES

6231.1 FUNCTION. General files serve two functions:

A. Storage of fragmentary or low priority information on an individual, a business firm, or a vessel which is not significant enough to open a case file (i.e., Name General Files).

B. A means of compiling information on a general subject for subsequent topical retrieval (i.e., Program General Files).

6231.2 GENERAL FILE NUMBER. The General File Number is the principal element used in referencing, filing, and retrieving general file information. It is a 10-digit number coded as follows:

(1) (2) - (3) (4) - (5) (6) - (7) (8) (9) (10)

(1) and (2) These will be the letters "GF".
(3) and (4) These two digits identify the originating office. See Appendix G.

(5) and (6) These are the last two digits of the fiscal year of the file opening. When a report is written under a Headquarters Program File, however, it will be the fiscal year in which the report was written. Program files other than those established by Headquarters will retain the fiscal year established in their file number.

(7), (8), (9) and (10) Sequential numbers within one of the following series:

From	To	File
3001	3999	Name general files pertaining to diversion control.
4001	7999	Name general files pertaining to criminal information.

* Revision

8001	8999	Office program general files.
9001	9999	Headquarters program general files.

Sequence numbers are assigned in ascending order beginning with the lowest number in the series. At the start of a new fiscal year, the sequence shall begin again.

6231.3 NAME GENERAL FILES

A. Name general files (4001 to 7999) may be established by any field office for reporting information on an individual, business firm, or vessel, which is not readily reportable under a case file number.

B. The name of the foremost individual known at the time of file opening will be the file title. In the case of a business firm, its legal name and address will comprise the file title. In the case of a vessel, its name followed by the designator "VSL" will be the file title.

C. Prior to establishing a name general file, the field office should ensure that an existing general file cannot reasonably accommodate the new material.

D. Where an activity being reported under a name general file is developed to the point where a case file is opened, then the general file number should be referenced as a related file on reports written to the case file.

6231.4 PROGRAM GENERAL FILES

A. Program files are a tool to meet the information requirements of the establishing office. Reports written specifically for one of these files will bear the program file title. Any pertinent reports written under any other general file or case file may be cross-filed to a program file.

B. Headquarters Program General files (9000 series) are standardized topical files to be used in reporting information on these topics. They may also be used for crossfiling reports if an office has a need for retrieving information on the topic of a 9000 series title. (See Appendix H and Paragraph 6144.23.)

C. Office program general files (8000 series) are established to report information on topics of interest only to the office establishing the file. They are also used to report information on enforcement operations under the title of the operation. They may be established by Headquarters, Division, or Resident Offices, as well as by DEA Task Forces, to support the needs of those offices.

D. Prior to establishing a new program file, ensure that there is no existing program file that could not reasonably accommodate the new material.

E. Program files will not be used as a repository for recurring reports of an administrative or management nature.

6231.5 GENERAL FILE MANAGEMENT

A. If a general file number is issued, but not used, it will be cancelled as in 6232.23.

B. A General File Ledger will be maintained by each domestic and foreign office for those files which it establishes. AMRI uses CAST in lieu of a file ledger, and field offices are encouraged to do likewise.

1. General files established by Headquarters offices: the office will formulate the file title, which will be recorded by AMRI with an AMRI-issued file number. AMRI will create a CAST record which will include the following information: file number, file title, and date assigned.
2. General files established by field offices: Each field office will maintain a ledger containing the same information as in number 1 above.

Within 2 days of the issuance of a general file number the case agent or intelligence analyst that opened the general file will ensure that this information is entered into CAST. (Refer to the CAST Subsystem, Field Users Guide). Foreign offices that do not have M-204 access will notify AMRI by teletype within 2 days with the following information: General File Number, File Title, Date Opened, Case Agent and G-DEP code (if assigned). AMRI will enter this information into CAST.

C. General files will be filed by office code, then year, then by sequential number.

D. General files are not governed by the criteria for closing as are case files. Usually, general files will remain in an open status until eventual retirement to the Federal Records Center. However, establishing offices may issue instructions to discontinue using a general file if desired. Such instructions will be included as a permanent part of the file.

E. No periodic status reports to a general file are required. Information applicable to a general file will be reported as received.

6232 CASE FILES

6232.1 GENERAL

6232.11 Domestic

A. A case file will be opened when: an arrest is made; or an arrest or drug acquisition (purchase or seizure) is anticipated or targeted for some future date; or a systematic gathering of information targeted on an individual, or group of individuals, or a drug trafficking operation continues for a period and in a manner typically associated with an investigation.

B. A case file will also be opened for a scheduled regulatory investigation. These investigations are exempt from the requirements of the Domestic Operations Guidelines.

6232.12 Foreign. A case file will be established for those investigations in which substantial assistance is provided to host country law enforcement officials. Substantial assistance is defined as those situations where DEA either actively participates or furnishes information or funds which lead to an arrest or seizure, and the principal violator meets the criteria for foreign G-DEP classification (see 622).

6232.13 Interoffice Transactions. Reports prepared in response to a request from another office normally will be identified with the requesting office's case file title and number. Should the request develop into an investigative lead, or if the response constitutes an investigative lead that will be pursued by the responding office to an extent that it meets the criteria in 6232.11 A or B above, then the responding office will establish its own case file. Also see 6211.5.

6232.2 CASE FILE ESTABLISHMENT. (See also 6214.2.)

6232.21 File Titles

A. In criminal investigations, the title will be the name of the principal violator known at the time of the file opening and upon whom the G-DEP classification is initially based. (When the case opening is based on a seizure with no defendant, the title will be the name of the drug or item and the location of the seizure). A file title will be changed only when it is determined that the current name is an alias. In this instance, prepare a DEA Form 6 setting forth this fact, with the following notation in Item 6: "(correct name), previously reported as (incorrect name)". Subsequent reports will only contain the correct name.

B. In regulatory investigations, the title will be the name of the registrant. For business names, the address of the site will be included as the second element of the title.

6232.22 File Numbers

Case file numbers consist of eight characters, coded as follows:

(1) (2) - (3) (4) - (5) (6) (7) (8)

(1) & (2) Establishing office's identifier (see Appendix G).
(3) & (4) Last two characters of the fiscal year in which the file is established.
(5) (6) (7) (8): Sequential number for files established by that office that year. The sequence will be within one of these series:

From	To	File
0001	1999	Criminal
2000	2999	Diversion

6232.23 File Ledger

A. Each domestic and foreign office will maintain a permanent ledger recording the issuance of case file numbers. At a minimum, they will contain the following headings:

1. File Number.
2. File Title.
3. Date Opened.
4. Employee opening the case (and group, if applicable).
5. G-DEP Identifier.
6. Date closed.

AMRI uses CAST for the Headquarters file ledger, and field offices are encouraged to do likewise.

B. Cancelled file numbers will not be reused. Where a number is cancelled, the originating office will notify AMRI by memorandum of the cancellation and the reason for doing so. The cancellation will be recorded in the field office file ledger and in CAST. Field offices will change the status in CAST from "A" (Active) to AC" (Administratively Closed) and add the following in the CAST Remark: "Case Cancelled". AMRI will make CAST entries for foreign offices that do not have M-204 access upon receipt of the cancellation memorandum referred to above.

6232.24 Case Initiation Report

A. A DEA Form 6 entitled "Case Initiation Report" will be prepared within 5 days of opening a case file. This report will be separate and distinct from any other DEA Form 6's prepared under the particular case file number. Exceptions to this reporting requirement are:

1. Cases which are opened and terminated (either closed or placed in a pending status) within a short time period, generally 5 working days. See 6232.25 for reporting this type of case.
2. Scheduled regulatory investigations.
3. Cases where there are no targeted individuals (i.e., a drug or property seizure).

B. The Case Initiation Report will contain the following elements:

1. Basis of Investigation. The facts or information considered which indicate that a possible violation has occurred, is occuring, or will occur. A reference to another report (e.g., an informant debriefing report) is permissible.
2. Targets. Based upon information known at the time, the individual(s) who will be the focus of investigation.
3. Indexing Section (see 6242.2).

C. A copy of the DEA-202 G-DEP submission on the principal target will be attached to each copy of the DEA-6 Case Initiation Report.

D. The immediate supervisor will review and discuss the contents of this report with the case agent, and document his concurrence by signing the report in the approved block (item 14). Should targets shift as the investigation progresses, no separate updating of initiation reports is required, provided that such shifts are adequately documented through normal reporting procedures.

E. A copy of the Case Initiation Report will be placed in the appropriate informant file, if its opening is substantially based on information provided by the informant.

F. Within 2 days of the issuance of a case number this information should be entered into CAST (Refer to the CAST Subsystem, Field Users Guide). Foreign offices which do not have M-204 access will notify AMRI by teletype within 2 days with the following information: Case Number, File Title, Date Opened, Case Agent and G-DEP. AMRI will enter this information into CAST.

G. The FBI/DEA Concurrent Jurisdiction Guidelines require field managers of both agencies to establish appropriate local liaison mechanisms. At the discretion of local management, this may include the exchange of case initiation reports.

6232.25 Summary Reports - Short Term Investigations

A. Short term investigations which are opened and terminated (either closed or in a disposition pending status) within a short time period (5 working days or less), or any other situation in

which an arrest or seizure is made without significant prior investigation, and which will not require significant investigation afterwards, may be opened and reported in their entirety on a single DEA Form 6 prepared in the following format:

1. Enter "Summary Report" in item 1.
2. The narrative will have the following topical headings:

Defendants: Include name, D/POB, address and occupation for each.
Violation : Self-explanatory.
Judicial District: Self-explanatory.

Date, Time, and Place: (of arrest/seizure.)
Exhibits: List exhibits plus terse description of each.
Action on Defendants: Give details of initial appearance.
Witnesses: Fully identify all persons who were witness or party to the activities being reported, and who may be called as prosecution witnesses.
Details: Give details up to and including arrest/seizure.
Attach appropriate copies of DEA Form 7's,7a's,202's,etc. DEA Forms 48, 48a, 210, etc. must ultimately be prepared for these cases as well.

B. Where this format is being used to report a seizure with no DEA defendants, the foregoing format may be modified accordingly, so as to include pertinent matters such as a description of the property, probable cause, copies of other agency reports, etc.

C. Should further investigation become warranted in a case reported under this format, the Summary Report will take the place of the Case Initiation Report in the case file.

D. Cases reported in the Summary Format are still subject to the same reporting and review requirements as other cases.

6232.3 CASE FILE STATUS

6232.31 Open Cases. Open cases are those involving criminal investigations initiated by DEA and in which all investigative, administrative, or judicial actions have not yet been completed. There are two categories of open cases: "active" and "pending."

A. Active. These are cases which are being actively investigated and in which all arrests have not yet been made. Cases in this status are subject to the supervisory review provisions of 6214. Not more than 90 days may elapse between the submission of either a routine DEA Form 6 or a status DEA Form 6 reflecting investigative progress.

B. Pending. These are cases in which all defendants have either been arrested or declared fugitives and/or all property has been seized, but where final judicial action has not been completed. Cases in this status are not subject to the supervisory review provisions of 6213.2. Where a case has remained in this status for 180 days, a DEA Form 6 will be submitted setting forth all pending matters which are the basis for the case remaining open. Thereafter, similar DEA Form 6's will be submitted at 90 day intervals until all these matters have been resolved. Status reporting requirements for fugitives are set forth in 6642.

6232.32 Closed Cases

A. Within 10 working days after all administrative and judicial aspects of a case have been disposed of, all evidence and seized and recovered funds have been disposed of, and all required reports have been submitted, a case closing DEA Form 6 reporting these facts will be submitted. The case closing status should be entered into CAST within 2 days. Foreign offices that do not have M-204 access will notify AMRI by teletype within 2 days with a request to change the case status in CAST.

B. A case may be administratively closed where no arrests have been made and the field office determines that no further investigative or referral action is warranted. A DEA Form 6 reporting this determination will be submitted.

C. A case may not be closed while any of the defendants are in a fugitive status. However, there are two exceptions; cases meeting the criteria below may be closed.

1. Cases involving post-conviction fugitives (regardless of whether or not they have been sentenced), which are being investigated by the U.S. Marshals Service, the FBI, or State/local authorities (see 6642.2B), may be closed upon written concurrence of the prosecuting authority allowing destruction and/or other final disposition of drug and non-drug evidence. A DEA Form 210 for each post-conviction fugitive must be completed and Item 13, Box A, post-conviction fugitive, must be checked. All other manual requirements for case closures must be met.

2. Cases in which Federal prosecution has been deferred to State/local/foreign authorities and where the fugitive or fugitives are not being sought by the U.S. Marshals Service or the FBI may be closed when the following requirements are met:

a. No drug evidence in the case has been submitted to a DEA laboratory; or, if submitted, the evidence has been transferred to a State/local/foreign authority.

b. No non-drug evidence or other property in the case is in the custody of DEA, or if in DEA's custody, it has been transferred to a State/local/foreign authority

c. The case is in fugitive status for 6 months.

d. A statement by the State/local/foreign law enforcement authority and prosecutor that no further DEA participation such as testimony will be required. This should be fully documented in the closing DEA Form 6, along with the identity of the agency seeking the fugitive.

D. In accomplishing the case closing for State/local prosecuted fugitives who have not yet been convicted, the DEA-210 must be completed for each fugitive as follows:

Item 13, check State fugitive.

Item 22, Remarks Section will be completed by a statement relating that closure of the case meets the requirements of this section and the identification of the State/local law enforcement agency seeking the fugitive.

All other requirements for closing cases must be met.

E. No DEA Form 210 is required for prosecutions in foreign jurisdictions.

F. Before approving a case closing DEA Form 6, the immediate supervisor will review the case file to assure that all documents are present and filed in correct order, and that all extraneous or duplicative material is removed.

G. Reports may not be written under or cross-filed to a closed case. If new information develops, or new investigation is warranted, then a new case file must be opened (referencing the closed case as a related file).

H. Closed case files will be stored and ultimately disposed of in accordance with Appendix 0750A of the Administrative Manual.

6233 FILE JACKETS/SERIALIZATION/INDEXING

6233.1 FILE JACKETS. Each investigative file will have a separate DEA Form 5 File Jacket. (Use DEA-5 for file cabinets and DEA-5c for open shelf files.) Should a file become large to the point of unwieldiness, then it should be divided chronologically into volumes I, II, etc. The file number will be stamped on the reference leaf and the front cover. Related files may be entered in the spaces provided if deemed useful. Numbered files will be separated by office designation and year, and filed in numerical sequence.

6233.2 SERIALIZATION. Serialization is the process by which information on individuals mentioned in an investigative file can be located quickly, without having to search the entire file.

A. NADDIS Users. Serialization is now included in each NADDIS record created or updated. To obtain NADDIS serialization, enter "QSER" and the file number. The display will reflect all the names in that file that have been serialized, listed alphabetically, and all the dates of reports pertaining to that individual which have been processed through NADDIS.

B. For DEA offices without M-204 access, serialization is accomplished with the DEA Form 5a, Serialization Sheet. One or more of these sheets will be filed at the top of each investigative file. Upon receiving a DEA Form 6 for filing, refer to the Indexing Section of the report, and record each name in the section on the DEA Form 5a, as well as the date of the report in the first box alongside the name. When the individual is mentioned in subsequent reports, the clerk will enter the report date in the following box.

When an entire line is filled with report dates for an individual, use the final box to enter the line number for a new line. When an individual is the subject of an investigation and will be mentioned in the majority of the reports, it is not necessary to enter each report date. Enter the individual's name and write "SUBJECT" across the adjoining boxes.

6233.3 INDEXING

6233.31 General

Indexing is a means of locating information on a specific person, business, or other named entity which may be in one or more investigative files. The preparers of investigative reports are responsible for determining and noting which subjects in these reports should be indexed. Based on these determinations, AMRI is responsible for entering this information into the NADDIS index.

6233.32 Criteria for Indexing

Conceptually, a balance must be held between having as complete an index system as possible, without cluttering it with information of no practical value. The following guidelines shall apply in determining whether or not to index a name:

1. Persons suspected of drug violations.
2. Business firms and vessels suspected of being directly involved in drug violations, or being used in conjunction with

illegal activities by suspected drug violators. Business firms or vessels which are just incidentally involved will not be indexed.

3. Officials of business firms, only if they are suspects or if they were contacted in the course of the investigation.

4. Persons having knowledge of drug violators or violations, even though they are not suspects themseleves.

5. Persons reported by another agency as suspected, arrested, or convicted drug violators.

6. Persons on various types of lists received from other agencies or taken from a defendant, if:

a. There is reason to believe that the person on the list may be involved in drug trafficking.

b. There is sufficient identifying information to establish that the person is, in fact, the same as the subject of an existing NADDIS record.

7. All names appearing on records of toll calls made by a suspected violator, except for those which are obviously not involved in criminal activities (e.g., airlines, hotels, business firms, etc.).

8. Persons surfacing in DEA investigations who are suspected of nondrug violations.

9. Nicknames, in the absence of full names, only if the nickname is sufficiently distinctive to produce a "hit" on a name query. Do not index "John Doe's", or derivations of common first names (e.g., Don, Bob, Jack, etc.).

10. Registrants, and key officers/employees of registrants (i.e., those with acces to and/or management control over controlled substances).

6233.33 Indexing Procedures

A. To enter a name in the NADDIS index from a DEA Form 6 (or a teletype in lieu of a DEA Form 6), place it in the Indexing Section of the report narrative. A name appearing elsewhere in the report, but not in this section, will not be indexed. For other reports, (including those from other agencies which the field office determines should be indexed), the name(s) must be checked for indexing, and a NADDIS number (or "NADDIS negative") inserted next to where the name(s) appears in the text. The document must also contain a DEA file reference (General or Case File Number).

B. For each name in the Indexing Section of a DEA Form 6, include either the NADDIS number or the statement "NADDIS NEGATIVE." If it is NADDIS negative, include all identifying information as follows:

-Name (last, first, middle initial)
-NADDIS number (If not yet assigned, enter "NADDIS negative". Foreign offices will include the number if known or, if not, enter "No NADDIS number available").
-Date of Birth
-Race (see race codes below)
-Sex
-Nationality (Enter the data which is most descriptive of the subject's national origin or ethnic background, e.g., French, Mexican, Pakistani, etc.)
-Height, Weight, Eye Color, Hair Color
-Address (Number, Street, City, State, Zip Code)
-Telephone Number (Include Area Code)
-Identifying Numbers

1. DEA Registration Number
2. FBI Number
3. Passport Number
4. Customs Case Number
5. Other Agency Numbers

-Aliases
-Identifying Characteristics (scars, tattoos, etc.)

The NCIC allowable race codes and the definitions for each are as follows:

Code	Race
I	American Indian or Alaskan Native - a person having origins in any of the original peoples of the Americas and who maintains cultural identification through tribal affiliations or community recognition.
A	Asian or Pacific Islander - person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
B	Black - A person having origins in any of the black racial groups of Africa.
W	White - A person having origins in any of the original peoples of Europe, North Africa or the Middle East.
U	Unknown

Hispanics should be entered with the race code most closely representing the individual.

C. Where a DEA Form 6 includes a lengthy list of names, only some of which are to be indexed (e.g.,) subscriber information from toll records), mark it for indexing as if it were a non-DEA report (see A above).

D. Once a NADDIS record has been created, then additional information on the person will be added by AMRI as subsequent reports are received. Subsequent DEA Form 6's need only include the name and NADDIS number in the Indexing Section.

E. To correct personal data in a NADDIS record, submit a DEA Form 202 to AMRI prepared as follows:

1. Complete items 1, 4, 5, 6, and 7.
2. Enter "NADDIS CORRECTION" in item 3.
3. Enter the correction to be made in the appropriate item.
4. Enter any explanation necessary in item 59.

F. Duplicate NADDIS records on the same individual may be corrected by including both NADDIS numbers after the name in the Indexing Section of the DEA Form 6, plus the notation "(Duplicate Records)."

6234 PROGRAM CODES

A. Program codes serve the function of identifying various case and/or general files that relate to the same subject. They will only be assigned to subjects of significant, multi-jurisdictional interest (e.g., Kingpins, Special Enforcement Programs, Special Enforcement Operations, etc.).

B. All Program Codes will be assigned by Headquarters (OMG), upon written request by a Headquarters program office. OMG will assign a six character code to the subject, and enter it in the CAST record of all cases identified in the request.

C. Once assigned to a file, all subsequent correspondence under this file must be identified with this program code (eg., DEA-6s, 7s, 202s, 210s, 352s, 453s, etc.). Do not report more than a single program code for this file on any of this correspondence.

D. A program code may not be assigned to a file not included in the original request without the approval of the appropriate Headquarters program office. Upon approval, the program office will notify OMG, which will update the CAST record for that file.

6235 DEA FORM 6, REPORT OF INVESTIGATION

6235.1 USE. The DEA Form 6 is a general purpose form used to report investigative activities and intelligence information to DEA investigative files. The following instructions will suffice for most reporting situations. Special reporting situations are covered in the topical chapters as appropriate.

NOTE: A teletype may be used in lieu of a DEA Form 6 in time sensitive situations, or to request action by another office, or to report the results of such action. However, the teletype must include all relevant detail normally found in the DEA-6, including either an indexing section or a "(V)" in parenthesis after each name to be indexed, and the NADDIS number or "(NADDIS UNK)" after the (V). It should be routed to the same parties as the DEA Form 6 (Headquarters distribution must include AMRI and the appropriate Operations section/office). The agent who prepared the teletype must sign and date the return copy at the bottom. The signed return copy will be retained in the office case file.

6235.2 PREPARATION

A. Item 1: Program Code: This block will only be used for special Headquarters-approved activities. See 6234.

B. Item 2: Cross File/Related File: Enter the number of any files (general or case) which contain information having a bearing on the file to which the DEA Form 6 is being written.

Indicate crossfiling (i.e., where a copy of the DEA Form 6 is to be placed in the related file) by checking the appropriate box. Generally, crossfiling should be limited to informant debriefing reports (where an informant may provide information pertinent to several files), or for entry into program general files, and crossfiling instructions apply only to the originating office file. Closed cases may be listed as related files, but reports cannot be crossfiled to them.

When a case has been referred from another agency, enter that agency's case number as a related file.

C. Item 3: File Number: Enter the appropriate case or general file number. Also enter, in parenthesis, the number of the preparing enforcement group (if appropriate to the office).

D. Item 4: G-DEP Identifier: Self-explanatory.

E. Item 5: Report By and At: Enter the name of the preparing agent and the city where the report is prepared.

F. Item 6: File Title: Self-explanatory.

G. Item 7: Status:

1. Closed: See 6232.32.
2. Action Requested By: Check this block when requesting action from another office. Enter the specific office being requested, and be sure to indicate the specific action requested

in the report narrative. When requesting action from Headquarters, indicate the specific office by symbol.

3. Requested Action Completed: Check this box when responding to a request from another office. If further investigative efforts are to be made, be sure to indicate this in the report narrative.

H. Item 8: Date Prepared. Enter the date the report is dictated or drafted.

I. Item 9: Other Officers. Enter the names of all other officers who participated in the activity being reported,

including officers of other agencies. If the space provided is not sufficient to list all names, complete the list at the end of the Details section in a paragraph captioned Other Officers (Continued).

J. Item 10: Report RE: Enter a brief subject or title for the contents of the report (e.g., Purchase of Exhibit 1, Report of Arrest, Request for Telephone Toll Check, etc.).

K. Item 11: Report Narrative: The narrative will be written in the third person. The Continuation Sheet, DEA Form 6a, will be used for reports which are longer than one page. The body of the report will normally be divided into four sections: Synopsis, Details, Custody of Evidence, and Indexing.

1. Synopsis. If the report exceeds two pages, the first paragraph will be a synopsis. This will be a concise statement of the results being reported. The paragraph will be captioned "SYNOPSIS" in capital letters and underlined; it will not be numbered.

2. Details. The first section, if the report is less than two pages, or the second section, if the report is longer than two pages, will be captioned "DETAILS" in capital letters and underlined. Each paragraph in the details section will be consecutively numbered. If the report is being prepared in response to a request for information provided in another DEA Form 6, reference that DEA Form 6 in the first paragraph of the details section.

3. Custody of Evidence. If acquisition of evidence is being reported, a section captioned "CUSTODY OF EVIDENCE" in capital letters and underlined will be included. The chain of custody for each exhibit, drug and nondrug, will be recorded from the time of acquisition to the time of submission to the laboratory or evidence custodian. Each exhibit will be documented in separate paragraphs which are consecutively numbered beginning with number "1". It is not necessary to describe the evidence in this section; the complete description of each exhibit will be

reported on the DEA Form 7 or 7a. All references to the weight of drug evidence will indicate the gross weight (see Section 6662.23).

4. The next section will be entitled "INDEXING SECTION," in capital letters and underlined. List the names and identifying data of all individuals to be indexed, numbering each consecutively. Do not continue the sequential numbering from the previous sections. For ease of retrieval it is suggested that when a DEA-6 exceeds ten pages, or has more than eight names to index, that the report writer enumerate in the indexing section those paragraphs in which that individual is mentioned; i.e., SMITH, JOE NADDIS 246810 (other information if any) para 2,7,11,12.

L. Item 12: Distribution. Enter the office designator (Appendix G) of each domestic and foreign office which is to receive copies of the report. The "Other" section of the distribution block will be used to indicate distribution made to other agencies. If a report is sent to another office for informational purposes only, enter "Info Only" next to the office name.

M. Item 13: Signature. The preparing agent will sign the report and enter the signed date in the space to the right of the signature.

N. Item 14: Approved. Type the name and title of the approving supervisor. The supervisor will sign the report and enter the date approved in the space to the right of his signature.

These dates should not be typed. The carbon imprint of the signature will suffice on the copies. Name stamps may be used on the other copies. Reproduced copies, if necessary, should be made from the original.

6235.3 DISTRIBUTION

A. The DEA Form 6 (and 6a) is a six-part manifold form which will be distributed as follows:

Original: The original will be the prosecution copy and will be presented to the United States Attorney in accordance with 6214.23. If the DEA Form 6 is in response to a request from another office, this copy plus one extra copy will be sent to the requesting office.

1st copy: Forward directly to AMRI for indexing and filing.

3rd copy: For the originating office file.

5th copy: Forward directly to the appropriate Operations section/office.

The remaining copies of this form, if not needed for other purposes, may be discarded.

B. "Info Only" reports received from other offices which are found not to contain information warranting retention may be destroyed. The SAC/CA will determine the appropriate supervisory level at which this decision may be made.*

* Revision

6241 GENERAL

This subchapter contains instructions for the preparation of DEA's basic investigative reporting forms. Additional forms and instructions can be found elsewhere in this manual under the topics to which they pertain. Detailed filing instructions are located in Subsection 0752.6 of the Administrative Manual. (This will change to Section 0754 on revision of the Administrative Manual.

6242 DEA FORM 6, REPORT OF INVESTIGATION AND DEA FORM 6A, CONTINUATION SHEET

6242.1 USE. The DEA Form 6 is a general purpose form used to report investigative activities and intelligence information to DEA investigative files. The following instructions will suffice for most reporting situations. Special reporting situations are covered in the topical chapters as appropriate.

6242.11 Use By Foreign Offices. Foreign offices, however, may utilize the DEA/State Department secure teletype message format in lieu of the DEA-6 to report investigative and intelligence information so long as care is taken to include all relevant detail normally found in the DEA-6. This does not preclude foreign offices from documenting case initiations, informant debriefings, significant events such as arrests and seizures, and required case status and closure reports in the DEA-6. The teletype message must contain the names of personnel who could testify to facts in the message in the event of domestic prosecution and a statement that the teletype is being use in lieu of a DEA-6. The teletype message must include an indexing section or a (V) in parenthesis after each name to be indexed and the NADDIS number or (NADDIS UNK) after the (V) and routed to the Headquarters Investigative Records Unit (AMRI) for processing. The Agent who prepared the teletype will review the return copy for accuracy, sign and date it at the bottom. The signed return copy will be retained in the foreign office case file. See also 6211.6 regarding preservation of investigative notes.

6242.2 PREPARATION

A. Item 1: Program Code: This block will only be used for Summary Reports (see 6232.25) or for special Headquarters-approved activities (e.g., Special Enforcement Operations). Normally, it will be left blank. Instructions on its use will be included in the instructions provided for the particular activities.

B. Item 2: Cross File/Related File: Enter the number of any files (general or case) which contain information having a bearing on the file to which the DEA Form 6 is being written.

Indicate crossfiling (i.e., where a copy of the DEA Form 6 is to be placed in the related file) by checking the appropriate box. Generally, crossfiling should be limited to informant debriefing reports (where an informant may provide information pertinent to several files), or for entry into program general files. Generally, crossfiling instructions apply only to the originating office file.

** Addition

When a foreign office is crossfiling to a general file, it will not include the general file number on the index card.

Closed cases may be listed as related files, but reports cannot be crossfiled to them.

When a case has been referred from another agency, enter that agency's case number as a related file.

C. Item 3: File Number: Enter the appropriate case or general file number. Also enter, in parenthesis, the number of the preparing enforcement group (if appropriate to the office).
D. Item 4: G-DEP Identifier: Self-explanatory.
E. Item 5: Report By and At: Enter the name of the preparing agent and the city where the report is prepared.
F. Item 6: File Title: Self-explanatory.
G. Item 7: Status:

1. Closed: See 6232.32.
2. Action Requested By: Check this block when requesting action from another office. Enter the specific office being requested, and be sure to indicate the specific action requested in the report narrative. When requesting action from Headquarters, indicate the specific office by symbol.
3. Requested Action Completed: Check this box when responding to a request from another office. If further investigative efforts are to be made, be sure to indicate this in the report narrative.

H. Item 8: Date Prepared. Enter the date the report is dictated or drafted.
I. Item 9: Other Officers. Enter the names of all other officers who participated in the activity being reported, including officers of other agencies. If the space provided is not sufficient to list all names, complete the list at the end of the Details section in a paragraph captioned Other Officers (Continued).
J. Item 10: Report RE: Enter a brief subject or title for the contents of the report (e.g., Purchase of Exhibit 1, Report of Arrest, Request for Telephone Toll Check, etc.).
K. Item 11: Report Narrative: The narrative will be written in the third person. The Continuation Sheet, DEA Form 6a, will be used for reports which are longer than one page. The body of the report will normally be divided into four sections: Synopsis, Details, Custody of Evidence, and Indexing.

1. Synopsis. If the report exceeds two pages, the first paragraph will be a synopsis. This will be a concise statement of the results being reported. The paragraph will be captioned "SYNOPSIS" in capital letters and underlined; it will not be numbered.
2. Details. The first section, if the report is less than two pages, or the second section, if the report is longer than two pages, will be captioned "DETAILS" in capital letters and underlined. Each paragraph in the details section will be consecutively numbered. If the report is being prepared in response to a request for information provided in another DEA Form 6, reference that DEA Form 6 in the first paragraph of the details section.

3. Custody of Evidence. If acquisition of evidence is being reported, a section captioned "CUSTODY OF EVIDENCE" in capital letters and underlined will be included. The chain of custody for each exhibit, drug and nondrug, will be recorded from the time of acquisition to the time of submission to the laboratory or evidence custodian. Each exhibit will be documented in separate paragraphs which are consecutively numbered beginning with number "1". It is not necessary to describe the evidence in this section; the complete description of each exhibit will be reported on the DEA Form 7 or 7a. All references to the weight of drug evidence will indicate the gross weight (see Section 6662.23).

4. The next section will be entitled "INDEXING SECTION," in capital letters and underlined.

List the names and identifying data of all individuals to be indexed, numbering each consecutively. Do not continue the sequential numbering from the previous sections. For ease of retrieval it is suggested that when a DEA-6 exceeds ten pages, or has more than eight names to index, that the report writer enumerate in the indexing section those paragraphs in which that individual is mentioned; i.e., SMITH, JOE NADDIS 246810 (other information if any) para 2,7,11,12.

L. Item 12: Distribution. Enter the office designator (Appendix G) of each domestic and foreign office which is to receive copies of the report. Offices routinely provided designated copies of DEA Form 6 will not be listed (see 6211.4).

If the report is prepared by a subordinate field office for another subordinate field office, one copy will be forwarded to each concerned field office to which they report. The "Other" section of the distribution block will be used to indicate distribution made to other agencies.

If a report is sent to another office for informational purposes only, enter "Info Only" next to the office name.

M. Item 13: Signature. The preparing agent will sign the report and enter the signed date in the space to the right of the signature.

N. Item 14: Approved. Type the name and title of the approving supervisor. The supervisor will sign the report and enter the date approved in the space to the right of his signature.

These dates should not be typed. The carbon imprint of the signature will suffice on the copies. Name stamps may be used on the other copies. Reproduced copies, if necessary, should be made from the original.

6242.3 DISTRIBUTION

A. The DEA Form 6 (and 6a) is a six-part manifold form which will be distributed as follows:

Original: The original will be the prosecution copy and will be presented to the United States Attorney in accordance with 6214.23. If the DEA Form 6 is in response to a request from another office, this copy plus one extra copy will be sent to the requesting office.

1st copy: Forward directly to Headquarters (AMRI) for indexing and filing.
2nd copy: For the Division Office file.
3rd copy: For the originating office file (where applicable).
4th copy: For the District Office file (where a Resident Office reports to a District Office).
5th copy: Forward directly to the appropriate Headquarters drug section who, after review, will forward to OI. If reporting a non-drug specific matter (e.g., informant status), this copy may be discarded.

Note: Separate the first copies of all DEA-6s and place them in an envelope addressed directly to AMRI. Sort the fifth copy of all DEA-6s by drug, and place in separate envelopes addressed directly to the appropriate drug section. [redacted]

B. "Info Only" reports received from other offices which are found not to contain information warranting retention may be destroyed. The SAC will determine the appropriate supervisory level at which this decision may be made.

6243 DEA FORM 202, PERSONAL HISTORY REPORT

The DEA Form 202 is a general purpose form that will be used to accomplish any of the following:

1. To classify an individual, or update an earlier classification, under G-DEP, either prior to or at the time of his arrest (see 622 and 6641.36).
2. To declare a defendant a fugitive (see 6642.3).
3. As part of the informant establishment package (see 6612.27).
4. To correct personal data in NADDIS records (see 6234.22E).

6244 DEA FORM 210, DEFENDANT DISPOSITION REPORT

This form is the source document for the compilation of DEA defendant statistics, as well as the means by which DEA and the FBI track individual cases brought against DEA defendants. A separate form will be prepared for each defendant prosecuted in a DEA investigation. It will not be prepared for defendants to be prosecuted in foreign courts. Instructions for preparing the DEA Form 210 are on the reverse side of the form.

6245 DEA FORM 453, RECORD/RECEIPT OF SEIZED ASSET

6245.1 GENERAL. DEA operations impact on the illicit traffic through the seizure of drugs, the arrest and conviction of traffickers, and the seizure of assets. Our performance is measured by the quality and quantity of these activities; it is therefore vital that accurate statistics be maintained on them.

The DEA Form 202/210 system tracks our arrest and conviction of violators; the DEA Forms 7/48 system tracks our drug seizures; and the DEA Form 453/48a tracks our removal of assets.

6245.2 ASSET REMOVALS DEFINED. The term "asset removal" shall be defined as those assets directly seized by DEA for forfeiture, or those assets seized by DEA in conjunction with another agency where the secondary agency is responsible for the processing of the seizure for forfeiture. If DEA had no involvement in the seizure, the seizure will not be reported on the DEA Form 453, unless the seizure is adopted by DEA for Federal forfeiture proceedings. Items such as bond forfeitures or civil/criminal fines levied by the court system are not considered "asset removals." These court actions do not impact on DEA's seizure and forfeiture program, and they are not to be reported on DEA Form 453.

A. Any administrative or judicial seizure made under 21 USC 881 will be reported on DEA Form 453. Blocks 1 through 50 of DEA-453 will be completed when DEA is the processing agency for the seizure. All pertinent information should be provided including proper addresses (zip codes as well) for all appropriate parties related to the seizure. Incarceration addresses and booking numbers must be provided when the person or owner of the seized property has been arrested and taken to jail.

B. Any seizure made under 21 USC 853 (CCE), 18 USC 1963 (RICO) or any asset obtained through plea agreement stemming from a drug-related investigation which DEA has developed unilaterally, or in conjunction with another agency (and to which a DEA case or general file number has been assigned) will be reported on DEA Form 453. The DEA Form 453 will be completed as in A above, and the DEA Form 453 will be completed at the time of seizure. When reporting criminal forfeitures, seizing agents should provide the necessary information concerning the criminal indictment in Block 42 of the DEA Form 453.

C. Any asset seized by DEA and referred to another agency for processing (and to which a DEA case number or general file number has been assigned) will be reported on the DEA Form 453. Blocks 1 through 11, 13, 15 and 46 through 48 will be completed when reporting "referred assets."

D. Seized property, with a minimum value of $100, which has been seized and for which abandonment proceedings are to be initiated, will be reported on the DEA Form 453 as described in A above. Foreign DEA Offices will complete the DEA-453 as required in C above. The DEA-453 will be mailed directly to Headquarters (PESO) for statistical information.

6245.3 REPORT PREPARATION AND DISTRIBUTION

A. The DEA-453 is a four-part manifold, designed to be hand-written. The form can be typewritten, but any typing requirement levied by a field office should not impact on the basic reporting requirements of five (5) calendar days from date of seizure. The DEA Form 453 has also been designed to serve as a receipt and as an agent's file copy. For assets to be processed by DEA, blocks 1 through 50 will be completed and the form will be distributed as follows:

ORIGINAL - to terminal input operator.
COPY 1 - Agent's receipt and case file.
COPY 2 - retained by custodian.
COPY 3 - affixed to the property as an inventory identifier.

NOTE: Copy 1 will be signed by the USMS or their designee when property pending forfeiture is released to the USMS. Copy 3 will be provided to the USMS at the time property pending forfeiture is released to the USMS.

B. If the seizure of property has been referred to another agency for forfeiture processing, blocks 1 through 11, 13, 15 and 46 through 48 will be completed on the DEA-453. It will be distributed as follows:

ORIGINAL - to terminal input operator.
COPY 1 - Agent's receipt and case file.
COPY 2 - discard.
COPY 3 - discard.

Foreign DEA Offices will mail the original to PESO. Copy 1 will be retained by the reporting office. Copies 2 and 3 should be discarded.

C. The DEA-453 will be used to report all asset removals under 21 USC 853 (criminal forfeiture), 21 USC 881 (civil forfeiture), and 18 USC 1963, or property subject to abandonment proceedings.

D. Once the data from the DEA-453 has been entered into the CAP database, the terminal input operator will forward a copy of the full-record print, retrieved from CAP, to the submitting case agent. Field Offices must ensure the accuracy of the data entered into the CAP database, and update and modify the records in CAP to ensure that the most current status of the forfeiture process known to the field office is entered. Modify the database according to the instructions provided in the "Guidelines for Field User Modification to CAP."

6246 DEA FORM 470 PHOTO IDENTIFICATION FOLDER

6246.1 GENERAL. The use of "mug shots" in an informal photographic display has traditionally been a means of identifying suspects in criminal investigations. Photo displays that have been improperly prepared and presented may be found to be inadmissible as evidence in court and could result in the dismissal of charges against a defendant.

6246.2 PHOTO IDENTIFICATION PROCEDURE. The procedures for preparation and presentation of the DEA Form 470 are contained on the folder. In situations involving multiple witnesses who have no contact with each other, one folder may be prepared and presented to the witnesses. Each witness identifying the subject may then indicate the identification by signing a photocopy of the folder. Handle the photocopies as separate evidence exhibits.

CHAPTER 63 LIAISON

CHAPTER 63 LIAISON

Subchapter 631 General

It is DEA's policy to cooperate with other Federal, State, and local authorities to the fullest possible extent, consistent with governing Federal law and regulation, and Section IID of the Domestic Operations Guidelines.

Subchapter 632 Dissemination of Information

6321 GENERAL

A. The following provisions pertain to all dissemination of investigative information:

1. Need to Know. Dissemination of investigative information will be limited to those recipients with a need for the information to perform their duties or functions.

2. Transmission Security

a. Information bearing a National Security Classification will be transmitted in accordance with Subchapter 865 of the Planning and Inspection Manual.

b. DEA investigative and regulatory reports and records are designated "DEA SENSITIVE". Transmittal of "DEA SENSITIVE" materials will be by U.S. Government courier, by first class mail, or by personal delivery.

3. Third Agency Rule. When a request is received for information that is contained in a report or record furnished to DEA by another agency and the release of material or information is primarily the responsibility of the other agency, the person submitting the request will be directed to the other agency.

B. The following definitions apply to terms used throughout this subchapter.

1. Individual. The term as used herein means a citizen of the United States or an alien lawfully admitted for permanent residence.

2. Individual Record. Information constitutes a record within the meaning of the Privacy Act only if it is retrievable by the name or a unique identifier by which an individual can be identified. Thus, within the meaning of this subchapter and the Privacy Act of 1974, a DEA record on an individual may be any item of information on the NADDIS display record, as well as information contained in investigative files referenced on the respective index records.

3. Disclosure. A disclosure of information is the release to a non-DOJ person or agency of any item of information that includes either the name of an individual or any number or identifying item, such as a photograph or finger or voice print, by which the individual may be subsequently identified. The actual release of the information may be in documentary, photographic, or automated media or by oral disclosure.

4. Other Investigative Information. This term is used herein to describe investigative information on foreign subjects, legal aliens admitted to the United States on a temporary basis, or illegal aliens and general information and data not directly related to identifiable citizens of the United States or aliens legally admitted for permanent residence.

5. Noninvolved Party. This includes those officials of other agencies or private persons who cannot substantiate a need-to-know for investigative information for an authorized purpose.

6322 EXCHANGE OF INFORMATION WITH OTHER AGENCIES

6322.1 DISSEMINATION OF INVESTIGATIVE INFORMATION WITHIN THE DEPARTMENT OF JUSTICE. Investigative information, including individual records, may be disseminated within DEA and to other agencies of the Department of Justice as outlined in 6321 above. The disclosure accounting procedures detailed in 6327 do not apply to disclosures of information within the Department of Justice.

NOTE: Within the meaning of the Privacy Act of 1974, members of a joint organization are considered to be members of the lead organization. Therefore, where DEA participates as the lead organization in a formal joint law enforcement organization with other Federal, state or local officials, such as in a DEA Task Force, disclosures may be made under the provisions of this paragraph, subject to the conditions outlined in Section 6321.

6322.2 DISSEMINATION OF INVESTIGATIVE INFORMATION OUTSIDE THE DEPARTMENT OF JUSTICE. All disclosures of investigative information outside the Department of Justice are subject to the accounting procedures in 6327. Release of investigative information which includes an individual record to a person or agency outside the Department of Justice is authorized only when one of the following conditions is met:

NOTE: The section of the Privacy Act which authorizes each type of disclosure appears in parentheses after each condition. This information must be entered in item 6 of the DEA-381, Disclosure Account Record (see 6327).

A. The individual named in the disclosure has either requested in writing or has given prior written consent that the disclosure be made to a specific person or an otherwise authorized official of agency. ((b))

B. Disclosures may be made to designated agencies or activities without the consent of the individual, provided the release is for a routine use in discharge of DEA law enforcement or regulatory responsibilities and provided the would-be recipient has established a need-to-know for the information. "Routine use" disclosures may be made to the following agencies or persons at the initiative of DEA or in response to an appropriate oral or written request: ((b)(3))

1. Other Federal law enforcement and regulatory agencies
2. State and local law enforcement and regulatory agencies

3. Foreign law enforcement agencies with whom DEA maintains liaison
4. The Department of Defense and Military Departments
5. The Department of State
6. Intelligence Agencies
7. The United Nations
8. Interpol
9. To individuals and organizations in the course of investigations to elicit information

C. In addition, disclosures are routinely made in the following categories for the purposes stated: ((b)(3))

1. To Federal agencies for national security clearance purposes and to Federal and state regulatory agencies responsible for the licensing or certification of individuals in the fields of pharmacy and medicine.
2. To the Office of Management and Budget upon request in order to justify the allocation of resources.
3. To state and local prosecutors for assistance in preparing cases concerning criminal and regulatory matters.
4. To the news media for public information purposes (See 6326).
5. To the Comptroller General, or any of his authorized representatives in connection with a General Accounting Office audit or inspection.
6. Pursuant to the order of Federal or state court. See paragraph 6322.4.

D. Disclosures may be made for law enforcement purposes in response to requests from law enforcement and regulatory agencies, provided the request is signed by an authorized official of the agency, identifies the record and the specific information required, and states the law enforcement purpose for which the desired information will be used. ((b)(7))

NOTE: DEA may release investigative information under this condition or the routine use condition, as appropriate. Therefore, the basis for the disclosure reported on Form DEA-381 must be determined from the contents of the request and the media or means by which the request was received. Citation of both this provision and the routine use provision is appropriate where it is deemed necessary for completeness to provide at DEA initiative information beyond that requested. If, however, only the specific information requested is provided, subsection (b)(7) will be cited as the basis for the disclosure.

E. Any disclosures meeting any of the following conditions will be made only by DEA Headquarters:

1. To the extent of matters within the jurisdiction of the Congress, to either House of Congress, any committee or subcommittee thereof or any joint committee of Congress or subcommittee of any such joint committee. ((b)(9))
2. To a person pursuant to showing of compelling circumstances affecting the health or safety of an individual on whom a record is maintained. ((b)(8))

3. To the National Archives as a record which is deemed to have sufficient historical value to warrant its continued preservation by the United States Government. ((b)(6))
4. To persons under provisions of the Freedom of Information Act. ((b)(2))

6322.3 REQUESTING INDIVIDUAL RECORDS FROM OTHER AGENCIES

A. Procedures for such requests to a Federal agency depend on whether the agency provides information to DEA as a routine use and has defined this use in the Federal Register.

1. If a Federal agency has defined the provision of information on individuals to DEA as a routine use, normal channels for request/exchange of information, including oral requests, pertain.
2. To obtain information from Federal agencies who do not routinely provide information to DEA, specific written requests, signed by the SAC or Headquarters Office Head must be submitted. The request must include, at a minimum, section (b)(7) of the Privacy Act, which pertains to disclosures to law enforcement agencies:

a. The identity of the desired record by use of a name or another identifying element and the specific portion of the record or items of information requested.
b. A statement that advises the agency of the law enforcement purpose for which the information is requested.

B. A request to another Federal, state, local or foreign agency for information on an individual will of necessity involve providing certain information to the agency to elicit a meaningful response. The nature of the information revealed in the request determines whether or not an account of the disclosure must be made.

1. If the information given is of a nature that might be available to anyone acquainted with the individual, an account of the disclosure is not required. Examples of such items are name, date of birth, physical description, address, automobile registration number, etc.
2. If, in addition to items such as the foregoing, the request reveals other information that has resulted from DEA investigative activities, the disclosure must be reported on the DEA-381. Examples of such information would be the fact that the individual is being investigated for a particular offense, his alleged criminal activities, his criminal associates, modus operandi, etc.

C. In the process of a DEA investigation, the mutual request-response exchange with other agencies often represents a continuing dialogue that may extend for an indefinite period of time. In such cases it is sufficient to include, along with the nature of the disclosure, the date of initiation for the exchange involved. Additional DEA-381's reporting disclosures to the same agency must be prepared when additional individuals are identified and their names and pertinent investigative information are dis-

closed. Repetitive reports of disclosures on the same individual in the same investigation to the same agency are not required.

D. Information contained in positive responses to such inquiries will be processed as outlined in Chapter 62, and is subject to the security and privacy provisions of this subchapter.

6322.4 FURNISHING INFORMATION IN RESPONSE TO A SUBPOENA OR OTHER DEMAND

A. The authority of SAC's and the Chief Counsel to release certain information relating to controlled substances is contained in 28 CFR 0.102. This authority was granted to facilitate cooperation with Federal, state and local officials concerned with suppressing the abuse of controlled substances and permits the furnishing of:

1. Information obtained by DEA and DEA investigative reports to Federal, state and local officials engaged in the enforcement of laws related to controlled substances.
2. Information obtained by DEA and DEA investigative reports to Federal, state and local prosecutors and state licensing boards, engaged in the institution and prosecution of cases before courts and licensing boards related to controlled substances.
3. Testimony of DEA officials in response to subpoenas issued by the prosecution in Federal, state and local criminal cases involving controlled substances.

B. 28 CFR 0.103 does not authorize or apply to the disclosure of investigative information upon subpoena or demand:

1. For cases that do not involve controlled substances.
2. For civil matters.
3. From the defense in criminal cases.
4. From a state court where DEA would object to the disclosure on any of the grounds set forth in 28 CFR 16.26 (e.g., it would reveal informant's identity, classified information, investigative techniques, etc.).

These situations are governed by the provisions of 28 CFR 16B, which require prior review and authorization by the Department. Where any such situation arises, the SAC should immediately notify the Office of Chief Counsel and the appropriate U.S. Attorney's Office, which will jointly formulate an appropriate course of action.

6323 REQUESTS FOR INVESTIGATIVE INFORMATION BY MEMBERS OF THE PUBLIC

A. The Headquarters Freedom of Information Section will respond to all Privacy Act of 1974 and Freedom of Information Act requests submitted by members of the public.

The DEA Investigative Reporting and Filing System has been exempted by the Attorney General from certain provisions of the Privacy Act of 1974.

Note, however, that exemption from the above-cited provisions does not necessarily mean that all investigative information requested by an individual can be withheld by DEA.

B. Requests from members of the public received in DEA field offices will be processed as follows:

1. Freedom of Information Act Requests

a. In response to requests made in person or by telephone, advise the requestor that the proper channels for such requests are published in the Code of Federal Regulations. Refer requestors to 28 CFR Part 16, as amended, for Departmental regulations, procedures, fee schedules, etc. Freedom of Information Act requests must be made in writing to the *Chief, Freedom of Information Section.* All requests should be clearly marked "Freedom of Information Act" and should specify what documents or records are sought by the requestor.

b. Written requests addressed to field or Headquarters offices will be forwarded immediately by route slip to the Freedom of Information Section (AMF) at Headquarters. Do not acknowledge receipt of the request.

Under no circumstances should a field or Headquarters office acknowledge the existence or non-existence of any of the requested data in DEA files to a requestor. A written response will be forwarded to the requestor by the Administrator regarding the disclosability of the requested data.

2. Privacy Act Requests

a. In response to inquiries made in person or by telephone, advise the requestor that the proper channels for such requests are published in the Code of Federal Regulations and that written inquiries must be mailed to:

Drug Enforcement Administration
Freedom of Information Section
1405 I Street, N.W.
Washington, D.C. 20537

b. Written inquiries directed to DEA field or Headquarters offices will be handled in the same manner as directed in paragraph 1a, above.

NOTE: The Freedom of Information Act and the Privacy Act are different Acts. The Freedom of Information Act deals with all agency documents and records. The Privacy Act deals only with documents and records of an agency which are related to persons.

Both are complex acts. In dealing with the public, field offices should not try to interpret either Act. General inquiries regarding these acts should be directed to AMF.

* Revision

6324 REQUESTS FROM NONINVOLVED PARTIES

The release of individual records to a noninvolved party (see 6321B) where a condition of disclosure is not specifically authorized by this subchapter is prohibited. The release of other investigative information to noninvolved parties is prohibited, except for inquiries by Members of Congress as outlined in 6325 below.

6325 CONGRESSIONAL DEMANDS FOR INFORMATION

A. It is the policy of DEA to comply to the fullest extent possible with requests for information from DEA files received from members of Congress, Congressional committees and their staff members, and the General Accounting Office. However, DEA also has the responsibility of withholding certain information the disclosure of which would be incompatible with the public interest. This policy and responsibility is recognized in Presidential Memorandum to the Heads of Executive Departments and Agencies dated March 24, 1969, and by Attorney General's Order No. 116-56 dated May 15, 1956.

B. Requests from Congressional sources for information from DEA files should be reduced to writing and state the specific information sought as well as the specific objective for which it is sought. Requests received in DEA field and Headquarters offices should be referred to Headquarters (CP).

C. Once a request is coordinated throught CP, the following procedures will be utilized as appropriate in each of the situations outlined below:

1. Closed Files with no Litigation or Administrative Action Pending or Contemplated. Such files may be made available for review in the concerned DEA office in the presence of the official having custody thereof. However, investigative reports from other agencies will not be furnished by DEA, but rather, the Congressional representative will be advised to direct his request to the agency concerned. If necessary, the reports from the other agencies may be summarized by DEA without revealing the identity of informants or certain investigative techniques; however, authority to release such summaries must be obtained from the agency involved.

2. Open Files in Which Litigation or Administration Action is Pending or Contemplated. These files may not be made available for examination by the Congressional representative. The person making the request should be advised that the request involves an active case and that the file cannot be made available until the case is completed. Additionally, the DEA representative should briefly set forth the status of the case in as much detail as practicable and prudent without jeopardizing the case.

3. Invoking Executive Privilege. A Presidential Memorandum of March 24, 1969, states that executive privilege will be invoked "only in the most compelling circumstances and after a rigorous inquiry into the actual need for its exercise." Should DEA believe it necessary to invoke executive privilege, the

Administrator will consult the Office of Legal Counsel of the Department. Subsequently, if the Attorney General agrees that the circumstances justify the invocation of executive privilege, the matter will be transmitted to the Counsel for the President, who will advise the Attorney General of the President's decision. The Attorney General will then advise the Congressional agency that the claim of executive privilege is being made with the specific approval of the President. Pending the decision whether to invoke executive privilege, a request should be made to the Congressional source to hold the inquiry in abeyance until the decision is made whether to invoke executive privilege.

6326 PUBLIC INFORMATION

6326.1 GENERAL

A. Information which may be released to the news media and the general public may be divided into three broad categories:

1. Information concerning DEA policy, positions and operations.
2. Information on violations of narcotic and dangerous drug laws.
3. Public information designed to prevent the abuse of narcotics and dangerous drugs.

These instructions apply to all personnel, but some deviations must be noted to cover application by Headquarters and field office personnel. Guidelines pertaining to the three categories outlined in the above paragraph are thus set forth separately for field offices and for the Headquarters professional staff.

B. Special Agent participation in media interviews or publication of articles requires prior approval of the SAC. At Headquarters, agents will obtain approval from the Assistant Administrator for Operations. Approval will be granted only for interviews or articles which emphasize the overall objectives, goals and functions of DEA.

6326.2 INFORMATION CONCERNING DEA POLICY, POSITIONS OR PROCEDURES

A. Field Personnel. The SAC is authorized to release that information which is related to his Division and does not encroach upon overall DEA matters. Examples of this are:

1. Apparent increase or decrease in illicit drug or narcotic violations.
2. The role of the Division Office in educational and training programs.
3. Cooperation with state and local law enforcement agencies.

Under no circumstances will SAC's respond to inquiries which relate to DEA activity on a nationwide scope, e.g., budgetary matters, personnel assignments, legal matters, legislative happenings, or Departmental and DEA policy.

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

DEA

NOTICE

CLASSIFICATION CODE
63 & 65

Cancellation: Upon revision of the Agent's Manual

SUBJECT: PUBLIC INFORMATION

This notice provides the current guidelines and procedures for Chapters 63 and 65.

63.1 GENERAL

Add the following sentence to the last paragraph under A.3.

Guidelines pertaining to foreign media contact are found in Section 65.1C(4).**

65.1 GUIDELINES FOR DEA FOREIGN ACTIVITIES

(Paragraphs A through G.3. remain the same).

4. Public Affairs and Contacts with the News Media. Since the presence of DEA representatives in foreign countries could become a sensitive subject, communications with the news media or response to media questions by **the DEA Country Attache will be carried out with the concurrence of the U.S. Ambassador or the U.S. Mission Public Affairs Officer. The Country Attache or Supervisory Special Agent designated by the Country Attache, may brief and respond to inquiries from media representatives concerning DEA activities in their area of responsibility. Non-supervisory personnel are not authorized to speak to the media on behalf of the Drug Enforcement Administration unless they are specifically authorized to do so by the Country Attache. In addition, the Country Attache is requested to advise the Chief of Congressional and Public Affairs as soon as possible after any media contact that involve potentially sensitive or controversial issues.** This will not preclude the initiation of any such communication by DEA Headquarters.

**Addition

Originated by: HQ OMC

B. Headquarters Professional Staff. All inquiries made directly to a Headquarters professional staff member will be referred to PA. PA may then request information relative to the inquiry from the staff member, or in the interest of accuracy and expediency, authorize the staff member to respond directly to the inquiry. Exceptions to this may occur when, for example, the staff member is queried relative to a presentation made before a public group or organization. In this case it is proper for the staff member to clarify any statements made in the presence of the press. PA will be notified of such action.

6326.3 INVESTIGATIVE INFORMATION

A. Field Personnel

1. Information Concerning Arrests or Criminal Offenses. These instructions apply to the release of information to the news media from the time a subject is arrested or is charged with a criminal offense until the proceeding has been terminated by a trial or otherwise. Such releases constitute accountable disclosures. The SAC or his designee, subject to specific limitations imposed by law, court rule or order, may make public the following information:

a. The defendant's name, age, residence, employment, marital status, and similar background information.
b. The substance or text of the charge, such as complaint, indictment, or information.
c. The identity of the investigating and arresting agency and the length of the investigation.
d. The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a cursory description of items seized at the time of arrest. An estimate of the approximate wholesale value of the drugs seized may be included only if asked. Since these values vary by geographic area over time, such estimates should be made cautiously and only in response to direct questions. Disclosures will include only incontrovertible, factual matters, and will not include subjective observations. If background information or information relating to the circumstances of an arrest would be highly prejudicial, and if the release thereof would serve no law enforcement function, such information will not be made public.

2. Volunteering Background Information. SAC's will not volunteer for publication any information concerning a defendant's prior criminal record. However, this is not intended to alter the policy that Federal criminal conviction records are matters of public record, and this information may be made available if approved by the United States Attorney.

3. Release of Information Prior to or During the Trial Period. Because of the particular danger of prejudice resulting from statements made in the time approaching and during this period such statements must be avoided. Any such statement or release will be made only when circumstances absolutely demand a disclosure of information and will include only information which is clearly not prejudicial. Prior to release, such statements will be cleared by the United States Attorney handling the case.

4. Significant Cases. Information relative to arrests or cases, which in the opinion of the SAC have particular national significance, will be relayed by teletype to AO, outlining the pertinent facts and requesting a press release. AO will coordinate the request with PA, who will determine whether the Department of Justice or DEA will make the press release. PA will notify and coordinate with the SAC as to the determination and status of the press release. If the arrest was made in cooperation with a U.S. Attorney, a grand jury investigation, state or local enforcement agencies, or another Federal agency, PA should be so informed. A joint release will then be considered, or the Department of Justice may waive the press release in favor of the other agencies involved. It is DEA's policy to give credit to any and all agencies which assist in any way. Following a determination that the information is to be released by Headquarters or the Department of Justice, PA will, by the most expeditious means, notify the SAC that the information is being released. Within a reasonable length of time after receiving such notification from Headquarters (usually one hour), the SAC may give identical information to the local press. No favoritism is to be shown to any media, but all will receive notification of the arrest in rapid succession. The two major wire services should not be overlooked, for these provide wider coverage. SAC's will keep a local press card file containing the names of media personnel who have acquired some expertise in reporting criminal and drug cases. This establishes a good relationship with the press, thus assuring DEA of accurate coverage.

5. Information Restricted from Release. The release of certain types of information generally tends to create danger of prejudice without serving a significant law enforcement function. Therefore, SAC's will refrain from making available the following:

a. Observations about a defendant's character

b. Statements, admissions, confessions, or alibis attributable to a defendant.

c. References to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests.

d. Statements concerning the identity, credibility or testimony of prospective witnesses.

e. Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

6. Release of Agent Identity. Agents will make every reasonable effort to see that their photographs or names do not appear in press releases. This can usually best be accomplished by establishing contact with press representatives at the outset of any incident and explaining the press policy of DEA. When credit is provided in a news release regarding DEA agents it should appear simply as "Special Agents of the Drug Enforcement Administration" and refrain from any direct identification of agents by name.

7. Assisting New Media. SAC's will take no action to encourage or assist news media in photographing or televising evidence, defendants or accused persons being held or transported in Federal custody. Photographs of evidence or defendants will

not be made available unless a law enforcement function is served thereby. If such requests are received from news media, the local U.S. Attorney will be contacted for a decision. This policy does not restrict the release of pertinent information concerning a defendant who is a fugitive from justice when the information would assist in the fugitive's apprehension.

8. Exceptions to the Policy on Release of Information. If a SAC believes that, in the interest of the fair administration of justice and the law enforcement process, information beyond these guidelines should be released in a particular case, he will confer with AO, and then request permission of the local United States attorney to release the information.

B. Headquarters Professional Staff. In general, Headquarters personnel are not likely to be called upon to volunteer information concerning arrests and cases. If such is the case, however, all inquiries will be referred to CPP. CPP will make the determination as to whether or not Headquarters personnel will handle the inquiry. Situations such as this may arise in connection with a case which has been closed, but information for background purposes is needed by a particular member of the press.

6326.4 INFORMATION FOR DRUG ABUSE PREVENTION PURPOSES

A. Field Personnel. When the inquiry is related to general public information such as is contained in pamphlets, books and papers, field personnel may refer the inquiry to the Training Officer. This officer has access to Headquarters for information which he cannot supply from Division sources.

B. Headquarters Professional Staff. CPP will process all inquiries, except those from Congressional sources, related to general information, whether made in writing or by telephone.

6326.5 PUBLICATIONS. The publication of articles by DEA employees may be authorized, provided the content of the article is commensurate with the training and experience of the employee and does not interfere with the duties of his position. Generally speaking, these projects should be in keeping with the overall objectives, goals and functions of DEA. Articles and manuscripts that are prepared for publication must be cleared by the SAC or Headquarters Assistant Administrator. Clearance from CPP is also required when the text matter pertains to controversial issues.

6327 ACCOUNTING FOR DISCLOSURES

6327.1 GENERAL. Except for disclosures of individual records made to a Department of Justice Agency and disclosures made pursuant to the Freedom of Information Act, all disclosures of individual records are accountable. Accountable disclosures, therefore, include disclosures to persons, the Congress, and agencies outside the Department of Justice. All DEA offices will report each such disclosure from the Investigative Reporting and Filing System (including NADDIS) on DEA Form 381, Disclosure Account Record, as

outlined below. Headquarters (AMRI) will maintain a central account of such disclosures of individual records to provide an audit trail to assist in determining DEA compliance with the Privacy Act.

** NOTE: The DOJ has approved by memorandum the elimination of any DEA Privacy Act Disclosure--Accounting 381 procedures regarding exchanges of investigative records within all foreign U.S. missions. Investigative disclosures to the State Department are also included in this category and do not require 381 preparation.**

6327.2 DISCLOSING OFFICE RESPONSIBILITIES

A. Each DEA office that makes accountable disclosures will maintain an office disclosure account file of the carbon copies of DEA-381. The file will be maintained for 3 years. Subsequent to verification by AMRI that the central account is complete, DEA offices will be authorized in writing to destroy the office disclosure account file for the year specified.

B. Each office will maintain a central control log for assignment of the disclosure sequence number. A separate log will be maintained for each system of records.

6327.3 HEADQUARTERS RESPONSIBILITIES

A. AMRI will maintain a central disclosure account. A separate file, consisting of original copies of DEA Form 381, will be maintained for each office reporting disclosures. This account will be maintained for 5 years or the life of the record, whichever is longer, and may contain reports for records which have been retired to a Federal Records Center.

B. AMRI will conduct a periodic audit of each office disclosure account to ensure that the central disclosure account is complete. Reporting offices will be promptly informed of any discrepancies noted for corrective action. Once the central account is determined to be complete, each office will be authorized in writing to destroy the office account file for a specific year.

C. An automated central index of disclosures by name of the individual will be maintained. The DEA-381 will be reviewed for accuracy and completeness prior to processing for the automated indexing.

6327.4 DISCLOSURE ACCOUNT RECORD, DEA FORM 381. A DEA-381 will be prepared by each DEA employee who makes a disclosure under any of the conditions specified in Section 6322.

Disclosures made from different systems of records (see Exhibit 2) must be reported on separate DEA Form 381's.

A. Preparation. (See Exhibit 1.) The DEA Form 381 will be prepared in duplicate. Enter information as follows:

1. Date (Item 1). Enter the date the disclosure was made.
2. Disclosure Number (Item 2). Disclosure numbers will be constructed as follows:

** Addition

a. Records System Identifier. This identifies the system of records from which the disclosure was made. See Exhibit 2.

b. Office Designator. See Appendix G.

c. DEA Office/Task Force Indicator. DEA Offices will enter a zero. DEA Task Forces will enter an "X".

d. Fiscal Year. Enter the last two digits of the fiscal year.

e. Sequence Number. This is a sequential number identifying each disclosure made from each records system by an office during a given year. Commence with one at the beginning of each fiscal year; do not enter leading zeros.

The first four portions of the disclosure number (records system identifier through fiscal year) will be entered by the person preparing the report. The sequence number will be assigned by the individual maintaining the control log (see 6327.2 above).

3. Disclosed To (Item 3). Enter the name of the person or the name and address of the agency to whom the disclosure was made. For disclosures to DEA informants, enter only the informant number. **If the disclosure is an EPIC publication (Brief or Special Report), enter "See Attached List", and attach to the DEA-381 a list of the names and addresses of the agencies to whom the publication was distributed. Note: Items described in paragraphs 5 thru 9 below will be preprinted by EPIC on the DEA-381 attached to the publication.**

4. Disclosed By (Item 4). Enter the typed name and signature of the person actually making the disclosure. Should more than one person be a party to a disclosure, the senior DEA employee will sign the disclosure report.

5. Purpose of Disclosure (Item 5). Check the appropriate block to indicate the primary justification for the disclosure. Immediately after the box checked, enter the section of the Privacy Act which allows the disclosure, as noted in 6322. For example, enter "(b)(3)" for a routine use disclosure.

6. Nature of Disclosure (Item 6).

a. Enter the number 1 in the appropriate block to distinguish between oral and written disclosures.

b. Enter a general description of the contents of the disclosure. Neither a complete listing of items in a documentary disclosure nor the details of a conversation are required.

7. Name (Item 7a). List the names of the individuals that were contained or discussed in the disclosure. Enter last name, first name, and middle name or initial, as disclosed. Where both a true name and an alias name or names were disclosed, list the true name only; where only an alias name was disclosed, enter the alias name.

8. ID Number (Item 7b). Enter the NADDIS number for each name if a number has been assigned and access to DATS is available.

9. File Number (Item 7c). Enter the case file number or the general file number from which the disclosure on each name was made. Should multiple files be involved on a single individual, enter the most recent file number. Where a disclosure is made

** Addition

that relates only to a general file for which a general file number was not assigned, enter "GFT" followed by the office designator of the originating office. On the reverse side of the form enter the number (1 through 35) related to the name and the general file title.

B. Distribution

1. The original of each DEA Form 381 for disclosure from the Investigative Reporting and Filing System will be forwarded to Headquarters, AMRI.

2. The duplicate copy of each DEA Form 381 for a disclosure from the Investigative Reporting and Filing System will be maintained by the office making the disclosure and will be filed by disclosure number as outlined in 6327.2.

Exhibit 1

DISCLOSURE ACCOUNT RECORD

1. DATE	2. DISCLOSURE NO.
1/20/88	01-B10-88-9

3. DISCLOSED TO *(Name and Address)*	4. DISCLOSED BY *(Typed Name and Signature)*
Boston Police Department 1000 Main Street Boston, MA	/s/ Kate B. Norman

5. PURPOSE OF DISCLOSURE *(Check one only)*

- [x] CRIMINAL LAW ENFORCEMENT (b)(3)
- [ ] REGULATORY FUNCTION *(Non-Criminal)*
- [ ] NATIONAL SECURITY CLEARANCE
- [ ] OTHER *(Specify)*

6. NATURE OF DISCLOSURE [1] DOCUMENT [ ] ORAL *(Enter numeral 1, in box)*

Copy of DEA-6, dated January 19, 1988, concerning drug trafficking activities of subjects.

7a. NAMES *(Last, First, Middle)*	7b. I.D. NUMBER	7c. FILE NUMBER
1. Greene, Leon L.	2287	B1-88-0048
2. Hines, Godfrey X.	3299	B1-88-0048
3. Billsboro, Albert B.	22997	B1-88-0048
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Exhibit 2

RECORDS SYSTEM IDENTIFIER

	System Identifier	Alphabetical Code	System Name
	01	IFRS	Investigative Reporting and Filing System (JUS/DEA-008)
	02	ISR	Planning and Inspection Division Records (JUS/DEA-010)
	03	CSA	Controlled Substances Act Registration Records (JUS/DEA-005)
	04	ARCOS/DADS	Automated Records and Consummated Orders System/Diversion Analysis and Detection System (JUS/DEA-003)
	05	RSIR	Registration Status/Investigation Records (JUS/DEA-012)
*	06	AAS	Addict/Abusers System
*	07	DDS	Defendant Data System
	08	STRIDE	System to Retrieve Information from Drug Evidence (JUS/DSE-014)
	09	SF	Security Files (JUS/DEA-013)
	10	OF	Operations Files (JUS/DEA-011)
*	11	DIDB	Domestic Intelligence Data Base
	12	AIP	Air Intelligence Program (JUS/DEA-001)
*	13	TFPS	DEA/FAA Trans-Border Flight Plan Reporting System
*	14	IIDB	International Intelligence Data Base
*	15	SRN/1	Source Registry Narcotics
	16	PATHFINDER	Automated Intelligence Records System (JUS/DEA-INS-111)
	17	FOI	Freedom of Information/Privacy Act Records (JUS/DEA-006)
	18	MR	Medical Records (JUS/DEA-009)
	19	CCF	Congressional Correspondence Files (JUS/DEA-004)
	20	TF	Training Files (JUS/DEA-015)
	21	DEAAS	Drug Enforcement Administration Accounting System (JUS/DEA-016)
	22	GCF	Grant of Confidentiality Files (JUS/DEA-017)
*	23	DTR	Drug Theft Reporting System
*	24	AGC	Appeals, Grievances, Complaint Files
*	25	GPR	General Personnel Files
*	26	REP	Recruiting, Examining and Placement Files
	27	DAI	DEA Applicant Investigations (JUS/DEA-018)
*	28	KISS	Semi-Automated Narcotics Trafficker Profiles

* System has been deleted

*	29	NIMROD	Specialized Automated Intelligence Files
	30	ECRS	Essential Chemical Reporting System (JUS/DEA-020)
	31	AURS	DEA Aviation Unit Reporting System (JUS/DEA-021)
	32	CTAP	Clerical, Technical and Professional Program Files (JUS/DEA-023)
	33	DEPS	DEA Employee Profile System (JUS/DEA-027)

*System has been deleted

6331 DEA STATE AND LOCAL TASK FORCE PROGRAM

6331.1 PURPOSE. This section sets forth operational policies and procedures for program-funded (Headquarters-funded) and provisional (Division-funded) task forces of the DEA State and local Task Force Program. Financial administrative guidelines for program-funded task forces are in Section 0586 of the Administrative Manual.

6331.2 OBJECTIVES

A. Effective control of the illicit drug traffic depends to a large extent on close cooperation among agencies at all levels of government. Collectively, State and local law enforcement agencies dedicate more resources to drug enforcement than does the Federal Government. It is, therefore, of major interest to DEA that State and local agencies be encouraged to expend their resources in line with national objectives, and that there be close interagency cooperation at all levels.

B. The specific objectives of the State and Local Task Force Program are to:

1. Disrupt the illicit drug traffic in specified geographic areas by immobilizing the highest levels of targeted violators and trafficking organizations.
2. Increase the effectiveness of participating agencies by providing extended on-the-job training to assigned officers and exposing them to the benefits of selective targeting.
3. Improve operational interaction among all agencies participating in the task force.
4. Encourage participating agencies to establish investigative priorities which emphasize those drugs posing the greatest danger to society.
5. Increase the effectiveness of drug law enforcement agencies in the local area that are not participating in the task force, by providing direct assistance, intelligence information and other support.
6. Provide for the development and maximum use of intelligence information through enhanced coordination.

6331.3 TASK FORCE CREATION, MODIFICATION, AND ABOLISHMENT

A. Field management will continuously survey law enforcement needs and capabilities within its jurisdiction to identify potential task force sites, as well as conduct **appropriate** liaison and joint planning when the need for a new task force is indicated.

B. All requests to establish program-funded or provisional task forces must adhere to the *regulations set forth in* Section 0012 of the Administrative Manual. This section states that the requesting office will submit a proposal to the Assistant Administrator for Operations (AO) through the Office of Investigative Support, Task Force Unit **(OS/OSF)** for review. The proposal will be reviewed concurrently by the Assistant Administrator for Operational Support (AA) for **operational support sufficiency.** AA will make a recommendation for

* Revision
** Addition

approval or disapproval to the Deputy Administrator (AD), who makes the final decison. If approved, the task force will be provisional and require Division funding. It will also be subject to closure by DEA at the end of a specified trial period of 12-15 months. Upon expiration of the provisional period, OSF will evaluate the task force to determine if it meets criteria for Headquarters program funding.

C. Provisional and program-funded task forces will *be formed by and operate under a Task Force Agreement between DEA and all participating agencies (see Section 0586 of the Administrative Manual for sample agreement).* Drafts of all agreements will be reviewed and approved by Headquarters (OSF and Office of Chief Counsel) prior to formally establishing the task force. *Drafts of all agreements will also be reviewed and approved by Headquarters (OSF and Office of Chief Counsel) prior to signing or renewal of the agreement.* Authority to enter into these agreements will not be delegated below the SAC. At a minimum, these agreements shall address funding, supervision, conduct, liability and geographic jurisdiction. Provisional task forces should request resource contributions from participating agencies to operate the task force. The exact percentage will remain negotiable. *However, the intent is for State and local agencies to contribute equally with DEA to the costs of the task force. State and local agency contributions are intended to be offset, at least in part, by asset forfeiture sharing.* Division funding used to support provisional task forces will be combined with funds provided by participating agencies for items such as PE/PI, furniture, space, vehicles, etc. If a provisional task force is subsequently approved for Headquarters funding (program-funded), a new Task Force Agreement will be prepared by the SAC with the participating agencies, and approved by Headquarters (OSF and CC). Funding for program-funded task forces is explained in Section 0586 of the Administrative Manual.

D. If a provisional task force is determined to be unsatisfactory, or if a negative probationary review decision is reached, DEA will disband it. All related activity must then be completed within an additional 6 month period.

E. Program-funded task forces will continue for an initial 3 year period, during which they will be subject to evaluation by Division Management and Headquarters (AO and the Planning and Inspection Division - AP). After 3 years, the Assistant Administrator for Operations (AO) will make recommendations to the Deputy Administrator (AD), who will then decide to continue, modify or abolish any task force under the guidelines set forth in the Administrative Manual Section 0012. Minor modification (e.g., enhancements, funding adjustment, etc.) in the program must be approved by Headquarters (OS).

F. On-site visits to task force offices will be made periodically by staff coordinators from Headquarters - Task Force Unit (OSF).

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6331.4 TASK FORCE PERSONNEL AND OPERATIONS

A. **The head of the task force shall always be a DEA Special Agent of appropriate grade whose primary duty is the operation of the task force. Supervisors of sub-units of a task force should optimally also be DEA Special Agents of appropriate grade. However, if local circumstances dictate that a State or local officer be in charge of a sub-unit of the task force, the head of the task force may authorize no more than 50% of the sub-units to be so commanded, subject to the approval of OSF. Sub-units with State or local officers in command should have an experienced DEA Special Agent as back-up. Conversely, units or sub-units commanded by DEA may have an experienced State or local officer of appropriate rank as back-up. Whatever the command structure of a task force, responsible DEA supervisory personnel must exercise sufficient, direct daily supervision of task force operations to assure that task force investigative activities are known to and approved by DEA. Overall head of the task force should not be delegated outside of DEA.**

B. The assignment of particular State and local officers to task forces must be approved by their department (Chief of Police, Internal Affairs, Personnel Office, and immediate supervisor), the Division SAC, and DEA Headquarters. DEA may reject any nominee based on the officer's training, attitude, past performance, or other factors bearing on suitability. **Officers assigned should have at least 2 years police experience.**

C. Assignment of a State and local officer shall be full-time and shall continue for not less than 12 months. Officers assigned will be under the direct daily supervision of DEA personnel, and officers assigned will follow DEA policies, procedures, and guidelines. Specifically, all task force personnel will adhere to DEA regulations concerning conduct; DEA property; reporting systems; evidence handling; informants; technical equipment; official funds; official vehicles; and arrest, search, and seizure; **and submission of DEA-352's. Violation of those standards can result in expulsion from the task force.**

D. ** Once appointed, State and local officers must meet and maintain DEA firearm qualification standards. State and local officers may carry the weapons and ammunition mandated by their parent agencies. State and local officers must qualify with firearms under DEA standards unless their parent agencies' qualification requirements are equal or more stringent than DEA, in which case they may qualify under their agencies' standards. State and local officers must follow DEA deadly force policies as set forth in the Agents Manual.**

E. State and local officers newly assigned to task forces, and officers currently assigned with less than 1 year task force experience, will receive a training course conducted by the DEA field Division or specialized training personnel from the Office of Training (TR). **State and local officers should attend 20 hours of in service training per year.**

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F. The responsible SAC will have supervisory control over the direction and administrative management of the task force. The SAC will subsequently assign a task force supervisor to directly supervise and manage task force activities and personnel.

G. **State and local officers may not remain in the task force for over 4 years without the written authorization of the SAC.**

H. **State and local officers may not be assigned non-task force duties by the parent agency without DEA's approval (aside from removal from the task force.)**

I. **No task force officer may receive a formal, final evaluation other than from supervisor of his or her parent organization. However, an informal, in house evaluation will be done annually by the agent or officer in charge of the task force or appropriate subunit for the information of the task force officer's parent agency.**

J. Participating agencies in a task force should be limited to six. *Waiver of this section may be granted by the head of OS.* The ratio of assigned personnel should be one DEA agent to, no more than 4 State and local officers.

K. Access to DEA investigative files (both manual and ADP) will be governed by DEA regulations and, in any event, will be on a need-to-know basis.

L. Task force officers will be issued accountable copies of the DEA Agents Manual to assure compliance with the above provisions.

M. Task force officers will be deputized and granted enforcement authority set forth under Title 21 USC 878. The responsible SAC will comply with procedures required by OSF and the Office of Security Programs (PS). See Subsection 6331.6 below.

6331.5 QUARTERLY TASK FORCE SUMMARY REPORT. For each provisional or program-funded *State and Local Task Force, Division management will submit a report in the following format to Headquarters Investigative Support Section, Task Force Unit (OSF), by the 15th working day after the end of each quarter.*

_____ Task Force
Quarterly Summary

_____ Quarter FY _____

I. Enforcement

A. Arrests by G-DEP violator class and drug. ("G" identifiers and "X" case numbers only)

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B. Arrests by G-DEP violator class and drug. (OCDETF defendants resulting from Task Force original cases)

C. PE/PI expenditures

1. DEA funded
2. State/local funded

D. Operating expenditures

1. DEA funded
2. State/local funded

E. Total assets seized
("G" identifiers and "X" case numbers only)

F. **Total assets seized
(OCDETF seizures resulting from task force originated cases)**

II. Administration

Present on-board strength

_____ DEA Agents
_____ State/local officers (list by name and parent agency)
_____ Support personel (DEA)
_____ Support personnel (State/local)

6331.6 DEPUTIZATION OF STATE AND LOCAL OFFICERS - TITLE 21 USC 878

6331.61 General

A. The Anti-Drug Abuse Act of 1986 (Public Law 99-570) authorized the Attorney General to deputize State and local officers by granting them certain enforcement powers set forth in 21 USC 878. Title 28 CFR, Subpart R, Section 0.100, et. seq., delegates this deputization authority to the DEA Administrator.

B. The deputized State and local police officer's Federal authority is in effect only when engaged in DEA activity at the specific direction of a DEA supervisor. Deputized officers do not possess general authority to act as DEA Agents. They only have deputization authority while acting as a Task Force Officer or in support of those case(s) specified on the DEA-481, DEA Deputization Request/Authorization.

C. Deputized officers performing non-task force functions or actions not included in the scope of their deputization are not entitled to Department of Justice representation or any liability protection which might be available to their DEA counterparts.

D. Title 21 deputization should not be confused with an assignment of State and local police officers to DEA pursuant to

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the Intergovernmental Personnel Act (IPA) - 5 USC 3374. Deputization and an IPA assignment are not mutually exclusive; they each have separate and distinct differences and effects (see 6331.7).

If Title 21 deputization is not appropriate in an area, consider the provisions set forth in the IPA. See 6331.7.

6331.62 Deputization of Officers Assigned to a Formally Recognized DEA State and Local Task Force

A. In most instances, State and local officers assigned to authorized DEA program-funded or provisional task forces will require Title 21 deputization authority for their term of duty. Initial task force assignments will require an explanatory memorandum from the SAC and the preparation of the necessary information on the DEA-481. Part I will be completed verifying that the parent police agency has conducted the necessary character and internal security investigations; and Part II which certifies that the office of the Division SAC has completed favorable NADDIS and/or NCIC checks of the officer candidate. Upon completion of Parts I and II, the SAC will retain Copy 6 of the DEA-481 and submit the remaining copies to Headquarters, Task Force Units (OSF). The DEA-481 will be forwarded to the Office of Security Programs (PS). After processing, Copy 5 will be retained by PS and remaining copies of the deputization request will be returned to OSF. OSF will prepare the appropriate portions of the DEA-481 and submit it to the DEA Administrator for his authorization.

B. *After authorization is granted by the Administrator, Copy 4 of the DEA-481 will be retained by OSF, and the remaining copies will be forwarded to the appropriate SAC who will then be responsible for administering the Oath of Office and completing Part IV of the DEA-481. Copy 3 of the DEA-481 will be retained by the SAC, and Copy 1 along with 2 photographs of the officer should be submitted to PS for the issuance of credentials. The Oath of Office responsibility of the SAC pertaining to task force officers may not be delegated unless approval is granted by the Assistant Administrator for Operations (AO).*

6331.63 Deputization of Officers Assigned to Case Specific Activities

A. Requests for short term Title 21 deputizations of officers may be granted in those investigations which are finite in scope, such as a Title III investigation, or those that involve activities related to a specific case(s). This type of deputization must be requested by a memorandum from the SAC to the Investigative Support Section (OSF) delineating the specific case(s), officer(s) to be deputized, and the period of deputization needed for each officer. This period may not exceed 180 days without a written justification for renewal. At this time, the preparation of the DEA-481 is not necessary. The memorandum from the SAC must also include the results of a NADDIS and NLETS and/or NCIC checks of the officer, plus a verification that the officer is not the subject of a parent agency internal security investigation. The officer must be a favorable candidate for deputization.

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B. *OSF will prepare Parts I and III of DEA-481. After authorization is granted by the Administrator, Copy 4 of the DEA-481 will be retained by OSF and the remaining copies will be submitted to the SAC who will be responsible for administering the Oath of Office and completing Part IV of the DEA-481. The SAC may delegate this responsibility to the ASAC and RAC levels. Copy 3 of the DEA-481 will be retained by the SAC, Copy 2 by his delegate, if applicable, and Copy 1 will be submitted to PS.*

6331.64 Deputization of Officers Assigned to Organized Crime Drug Task Force (OCDETF) Investigations

A. All State and local officers sponsored by DEA to support OCDETF investigations will be deputized by DEA as necessary. Deputization authority will be granted only when necessary to successfully develop DEA investigations.

B. All field requests will follow the deputization procedures set forth in the Department of Justice OCDETF Guidelines, which require the utilization of DOJ Forms OCDE-S/L-4, 5 and 6. The requests must originate and be signed by the SAC of the Division in which the officer will be working. This function cannot be delegated. All requests will be channeled through the AUSA OCDETF Coordinators to the OCDETF Administrative Staff, Main Justice, for review. They will then be forwarded to DEA Headquarters, Task Force Unit (OSF), for approval and processing. OSF will prepare the appropriate portions of the DEA-481 and submit it to the DEA Administrator for his authorization.

C. Deputization authority in these instances will not routinely exceed 90 days. In exceptional situations, authority may be granted for 6 months if sufficient justification is provided in the narrative section of the OCDE-S/L-4.

After authorization is granted by the Administrator, *Copy 4 of the DEA-481 will be retained by OSF and the remaining copies will be forwarded to the appropriate SAC who will be responsible for administering the Oath of Office and completing Part IV of the DEA-481.* The SAC may, at his discretion, delegate this responsibility to the ASAC and RAC levels. *Copy 3 of the DEA-481 will be retained by the SAC, Copy 2 by his delegate, if applicable, and Copy 1 will be submitted to the Office of Security Programs (PS).*

6331.65 Other Deputizations. *Deputization authority may be granted by DEA in other situations not covered in this subchapter, but only after evaluation by OSF and at the discretion of the Administrator.*

6331.66 Termination/Continuation of Title 21 Deputizations

A. The task force supervisor, RAC or SAC will request by teletype or memorandum the termination of Title 21 deputization for officers ending their task force term of duty. This request shall be submitted to DEA Headquarters, OSF. It should contain a brief

* Revision

explanation of the officer's departure, his/her date of birth, departure date, and parent agency. If task force credentials were issued to the officer, forward them to *OSF* immediately following the termination. *Upon receipt of the credentials, OSF will forward them to PS and request PS to cancel the officer's NADDIS access, if applicable. PS will maintain custody of the credentials for one year.* If the officer returns within a year, the credentials will be returned. If the departure is longer than one year, the complete deputization procedure must again be followed.

B. Terminations for DEA case specific deputizations will automatically expire when the predetermined date is realized.

The SAC may request deputization renewals by memorandum or teletype, specifying the requested term of the deputization and justification for renewal. This request will be made to Headquarters, OSF.

C. OCDETF deputization authority is granted for a specified term. All deputization extensions *will* require the resubmission of field requests in conformity with paragraph 6331.64.

D. In the event the field determines that deputization authority is not required for the full term, Headquarters (OSF) will be notified by teletype.

6331.7 OFFICERS ASSIGNED UNDER THE INTERGOVERNMENTAL PERSONNEL ACT (IPA). A nondeputized but IPA-detailed State or local officer is a Federal employee for purposes of the Federal Tort Claims Act. However, because the subject lacks Federal law enforcement authority, a nondeputized but IPA-assigned officer is not a Federal law enforcement officer. The distinction is important because it means that while the United States can be sued for certain torts committed by the officer, such as negligence, the United States cannot be sued for such law enforcement related torts as assault, battery, false arrest, false imprisonment, or malicious prosecution.

* Revision

Subchapter 634 Liaison With Other Federal Agencies

6341 FEDERAL BUREAU OF INVESTIGATION (FBI)

Liaison with the FBI shall be governed by the provisions of the Concurrent Jurisdiction Implementation Guidelines of March 12, 1982. See Exhibit 1.

Exhibit 1

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

March 12, 1982

President Ronald Reagan has mandated that the Federal Government will do its utmost to assist in the reduction of crime throughout the Nation. In keeping with this mandate, during the past year Attorney General William French Smith initiated a task force to examine in depth the crime problems facing this country today. The task force findings endorsed, among other items, the proposition that the Attorney General should support the implementation of a clear, coherent and consistent national policy with regard to narcotics and dangerous drugs, reflecting an unequivocal commitment to combating international and domestic drug traffic.

The Attorney General, in order to insure maximum effectiveness and efficiency in the enforcement of criminal drug laws in the United States, on January 28, 1982, made the resources of the FBI available to complement and supplement those of the DEA in this effort. To this end, the FBI concurrently with the DEA was granted authority to investigate violations of the criminal drug laws of the United States. To insure complete coordination of the drug enforcement effort of the U. S. Department of Justice, the Administrator of the DEA will perform his functions under the general supervision of the Director of the FBI and will report through him to the Attorney General as appropriate.

This initiative by the Attorney General in harnessing the investigative resources of these two great institutions with long, proud and richly deserved records of achievement is unparalleled. The enclosed implementation directive, prepared jointly by the FBI and the DEA, addresses areas in which the FBI will supplement and, just as important, complement the efforts of the DEA in jointly attacking the drug crime problem nationwide. Acting Administrator Mullen and his field representatives will continue to be the primary architects of the Federal drug enforcement program after coordination with their FBI counterparts. Periodically, this directive will be reviewed with participation from each agency through the Headquarters Review Committee.

This directive and, more importantly, our joint efforts will ultimately succeed only with the full realization of all investigative personnel that we in the DEA and FBI are allies joined together in a unique venture to address the most significant crime problem facing the Nation today. I am confident that through the dedication, cooperation and professionalism of all personnel, we will accomplish our mandated goals and will have a major impact on the illicit trafficking of drugs.

William H. Webster
Director

Francis M. Mullen, Jr.
Acting Administrator
Drug Enforcement Administration

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I. BACKGROUND

Illicit drug traffic presents an ever-increasing threat to our society, its institutions and people. The Attorney General has identified drug trafficking as the number one crime problem in the United States. Clearly, an increased Government response is needed. On January 28, 1982, the Attorney General issued an order delegating to the FBI concurrent jurisdiction with DEA for investigations of violations of the Comprehensive Drug Abuse Prevention and Control Act of 1970, hereinafter referred to as the Controlled Substances Act. The Attorney General also announced that the Administrator of the DEA will function under the general supervision of the Director of the FBI, who will continue to report to the Attorney General. This decision recognizes that the strengths and unique capabilities of each agency, when joined together, will result in a more effective national drug investigative effort. The purpose of this joint directive is to implement the Attorney General's decision.

II. ROLES

The Attorney General has mandated that DEA will continue to function as the principal Federal drug enforcement agency, responsible for the enforcement of the Controlled Substances Act; the Diversion Control Program for the legitimate drug industry; drug intelligence analyses; and publication of appropriate strategic assessments.

In delegating concurrent jurisdiction to the FBI as it relates to the Controlled Substances Act, the Attorney General

has mandated that the FBI assume a significant drug enforcement role working in close cooperation with DEA. He has also directed that FBI expertise in such areas as organized crime (OC), financial investigations and white-collar crime investigations be fully utilized in drug enforcement work.

In furtherance of these directives, the FBI will focus its resources on drug investigations involving traditional OC families (La Cosa Nostra), violence-prone, nontraditional OC groups such as the outlaw motorcycle gangs, and ethnic or racial OC groups such as the Israeli, Mexican and Black Mafias and La Nuestra Familia. The DEA will continue to focus on investigations of major drug organizations according to established priorities. Where feasible, the FBI and DEA will buttress each other's investigative role by utilizing each agency's intelligence base and expertise. Nothing in the above delineation of roles will preclude either agency from coordinated selection of prioritized, mutual targets of opportunity.

The specific areas of responsibility and requisite coordination between DEA and FBI will vary with the availability of resources and the extent of the drug crime problem in a particular field division. Therefore, it will be incumbent upon FBI and DEA field office management to identify the major drug-trafficking groups in their divisions and, thereafter, either individually or jointly target them for investigation, utilizing available resources and expertise of both agencies.

In major urban areas, the number of joint investigations will be greater, necessitating close coordination to preclude

duplication of effort and minimize physical danger to personnel. In areas with less DEA presence, the FBI will be expected to conduct drug investigations in conjunction with DEA, but with minimal direct support from DEA.

Both DEA and the FBI will place strong emphasis on major distributors and organizations involved in the manufacturing, importing, distributing and financing of illicit controlled substances. To effectively immobilize these major organizations and traffickers, conspiracy investigations (particularly the use of the Continuing Criminal Enterprise and Racketeer Influenced and Corrupt Organizations Statutes) should be the focal point of our investigative efforts. Resources, both personnel and financial, should not be devoted to targeting street violators, which would duplicate the role of state and local law enforcement agencies.

III. COORDINATION OF INVESTIGATIVE ACTIVITY

A. Introduction

A successful cooperative effort against drug trafficking will depend, in large measure, on the degree of coordination and the spirit of cooperation at all levels. All Special Agents must recognize that rules and procedures cannot substitute for good-faith cooperation, which will be expected from all personnel of both agencies. Concurrent jurisdiction in drug investigations without proper coordination could cause not only inefficient use of resources and information, but create dangerous situations in street operations. Inefficiency caused by

duplication of effort or failure to take full advantage of opportunities to combine resources or information for a better investigative product must be avoided.

B. Headquarters Coordination

1. The Executive Headquarters Staff of DEA and FBI will meet regularly, as appropriate, to insure mutuality at the policy level.

2. A Headquarters Review Committee, consisting of equal FBI and DEA representation, will be established. The purpose of this Committee is to monitor the implementation of this directive, develop new national-level initiatives and resolve any problems referred by field office management. Prior to this Committee addressing field disputes, efforts must be expended to resolve such problems at the lowest possible level by respective agency counterparts.

3. FBI and DEA will each assign a Special Agent Supervisor in a liaison capacity at the opposite Headquarters for the purpose of insuring day-to-day coordination and cooperation in investigative activities.

C. Field Coordination

1. Management Meetings: The Special Agents in Charge and appropriate supervisory personnel of both agencies will be responsible for the implementation of this directive. Thereafter, meetings will be held on a regularly scheduled basis to enhance coordination, resolve problems and discuss ongoing or contemplated operations which may affect or be of interest to the other agency.

It is expected that first-line supervisors of both agencies will have an ongoing dialogue with their counterparts.

2. Exchange of Liaison Officers: In all field offices, DEA and the FBI will each assign an experienced Special Agent on a liaison basis for the purpose of insuring day-to-day coordination and cooperation in investigative matters.

3. Investigative Coordination:

a. Federal-level drug investigations fall into one of three categories:

i. Investigations of matters within the DEA's area of responsibility as outlined under Part II of this directive and conducted solely by DEA or by DEA with agencies other than the FBI;

ii. Investigations of matters within the FBI's area of responsibility as outlined under Part II of this directive and conducted solely by the FBI or by the FBI with agencies other than the DEA; and

iii. Joint FBI/DEA investigations.

b. With the exception of minor drug investigations targeted at low-priority subjects such as those conducted by the FBI on Indian or Government Reservations and by DEA at ports of entry, i. e. airports, all drug investigations

<u>instituted unilaterally by the DEA or the FBI should be coordinated through the liaison Agents at the field office level in order to:</u>

i. Insure that the DEA or FBI does not currently have an investigation ongoing with regard to the proposed targets of the drug investigation;

ii. Obtain all intelligence information each agency may have regarding the targets of the proposed investigation; and

iii. Determine any interest on the part of the FBI or DEA to enter into a joint investigation regarding the targeted subjects.

c. At the outset of joint investigations, a specific plan should be devised at the field office level regarding the role of each agency (FBI/DEA) in the investigation. Each Headquarters should then be advised of this plan by established procedure.

d. Request for Investigative Support: DEA may request assistance from its counterpart FBI field office for manpower support or investigative expertise which cannot be met by available DEA manpower. Conversely, the FBI may request assistance from its counterpart DEA field office for manpower support or

investigative expertise which cannot be met by available FBI manpower. Examples of such operations could include, but are not limited to:

i. Development of Title III intercepts (including the use of FBI/DEA technical expertise and/or equipment if necessary);

ii. Manning of undercover operations;

iii. Long-term surveillance operations;

iv. Large-scale arrests and/or searches and seizures; and

v. Assistance in the development of the financial aspects of drug investigations.

e. Joint FBI/DEA Investigations: Joint investigative efforts on a long-term basis are encouraged when the investigative targets are appropriate and resources of the respective agencies are available. Such investigations will require approval at the FBI/DEA Headquarters level. Funding of drug purchases, other operating expenses and dissemination of informant information will be handled in accordance with information set forth in other portions of this directive.

IV. INVESTIGATIVE MATTERS

A. Investigative Expenses

As a matter of policy, each agency will bear its own

investigative expenses and acquire supplemental funding through established agency's procedures.

Where one agency plays a minor, supportive role, the primary agency will supply the funds for the purchase of drug evidence.

In joint investigations, the agency responsible for funding purchases of drug evidence will be decided at the development of the operational agreement.

Policy relative to payments to informants is discussed in Subsection IV., C.

B. Access to Information Systems

Both the FBI and the DEA have developed a variety of information systems which will be utilized in drug investigations. As a matter of policy, there will be a full exchange of information in keeping with the mandate of complete, mutual support. Each agency will be responsible for searching its own data bases or other information systems upon request, or in keeping with proper investigative routine and providing the results to the other consistent with the intent of this directive. The Headquarters Review Committee, among other duties, will develop procedures for indexing into agency files.

C. Informants and Cooperative Witnesses

Informants will continue to be handled and supervised by their respective agencies. Each agency's informants will be routinely debriefed on matters of interest to the other agency. To facilitate this, a debriefing guide will be provided containing areas of inquiry pertinent to each agency. The respective Special

Agents in Charge will be responsible for the prompt, complete dissemination of informant information to their counterpart.

Cooperative witnesses will be controlled by the appropriate agency. In joint investigations, there must be an agreement as to which agency will control the cooperative witness to insure consistent and productive use. As with informants, appropriate dissemination of information must be made.

Informant payments will generally be made from the funds of the agency controlling the informant. Payments to informants of the other agency can be made in appropriate cases with concurrence of the respective Special Agents in Charge, Headquarters' approval if necessary and appropriate documentation.

D. Technical Support to Investigations

As a general rule, each agency will provide its own technical support as dictated by needs and capability. Should a need be identified in the local field office of either agency which cannot be locally met, support will be sought from that agency's Headquarters, as would normally be the case. If the support is needed on a short-term basis, the Special Agent in Charge, at his discretion, may seek assistance from his counterpart as this will be most efficient and cost effective in such situations. Longer term or more sophisticated requirements will be forwarded to the appropriate Headquarters where the support will be provided or sought from the counterpart Headquarters staff. A program will be implemented within the technical support structure of each agency to familiarize each other on available capabilities to insure that investigations are

enhanced to the fullest within the total capability of both agencies.

E. Evidence Processing

1. Drug Evidence - As a matter of policy, the DEA laboratory system will be responsible for the analysis of all drug exhibits collected, purchased or seized by either agency under any circumstances. Conversely, the FBI laboratory system will be responsible for analysis of all nondrug evidence requiring examination or analysis for investigations of either agency. Latent fingerprint examinations will also be accomplished in the FBI Identification Division for both agencies. This policy recognizes the efficient use of developed expertise, especially as it relates to expert testimony at time of trial. Any evidence submitted for analysis to the facilities of either agency will be processed with the same priority as if submitted by personnel of the host agency.

Where drug evidence is acquired in a joint FBI/DEA investigation, custody normally will be assumed by DEA for processing and submission to the laboratory.

Of special note is drug evidence seized by the FBI incidental to the arrest of a DEA fugitive. The processing of this evidence will be coordinated with DEA field management to assure that the prosecuting U. S. Attorney's Office is afforded the use of this additional evidence at trial. This may require transferring custody of the drugs to DEA for processing or direct FBI submission to the DEA laboratory handling other drug exhibits in the case.

2. Nondrug Evidence - Special Agents in Charge will be responsible to insure that the investigative value of nondrug evidence of interest to the other agency is shared fully consistent with the intent of this directive.

3. Clandestine Drug Laboratories - Special caution must be taken relative to the seizure of clandestine drug laboratories by Agent personnel. This caution cannot be overstated, as the common presence of explosive chemicals and the delicate nature of closing down an in-process operation present real dangers. Therefore, unless there are the most extenuating circumstances, neither FBI nor DEA personnel will attempt the seizure of a clandestine laboratory without the presence of a DEA chemist experienced in the required procedures.

F. Furnishing Controlled Substances

Controlled substances are by their very nature harmful to humans and, therefore, require a special degree of care in handling. The responsibility for keeping these substances out of the hands of the public applies to all law enforcement personnel. The handling of these substances must be distinguished from other forms of contraband or instruments of criminal activity. However, there are certain circumstances in which it is advantageous to an investigation to furnish small quantities of controlled substances to a violator through an undercover Agent or informant. The furnishing of a controlled substance by an Agent of the Government is considered sensitive enough to require the personal approval of the Administrator of DEA. In joint investigations, concurrence of both Headquarters will be required.

The Acting Administrator of DEA will develop standards for making decisions for furnishing controlled substances, mentioned above, and for allowing drugs to leave the Government's control, mentioned under Subsection G, which apply equally to DEA and FBI. This approach will provide for consistent standards for both agencies, and these standards shall be implemented upon approval of the Director of the FBI. Drugs shall not be allowed to leave the Government's control without the concurrence of the Acting Administrator of DEA unless specifically authorized by the Director of the FBI.

G. Other Instances of Allowing Drugs to Leave the Government's Control

There will also be situations when specific information is developed by an informant or through other investigative techniques, such as a court-approved electronic intercept, regarding the shipment, delivery or location of controlled substances not directly controlled by the informant or undercover Agent. In these situations, the respective Headquarters must be immediately advised by teletype if there is not an immediate plan to seize the controlled substances. In certain cases, it may not be appropriate to seize such drugs in order to enhance the effectiveness of an investigation (e.g., continue Title III, begin new Title III, develop undercover operation). The FBI or DEA may continue an investigation without seizing substantial amounts of illicit drugs only when authority is obtained from the Administrator of DEA. In joint investigations, the concurrence of both Headquarters will be required.

I. Seizure of Trafficker Assets

With the delegation of concurrent drug investigative jurisdiction to the FBI, Special Agents of the FBI will be authorized to seize property or other assets of traffickers as provided in Section 881 of the Controlled Substances Act following established procedures. The disposition of property suitable for official use will be made with the seizing agency having the first opportunity to place the property in service. In joint investigations, disposition of property suitable for official use will be discussed and agreement reached at the field level.

J. Fugitives

The FBI has agreed to provide direct assistance to DEA in the apprehension of significant DEA fugitives who are U. S. citizens and believed to be residing in the United States. These investigative matters will continue to receive priority investigative attention within the FBI. The initiation of these investigations will be coordinated by FBI Headquarters with direct support from DEA Headquarters. At the outset of the fugitive investigation, the appropriate DFA field office will provide all known information regarding the individual, and DEA will subsequently conduct no unilateral investigative efforts to apprehend the subject. Upon apprehension, the appropriate FBI Special Agent in Charge will be responsible to insure that his counterpart is expeditiously advised of the apprehension of the subject.

K. Coordination with Other Law Enforcement Agencies

The implementation of concurrent drug investigative jurisdiction will require close attention by the Special Agents in Charge and Headquarters' officials to insure that traditional interagency relationships will not be disrupted. DEA will continue to be the agency responsible for coordination of the drug program with state and local agencies. This role will also continue in relation to U. S. Customs Service, U. S. Coast Guard and others involved in the various drug interdiction efforts. DEA, in consultation with their FBI counterparts, as appropriate, will continue to be the spokesman for the Federal drug program.

In those investigations where DEA is playing a minimum support role or is not directly involved, a key element in the FBI's ongoing coordination efforts will be the advisement of DEA of the FBI's interaction with state or local law enforcement agencies in the investigation.

All Special Agents in Charge will be held accountable to insure that "agency shopping" by third parties does not develop.

The Special Agent in Charge of the respective agency should insure that their drug-related initiatives are known at the appropriate Law Enforcement Coordinating Committees.

L. Conduct of Foreign Investigations

In keeping with the principle that the United States Government should present a single point of contact with foreign drug enforcement counterparts, DEA will continue to be responsible for the conduct of drug investigations in foreign countries. This will include the investigation of leads generated in all types of FBI/DEA cases. In joint cases, the domestic DEA offices will transmit the investigative leads following established procedures. Where the FBI is conducting a drug investigation and there is minimum DEA participation, the request for foreign investigation will be transmitted to FBI Headquarters which, in turn, will task DEA Headquarters to transmit the lead to the appropriate DEA foreign office for action. An information copy of the request will be provided to the local DEA office by the originating FBI office for information and coordination. An information copy of investigative matters involving FBI interests will also be

simultaneously provided by the DEA Country Attache to the FBI Legal Attache for information. Any involvement of FBI personnel in foreign investigations must have the concurrence of both Headquarters.

M. Referral of Public Corruption Information

A priority within the FBI is the investigation of public corruption which is showing a significant increase in relation to drug trafficking. As a matter of policy, any drug case initiated by DEA which develops a public corruption aspect will be immediately coordinated with the appropriate FBI Special Agent in Charge and a mutually agreed upon plan established for pursuit of the case. Additionally, DEA informants routinely will be debriefed regarding public corruption matters. Indications of drug-related corruption on the part of foreign officials will be forwarded to the appropriate DEA foreign office for action. The DEA foreign offices will coordinate such information with the FBI Legal Attache having geographic jurisdiction for the country involved.

Any information developed which reflects on the integrity of employees of either agency will be immediately forwarded, following established procedures, to the Office of Professional Responsibility of the originating agency with a copy to the counterpart Special Agent in Charge. The respective Headquarters' Office of Professional Responsibility Staff will insure transmittal of employee-related allegations to the other on a timely basis for appropriate investigation and disposition.

N. Reporting Investigative Results

When an investigation is conducted primarily by one

agency with the other agency providing minimal support, the reporting rules of the principal agency will be followed throughout. In joint FBI/DEA investigations, a determination will be made at the outset as to which agency's reporting rules will be utilized in order to prevent duplication of recorded information.

O. Measurements of Accomplishments

As a result of concurrent jurisdiction, DEA and the FBI will each establish internal procedures for monitoring resources committed and results achieved in joint or independent cases, consistent with each agency's internal management controls and needs. In addition, it will be the responsibility of the Headquarters Review Committee to establish a common system for measuring accomplishments. The elements of this system, as well as reporting requirements, will be agreed to by each Headquarters and appropriate procedures established and published.

V. TRAINING

FBI Headquarters, in concert with DEA Headquarters, will be responsible to insure that a sufficient number of FBI Special Agents receive requisite training to conduct Federal-level drug investigations with minimal support from DEA. Conversely, DEA Headquarters, in concert with FBI Headquarters, will be responsible to insure that all DEA Special Agents are apprised of traditional FBI jurisdictional interests and an appropriate number of DEA Special Agents receive requisite training to enhance these joint efforts.

VI. PROCEDURES

The Headquarters Review Committee will be responsible to oversee the development, coordination and implementation of the necessary procedures for the implementation of the policy established in this directive. It is expected that procedures will be published within each agency consistent with the directives and management systems in force in each; however, all procedures or subsequent policy published as a result of the delegation of concurrent drug investigative jurisdiction to the FBI, must be coordinated with appropriate elements of the other Headquarters.

Subchapter 634 Liaison With Other Federal Agencies

6342 U.S. CUSTOMS SERVICE

6342.1 GENERAL. Liaison with the U.S. Customs Service shall be governed by the provision of the Memoranda of December 11, 1975 and March 2, 1984. See Exhibits 1 and 2.

6342.2 CROSS-DESIGNATION. The Administrator of DEA may designate specific Customs agents to have DEA supervised Title 21 investigative authority. The specific procedures to be followed by DEA SACs in seeking this "cross-designation" are delineated in Exhibit 2.

Exhibit 1

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Principal Field Offices **DATE:** 12/11/75
(U.S. Customs Service/Drug Enforcement Administration)

FROM : Commissioner of Customs/Acting Administrator,
Drug Enforcement Administration

SUBJECT: Memorandum of Understanding Between U.S. Customs Service/Drug Enforcement Administration

As the Commissioner of Customs and the Acting Administrator, Drug Enforcement Administration, we wish to assure all personnel of both agencies that this Memorandum of Understanding was signed in good faith by both parties and it is our intention to insure that the relationships between our agencies are conducted according to these operational guidelines in both a coordinated and professional manner.

It is of the utmost importance that the U.S. Customs Service and the U.S. Drug Enforcement Administration work together in an atmosphere of harmony and efficiency in combating the illegal importation and trafficking in illicit drugs. It is essential that each agency complement and support the other in fulfilling their respective obligations.

The attached policy guidelines have been established between the Drug Enforcement Administration and the U.S. Customs Service for the purpose of clarifying the respective operations of each agency in regard to drug related enforcement activities. It is anticipated that the guidance established in this agreement will promote and insure that the inter-agency relationships are in the best interests of the United States and will result in effective and efficient law enforcement.

A copy of this memorandum and the attached Memorandum of Understanding is being sent directly to all field offices of both agencies so that all personnel will be immediately aware of the agreed upon operational guidelines. We expect all principal field offices to insure that meetings are arranged at the earliest date between U.S. Customs Service and Drug Enforcement Administration counterparts at the various managerial and working levels to develop the closest possible working relationships within these operating guidelines.

Attachment

Vernon D. Acree
Commissioner of Customs

Henry S. Dogin
Acting Administrator
Drug Enforcement Administration

5010-110

MEMORANDUM OF UNDERSTANDING

Between

The Customs Service and the Drug Enforcement Administration on Operating Guidelines

The purpose of this memorandum is to emphasize and clarify the roles and the need for cooperation between the respective agencies. Under the broad guidelines of Reorganization Plan No. 2, the Drug Enforcement Administration has been assigned the primary responsibility for "....intelligence, investigative and law enforcement functions....which relate to the suppression of illicit traffic in narcotics, dangerous drugs or marihuana...." Under the plan and delegations, Customs retains and continues to perform those functions "....to the extent that they relate to searches and seizures of illicit narcotics, dangerous drugs, marihuana or to the apprehension or detention of persons in connection therewith at regular inspection locations at ports-of-entry or anywhere along the land or water borders of the United States..." However, Customs is required to turn over to DEA "any illicit narcotics, dangerous drugs, marihuana or related evidence seized and any person apprehended or detained...."

Both agencies have vital roles to perform within the Federal drug enforcement program. Customs, as part of its overall responsibility for interdicting the smuggling of contraband, retains the full responsibility for searching, detecting, seizing smuggled narcotics, and arresting suspected smugglers of any contraband. DEA has the full responsibility for any narcotic-related follow-up investigation as well as for providing Customs with information related to narcotics interdiction. Clearly, for the Federal effort to accomplish its enforcement goals related to reducing narcotics trafficking, both agencies must cooperate and provide appropriate mutual assistance in performing their respective functions. It is mutually agreed that an employee who willfully violates the intent and conditions of this agreement will be subject to firm disciplinary action.

To implement the above, the Commissioner of Customs and the Administrator of the Drug Enforcement Administration jointly approve the following guidelines for dealing with specific operational problems.

1) Operational Roles of Customs and DEA

- Customs is the agency with primary responsibility for interdiction of all contraband, including all drugs at the land, sea, and air borders of the United States.

- DEA is the agency with primary responsibility for investigation and intelligence gathering related to drug smuggling and trafficking.

- The Drug Enforcement Administration will notify the U.S. Customs Service of information from its narcotic investigations which

indicates that a smuggling attempt is anticipated at or between an established port-of-entry as soon as possible after the information is received. Such information may result in a cooperative joint interdiction effort but shall in no case result in uncoordinated unilateral action.

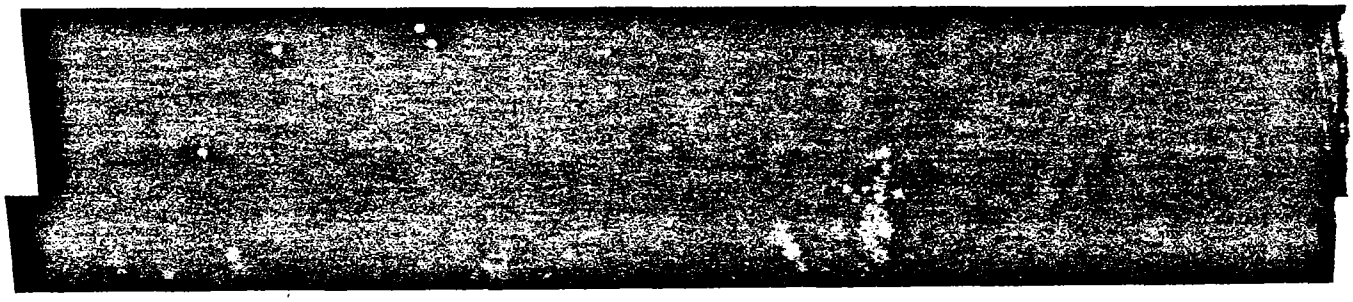
- Within the limitations of its resources, Customs will cooperate when requested to support DEA operations and ongoing investigations, including interception of aircraft suspected of drug smuggling and convoys.

- For purposes of this agreement an ongoing investigation includes only those cases in which information indicates a seizure and/or arrest should not occur at the initial point of contact in the United States, but should continue as a convoy to the final delivery point. The mere fact that a suspect or vehicle is known to DEA does not constitute an ongoing investigations.

2) Law Enforcement Coordination

- Whenever Customs has information on any person, aircraft, vessel, etc., that is involved in or suspected of being involved in drug smuggling or trafficking, DEA will be the first agency contacted by Customs. DEA will then have primary responsibility for the coordination of all investigative efforts.

- Whenever DEA has information on any person, aircraft, vessel, etc., that is involved in or suspected of being involved in the smuggling of contraband, Customs will be the first agency contacted by DEA. Customs will then have primary responsibility for interdiction if a seizure or arrest is to occur at the initial point of contact in the United States except in those cases under the control of DEA.



4) Combined Seizures of Narcotics and Other General Contraband

- Where both narcotics and general contraband are seized in the same case, the Customs Office of Investigations is to be notified and they will coordinate with DEA on a joint investigation.

- Investigative efforts will be dependent upon the magnitude of the violations and/or the value of the general merchandise seized.

5) Violations to be Reported to the U.S. Attorney

- DEA case reports will include any customs reports related to the drug violation. Customs will furnish their reports to DEA in an expeditious manner. DEA will present the violations to the concerned prosecutor for determination of charges.

6) International and Domestic Drug Intelligence Gathering, Coordination

- DEA is the agency with primary responsibility for gathering intelligence on drug smuggling and trafficking, including air trafficking.

- Customs has primary responsibility for intelligence gathering of smuggling activities and also a supportive role to DEA in drug smuggling and trafficking. Nothing in this agreement precludes Customs from gathering information from the air and marine community related to the smuggling of contraband. Customs will continue to maintain liaison and gather information from foreign Customs services on all smuggling activities.

- Customs will expeditiously furnish all drug-related information to DEA. DEA will expeditiously furnish drug smuggling intelligence to Customs. Unless immediate action is required, such drug smuggling intelligence collected will not be subjected to enforcement action prior to coordination between Customs and DEA.

- DEA and Customs will refrain from offering or lending support to any derogatory remarks regarding the other agency. When dealing with other law enforcement agencies, Federal, state and local officials should not be mislead as to DEA and Customs respective responsibilities.

- Neither Customs nor DEA will discourage potential sources of information from working for the other agency. The promising of rewards to informants for intelligence shall not be competitively used to increase the price of information and knowingly encourage the source of information to "Agency Shop."

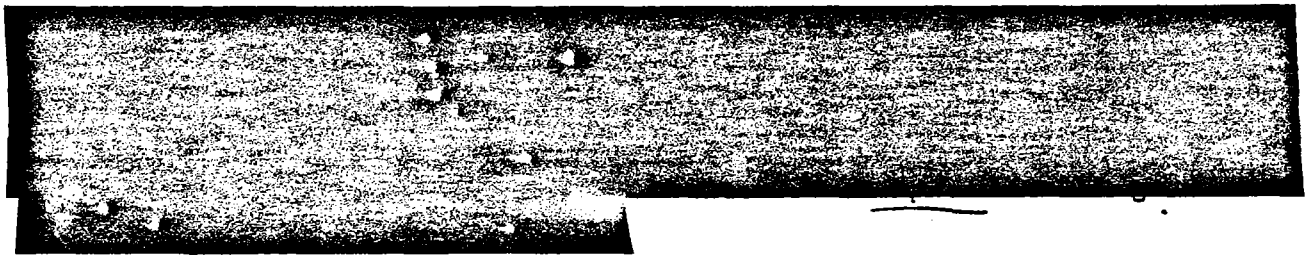
- Under no circumstances will Customs officers employ a participating informant for drug-related matters unless prior agreement and concurrence is obtained from DEA. Both agencies recognize that the identity of an informant may have to be revealed in court and that the informant may have to testify.

- In those drug smuggling cases involving a DEA confidential source, Customs will be promptly notified of the role of the informants so that the safety of the cooperating individual is not jeopardized. Customs officers will not attempt to debrief DEA informants.

- None of the foregoing is intended to limit total resource utilization of DEA and Customs law enforcement capabilities, but rather to insure coordination, elimination of duplication of effort, and prevention of counter-productive or potentially dangerous enforcement activities.

- At the field level, Customs and DEA offices will identify specific persons or organizational units for the purpose of information referral and to coordinate enforcement matters.

7) Procedures to be Followed When DEA has Information that an Aircraft, Vehicle, Vessel, Person, etc., will Transit the Border Carrying Narcotics



- Customs officers will participate in the enforcement actions until the initial seizure and arrest. The number of Customs personnel and equipment needed will be decided by the Customs supervisor with input from the DEA Case Agent, subject to the limitations of available Customs resources, not to exceed the number recommended by the DEA Case Agent.

- On drug-related joint enforcement actions, no press releases will be made by Customs or DEA without the concurrence of each other.

8) Drug Seizure Procedures

- Customs responsibility for interdiction of contraband, including illegal drugs, remains unchanged. Using every enforcement aid and technique available to them, Customs officers will continue to search for illicit drugs. Each time any drugs are discovered, they will be

seized and the nearest DEA office will be immediately notified unless otherwise locally agreed upon. Questioning of arrested violators will be limited to obtaining personal history and seizure information for Customs forms. Further questioning is the responsibility of DEA. Chain of custody forms or receipts are required for transfers of all seized items.

- Customs will take every step possible to preserve all evidentiary material and not remove suspected drugs from original containers when such action compromises evidentiary and investigative potential.

- In those instances where DEA will not accept custody of detained persons or seizure of drugs due to U.S. Attorney prosecutive policy, DEA will notify local enforcement authorities for prosecutive consideration. Otherwise DEA will request Customs to notify these authorities. When local enforcement authority declines, Customs will proceed to assess administrative and civil penalties, as appropriate. Otherwise, administrative and civil penalties should be held in abeyance until local prosecution is completed.

9) Convoy Operations After Customs Seizures

- In those instances where DEA decides to convoy the contraband seized by Customs to the ultimate consignee, Customs personnel will fully cooperate, and will withhold publicity. All seized vehicles or conveyances will be included in a chain of custody receipt.

- The weighing of the contraband may be waived when the method of concealment makes it impractical. At the termination of the convoy, an accurate weight will be supplied by DEA to the originating district director, and the chain of custody will be annotated with the correct weight. Customs officers will not normally participate in this type of convoy operation.

- At the termination of this type convoy operation, involved vehicle or conveyance shall be released to the custody of the nearest district director of Customs.

10) Disposition of Vehicles, Vessels, Aircraft and Seizures in Joint Enforcement

- All vehicles, vessels, and aircraft involved in joint smuggling cases will be seized and forfeited by Customs. Final disposition of the conveyance will be determined by a joint Headquarters review board comprised of Customs and DEA personnel. Guidelines governing disposition will be developed.

- Upon prior DEA request in writing, Customs will not administratively dispose of seized aircraft or other conveyances until it is no longer

required for evidence by the courts or termination of DEA investigation.

11) Referral to Other Agencies (Chain of Custody and Laboratory Sampling)

- Customs will continue, in the case of seized heroin and cocaine, weighing two ounces or more, to take samples not to exceed 7 grams. However, the Customs laboratory will not perform the quantitative and qualitative analysis until completion of the prosecutive action, except for special contingencies.

12) DEA Access to Customs Personnel and Controlled Areas

- Designated Customs areas are not normally accessible to others. Access to Customs controlled areas and Customs personnel on an as needed basis will be obtained from the officer-in-charge of the Customs facility in each instance. Customs will honor such requests, provided that DEA personnel in no way interfere in examination and inspection processes.

13) Procedures When Discovery of Drugs is Made Before Actual Violators Have Been Identified and Goods or Conveyances are Still in Customs Custody

- When Customs officers discover the presence of concealed drugs in imported goods. and the goods or conveyances are still under Customs custody or control, and they have not been claimed by a consignee or reached their ultimate destination, Customs shall maintain control of the drugs, but DEA will be notified immediately. Customs officers will cooperate with DEA and be guided by DEA's tactical decisions regarding investigative development, arrest and seizure.

14) Any representation made to Federal, state or local prosecutors for mitigation of sentence or other consideration on behalf of a defendant who has cooperated in narcotic cases or investigations will be made by DEA. DEA will bring to the attention of the appropriate prosecutor cooperation by a narcotic defendant who has assisted Customs.

There are existing DEA/Customs agreements not covered in this document that pertain to cross-designation of DEA agents, mail parcel drug interdiction and other matters. DEA and Customs mutually agree to review each of these and amend where appropriate for consistency with the cooperative intent of this agreement.

No guidelines are all encompassing and definitive for all occasions. Therefore, the appropriate field management of both agencies are

directed to establish communication with their respective counterparts to better coordinate their respective operations. Similar cooperation and harmonious working relationships should be implemented at all subordinate levels. It must be recognized that good faith as well as mutual respect for the statutory responsibilities of our agencies and for the employees are the cornerstones upon which full cooperation must be established. To this end, Customs and DEA personnel must take the appropriate affirmative actions to minimize conflict and develop a combined program which adequately serves the interests of the United States of America and its citizenry.

Henry S. Dogin
Acting Administrator
Druge Enforcement Administration

Vernon D. Acree
Commissioner
U.S. Customs Service

Exhibit 2

UNITED STATES GOVERNMENT

memorandum

DATE: MAR 2 1984

REPLY TO ATTN OF: Francis M. Mullen, Jr., Administrator, Drug Enforcement Administration

William von Raab, Commissioner, U.S. Customs Service

SUBJECT: Implementing Memorandum for "Request for Assistance and Authorization"

TO: All DEA Special Agents in Charge (SACs)
All Customs Special Agents in Charge (SACs)

Introduction

On January 5, 1984, the Attorney General signed a "Request for Assistance and Authorization Respecting Drug Enforcement Activities of Certain Customs Officers in Domestic Drug Investigations." This memorandum sets forth implementing procedures for the designation of Customs personnel and the management of investigations under this Request.

Basic Principles of Cooperation and Coordination

The 1975 Memorandum of Understanding remains in full effect regarding the jurisdiction of the two agencies and the coordination requirements imposed therein. The current Request has application in those circumstances where individual Customs special agents can make, in the words of the Attorney General, "significant contributions to specific drug investigations." The Administrator of the Drug Enforcement Administration has been delegated the responsibility to make these determinations consistent with the Federal strategy for drug law enforcement. While the principal drug role of the U.S. Customs Service relates to the interdiction of illegal controlled substances, the expertise of certain Customs employees may be more effectively applied to specific drug investigations. The Attorney General's Request for Assistance permits a fuller exploitation of Federal resources in the pursuit of dismantling major drug trafficking organizations. This is to be accomplished through the cross-designation procedures outlined below. Such procedures not only recognize the 1975 Memorandum of Understanding as the principal document for DEA/Customs coordination, but also acknowledge both a unity of command and a single intelligence base as prerequisites to safe and effective Federal drug investigations.

General Procedures

1. The DEA and Customs SACs, after full consideration of the target of the investigation, the status of the investigation thus far, and the likely strategy for furthering the investigation, will mutually decide whether the need for cross-designation exists. If so, the procedures set forth in "Cross-designation Procedures" below will be followed.

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.
5010-114

* U.S. GOVERNMENT PRINTING OFFICE : 1982 O - 361-526 (7289)

2. Both SACs will designate supervisory points of contact, whose responsibilities will include full coordination on investigative progress and planned activities with regard to the utilization of cross-designated Customs personnel.

3. Customs agents will function under the supervision and oversight of DEA while participating in an investigation for which they have received cross-designation authority. They will report on these investigations under the DEA reporting system and provide copies of such reports to U.S. Customs.

4. Both agencies shall coordinate in the development of a comprehensive statistical system to serve the management needs of each one.

5. All press releases or other dealings with the media with regard to cross-designated Customs agents, or investigation in which cross-designated Customs agents participated, will be fully coordinated in advance between DEA and Customs.

Cross-designation Procedures

Upon mutual agreement by the DEA and Customs SACs that circumstances exist where the cross-designation of Customs special agents should be sought, the following procedures shall apply:

(NOTE: In any instance where cross-designation of Customs agents is deemed necessary to support an FBI investigation, the FBI and Customs SACs will jointly submit a memorandum as set forth below to the DEA SAC for transmittal to DEA Headquarters.)

1. An official request must be submitted by the U.S. Customs Service SAC to the Director, Office of Investigations. Such requests must include:

   a. the name(s) of Customs personnel to be authorized to perform those drug law enforcement functions outlined in the Attorney General's "Request for Assistance and Authorization," including job series and formal training demonstrating qualifications to perform such functions. It is the understanding of both agencies that this agreement shall apply only to U.S. Customs Service special agents.

   b. the identification of the investigation for which the designation is sought, including the identity of the target and the scope of their criminal activity.

   c. a brief statement explaining the operational needs for which this designation is intended.

d. an estimate of time which is anticipated to be necessary for completion of the cross-designated operation.

2. Within five (5) working days after receipt of this request, the Director, Office of Investigations, will return this request, approved or disapproved, to the SAC.

3. In exigent circumstances, these written communications may be reduced to a single teletype to Customs Headquarters, Attn: Director, Office of Investigations. In emergency circumstances, approval to request designation may be sought by telephone with a written request to follow. The decision will be rendered via teletype to the office of the requesting SAC.

4. After the Customs SAC obtains approval to nominate candidates for cross-designation, a memorandum will be submitted from the Customs SAC to the DEA SAC specifying the information outlined in 1. above.

5. The DEA SAC will forward this memorandum, together with his recommendation, to DEA Headquarters. In exigent circumstances these written communications may be replaced by a teletype, and in emergency circumstances designation may be sought via telephone with written communication to follow.

6. The Administrator of DEA or, in his absence, the Acting Administrator, will be the deciding official. The decision will be rendered via teletype or memorandum to the DEA SAC with a copy to Customs Headquarters.

7. Authorization for cross-designated investigative authority will automatically expire on the date set forth in the designation communication, unless sooner revoked in writing or unless a written request for extension is received and approved prior to the expiration date. Such requests will follow the same procedures as the original requests.

Headquarters Executive Coordinating Committee

The Administrator of DEA, the Commissioner of Customs, and their deputies will meet on a monthly basis to review the progress of this interagency endeavor, to resolve differences, and to explore additional measures for the enhancement of the Federal effort against drug traffickers.

Subchapter 634 Liaison With Other Federal Agencies

6343 IMMIGRATION AND NATURALIZATION SERVICE (INS)

Liaison with INS shall be governed by the provisions of the Operational Agreement of November 29, 1973. See Exhibit 1.

Department of Justice

Immigration and Naturalization Service

Drug Enforcement Administration

OPERATIONAL AGREEMENT

I. Introduction

CONSIDERING that Executive Order 11727 dated July 10, 1973 designates the Attorney General as the Coordinator for all activities of the executive branch departments and agencies which are directly related to the enforcement of laws on narcotics and dangerous drugs;

DESIRING to meet the mandate of Reorganization Plan No. 2 which places on the Attorney General, the Department of Justice, or any officer or any agency of that Department the responsibility to make investigations and to engage in drug law enforcement activities at ports of entry or along the land and water borders of the United States;

RECOGNIZING the Drug Enforcement Administration's primary jurisdiction in drug enforcement and the Immigration and Naturalization Service's incidental role in the same activity, the Commissioner of Immigration and Naturalization and the Administrator, Drug Enforcement Administration, have jointly decided that the following Operational Agreement will become effective immediately.

II. Intelligence

A) All information received by INS relating to the illicit drug traffic or other violations of the Controlled Substances Act will promptly be referred to DEA for appropriate action.

B) INS will initiate a service-wide program to insure that all of their sources of information are debriefed as to any knowledge of drug related matters.

C) As a matter of routine policy, INS will debrief all arrested illegal aliens about their knowledge of the illicit drug traffic, either in the United States or in foreign countries, with a view towards locating foreign sources of supply of illicit drugs.

D) Any information received by DEA relating to the clandestine entry or smuggling of aliens, as well as other violations of immigration laws, will be referred promptly to INS for appropriate action.

E) The agencies herein involved will share and make available to one another relevant information gleaned from their respective sources and, where possible, the source will be made available.

F) INS will routinely supply DEA with copies of Reports of Apprehensions and Seizures (INS Form I-44) and DEA will, without delay, furnish INS a copy of all Personal History Reports (DEA Form 202) pertaining to arrested aliens or naturalized citizens and, as soon as possible, afford INS the opportunity to debrief arrested aliens regarding their status, their knowledge of clandestine entry or smuggling of aliens, or of other violations of immigration laws.

III. Operations

A) All seizures of drugs effected by INS incidental to their daily operations, will be referred to DEA as expeditiously as possible, whether or not the drug was known to have been smuggled into the United States.

B) Drugs seized by INS will be surrendered, against receipt, to DEA who will also assume custody of all defendants arrested at the time of seizure. Follow-up investigations will be the sole responsibility of DEA.

C) If the amount of drugs seized is minimal, the seizure will, at the discretion of DEA, be referred to the State or local authorities for judicial action. If these authorities decline action, the drugs seized will be surrendered, against receipt, to DEA for disposition.

D) Any cache of drugs located by INS along the borders of the United States, on land or on water, will be brought to the immediate attention of DEA who shall assume jurisdiction over the case. If practical, INS will continue to assist DEA in the surveillance and eventual interrogations of suspects in these cases.

E) Whenever DEA anticipates conducting a drug investigation between ports of entry, the matter will be coordinated with the appropriate INS representative.

F) When a "convoy" operation is anticipated, DEA will coordinate the operation with the appropriate U. S. Border Patrol headquarters supervisory officer in order to eliminate the possibility of compromise and the danger of unnecessary or inadvertent exposure of the convoy subject(s) by Border Patrol Agents.

G) DEA will be furnished maps or charts, as needed, showing area locations of sensing devices. Prior to entering a border area where U. S. Border Patrol sensing devices have been installed and are operational, DEA field supervisors will notify the appropriate INS field supervisor (i.e. Chief Patrol Agent). Information on the locations of sensing devices will be limited to a strict "need to know" basis.

H) To avoid duplications in the expenditure of money, manpower, and electronic detection equipment, INS shall be primarily responsible for the acquisition and operation of electronic intrusion and road monitoring equipment. DEA will furnish whatever technical support is available, particularly in the development of new detection devices.

I) INS will be given, on a continuous basis, biographical data on all DEA fugitives who shall be entered in the INS Look Out System. Likewise, DEA will routinely make appropriate inquiries to detect and report the location of all individuals wanted by INS.

J) In matters of joint interest, INS and DEA will, if necessary and to the extent possible, and as authorized by law or Departmental regulations, support each other's operations with personnel and equipment.

IV. Communications - Training

A) In matters of mutual interest in the area of the border, upon specific request for a particular location, the Service will authorize DEA the privilege of operating radio equipment on frequencies assigned to the Service. In those circumstances, DEA will observe all INS radio standards and operational procedures.

B) DEA and INS will, without delay, initiate a cross training program designed to familiarize all personnel with the laws governing each respective agency. The training shall also be geared towards promoting better understanding of the responsibilities of each agency and, thereby, increase the total effectiveness.

V. Liaison

A) To insure the smooth implementation of this Agreement, each agency will designate liaison representatives at the level of their respective Headquarters. These liaison representatives will meet, as required, to review all operational or policy problems, promulgate programs to increase cooperation, and formulate plans to meet future requirements.

B) The same close liaison will be implemented at all managerial levels in the field to insure operational effectiveness.

Washington, D. C., 11/29, 1973

Acting Commissioner
Immigration and Naturalization Service

Administrator
Drug Enforcement Administration

Subchapter 634 Liaison with other Federal Agencies

6344 U.S. SECRET SERVICE

A. Jurisdiction of the U.S. Secret Service. Subject to the direction of the Secretary of the Treasury, the United States Secret Service is charged by Title 18, U.S. Code, Section 3056, with the responsibility for protecting the person of the President of the United States, the members of his immediate family, the President-elect, the Vice President, or other officer next in the order of succession to the office of the President, and the Vice President-elect; protecting the person of a former President and his wife during his lifetime, the person of the widow of a former President until her death or remarriage, and minor children of a former President until they reach 16 years of age, unless such protection is declined; protecting persons who are determined from time to time by the Secretary of the Treasury, after consultation with the Advisory Committee, as being major Presidential and Vice-Presidential candidates who should receive such protection (unless the candidate has declined such protection).

The Executive Protective Service (formerly the White House Police), under the direction of the Director, United States Secret Service, is charged by Title 3, U.S. Code, Section 202, with protection of the Executive Mansion and grounds in the District of Columbia; any building in which Presidential offices are located; foreign diplomatic missions located in the metropolitan areas of the District of Columbia; and foreign diplomatic missions located in such other areas in the United States, its territories and possessions, as the President, on a case-by-case basis, may direct.

B. Protective Information Desired by the U.S. Secret Service. The U.S. Secret Service desires information of the following nature:

1. Information pertaining to a threat, plan, or attempt by an individual, a group or an organization to physically harm, kidnap, or embarrass the persons protected by the Secret Service, or any other high Government official.
2. Information pertaining to threats, incidents, or demonstrations against foreign diplomatic missions (embassies, chanceries, consulates).
3. Information pertaining to individuals, groups, or organizations who have plotted, attempted, or carried out assassinations or kidnappings of senior officials of domestic or foreign Governments.
4. Information concerning the use of bodily harm, assassination, or kidnapping as a political weapon. This should include training and techniques used to carry out the act.
5. Information pertaining to persons who insist upon personally contacting high Government officials for redress of imaginary grievances, etc.
6. Information pertaining to any person who makes oral or written statements about high Government officials in the following categories:

   a. Threatening statements
   b. Irrational statements
   c. Abusive statements

7. Information concerning professional "gate crashers."
8. Information pertaining to terrorists (individuals or groups) and their activities (bombings, etc.).
9. Information pertaining to the ownership or concealment by individuals or groups of caches of firearms, explosives, or other implements of war.
10. Information regarding anti-American or anti-U.S. Government demonstrations in the United States or overseas.
11. Information regarding civil disturbances.
12. Information pertaining to individual or groups expressing legitimate criticism of, or political opposition to, the policies and decisions of Government or Government officials is not desired or being solicited by the Secret Service.

C. Reporting of Information to the U.S. Secret Service: When information desired by the U.S. Secret Service is developed it should be promptly reported in a letter directed to the Special Agent in Charge of the nearest Secret Service Field Office. If the information is of an immediate nature notify Secret Service by telephone and confirm by a memorandum.

Subchapter 634 Liaison with other Federal Agencies

6345 U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE

Liaison with the Forest Service shall be governed by the provisions of the Memorandum of Understanding of June 1987. See Exhibit 1.

MEMORANDUM OF UNDERSTANDING

BETWEEN THE DRUG ENFORCEMENT ADMINISTRATION

AND THE USDA FOREST SERVICE

The Secretary of Agriculture and the Attorney General of the United States, acting through the Forest Service and the Drug Enforcement Administration, respectively;

Desiring to cooperate in the elimination of the illicit manufacture, distribution and dispensing of controlled substances within the boundaries of the National Forest System;

Recognizing that the safety of Federal law enforcement officers and the efficient use of public resources depend upon coordinating drug investigations in an effective manner; and

Determined to comply with the will of Congress as expressed in the National Forest System Drug Control Act of 1986 (P.L. 99-570), October 27, 1986;

HEREBY AGREE as follows:

A. Purpose

The purpose of this agreement is to establish guidelines for the Drug Enforcement Administration (DEA) of the United States Department of Justice, and the Forest Service of the United States Department of Agriculture, regarding the detection, investigation and prosecution of offenses involving controlled substances within the boundaries of the National Forest System.

B. Recognition of Authority

DEA acknowledges the authority of the Forest Service, under the National Forest System Drug Control Act of 1986 to take whatever actions are reasonable and necessary within the boundaries of the National Forest System to prevent the manufacture, distribution or dispensing of marijuana and other controlled substances. This authority includes the right, within the boundaries of the National Forest System, to --

1) carry firearms;

2) conduct investigations of violations of and enforce section 401 of the Controlled Substances Act of 1970 (21 U.S.C. § 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed within the boundaries of the National Forest System;

3) make arrests;

4) serve warrants and other process;

5) conduct searches; and

6) seize evidentiary items

according to Federal law or rule of law. In exercising this authority, within the boundaries of the National Forest System, the Forest Service may cooperate with the law enforcement officials of any other Federal agency, state, or political subdivision.

The Forest Service recognizes DEA as the lead Federal drug enforcement agency, having primary jurisdiction, both within and outside the boundaries of the National Forest System, to investigate and enforce all violations of the Controlled Substances Act of 1970. As such, the Forest Service acknowledges its obligation under Section 15004(1) of the National Forest System Drug Control Act of 1986, to cooperate with DEA, when requested, in the detection, investigation and prosecution of offenses involving controlled substances within the boundaries of the National Forest System. Moreover, the Forest Service acknowledges that Sections 15003 and 15004 of the Act

explicitly confine the drug enforcement authority and special law enforcement powers of the Forest Service to within the boundaries of the National Forest System.

C. Investigative and Prosecutorial Jurisdiction

As a general rule, DEA defers to the Forest Service to investigate violations occurring entirely within the boundaries of the National Forest System. The Forest Service may cooperate in such cases with the law enforcement officials of any Federal agency, state, or political subdivision, and may bring such cases to prosecution in either state or Federal courts.

However, cases requiring Forest Service Officers to use their investigative or enforcement powers outside the boundaries of the National Forest System and cases of special interest must be referred promptly to DEA. Forest Service personnel shall notify the DEA local office as soon as an investigation shows prospects of crossing outside the boundaries of the National Forest System. Cases of special interest to DEA will be described by DEA from time to time, as circumstances warrant, in separate correspondence to the Forest Service. Where a referral has been made to DEA, the referring Forest Service Office may continue the investigation within the boundaries of the National Forest System until such time as DEA accepts jurisdiction and commences active investigation. Once a referral has been made, the Forest Service will, if requested by DEA, provide timely status reports of the ongoing investigation.

If DEA accepts jurisdiction, it will promptly decide whether both agencies should pursue a joint investigation. Serious consideration must be given by DEA to the continued participation of the Forest Service. Cooperation in conducting surveillances, controlled deliveries, undercover operations and other investigative endeavors is encouraged whenever possible. Consistent with the terms of this Memorandum of Understanding, agreements will be reached at the local level, on a case-by-case basis, concerning the details and conditions appropriate in joint cases. As the Agency with primary investigative jurisdiction, DEA will be the lead agency in all joint investigations. Forest Service officers engaged in joint investigations

with DEA cannot carry firearms or exercise any law enforcement authority outside the boundaries of the National Forest System unless they are individually cross-designated under 21 U.S.C. § 873(b) and closely supervised by DEA. Cross-designation procedures developed by DEA and the Department of Justice must be followed.

Should DEA elect to pursue an investigation unilaterally, the Forest Service will discontinue all further efforts regarding that investigation.

Whenever DEA declines jurisdiction, the Forest Service may continue the investigation (limiting its investigative activities to within the boundaries of the National Forest System), seek the cooperation of other law enforcement officials in the investigation of offenses occurring within the boundaries of the National Forest System, or refer the case directly to state, local or Federal prosecutors.

D. Asset Seizure and Forfeiture Jurisdiction

Whereas, the Forest Service does not have the statutory authority under 21 U.S.C. § 881 to seize or forfeit assets of violators of the Controlled Substances Act, DEA will seize or adopt for forfeiture those assets identified as forfeitable by the Forest Service alone or in conjunction with DEA. Seized conveyances must be processed pursuant to the Attorney General's Guidelines on Seized and Forfeited Property (50 F.R. 24052, 6/7/85, subject to amendment) and DEA guidelines setting forth minimum standards for Federal processing (subject to amendment) (Attached). DEA may waive this responsibility should a state or local entity wish to seize and forfeit the property under their respective state forfeiture law.

E. Eradication of Marijuana Cultivation

The eradication of marijuana cultivated within the boundaries of the National Forest System will become the primary responsibility of the Forest Service. The Forest Service shall have the primary responsibility for the processing and appropriate destruction of all marijuana and other drugs seized within the boundaries of the National Forest System except in those

investigations conducted unilaterally by DEA. All drug seizures should be immediately reported to DEA. DEA will continue to provide assistance, training and overall guidance to the Forest Service as it assumes responsibility for this program.

F. Training of Forest Service Personnel

Training of Forest Service personnel in the area of basic law enforcement will be conducted by the Federal Law Enforcement Training Center in Glynco, Georgia, on a reimbursable basis. DEA will continue to provide Forest Service personnel with the specialized training under its Marijuana Eradication Program until such time as the eradication program within the boundaries of the National Forest System becomes wholly operated by the Forest Service.

G. Information Sharing

Forest Service personnel must promptly notify the DEA local office as soon as an investigation shows prospects of crossing the boundaries of the National Forest System. Upon the request of DEA, the Forest Service will provide timely status reports of an ongoing investigation.

DEA must advise the local Forest Service office as soon as an investigation crosses the boundaries into the National Forest System and will keep the Forest Service apprised of its activities so as to avoid duplication of effort and problems in the investigation. DEA, through its El Paso Intelligence Center (EPIC), will provide the Forest Service with tactical information as available and when requested.

DEA and the Forest Service will abide by the "third agency rule" in regard to documents originated by another investigative agency. Approval will be obtained by the agency seeking disclosure from the originating agency prior to dissemination of such documents outside DEA or the Forest Service.

H. Reservations

Nothing herein is intended in any way to expand, contract or otherwise affect the statutory rights,

responsibilities or powers of the Parties.

I. Effective Date

This Memorandum of Understanding shall enter into force upon signature by all Parties and shall remain in force until amended by mutual agreement in writing.

Annex Attached

FOR THE DEPARTMENT OF JUSTICE

Edwin Meese III 11 Jun 87
Edwin Meese III Date
ATTORNEY GENERAL

FOR THE DEPARTMENT OF AGRICULTURE

Richard E. Lyng 5/21/87
Richard E. Lyng Date
SECRETARY OF AGRICULTURE

FOR THE DRUG ENFORCEMENT ADMINISTRATION

John C. Lawn 5/26/87
John C. Lawn Date
ADMINISTRATOR

FOR THE USDA FOREST SERVICE

F. DALE ROBERTSON 5/14/87
F. DALE ROBERTSON Date
for CHIEF

CHAPTER 64 DIVERSION INVESTIGATIONS

CHAPTER 64 DIVERSION INVESTIGATIONS

Subchapter 641 Diversion Control Program

6411 DEA OFFICE OF DIVERSION CONTROL (OD)

6411.1 GENERAL. The mission and goals of DEA as they relate to the control of legally manufactured controlled substances are as defined in Chapter 50 of the DEA Diversion Investigators Manual. The DEA Office of Diversion Control (OD) is charged with managing the overall program.

6411.2 DIVERSION INVESTIGATORS (GS-1810). The 1810 Diversion Investigator workforce is responsible for initiating and developing investigations of suspect registrants as directed by the Diversion Investigators Manual. During the course of these investigations it may become necessary to use traditional enforcement actions. DEA policy prohibits Diversion Investigators from the following enforcement actions:

A. Undercover activities of any kind.
B. Executing arrest or search warrants. The 1810 Investigator may be present after the area has been secured to identify records, documents, or drugs.
C. Conducting surveillance, either moving of stationary.
D. Developing, directing, or paying informants. This does not deny the 1810 the ability to develop or receive information from registrants or drug industry officials who wish to lend their support to investigations or to provide information on diversion matters. An 1810 Diversion Investigator may accompany 1811 personnel in the debriefing of informants when such debriefing takes place in secure premises, i.e., DEA office, police station, etc.

6412 ENFORCEMENT SUPPORT OF DIVERSION CONTROL

6412.1 GENERAL. In support of diversion cases, DEA Special Agents (or State or local enforcement officers) will conduct the necessary enforcement actions.

6412.2 DEA FIELD RESPONSIBILITY. The responsibility for assuring that 1811 personnel are made available to conduct enforcement actions rests with field management. This does not preclude the use of State or local officers in joint cases where appropriate.

The following procedures will be used to coordinate enforcement actions which become necessary during the course of a diversion case.

A. The SAC or RAC, satisfied that the proposed enforcement actions are necessary, and that State or local officers in joint cases are unavailable or inappropriate, is responsible for assuring that adequate resources are made available to conduct these activities within the framework of existing resources and priorities.

B. The SAC or RAC will assign an 1811 group to conduct the enforcement activity. In offices where there is more than one

group, a specific group will be designated to provide enforcement support for diversion cases. When possible, the 1810 and 1811 group supervisors will meet with the SAC or RAC to devise an appropriate strategy.

C. The 1810 Group Supervisor is responsible for reporting and case control requirements pursuant to Chapter 6214.

D. The 1811 Group Supervisor or assigned Special Agent will keep the 1810 Group Supervisor apprised of all enforcement activity.

E. All reports related to the enforcement actions will be filed in the existing 2000 series case file under which the investigations were initiated. New file numbers will not be taken out by the 1811 group. All other reporting requirements of Chapter 6232 will be followed.

6412.3 DIVERSION INVESTIGATION UNIT. (See Section 6332.)

CHAPTER 65 FOREIGN OPERATIONS

651 GUIDELINES FOR DEA FOREIGN ACTIVITIES

These guidelines apply to both DEA personnel stationed at foreign posts of duty and DEA personnel on assignment from a domestic post of duty.

A. Directions from United States Ambassadors

1. General Directions. DEA representatives, like all other official United States personnel abroad (excepting certain military commands), are under the full authority of the Ambassador. The Ambassador is expected to assist and give policy guidance to DEA activities in such a way as to assure that the DEA mission is realized to the maximum extent possible. The U.S. Drug Control Program is a high priority matter, and the United States Government supports as vigorous an approach as possible within the overall U.S. objectives in each foreign country.

2. Daily Operations Controlled by DEA. Routine DEA operations in foreign countries are under the chain of command of DEA management. At the same time, DEA Country Attaches shall operate within the policies established by the Ambassador in that country. Whenever a DEA activity, in the judgment of the Ambassador, may jeopardize relations between the host country and the United States, or is otherwise determined by him to be undesirable, the Ambassador's decision to disapprove of or suspend such activity shall be determinative. Should this occur, DEA field offices will advise Headquarters of the decision immediately.

B. Agreements With Host Governments

1. No Unilateral Activities. DEA representatives will not engage or participate in unilateral investigative operations or other activities outside the scope of the formal or informal agreement developed between the United States and the host government unless these activities have the express and explicit approval of a responsible host government official, the Ambassador, the DEA Country Attache and the DEA Administrator.

2. Historical Perspective. The activities of DEA with respect to its drug control programs in foreign countries are carried out in accordance with one or more or the following:

a. Artical 35 of the 1961 Single Convention on Narcotic Drug.

b. Formal written Agreements, Protocols, Terms of Reference, Letters of Exchange, or Memoranda of Understanding.

c. Informal agreements between the United States Government/DEA and host governments, their designated drug control agencies, and authorized host country officials.

d. Regulations, orders, manuals, notices and other policy guidance and guidelines issued by the Department of Justice or DEA.

NOTE: Unless specific allowance is made under the provisions of this manual or the written authority of Headquarters (AO), the policies and procedures contained in this manual are fully applicable to DEA's foreign operations.

C. Investigations

1. The Congress intends that P.L. 94-329 (Section 504(c)(1), referred to as the Mansfield Amendment) shall be applied in its strict sense and that DEA representatives in foreign countries shall not take an active part in any arrests made by host country officials. Additionally, DEA representatives shall not participate in an activity when there is a doubt as to whether or not an arrest may be made by foreign officials in their presence. The Supreme Court has defined that an arrest occurs when "the liberty of movement of a suspect is restricted by law enforcement officers." DEA representatives shall abide by the Supreme Court definition of arrest and adhere to the Congressional intent of P.L. 94-329. An "arrest action" includes those situations where arrests of suspects would normally ensue at that particular point in the investigation, even when arrests are not, in fact, made.

PL 99-570, the Anti-drug Abuse Act of 1986, provides a procedure to obtain a partial exemption from the above prohibition relating to participation in foreign arrest actions. The provisions relating to interrogation of U.S. persons and U.S. Armed Forces are unchanged. The language of the statute is as follows:

The language of the statute is as follows:

--Section 481(C)(1): No officer or employee of the U.S. may directly effect an arrest in any foreign country as part of any foreign police arrest action with respect to narcotics control efforts, notwithstanding any other provision of law. This paragraph does not prohibit any officer or employee from assisting foreign officers who are effecting an arrest.

-- (2) Unless the Secretary of State, in consultation with the Attorney General, has determined that the application of this paragraph with respect to that foreign country would be harmful to the national interests of the U.S., no officer or employee of the U.S. may engage or participate in any direct police arrest action in a foreign country with respect to narcotics control efforts, notwithstanding any other provision of law. Nothing in paragraph (1) shall be construed to allow U.S. officers or employees to engage or participate in activities prohibited by this paragraph in a country with respect to which this paragraph applies.

-- (3) Paragraph (1) and (2) do not prohibit an officer or employee from taking direct action to protect life or safety if exigent circumstances arise which are unanticipated and which pose an immediate threat to U.S. officers or employees, officers or employees of a foreign government, or members of the public.

-- (4) With the agreement of a foreign country, paragraphs (1) and (2) shall not apply with respect to maritime law enforcement operations in the territorial sea of that country.

(a) As revised, the prohibition on engaging or participating in foreign police arrest actions remains in effect, but, in countries wherein the Secretary of State, in consultation with the Attorney General, determines that adherence to the

prohibitions would be harmful to U.S. interests, an exception can be made permitting U.S. officers and employees to engage and/or participate in an arrest being effected by foreign police officers. Even in these countries, U.S. officers and employees are prohibited from directly effecting an arrest. But, as noted below in Section 481(C)(1), the intent of the legislation was not to prohibit officers or employees from assisting foreign police officers who are effecting a narcotics arrest.

(b.) Thus, under the revision, U.S. officers and employees may now engage and/or participate in an arrest being effected by foreign police officers--in those countries for which the Secretary of State has made an exception--but they may not directly effect the arrest.

(c.) As revised, the Mansfield Amendment makes clear that, in all countries, U.S. personnel are not prohibited from taking direct action to protect life or safety in exigent circumstances.

(d.) A new provision exempts maritime law enforcement operations in the territorial sea of a foreign country with the agreement of that country. The U.S. presently obtains the agreement of a foreign country on a case-by-case basis as the need arises.

(e.) Under law Chiefs of Mission are responsible for directing and monitoring the activities of all offices and employees, including narcotics enforcement personnel.

2. To the extent permitted under United States and host country laws and United States mission policy, consistent with P.L. 94-329, Section 504(C)(1), DEA representatives may perform the following functions:

a. Perform in an undercover capacity.
b. Obtain documentary evidence, such as telephone records and business records.
c. Interview arrested persons or otherwise assist host country officials after the arrest scene has been secured.
d. Provide host country officials with technical advice.
e. Obtain samples of seized controlled substances for analysis by DEA.
f. Coordinate, evaluate, and disseminate investigative leads to host country officials.
g. Inspect and photograph locations where controlled substances are manufactured and stored.
h. Assist and coordinate convoy investigations.
i. Develop, supervise and assess DEA sources of information.
j. Locate areas where illicit narcotic plants are grown or stored.
k. Provide instruction and training in the use of technical equipment.
l. Provide instruction and training in the conduct of drug investigations.
m. Take appropriate defensive action when the life of a host country official, informant, or DEA representative may be in jeopardy.
n. Conduct surveillance of the activities of drug traffickers in order to gather information concerning those major **organizations engaged in illicit drug trafficking affecting the United States.**

** Addition

o. Provide, to the extent possible, appropriate information obtained by DEA that will enable host government officials to carry out investigations of or operations against international drug traffickers.

p. Coordinate and assist in matters regarding Letters Rogatory, joint prosecutions and requests for judicial assistance.

D. Intelligence. DEA representatives generally may conduct the following intelligence activities in foreign counties:

1. Identify major drug violators and trafficking organizations.
2. Select intelligence targets and develop Major Organization Reports.
3. Collect long-range strategic intelligence relative to trafficking routes, trends of the traffic, and methods of drug concealment.
4. Analyze drug intelligence as fully as possible in order to integrate it with drug suppression programs in foreign countries and the United States.
5. Collect and develop intelligence relative to couriers, profiles, and smuggling routes and methods, for transmittal to the U.S. Customs Service and the U.S. Coast Guard in support of their primary interdiction responsibilities.
6. Collect intelligence relative to precursors and equipment used in the production of illicit controlled substances.
7. Collect strategic intelligence relative to the production of illicit narcotic crops and production of interim substances, e.g., coca paste, morphine base, etc.

E. Inter-Agency Responsibilities

1. DEA representatives shall coordinate with the Embassy Narcotics Coordinator at post all sensitive or unusual DEA activities conducted in-country and, to the extent determined by the Ambassador, keep him informed of routine activities.
2. Senior DEA officials in embassies shall, as members of the U.S. Mission Narcotics Committee, participate in the planning, preparation, implementation, and assessment of bilateral drug control programs.
3. DEA representatives shall, immediately upon the receipt of information with respect to the arrest of a United States person, notify the nearest appropriate U.S. Consular official.
4. Orders, guidelines or policies implemented between the U.S. Mission and DEA shall be submitted immediately to DEA Headquarters by the senior DEA representative at post.
5. During the course of their normal duties, DEA representatives may encounter nondrug intelligence that would be of value to other U.S. agencies. This type of intelligence shall be documented by DEA and provided by the most expeditious means to the appropriate U.S. agency.

F. Sources of Information (see also Subchapter 661)

1. DEA representatives shall locate and develop sources of information, informants and defendant/informants who can provide information relative to the highest levels of the illicit drug traffic.

2. Whenever practicable, two DEA representatives shall be present at all contacts and interviews with informants and defendant/informants.

3. DEA representatives shall advise informants and defendant informants that they are not employees, officers, or agents of DEA or the United States Government.

4. DEA representatives shall inform informants and defendant/informants that:

a. When it becomes evident that information they provide may be used in a criminal proceeding in the United States, they shall be so advised.

b. DEA will use all lawful means available to maintain the confidentiality of their identity. Except in extraordinary circumstances, no informant should be assured that his identity will not be disclosed during a criminal proceeding in the United States; such assurance may be given only with prior Headquarters approval.

G. Procedures for Exchanges of Information. DEA representatives shall disseminate information only under those circumstances which are permitted in accordance with Section 632 and this paragraph. The procedures outlined in paragraphs 1 and 2 below do not apply to the exchange of information concerning foreign nationals and/or illegal aliens.

1. Conditions and Authority for Disclosures

a. The conditions for disclosure for the release of individual records outside the Department of Justice are outlined in 632.

b. Once the authority for a disclosure is established, DEA representatives shall strictly interpret the need-to-know rule with respect to the release of any information that pertains to open investigations, to the identity of U.S. persons, or to any other matter that could seriously jeopardize the security of an investigation or the identity of a DEA undercover agent or a source of information.

2. Accounting for Authorized Disclosures. Except for those disclosures made within the Department of Justice, or those disclosures made to other Federal Departments and agencies in order to execute DEA's responsibilities for implementation of Department of State managed narcotics control action programs as described in K. below, a DEA Form 381 is required.

3. Exchange of Information with Foreign Governments and Release of Information. In addition to paragraphs 1 and 2 above, DEA representatives shall adhere to the following policies and procedures with respect to the exchange of information with foreign governments:

a. Provisions for Protection of Information and Confidentiality. The individual access provisions of the Freedom of Information Act (Title 5 U.S.C. 552) and the Privacy Act (Title 5 U.S.C. 552a) have given some foreign governments cause for

concern as to the confidentiality of information they supply to DEA. DEA representatives should assure those governments that both Acts provide for the protection of the data they supply. Briefly summarized, the applicable provisions are:

(1) Classified Material. Information classified by another government will be accorded, under 28 CFR 17.19, the same handling as material classified by the United States, and, therefore, will be exempt from individual access under both the Freedom of Information Act (5 U.S.C. 552(b)(1)) and the Privacy Act (5 U.S.C. 552a(k)(1)), in accordance with 28 CFR 16.57, which covers the interface of the Privacy Act with the Freedom of Information Act.

(2) Non-Classified Material

(a) Criminal investigative and intelligence data that is provided in confidence by foreign governments, contained in DEA's files, and the subject of a request under the Freedom of Information Act, is exempt from disclosure under Title 5 U.S.C. 552(b)(7)(D). Similarly, criminal investigative and intelligence information requested under the Privacy Act is exempt from disclosure under Title 5 U.S.C. 552a(j)(2).

(b) Information provided by a foreign government in the course of a civil investigation for law enforcement purposes may be withheld from a Privacy Act requestor under Title 5 U.S.C. 552a(k)(2), to the extent that it would identify that government as the source of the information, and provided that the information was supplied to DEA pursuant to an express promise of confidentiality.

(c) Suitability investigation data, as well as the source of the information, may be withheld under Title 5 U.S.C. 552a(k)(5), provided that such information was supplied to DEA under an express grant of confidentiality if it was supplied after September 27, 1975, or under and implied grant of confidentiality prior to that date.

b. DEA Policy and Procedures. It is the policy of DEA to hold all information received from foreign governments in the strictest confidence. In order to ensure this confidentiality, DEA representatives, upon receiving information from foreign governments, will take the following steps with respect to the following categories of information:

(1) Classified Material. Ensure that classified documents received from foreign governments are properly marked in order that they may be accorded the protection outlined in the exemptions above (see also Planning and Inspection Manual, Section 8656).

(2) Criminal Investigative and Intelligence Data. If information is passed to DEA for a criminal investigative and/or intelligence purpose, and the information is documented in a criminal investigative or intelligence record system maintained by DEA, a pledge of confidentiality need not be granted to the foreign government. DEA is authorized to withhold the type of information and the identity of its source pursuant to the Freedom of Information and Privacy Act exemptions, regardless of the existence of an expressed grant of confidentiality. DEA employees

may document in the file a pledge of confidentiality if the foreign government so requests, or if there is some doubt as to the purpose for which the information is supplied.

(3) Suitability Investigation Data. Information for suitability, eligibility, or qualifications for Federal civilian employment, military service, federal contracts, or security clearances is all considered noncriminal investigative data. The DEA representative who receives this type of information from a foreign government solely for the above purposes will make an express promise not to disclose the information without the consent of the foreign government. This pledge of confidentiality will be documented and made part of the file.

4. Public Affairs and Contacts with the News Media. Since the presence of DEA representatives in foreign countries could become a sensitive subject, communications with the news media or response to media questions by DEA representatives will be carried out only with the concurrence of the U.S. Mission Public Affairs Officer and the DEA Country Attache. This will not preclude the initiation of any such communication by DEA Headquaters.

H. Interviews of Individuals. DEA representatives may seek to interview a detained person or defendant following a detention action by host country officials. If so, DEA representatives will be guided by the following conditions:

1. Prior to an interview, DEA representatives, in each case, will obtain permission from host country officials through official government channels, and, in the case where an individual refuses to be interviewed, the DEA representative will not insist upon access to the individual.

2. DEA representatives shall not encourage or participate in any cruel or inhuman treatment of any detained or arrested individual. If such activity is observed by the DEA representative, he shall withdraw to indicate his disapproval. If a U.S. person is involved, he will request that it cease and promptly report the incident to his immediate supervisor and an appropriate U.S. Consular Official.

3. During the initial contact with a U.S. person, the DEA representative will determine if the individual was given access to a U.S. Consular Official. In those situations where access has not been granted, the DEA representative shall inform an appropriate U.S. Consular Official.

4. In all cases where a detained person is a U.S. person, DEA representatives will inform the individual of their true identity.

5. If there is a likelihood that a statement by the U.S. person being interviewed will be utilized against that person in a U.S. judicial proceeding (Federal or State), the DEA representative will inform the individual of his constitutional rights against self-incrimination. If the individual does not waive right to counsel, the DEA representative will terminate the interview immediately.

I. Prohibited Activities. As a general rule, DEA representatives shall not perform any undercover, surveillance, or other investigative activity that is planned or carried out in such a way that the representative will engage or participate in an arrest made by a foreign official.

1. Where an arrest by host country officers is contemplated at the conclusion of a particular activity in which the DEA representative is engaged, the DEA representative shall not participate in any undercover, surveillance or other investigative activity unless he has obtained the concurrence of his immediate supervisor with the operational plan which will set forth how the agent plans to be absent from the scene of the arrest.

2. When time or lack of communication capability precludes the approval of the operational plan by the supervisor, the DEA representative may, after an in-depth analysis of all of the facts and circumstances, assist host country officials in a manner consistent with P.L. 94-329.

3. When unforeseen circumstances result in an agent being present during a host country police arrest action, the agent shall report, by cable, within 24 hours, the facts that led to his being present.

4. DEA representatives shall not act as an auxilliary force to assist host country officials.

5. DEA representatives shall avoid those situations where they have received prior specific information concerning the probability of foreseeable violence. Examples of those situations are:

a. When an undercover penetration involves a suspect or known drug trafficker about whom they have been told by an informant that the suspect or trafficker will be armed during the undercover meeting;

b. When host country officials require for their own protection the possession or use of heavy weapons, such as shotguns or automatic weapons, as a means of protection against persons to be arrested. This is meant to cover those situations where there is a high probability that a major confrontation will occur. It does not cover those situations in which host country officials routinely carry such weapons during enforcement operations.

J. Electronic Surveillance by DEA Representatives in Foreign Countries. See 6635.2.

K. U.S. Drug Control Programs

1. Background. The Strategy Council on Drug Abuse, created by the Drug Abuse Office and Treatment Act of 1972, serves as the government-wide advisory committee for the Secretary of Treasury, Secretary of Defense, Attorney General, Secretary of Labor, Secretary of Health and Human Resources, Secretary of Transportation, the U.S. Representative to the United Nations, Director of the Office of Management and Budget, Director of Central Intelligence, and the Administrator of Veterans Affairs. The Director of the White House Office of Drug Abuse Policy serves as the Executive Director of the Council. With regard specifically to the overseas aspect, the Secretary of State retains total policy and program responsibility for the United States international narcotics control effort, including coordination of the activities of DEA and other participating agencies. These activities will comply with the policy guidelines developed to assure that the United States Inter-

national narcotics effort is given high priority and that there is proper coordination of all diplomatic, intelligence, and law enforcement liaison activities of international scope.

As part of the Department of State's policy and program responsibility, it allocates and manages the international narcotics control assistance funds appropriated in the Foreign Assistance Act. This is done by delegation of authority from the Secretary of State to his Senior Advisor and Coordinator for International Narcotics Matters. Under this program, Narcotics Control Action Programs are developed for principle countries involved in the production and trafficking of illicit drugs. In various aspects of country program implementation, the Department of State relies upon DEA, as well as other agencies having specialized expertise to contribute, such as the U.S. Customs Service, the Agency for International Development, the National Institute for Drug Abuse, and the Department of Agriculture.

2. DEA's Responsibilities

a. Cooperate and exchange drug intelligence with appropriate host country law enforcement officials.
b. Assist in the establishment and/or development of a host country drug law enforcement capability.
c. Provide assessments, as appropriate, with respect to the end-use of resources furnished by the Department of State to foreign drug law enforcement organizations, and submit appropriate assessments and recommendations to the U.S. Mission.
d. Develop, with the U.S. Mission, appropriate resource requirements for host country drug law enforcement organizations. Requirements should be keyed to the ultimate goal of reducing the availability of illicit drugs on the United States market.
e. Develop, with the U.S. Mission, specific short-term and long-term bilateral drug intelligence programs that will accrue to the benefit of both the host country and the United States.

L. Narcotic Crop Eradication Programs

1. Background. The principle elements required in order to cause a measurable reduction of illicit drugs are:

a. Elimination of illicit cultivation.
b. Repressive measures against illegal cultivators.
c. Cooperation among concerned governments on either a bilateral or multilateral basis.

2. DEA's Responsibilities

a. Collect intelligence and provide assessments with respect to illicit narcotic crop production in source countries, and furnish estimates of diversion from licit production.
b. Provide expertise and technical assistance to appropriate officials in those countries that have programs funded by the Internationl Narcotics Control Fund and in those countries where narcotic crop eradication programs are conducted.

c. Perform air observer functions and conduct reconnaissance flights, as requested and agreed upon, during host country narcotic crop eradication campaigns or other drug control efforts.

M. Training and Development of Foreign Control Capability. The following guidance and policy is provided to ensure that DEA representatives in foreign countries place an appropriate priority on those programs that are funded by the International Narcotics Control Fund by providing input, recommendations, and periodic assessments:

1. Overseas Enforcement Training School. This program provides a curriculum of intensive, practical, on-site drug law enforcement training in the recipient country. The objectives vary from course to course but generally provide the participants, in as practical a manner as possible, specific techniques that address the initiation and development of drug investigations.

2. Advanced International Drug Enforcement School for Instructors. This course provides foreign police training instructors with the technical skills and knowledge that are required in order to develop and present training programs in drug law enforcement. This advanced course includes those subjects essential to drug law enforcement and subjects intended to enhance managerial skills and instructional development. The 6 week program combines classroom presentations in Washington with an opportunity to observe local and State training programs in various U.S. cities.

3. Forensic Chemists Seminar. This program provides instruction in the most current techniques and methodology for drug analysis. Trained chemists are instructed in the use of sophisticated drug analytical equipment in a laboratory environment. Two weeks of instruction are provided at the DEA Special Testing and Research Laboratory. Additionally, field training and observation are provided in DEA Field Laboratories and police laboratories in the United States.

4. Executive Program. This program is designed to provide executive-level foreign officials an opportunity to observe DEA operations in the United States. Each program is highly individualized and designed to increase support and cooperation from key foreign officials who are in a position to positively influence the effectiveness of U.S. drug control efforts. Invitations are issued on a very select basis by the Administrator through the Department of State.

5. Institution Building. DEA objectives should be directed to the long-term goal of developing viable host country narcotics control capabilities. Such a viable institution requires an administrative capability, a budget, a management system, planned objectives and motivations, proper recordkeeping procedures, an intelligence capability, and a clear-cut, effective chain of command. It is to the development of these goals that DEA's international training efforts should be directed.

Subchapter 652 DEA Activity in the Republic of Mexico

A. The mission of DEA in the Republic of Mexico is to assist the Mexican government in the interdiction of drugs at their source or at the earliest point in the transshipment network. To this end, DEA investigative activity should be directed toward the development of intelligence leading to the interdiction of drugs within Mexico.

B. DEA involvement in Mexico will be limited to a role which results in the least possible notoriety and maximum effectiveness. This "low profile" encompasses all matters ranging from minimum investigational staffing and limiting unnecessary use of equipment, vehicles, firearms and radios to the judicious release of information to the domestic media regarding DEA activity in Mexico. The M City Country Office and domestic field management will realistically apply this low profile philosophy to all operational situations in Mexico.

C. DEA will conduct all investigations in Mexico in such a manner as to insure a continuing harmonious relationship between the United States and Mexico. The impact of this policy is such that DEA may forego operational activities in Me i o which are not consistent with operational agreements developed between DEA and the government of Mexico.

DEA agents operating in Mexico will not identify themselves as U.S. agents to any defendant arrested in Mexico, and under no circumstances participate in the interrogation of defendants if doing so could cause embarrassment to the Government of the United States and to DEA.

D. Operational and investigative activity in Mexico will be carried out in cooperation with the Mexican Federal Judicial Police (MFJP) under the authority of the Attorney General of Mexico.

DEA will operationally assist a Mexican State agency only when there is concurrence by the MFJP. Domestic offices will not conduct investigations in cooperation with a Mexican State law enforcement agency when that agency refuses to cooperate with the Mexican Federal authorities. When a Mexican State agency requests assistance, DEA will diplomatically advise the State agency to contact the Mexican Federal Prosecutor and request the assistance of the MFJP. In the event that the State agency refuses to make such a request or the MFJP is unwilling to participate, DEA will not render the assistance requested.

E. The Mexico City Country Office is jurisdictionally responsible for all DEA activities within the geographic and territorial boundaries of the Republic of Mexico. For internal DEA operational purposes, a zone extending 26 kilometers south of the border has been established within which DEA domestic offices may conduct limited cooperative activities with the MFJP. This geographic distinction is not officially recognized by the Mexican Government, and in no way confers any additional latitude for DEA activity within this zone that does not exist in the remainder of Mexico.

DEA domestic field offices will not conduct any investigative activity in Mexico on a unilateral basis. All such activity will be conducted in cooperation with the MFJP, and only after prior approval by its Director General in Mexico City. Such approval will be sought through the Mexico City Country Office. The term "investigative activity" includes joint investigations as well as requests of the MFJP for investigative assistance or action.

Approved activities which are conducted within the 26 kilometer zone will continue under the control and direction of the appropriate domestic field office. The control and direction of activities extending beyond this zone will be assumed by the Mexico City Country Office.

Subchapter 653 DEA Activities with Canada

6531 GENERAL

This subchapter sets forth policies and procedures governing all DEA investigative and intelligence activities conducted in Canada or with Canadian authorities. These policies and procedures are based upon the Terms of Reference between the Royal Canadian Mounted Police (RCMP) and DEA.

The central concept governing all DEA activities in and with Canada is that they must be carried out in full coordination with the RCMP. Unilateral cross-border operations are expressly prohibited, as are operations carried out in coordination with any agency of Canada (Federal, provincial, or local) other than the RCMP.

6532 EXCHANGES OF INFORMATION AND JOINT INVESTIGATIONS

A. With the exception of the "border office" provisions set forth in 6533 below, all requests for investigative assistance or referrals of information, either to or from the RCMP, will be channeled through the Ottawa Country Office for action.

B. All such requests or referrals will adhere to the standard DEA reporting procedures (i.e., DEA-6, teletype, or, in exigent circumstances, telecom followed by a DEA-6 or teletype).

C. Where the request or referral is from the RCMP, the Ottawa Country Office will be considered the originating office, and transmit it under Program General File 9223, Referrals to/from RCMP. Should the ensuing activity develop to warrant opening a case file (see 6232.1), the recipient office will do so under its own case file designator, using a "_K" G-DEP identifier.

D. When the request or referral is directed to the RCMP, the originating office will transmit it under its assigned case or general file, crossfiled to GF 9223. When reported under a general file, and the ensuing activity in Canada develops to meet the criteria for opening a foreign case file (see 6232.12), the

Ottawa Country Office will do so using "K" G-DEP identifier, and include the originating office in the distribution of all subsequent correspondence generated under that file number.

E. Where a request or referral to or from the RMCP develops into an investigation that will require continued dialogue between the RCMP and the originating office, this dialogue may be carried out directly. However, such direct contact may only occur after prior coordination with the Ottawa Country Office. Further, the Ottawa Country Office should be included in the distribution of all subsequent correspondence generating from this investigation.

6533 BORDER OFFICE INTERACTIONS WITH THE RCMP

A. Certain DEA offices, due to their proximity to the Canadian border, are authorized to coordinate matters directly with the RCMP. However, such direct coordination shall be limited by the parameters contained in this section.

These offices, and their Canadian "spheres of operation", are as follows.

Border Office	RCMP Division
Anchorage R.O.	(G) all of the Northwest Territories (M) all of the Yukon Territory
Blaine R.O.	(E) all of the province of British Columbia
Great Falls R.O.	(K) all of the province of Alberta (F) all of the province of Saskatchewan
Fargo R.O.	(D) all of the province of Manitoba and part of western Ontario
Detroit D.O.	(O) all of the part of the province of Ontario assigned to "O" Division west of 81 degrees longitude
Buffalo R.O.	(O) all of that part of the province of Ontario assigned to "O" Division east of 81 degrees longitude
Ottawa C.O.	(A) all of that part of the province of Quebec assigned to "A" Division and RCMP Headquarters
Montreal R.O.	(C) all of the province of Quebec assigned to "C" Division
Portland, ME, R.O.	(J, H, L, and B) all of the provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland

NOTE: From a procedural standpoint, the Montreal Resident Office may be considered a "border office" with regard to the Province of Quebec.

B. A border office may interact on a direct basis with RCMP counterparts stationed within its Canadian sphere of operation. However, the Ottawa Country Office will be included in the distribution of all correspondence generated by such activities, and be promptly informed of any significant operational activities.

C. Where a border office requires investigative assistance from the RCMP outside its specific Canadian sphere of operation, it must adhere to the procedures set forth in 6532 above (i.e., from procedural standpoint, it no longer has the status of a border office).

D. Where a border office's RCMP counterparts require investigative assistance from DEA outside the border office's domestic jurisdictional boundaries, the border office may initiate the request for assistance, provided the Ottawa Country Office is included in distribution of all resulting correspondence originating from the border office as well as the action office. All such requests must be documented under either Program General File 9223 or a case file number, crossfiled to PGF 9223.

E. Non-border DEA offices requiring investigative assistance from the RCMP must channel that request through the Ottawa Country Office for action, regardless of where in Canada the action is required.

CHAPTER 66 ENFORCEMENT PROCEDURES

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Subchapter 661 Sources of Information

6612 INFORMANTS

6612.1 GENERAL POLICIES

A. This section contains policies and procedures to be followed in the establishment, use, and handling of informants by DEA. To a considerable extent, it is based upon the requirements prescribed by the Domestic Operations Guidelines (Appendix B).

The title "Informants" covers the following:

1. Informant: A person who, under the direction of a specific DEA agent, and with or without expectation of compensation, furnishes information on drug trafficking or performs a lawful service for DEA in its investigation of drug trafficking.
2. Defendant/Informant: As above, but subject to arrest and prosecution for a Federal offense; or a defendant in a pending Federal or state case who expects compensation for his assistance in either the form of judicial or prosecutive consideration, or compensation of another form.
3. Restricted-Use Informant: Any informant who meets any of the following criteria shall be considered a "restricted-use informant," subject to use as authorized below:

a. Persons less than 18 years of age: Only with written consent of parent or legal guardian.
b. Persons on probation or parole (Federal or state): SAC's will establish procedures to obtain permission to use persons on probation (Federal and state) and parole (state) within the SAC's area of responsibility.

For persons on Federal parole, SAC's will contact the Regional Parole Commissioner of the region in which the releasee is under supervision at least (except when emergency circumstances dictate otherwise) 30 days prior to the proposed use of the person (releasee). See Exhibit 1 for locations of Regional Parole Commissioners. SAC's will furnish in writing an overview of the proposed utilization of the person's services to include:

(1) Informant instructions (6612.31F.1, 2, 3, 4).
(2) Administrative controls (Domestic Guidelines).
(3) Potential risk to the person.
(4) Measures to be taken to insure the person's safety.
(5) Why the potential benefit to the Government outweighs the risk of the persons reinvolvement.
(6) Length of time the person is needed (up to 90 days).

If the Commission approves the SAC's request, the conditions of the person's cooperation will be set forth in a memorandum from the Regional Commissioner to the SAC.

NOTE: Where the person is currently a Federal prisoner, and the intended utilization will require temporary furlough or transfer from his detention site, or the use of consensual monitoring devices, it is necessary to obtain prior Departmental approval.

This approval will be requested by teletype to Headquarters **Investigative Support Section (OS) for action and to the appropriate Drug Section for information.** The teletype must contain the following information:

1. Name and identifying data of prisoner.
2. Present location of prisoner.
3. Necessity of using the prisoner.
4. Identity of target.
5. Nature and circumstances of intended use.
6. Security measures to be taken to ensure the prisoner's safety.
7. Whether he is to remain in DEA custody or will be unguarded at any point.
8. Length of time the prisoner is needed.
9. Whether he will be needed as a witness.
10. Whether it will be necessary to relocate the prisoner to another prison.

Upon completion of the activity, submit a followup teletype setting forth the results of the utilization.

c. Persons formerly dependant on drugs, or currently participating in a drug-treatment program; with the approval of the SAC.

d. Persons with two or more felony convictions; with the approval of the SAC.

e. Persons who have been convicted of a drug felony; with the approval of the SAC.

f. Persons who have been previously declared unreliable informants; see 6612.52.

g. "Walk-in" informants, until subsequent investigation justifies a less stringent classification; with the approval of the SAC.

B. The title "informant," as well as the informant requirements of the Domestic Operations Guidelines, does not apply to "sources of information." A source of information is a person or organization, not under the direction of a specific agent, who provides information without becoming a party to the investigation itself (e.g., a business firm furnishing information from its records; an employee of an organization who, through the routine course of his activities, obtains information of value to DEA; or a concerned citizen who witnesses an event of interest to DEA).

Should a person who would otherwise be considered a source of information become a continuing active part of the investigation, then his status should be shifted to that of an informant. **Should a source of information seek financial compensation or become a recipient of an award from the Assets Forfeiture Fund, then he must be established and assigned a code number for purpose of payment. The source of information is not to be considered an informant in this type of situation.**

Generally, a person or organization fitting this definition can be identified by name in investigative reports. However, if there is cause to preserve anonymity, yet the circumstances do not warrant establishing the source as an informant, the term "source of

** Addition

information" may be used. Sources of information will be identified in an administrative memorandum (see 6211.7) attached to the report.

C. There are three criteria that must be met to establish a person as a DEA informant:

1. The person is in a position to measurably assist DEA in a present or future investigation.
2. To the extent a prudent judgment can be made, the person will not compromise DEA interests and activities.
3. The person will accept the measure of direction necessary to effectively utilize his services.

D. If there is reason to believe that an informant or defendant/informant has committed a serious criminal offense (i.e., a felony), the appropriate United States Attorney's Office will be notified. The U.S. Attorney's Office, after consultation with DOJ, will determine whether DEA may continue to use the individual as an informant.

E. In the situation described in D above, the law enforcement agency having jurisdiction over the crime will also be notified. If it is felt that immediate and full notification would jeopardize an ongoing investigation or endanger the life of an agent or other person, then this notification may be limited to just apprising the agency that the crime was committed. In this instance, all evidence of the crime will be preserved for subsequent transfer to the agency at a point in time when full disclosure is possible.

F. Informants under the control of another agency are not subject to the requirements of the Domestic Operations Guidelines. Frequently, however, situations occur in which control of the informant is shared between DEA and the other agency, or the control by the other agency is nominal, or DEA provides direction to the informant through the other agency. The nature of the relationship between the three parties will be continuously reviewed by the agent involved and his immediate supervisor. Should control shift to where more rests with DEA than the other agency, the informant will be established as a DEA informant.

G. The following additional requirements shall apply to DEA's development of defendant/informants:

1. The approval of the appropriate prosecutor (i.e., Federal, state, or local) will be obtained <u>prior</u> to seeking the cooperation of a defendant.
2. A defendant may be advised that his cooperation will be brought to the attention of the appropriate prosecutor. No further representations or assurances may be given without approval by the SAC. The prosecuting attorney shall have sole authority to decide whether or not to prosecute a case against a defendant/informant.
3. The appropriate prosecutor shall be advised of the nature and scope of the defendant's cooperation throughout the period of his use. The procedures and frequency of this reporting shall be set by the prosecutor.
4. Prior to formally seeking the <u>dismissal</u> of any criminal charge against a defendant/informant, the SAC must obtain the written approval of the Headquarters (DO).

Requests under this requirement will be made via teletype. The teletype will include the informant's code, the specific charge, the informal views of the appropriate prosecutor, and a terse justification in terms of advantage to DEA. Written approval or disapproval will be via return teletype.

H. The Domestic Operations Guidelines do not apply to informant development and handling by DEA's foreign offices. Nevertheless, to the extent that the policies contained in this section can be applied, they should. Any deviation from these policies must be specifically approved by Headquarters (DO), based upon factors specific to the foreign country involved.

6612.2 ESTABLISHING INFORMANTS

6612.21 General. All persons who will be utilized as DEA informants will be formally established as such. The specific procedures required in establishing a person as an informant vary somewhat, depending upon the characteristics of the person involved.

In instances of either extreme sensitivity or where a "source of information" is being established for payment purposes, certain establishment procedures may be waived by the SAC or Country Attache. Such exemptions from the norm will be used judiciously. Those procedures that may be exempted under this criteria are so indicated below. Any such exemption must be specifically documented in item 58 of the DEA Form 202 Establishment Report.

6612.22 Informant Code Number

A. Each DEA informant will be assigned a code number. This code will appear in all investigative reports in lieu of the informant's true name.

B. The code will have nine characters, each designated as follows:

(1) (2) (3) (4) (5) (6) (7) (8) (9)

(1) The first character will always be the letter "S".

(2) & (3) The next two characters will be the designator of the establishing office (see Appendix G).

(4) & (5) The next two characters will be the last two digits of the fiscal year of establishment.

(6), (7), (8) and (9) The last four characters will be a sequential four-digit number within the fiscal year and within the establishing office.

NOTE: DEA state and local task forces will use a sequential numbering system separate from the DEA field office, and use the letter "X" in place of the number in character (6). Example: SC3-85-X001.

C. Once assigned, this code number will remain with the informant throughout his use, even if his services are temporarily used by another office. If a deactivated informant is subsequently reactivated, the same code will be reused. Exceptions to this are where an informant deactivated by one office is independently established by another office, or where his use by an office other than the establishing office is of a permanent nature. In the latter instances, he will be established by the second office, using a new code number.

D. Informants under the control of another agency will not usually be assigned DEA code numbers. This will be necessary, however, if the informant is to be paid with DEA funds.

6612.23 Informant Code Book. Each office will maintain an informant code book. Parent offices will maintain code books duplicating those of the subordinate field offices directly under their jurisdiction. Headquarters (AMRI) will maintain a master code book. These books will be controlled by the field office head or his designee, and stored as prescribed for informant files in 6612.24A.

Informants will be logged in these books, in separate sections for DEA informants and for DEA state and local task force informants, upon approval of their DEA Form 202 establishment report. Where written approval of the DEA Form 202 requires mailing it to and from the approving supervisor, then, in exigent circumstances, telephone approval will suffice pending receipt of the approved DEA Form 202. Informant code books will have the following entries:

1. Informant's code number.
2. Type of informant (i.e., informant, defendant/informant, restricted-use informant).
3. Informant's true name or "exempted by SAC (or Country Attache)" (true name may be waived per 6612.21).
4. Name of establishing agent.
5. Date the establishment is approved.
6. Date of deactivation.

6612.24 Informant Files

A. For each informant a separate DEA-5 File Jacket will be established by the establishing office, the managing Division Office (if appropriate), and Headquarters (AMRI). These files will be kept in a separate and secure storage facility, segregated from any other files, and under the exclusive control of the office head or an employee designated by him. The facility will be locked at all times when unattended. Access to these files will be limited to those employees who have a necessary, legitimate need. An informant file may not leave the immediate area except for review by a management official or the handling agent, and will be returned prior to the close of business hours. Signout logs will be kept indicating the date, informant number, time in and out, and the signature of the person reviewing the file. Also see 8615 of the Planning and Inspection Manual.

NOTE: Country Attaches, at their discretion, may adjust the foregoing insofar as which offices will maintain sets of informant files.

B. In certain instances of extreme sensitivity, files of those informants for whom a waiver of establishment procedures was granted per 6612.21 may be stored separately from other informant files, accessable only to the SAC (or Country Attache) and those DEA personnel designated by him to control the informant's utilization. Upon deactivating any such informant, the SAC (or Country Attache) will determine whether his file should be integrated into the regular informant file storage facility.

C. Non-DEA employees, including those of other Federal agencies, other law enforcement agencies, or other Department of Justice elements, will not be permitted access to these files. An exception to this is the files of those informants under the control of a DEA Task Force. Conditions of access to these files will be set by DEA Task Force management.

On an individual file basis, a prosecuting attorney may examine a DEA informant file if such examination is necessary to the prosecution of a case. Unless expressly authorized by the Administrator, employees of GAO, the Department of Justice, or others who are engaged in an evaluation of DEA will not be permitted access to these files. Bonafide and authorized evaluators may be permitted secondary access through review of DEA prepared summaries of or extracts from these files. In no case will the identity of an informant be disclosed to an external evaluator.

D. Informant files will be maintained in code number sequence, under two headings: active informants and deactivated informants.

E. Informant files will contain the following documents:

1. DEA Form 356, Informant Payment Record, kept on top of the file (except for the Headquarters informant file).
2. DEA Form 202, Informant Establishment Report, plus any other documents connected with the informant's establishment.
3. DEA Form 473, Cooperating Individual Agreement
4. DEA Form 103, Voucher for Payment for Information and Purchase of Evidence. The signed copy will be kept by the originating office (except for the Headquarters informant file).
5. Copies of all debriefing reports (except for the Headquarters informant file).
6. Copies of case initiation reports bearing on the utilization of the informant (except for the Headquarters informant files). See 6214.4.
7. Copies of statements signed by the informant (unsigned copies will be placed in appropriate investigative files).
8. Any administrative correspondence pertaining to the informant, including documentation of any representations made on his behalf or any other nonmonetary considerations furnished.
9. Any deactivation report or declaration of an unsatisfactory informant.

F. For each informant in an active status, the controlling agent will review the informant file on a quarterly basis to assure it

contains all relevant and current information. Where a material fact that was earlier reported on DEA-202 Establishment Report is no longer correct (e.g., a change in criminal status, means of locating him, etc.), a supplemental DEA-202 should be submitted with the corrected entry. If the new information warrants a higher level of approval than was originally necessary, this approval will be sought by this DEA-202. If the new information is routine, the approval of the immediate supervisor on the DEA-202 will suffice, regardless of the original level of approval.

G. Where an informant is utilized and/or paid by an office other than the establishing office, its file on that informant need only consist of those documents pertinent to its utilization and/or payment.

6612.25 Photographs. All informants will be photographed (unless a recent photograph is already available). One print will be attached to each copy of the Establishment Report. This requirement may be waived by the SAC (or Country Attache) pursuant to 6612.21. Informants controlled by another agency who are established for payment purposes only need not be photographed (see 6612.43D).

6612.26 Fingerprinting and Criminal History

A. All informants being established by a domestic field office will be checked in DEA and FBI files. DEA files will be checked via NADDIS. FBI files will be checked via NADDIS/NCIC, and Wanted Person and Criminal History Summary Files. (If a verified FBI number is available, submit DEA Form 105 (revised) Request for Criminal Records, to the FBI Identification Division for criminal record checks.

B. Where a verified FBI number is not available and the potential informant must be fingerprinted, submit a completed FD-249, Fingerprint Card, directly to the FBI. Do not enter the informant code number on the FD-249. On the FD-249, line through the space entitled "Your Number." Enter "Criminal Inquiry" in the space entitled "Charge." See 6641.34 for further instructions on preparing the FD-249.

C. A copy of the DEA Form 105 will be attached to each copy of DEA Form 202 Establishment Report.

D. The informant may be utilized on a provisional basis while awaiting a response from FBI. Information contained in the subsequent FBI response will be reviewed from the standpoint of whether it affects the current status and utilization of the informant. Adjustments to procedures, status, and/or use will be made as appropriate.

E. In instances of extreme sensitivity or where a source of information is being established for payment purposes, the fingerprinting requirement may be waived per 6612.21.

F. The foregoing criminal history/fingerprint requirements do not apply to informants controlled by another agency who are established for payment purposes only.

G. All informants being established by a foreign field office must be fingerprinted. The only exception to this requirement is where an official of a foreign government or business entity is being established for payment purposes, or where a set of fingerprint records is available from another source. In this instance, the fingerprinting requirement may be waived by the Country Attache. Any such waiver will be specifically documented on the DEA Form 202 Establishment Report. Where a foreign informant is fingerprinted as per B above, the DEA Form 249 should be sent directly to the FBI Identification Division.

6612.27 Informant Establishment Report

A. An Informant Establishment Report will be prepared on DEA Form 202 for any person assigned an informant code.

B. The DEA Form 202 will be prepared in sufficient copies to be distributed as follows:

Original - Originating office informant file.
Copy - Division Office informant file (if applicable).
Copy - District Office informant file (if applicable).
Copy - Headquarters (AMRI) informant file.

Distribution will be via registered mail, return receipt requested. It will not be sent with other reports, memoranda, etc., in the same envelope.

C. In instances of extreme sensitivity, the SAC (or Country Attache) may waive the normal distribution of the DEA Form 202 (see 6612.21). In these instances, a single copy will be prepared and stored in the Division or Country Office informant file in a sealed envelope; and a memorandum will be submitted to DO detailing the waiver. Details will include the informant's code number (not his name), his classification (informant, defendant/informant, restricted-use informant), his proposed utilization, any compensation agreed upon, and the names of the DEA personnel who control his utilization. The original of this memorandum will be filed in the Headquarters informant file, and copies will be distributed to each field office maintaining a file on this informant.

D. The DEA Form 202 will be completed as fully as possible. Special instructions are are follows:

Item 1: Subsequent to supervisory approval, enter the informant code number.
Item 5: Enter the date the DEA Form 202 is drafted.
Item 10: Enter the telephone number at which the person is usually contacted.
Item 42: Include pending charges.
Item 58: Enter a brief evaluation of the informant's potential and proposed utilization. If he is a defendant/informant or a restricted-use informant, enter the pertinent details. Also enter the details of approval for use, if applicable (name of approving party, date of approval, conditions of approval, the agent to whom the approval was given). Enter the substance and

circumstances of any nonmonetary assurance given. Also enter any procedural waivers pursuant to 6612.21. Use a white bond addendum sheet if additional space is needed.

E. For informants other than defendant/informants and restricted use informants, the approval of the immediate supervisor (items 63-65) is sufficient.

For defendant/informants and restricted-use informants, the additional approval of the SAC (or Country Attache) (items 66-68) is required. The SAC's (or Country Attache's) approval is also required where any establishment procedures were waived.

The re-establishment of an informant previously declared unreliable requires DO approval (request and response by teletype).

F. Attach a photograph and copies of written approvals, if any, to each copy of DEA Form 202.

6612.3 UTILIZATION OF INFORMANTS

6612.31 General Policies

A. Informants are assets of DEA, not a specific agent. At its discretion, DEA management may reassign an informant to the control of another agent or another office.

B. Agent/informant contacts will be of a strictly professional nature. Extrinsic social or business contacts are expressly prohibited.

C. Contacts with informants will be such that their knowledge of DEA facilities, operations, activities, and personnel is kept to the minimum necessary to their successful utilization.

D. At least two agents must be capable of contacting an informant. Whenever practical, two agents (or an agent and an officer of another enforcement agency) will be present at all contacts with the informant.

E. All significant contacts with the informant, and all information obtained at these contacts, will be documented in writing.

F. Informants (and sources of information) shall be advised at the outset that:

1. They shall not violate criminal law in furtherance of gathering information or providing services to DEA, and that any evidence of such a violation will be reported to the appropriate law enforcement agency.
2. They have no official status, implied or otherwise, as agents or employees of DEA.
3. The information they provide may be used in a criminal proceeding, and that, although DEA will use all lawful means to protect their confidentiality, this cannot be guaranteed.
4. It is a Federal offense to threaten, harass, or mislead anyone who provides information about a Federal crime to a Federal

law enforcement agency. Should they experience anything of this nature, as a result of their cooperation with DEA, they should contact their controlling agent immediately. (See 6115.)

5. Cooperating Individuals will sign DEA Form 473 (Cooperating Individual Agreement) acknowledging that he/she has read and agree to the above conditions. His/her signature and date will be witnessed by two agents. Should a cooperating individual refuse to sign the DEA Form 473, the following statement will be entered on the DEA form, and will be signed and dated by two agents: "On date, (C.I. Number) was advised of and agreed to the conditions set forth on this form. (C.I. Number) refused to sign." The DEA-473 will be filed in the appropriate C.I. file. Foreign offices will also follow this procedure.

G. See 662 for undercover purchase procedures. Where an informant is to participate in an undercover purchase in which he may come in contact with either official funds, controlled drugs, or anything else of potential evidentiary value, he will be thoroughly searched both before and after the undercover encounter, and where possible kept under continuous observation in between. The reason for this is to preclude questions as to the validity or integrity of the evidence. The search of the informant will be reported in the DEA-6 documenting the activity.

H. All interactions with the informant including his development, establishment, debriefing, and utilization, will be carried out with the highest regard for confidentiality. When he is to be brought to the DEA office, it will be done in a manner so as to attract minimal attention, both upon entering and exiting, and while he is in the confines of the office itself. Unnecessary disclosure of his identity in discussions will be avoided. Documents and reports concerning his informant status will be kept secured. Meetings outside the office will be done insofar as possible in "neutral" locations. Where the disclosure of his informant status to a prosecutor is necessary, the prosecutor should be reminded to handle this fact with similar regard for security.

I. Informants who are injured or killed while engaged or as a result of their cooperation with DEA are eligible for benefits under the Federal Employees Compensation Act. See Section 2810 of the Personnel Manual for details. Also see 6115 regarding threats made against informants.

J. To assure proper coordination and targeting of investigative operations, any attempt to recruit as an informant or witness, an individual who (1) is known to be a significant target or subject in an active or pending DEA or FBI investigation; (2) is at any point in the judicial process as a result of an FBI or DEA case; or (3) is incarcerated as a result of an DEA or FBI investigation, must be thoroughly coordinated between the DEA and the FBI. This coordination must include the appropriate prosecuting attorney when the prosecutor is actively involved with the potential informant's prosecution. Neither the DEA or the FBI will unilaterally attempt to recruit an informant or witness by utilizing the other agency's case as leverage to stimulate cooperation.

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

DEA

NOTICE

CLASSIFICATION CODE

Chapter 66

Upon revision of Agents Manual

SUBJECT: CHAPTER 66 ENFORCEMENT PROCEDURES

This notice provides the ~~current~~ guidelines and procedures for the various program areas. Also included in this notice are pen-and-ink changes.

6612.3 UTILIZATION OF *COOPERATING INDIVIDUALS*

6612.31 General Policies

Paragraphs A through F5 remain the same except change any reference to ~~informant~~(s) to cooperating individual(s).

6. The controlling Special Agent will advise all cooperating individuals that they must file Federal income tax returns to include all payments, awards and rewards paid to them by DEA. In addition, the controlling Special Agent will advise the cooperating individual that all payments must be reported as "other income" on their Federal income tax returns, and it will be their responsibility to obtain receipts and other supporting documentation to offset the legitimate expenses from income for possible audit by the Internal Revenue Service. Special Agents will advise all cooperating individuals that their tax liability is a matter strictly between them and the Internal Revenue Service. A statement attesting to this policy will be documented on the back of the DEA-202. Special Agents will remind cooperating individuals of this policy when any payment is made.

The remaining paragraphs remain the same except change any reference to ~~informant~~(s) to *cooperating individual(s)*.

* Revision
** Addition

Distribution:
H-1,2,3C,3D,4,5
D-1, through 7

Initiated by: Hqs OMG

DEA Form [illegible] - 48

6612.32 Debriefing of Informants

A. As part of the establishment process, and prior to the supervisor granting approval to the establishment of the informant, a full debriefing will take place. The nature and extent of this debriefing will vary with the individual's background (e.g., whether he is a long-time associate of criminals, etc.). A line of inquiry will be developed such that all knowledge of criminals and criminal activity, both drug and nondrug-related, will be covered.

B. The general order of priority to the criminal information sought will be as follows:

1. Actionable drug-related criminal information.
2. General drug-related criminal information.
3. Nondrug-related criminal information.

The debriefing will not be limited to, nor overly focus upon, the first priority. It could well be that a broad coverage of the second priority will lead to a better choice of targets and objectives than an oversimplified discussion of actionable information.

In obtaining information on a drug trafficker, the financial aspects of his activities will also be included (e.g., how money is transferred, assets, proceeds, etc.). The drug-related information sought will not be limited to the traffic within the geographic boundaries of the immediate office.

C. Nondrug-related criminal information will be disseminated to the appropriate agencies unless there is a valid reason not to do so. If the information is nonspecific or of low significance, the immediate supervisor will decide whether it should be disseminated. If the information concerns a serious criminal offense (i.e., a felony), then the procedures described in 6612.1E shall apply.

Particular attention should be paid to information that would interest the FBI (e.g., LCN, motor cycle gangs, etc.). Any such information will be promptly furnished to the counterpart FBI field office.

Any information pertaining to a threat, plan, or attempt by an individual or group to physically harm, kidnap or destroy the property of high U.S. Government officials, foreign officials, or their families will be reported to the U.S. Secret Service.

D. Information which adversely reflects upon the integrity or conduct of a DEA employee will be handled in accordance with the DEA Standards of Conduct (Appendix A). Information which adversely reflects upon the integrity of an FBI employee or any information concerning public corruption will be handled in accordance with the FBI/DEA Concurrent Jurisdiction Guidelines (see 6341).

E. Informants will be debriefed subsequently on a periodic basis, at least every 90 days (see 6612.61).

F. All debriefings will be fully reported in an Informant Debriefing Report using DEA Form 6. These reports will be written to the appropriate case or general file (and crossfiled to the informant file). They will be crossfiled to other case or general files, as appropriate.

If the information contained in the report is of interest to another DEA office or another agency, distribution will be indicated in the Distribution block. If only a portion of the information is of interest to another agency, it may be repeated in a letter to the agency. Such correspondence should be identified by DEA investigative file number. Copies of this correspondence should be forwarded to all DEA offices maintaining a file on the informant (see 6612.24A).

G. The format of an Informant Debriefing Report will be as follows:

1. No synopsis is necessary.
2. There will be three major headings: Drug-Related Information, Nondrug-Related Information, and Indexing Section. If no information is to be entered under any one of these headings, enter the word "negative."
3. Insofar as practical, the narrative sections should be formatted as follows:

a. Information of interest to another agency should be paragraphed separately to facilitate extraction.
b. Information that appears to exonerate a defendant or suspect should be paragraphed separately.

H. Refer to 6211.6 for instructions on the preservation of investigative notes.

6612.33 Informant Statements

A. Where an informant has provided information or has participated in an activity (DEA directed or otherwise) to which he may be required to testify, a formal statement normally will be taken. However, where taking a statement may adversely impact an investigative outcome, this procedure may be waived if all relevant information is reported in a DEA Form 6. The immediate supervisor, in consultation with the prosecuting attorney, will decide whether or not a formal statement is necessary.

B. The original copy of the statement will be signed and filed in his informant file. An additional copy, identified only by informant code number, will be filed in the case file (copies forwarded to the other appropriate offices maintaining this case file).

C. The statement normally will be typed. This is not a mandatory requirement, provided the handwriting is legible and in ink.

D. Any mistakes, cross-throughs, etc., will be initialed by the informant on the original copy. Each page of the original copy will be initialed immediately at the end of the narrative on that page.

E. Two agents will take and witness the statement.

F. The format of the statement shall be as follows:

1. Heading: The heading will contain the informant's code number, the date, time, and place of the statement, the agents taking the statement, and a terse explanation of the contents. For example:

> "Statement of SR1780007 at the Los Angeles District Office at 10:00 a.m. on October 2, 1978, given to DEA Agents Fred Butler and Jerry Long, regarding the introduction of Agent Long to defendant William Charles HARRISON, R1-78-0012."

2. Body: The body will be composed in the informant's words as long as the expressions are clear to the average person. The organization and sequence of material may be set by the agents. Any factual gaps, or statements which raise obvious questions, will be explained.

3. Conclusion: The conclusion will state that the informant has read the foregoing statement consisting of _____ pages, that he has initialed each page and all corrections, that it is true and correct to the best of his knowledge and belief, and that he gave the statement freely and voluntarily, without threats, coercion, or promises.

4. Signatures: The agents will sign all copies, the informant will sign just the original.

6612.34 Use of Polygraph Examinations

A. Information supplied by an informant is normally evaluated by a meld of proper debriefing techniques, prior knowledge of the facts being reported, and investigative follow-up. In certain situations, however, these approaches are not sufficient. Where this is the case, and where corroboration is essential to the furtherance of an important investigation or prosecution, the use of a polygraph examination should be considered.

B. Barring exigent circumstances, all polygraph examinations conducted in a DEA-controlled investigation will be done under the auspices of Headquarters (OS).

6612.35 Attendance at Meetings at Which "Privileged Information" May Be Disclosed. See 6621.

6612.36 Disclosure of an Informant's Identity

A. As stated in 6612.31F, informants shall be advised at the outset that the information they provide may be used in a criminal proceeding, and that although DEA will use all lawful means to protect their confidentiality, this cannot be guaranteed. In extraordinary circumstances, the SAC, with DO concurrence, may authorize that such a guarantee be given for any government initiated proceeding (provided the prosecutor is advised of this assurance). DEA will honor any such guarantee, regardless of the outcome of any case. Therefore, such guarantees will be issued judiciously.

B. The disclosure of an informant's identity, even when no prior guarantee of confidentiality was made, will be avoided whenever possible. Informant confidentiality will be thoroughly discussed with the prosecutor prior to the trial or other proceedings; and any alternatives will be given full consideration.

C. In situations where the disclosure of an informant's identity might adversely affect the outcome of a more significant investigation, DEA may conceivably recommend dismissal of the immediate case. A decision of this nature may only be made by the Headquarters (DO).

Requests for such decisions will be via teletype or telephone followed by teletype. Headquarters responses will be similarly documented.

D. If the issue of disclosure arises during an agent's testimony and he is uncertain of the legal requirement, he should request time to discuss the matter with the prosecutor.

6612.4 PAYMENTS TO INFORMANTS. (Also see 6133.)

6612.41 General Policies - Domestic

A. Any person who is to receive payments charged against PE/PI funds must be established as an informant. This includes persons who may otherwise be categorized as sources of information or informants under the control of another agency.

B. The amount of payment must be commensurate with the value of services and/or information provided. It will be based on the following factors:

1. The G-DEP level of the targetted individual, organization or operation.
2. The amount of the actual or potential seizure.
3. The significance of the contribution made by the informant to the desired objectives.

C. All payments to informants will be witnessed by another agent. In unusual circumstances, a nonagent DEA employee, or an officer of another law enforcement agency, may serve as witness.

6612.42 General Policies - Foreign

A. Payments made to foreign informants will be witnessed as in 6612.41C above whenever possible. Payments may be witnessed by another embassy official. Where no other U.S. official is available and the host country authorities cannot or will not sign DEA Form 103 as witness, foreign field management may authorize payment without a witnessing signature, provided the situation is explained in the Remarks section.

B. Foreign field management may authorize payments to foreign informants in the form of goods in lieu of cash, as deemed appropriate. Appropriate receipts or other documentation of value must be attached to the DEA Form 103.

C. Foreign field management may authorize payment to a foreign informant through an interceding third party if deemed appropriate.

D. Foreign field management will develop policies for payments to foreign informants. Management of those domestic offices having foreign geographic responsibilities will likewise develop such policies. In any situation where such a payment could adversely affect host country relationships, but circumstances still warrant payment, prior approval should be obtained from Headquarters (appropriate drug section, which will coordinate with OS and OF as necessary).

6612.43 Types of Payment. There are three circumstances in which payments to informants may be made:

A. Payments for Information and/or Active Participation. When an informant assists in developing an investigation, either through supplying information or actively participating in it, he may be paid for his services either in a lump sum or in staggered payments.

[redacted]

2. The fee arrangement should be discussed with the informant in detail; there should be no gaps in understanding the terms of the arrangement;

3. The usual instructions to the informant, the details of the fee arrangement and the Entrapment instructions should be provided to the informant in writing at the beginning of the operation;

4. Every effort should be made to maximize the control and supervision of the informant;

5. Every effort should be made to corroborate the informant's statements concerning his activities;

6. Payments should be completed before the informant testifies; and

7. We should be prepared to give reasons why it is necessary to use informants in this unusual manner.

[redacted]

Payments for information leading to a seizure, with no defendants, should be held to a minimum.

C. Payment for Informant Protection. The Department of Justice has a formal witness protection program. Where circumstances are such that an informant needs protection, every effort should be made to have the United States Attorney enter the informant into this program (see 6612.7).

Where this cannot be done, or in the interim period until it can be done, DEA may absorb the expenses of relocation. These expenses may include travel for the informant and his immediate family, movement and/or storage of household goods, and living expenses at the new location for a specific period of time (not to exceed 6 months). Payments for these expenses may be either lump sum or as they occur, and will not exceed the amounts authorized for DEA employees for these activities.

The SAC has the authority to approve payments of up to $5,000 for informant security expenditures from his established PE/PI funds. He should, however, coordinate the payment with the appropriate Headquarters drug section chief. Amounts exceeding $5,000 must be precleared and approved by the Deputy Assistant Administrator for Operations (DO).

D. Payments to Informants of Another Agency. To use or pay another agency's informant in a DEA-controlled investigation, he must be established as a DEA informant.

DEA will not normally pay another agency's informant in non-DEA controlled cases, and under no circumstance where the payment is a duplication of a payment from the other agency (sharing a payment, however, is acceptable). Such payments may not exceed $10,000 per informant per quarter, and may only be made with the approval of the SAC (or Country Attache). Payments above this amount require approval from Headquarters DO. (See A above.)

The informant must be established and coded. Item 59 of DEA Form 202, Establishment Report, must contain a statement identifying the individual as an informant of the other agency, the name and agency of the officer responsible for him, and a terse justification for the payment. Fingerprinting and photographing are not required. For recordkeeping purposes, such informants will be considered deactivated once payment has been made.

6612.44 **Payment of Awards From the Department of Justice Assets Forfeiture Fund

A. Types of Awards. Two types of awards that are reimbursable from the Department of Justice Assets Forfeiture Fund, hereafter referred to as the Fund, are authorized by 28 USC 524.

1. 28 USC 524(C)(1)(B) provides for payments up to $250,000 to individuals for information or assistance directly relating to violations of the criminal drug laws of the United States. This type of award is program related and is paid in connection with one or more of a series or related criminal investigative activities, irrespective of a criminal or civil forfeiture. Eligibility for an award under 524(C)(1)(B) does not require an asset seizure in the related investigation; however, asset seizure should be a factor in consideration of the recommended amount of payment. Any award made pursuant to 524(C)(1)(B) shall preclude the recipient of such award from receiving any additional award based on a forfeiture resulting in any way from the same information or assistance.

2. 28 USC 524(C)(1)(C) provides for payment for information or assistance leading to a civil or criminal forfeiture. 524(C)(1)(C) awards are based upon and limited by amounts realized by the United States from assets forfeited in an investigation.

** Addition

To qualify, an individual must provide original information to DEA that ultimately results in the seizure and forfeiture of one or more assets. Awards paid pursuant to 524(C)(1)(C) are asset specific and payment may not exceed the lesser of $250,000 or one-fourth of the amount realized by the United States from the property forfeited.

The amount realized by the Government for purposes of 524(C)(1)(C) is defined as the gross receipt of the forfeiture (either cash or proceeds of sale), less management expenses attributable to the seizure and forfeiture of the property. Assets that are forfeited and placed into official service can be considered as a basis for an award calculation. If forfeited property is retained for official use, the amount realized by the United States from the property forfeited is the value of the property at the time of seizure less any management expenses paid from the Fund. The "net" figure is then used as the basis for calculation of the award.

3. Any award pursuant to Section 524(C)(1)(B) shall preclude the recipient of such award from receiving any additional award based on a forfeiture resulting in any way from the same information or assistance. Similarly, any award pursuant to 524(C)(1)(C) shall preclude the recipient from receivng any additional award based on the same information or assistance. However, there are instances in which an individual provides very separate and distinct information which leads to several seizures under the same DEA case number. If the information is given at different times and concerns unrelated seizures, then separate requests even under the same case number can be authorized. Such award requests should be very rare and the separateness and distinctness of the information must be clearly articulated in the award application.

B. Application for Awards

1. Individuals applying for either type of award must be established and assigned a code number in accordance with existing procedures. The SAC or Country Attache may exempt an individual from certain establishment requirements such as fingerprinting and photographing as defined in Section 6612.21, as for example, where a source of information within the definition stated in 6612.1(B) is being established solely for the purpose of receiving an award from the fund. In this case, a statement shall be set forth in the remarks section of the DEA-202 identifying the individual as a source of information and that the assignment of a code number is for the purpose of payment and of maintaining his/her confidentiality.

2. The appropriate field office will prepare a memorandum from the SAC addressed to the Deputy Assistant Administrator for Operations providing full justification for the recommendation for the award. The award applicant will be identified only by code number except as noted below. The memorandum shall include:

a. Type of award - 524(C)(1)(B) or 524(C)(1)(C).
b. Amount requested by award applicant, if such claim is made.

c. Recommended amount or percentage basis by SAC. The actual amount paid will be determined by the "net" proceeds, i.e., after deduction of management expenses.

d. Identify the individual only by code number.

e. The CAP seizure number(s) for the assets(s) involved. Include for both 524(C)(1)(B) and 524(C)(1)(C) awards.

f. The extent to which the individual has been previously paid from other sources, i.e., PI and other agency payments in the same investigation.

g. Whether or not there is an agreement by other Federal, state or local agencies to provide funds for an award in the same investigation and, if so, the amount.

h. If the individual wishes the award to be paid by check, then identify by full name, address and social security number. In this case, the memorandum must be marked "sensitive" and all applicable handling procedures must be adhered to.

i. The extent and significance of the individual's information or assistance in the development of the investigation and the value and impact of the investigation's results, including assets seized.

j. If the individual requests more than one award under the same case number for separate and unique sets of information and/or assistance he/she has provided giving rise to separate and distinct seizures, then these circumstances must be explicitely articulated.

3. The SAC or Country Attache will forward the request and recommendation for award with all pertinent case documents including orders and/or judgments, transfer receipts of custodianship, U.S. Marshal Service deposit slips and receipts, directly to the Deputy Assistant Administrator for Operations (DO) for approval.

4. The Headquarters Undercover and Sensitive Operations Unit (OUS) will review the request and when circumstances dictate convene the Undercover Review Committee. Results of the review will be submitted to the Deputy Assistant Administrator for final approval of the award. If the amount of the award is $25,000 or less, a statement by the SAC or Country Attache supporting his recommendation will ordinarily suffice for final approval.

5. In the case of 524(C)(1)(B) awards, once approval is obtained, payment may be made immediately at the direction of the SAC or Country Attache pursuant to established guidelines.

6. In the case of approved 524(C)(1)(C) awards, OMG will forward a copy of the award application to the Asset Forfeiture Section (CCF). Once the forfeiture actions are complete, CCF will notify in writing the Deputy Assistant Administrator for Operations of such circumstances and the award will be processed by OMGB for payment.

7. Offices having approval to make award payments from the Fund will be issued a fund cite by OMGB in the amount of the approved award. Payments may be made from the office's imprest fund or funds for payment may be wire transferred utilizing the Federal Reserve Bank system.

8. Awards pursuant to 524(C)(1)(B) or 524(C)(1)(C) may be paid by government check at the discretion of the SAC. If the award is to be paid by check, OMGB then will process the request through the Office of the Controller and forward the check to the SAC or Country Attache.

9. Assets Forfeiture Fund award payments must be documented by the completion of DEA-103. The remarks section of the DEA-103 shall reflect that a payment was made pursuant either to 524(C)(1)(B) or 524(C)(1)(C). All payments must be posted to the DEA-356, Informant Payment Record.

10. 524(C)(1)(C) awards may not be paid until all aspects of seizure have been successfully completed, i.e, the assets forfeited, property disposed of by sale, and management expenses paid.

C. Award Payments

1. Approval for awards from the Fund will be according to existing guidelines for paying established informants from PE/PI allowances; that is, the SAC or Country Attache may approve payments up to $25,000 per quarter; the Deputy Assistant Administrator for Operations (DO) may approve amounts beyond $25,000. (See 6612.43). All award payments will normally be paid in cash in accordance with existing procedures governing regular PE/PI payments. The Attorney General may delegate authority to the Administrator to approve an award in excess of $250,000. This authority may not be redelegated.

2. Offices must not promise any awards in any amount to an individual. The statutory authority provides that the payment of such awards is purely discretionary. In preparing the recommendation for award, the SAC or Country Attache should ensure that proper discretion is exercised. Similar circumstances should warrant similar awards. Therefore, special attention should be given to the factors stated in Agents Manual Section 6612.41(B) and 6612.44(B)(2) as a means of recommending an award consistent with the total circumstances of the involvement of the individual.

3. In cases where DEA is sharing with state and local law enforcement agencies under the equitable transfer provisions, the SAC may reach an agreement with participating state or local authorities that a combination of payments by DEA and the concerned state or local agencies to the award applicant should not exceed the monentary limits established by 524(C)(1)(B) and 524(C)(1)(C). If a state and/or local agency intends to pay the concerned individual the full amount of the award, then DEA may use that information as the basis for denying or modifying a similar request.

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

DEA

NOTICE

CLASSIFICATION CODE
6612.45

Upon next revision of the Agents Manual

SUBJECT: DOCUMENTATION OF PAYMENTS (DEA FORM 103)

A. This notice updates the current guidelines and procedures for documentation of payments using (DEA Form 103).

B. These changes will be incorporated into the next revision of the Agents Manual.

6612.45 Documentation of Payments (DEA Form 103)

A. Witnessing payments to informants shall be as described in 6612.41C (domestic) and 6612.42A (foreign).

B. All payments to informants will be documented on the DEA-103, Voucher for Payment for Information and Purchase of Evidence. The informant will sign his true name on the green copy only. *This copy will be detached from the completed form for filing in the informant file before distributing the remaining copies. When the paying office is different from the establishing office, a duplicate of the signed copy must be made for the paying office, and the green copy should be forwarded to the establishing office via registered mail, return receipt requested. The green copy will not be sent with other reports, memoranda, etc., in the same envelope.*

(Paragraphs C and D remain unchanged)

*Revision

Distribution: H-1,2,3C,3D,4,5
F-1 through 7

Originated by: HQ OMC

DEA Form [illegible] - 46

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C. **In the case of payments of awards from the Assets Forfeiture Fund, the paying office will forward an unsigned copy of the completed DEA-103 to Headquarters OMGB within 5 days of payment. The remarks section of the DEA-103 must contain a statement that the payment is made from the Assets Forfeiture Fund either pursuant to 28 USC 524(C)(1)(B) or 524(C)(1)(C).**

D. In addition to copies of all DEA Form 103's, each field office informant file will contain a DEA Form 356, Informant Payment Record. This record will be kept on top of all the other documents in the file, and will contain a continuous record of payments made. The employee responsible for maintaining informant files is responsible for keeping this record current and complete.

6612.5 DEACTIVATION OF INFORMANTS

6612.51 Criteria

A. An informant will be deactivated when:

1. He no longer has the potential to furnish information or services which could lead to a significant prosecution or interdiction of drugs.
2. He is no longer willing to cooperate.
3. His cooperation has been determined to be unsatisfactory.

B. An informant will be deactivated by the decision or with the approval of that level of supervision which approved his establishment.

6612.52 Procedures

A. A DEA Form 6, entitled "Deactivation of (code number)," will be written to the informant file, containing the reason for deactivation. No crossfiling to investigative files will be made. Upon appropriate approval of the report, it will be distributed to all offices maintaining a file on the informant.

B. Should an informant be deactivated due to unsatisfactory cooperation or behavior, the SAC (or Country Attache) will send a teletype to Headquarters (OS), followed by a DEA Form 6 (with a photograph attached). Both documents will give supporting justification and request that he be designated unsatisfactory. Both documents must be approved by a SAC (or Country Attache). The DEA Form 6, upon approval, will be distributed to files as in A above. Upon concurrence, Headquarters will identify the informant as unsatisfactory in NADDIS and so notify (via teletype) all offices that have utilized his services.

C. A deactivated informant may be reactivated by submitting a DEA Form 6 as in A above, entitled "Reactivation of (code number)." In addition to containing the reason for reactivation, this report will reflect any developments during the period of deactivation which would affect the informant's status as a restricted-use or defendant/informant. Approval for reactivating an informant must be at least at that level of management which approved his deactivation. See also 6612.22C.

** Addition

6612.6 MANAGEMENT REVIEW OF INFORMANTS

6612.61 Immediate Supervisor. (See also 6214.21.)

A. The immediate supervisor is responsible for assuring that all handling of informants by employees under his supervision is in compliance with the Domestic Operations Guidelines. Factors that will be routinely considered by the immediate supervisor in carrying out this responsibility include that:

1. Any person whose cooperation with DEA meets the criteria for informant establishment is, in fact, established as such.
2. Any factors in an informant's background that would warrant his being established as a restricted-use informant or defendant/informant are properly brought to light, and that the informant is properly classified as such.
3. Any required external approvals for utilization are properly and fully obtained.
4. The cautions to be given to all informants at the outset (see 6612.31F) are in fact given and noted per DEA Form 473, Cooperating Individual Agreement.
5. Each informant is fully and accurately debriefed on targets of immediate interest, knowledge of long-range or general interest, and knowledge of nondrug criminal activity. Further, that this information is fully and accurately reported.
6. Each informant is being utilized in a manner so as to make best use of his potential.
7. Monies paid to informants are properly documented and are not excessive.
8. Informants warranting deactivation are deactivated.
9. Any appropriate requirements pertaining to review by the SAC, prosecutor, or DEA Headquarters are met insofar as it is his responsibility to do so.

There will be no separate reporting system by which the supervisor documents his adherence to the foregoing. His written approval of investigative reports signifies this adherence.

B. The immediate supervisor and/or a member of the Divisional Intelligence Unit will participate in a full debriefing of each active informant under his unit's control at least every 90 days. This debriefing will cover the full range of topics set forth in 6612.32, and be properly reported as with any other debriefing.

6612.62 Special Agent In Charge. (All the following requirements shall also apply to Country Attache.)

A. Where the nature of the informant is such as to require the SAC's approval for use, the SAC shall assume a responsibility paralleling that of the immediate supervisor for pertinent factors set forth in 6612.61A. This does not relieve the immediate supervisor of his responsibilities, but instead provides for a "double-check."

B. On a quarterly basis, the SAC (or ASAC) shall conduct a review of all active informants with the supervisors under his command. This review will cover the following points:

1. Whether these informants should remain in an active status.
2. Whether these informants are being appropriately targetted and utilized.
3. Whether the debriefings have been complete and fully reported.
4. Whether the appropriate initial or ongoing approval requirements are being met.

C. After completion of this review, the SAC/CA shall certify in a brief memorandum to AO entitled "Quarterly Review of Informants" that this review has been completed.

6612.7 WITNESS PROTECTION PROGRAM

(NOTE: Chapter 9-21.000 of the U.S. Attorney's Manual contains more detailed instructions on this program.)

6612.71 Criteria

A. The Witness Protection Program, operated by the Department of Justice, serves to ensure the appearance of significant government witnesses at trial. Admitting an individual into this program represents a major administrative and financial burden to the government. For this reason, candidates will be carefully screened. Factors that will be considered include the following:

1. The individual must be a witness. Informants who are not witnesses are not eligible.
2. Only those witnesses whose testimony is essential to the prosecution of the most significant violators will be recommended for admission. The Department of Justice uses the terminology of "(an individual having) a nexus to organized criminal activity."

Generally, DEA will limit its selection of candidates to those witnesses who are essential to the prosecution of more than one Class I violator and/or the immobilization of a major trafficking network.

3. There must be clear indication of a threat to the witness or a member of his immediate family. Evidence of a specific threat is not required if there is a documented pattern of violent behavior by the defendants and/or their associates.
4. The individual must be willing to undergo a legal change of name, and to permanently relocate to a place of the government's choosing.
5. The individual must not have any unresolved charges against him (Federal, state, or local) involving any criminal violation.

B. Witnesses in DEA cases, DEA task force cases, and DEA state and local cooperation cases are eligible for inclusion in this program. However, the total number of witnesses that can be assimilated is limited. Therefore, a non-Federal witness will be considered only under the most extraordinary circumstances. Furthermore, the U.S. Marshal's Service may make a non-Federal witness's acceptance into the program conditional upon reimbursement by the state.

* Revision

6612.72 Protection Provided Outside the Witness Protection Program

A. Individuals who warrant some measure of protection but do not meet the criteria for inclusion in this program may be provided financial assistance from DEA PE/PI funds. The cost of relocation may be considered in determining the amount of reward paid to an informant/witness (see 6612.43).

B. The cost of temporary relocation while awaiting formal admittance to the program may be provided from DEA PE/PI funding (see 6612.43).

6612.73 Procedures

A. The Office of Enforcement Operations, Criminal Division, Department of Justice, controls the admittance to and operation of this program. The U.S. Marshals Service operates the program per se.

B. Formal requests for admittance must originate with a U.S. Attorney, not DEA. Furthermore, these requests must be from the U.S. Attorney or the 1st Assistant U.S. Attorney, not an Assistant United States Attorney.

C. Requests will not be approved without DEA concurrence. This concurrence, as well as all other dialogue with the Department, will be carried out by Headquarters (OS) in coordination with the appropriate drug section. DEA field offices will not make any direct requests of or inquiries to the Department.

D. It is important to avoid detailed discussion of the terms of the protection offered. If the witness is accepted into the program, the U.S. Marshals Service will establish all terms and provide all explanations of them to the witness. Agreements or commitments made by any other party may not be honored.

E. Where it is anticipated that a witness or potential witness will be a candidate for this program, it is important that the request for admittance be submitted as soon as possible (i.e., as soon as it is determined that the individual will be a witness and will likely need relocation).

Although a provision for emergency admittance exists, its use severely taxes the resources of the U.S. Marshals Service. This procedure will only be used in the most extraordinary circumstances.

F. Prior to making a formal request to admit a witness into this program, he will be the subject of a background investigation and a thorough debriefing.

1. The background investigation will be oriented toward his criminal history; specifically, whether he is a fugitive, illegal alien, or in any other manner is the subject of unresolved criminal or civil matters.
2. The debriefing will be oriented towards any drug or nondrug-related criminal information he may have that would be of investigative or intelligence value.

In all probability, this will be the final opportunity for DEA or any other agency to utilize this witness; it is therefore incumbent upon DEA as a law enforcement agency to take maximum advantage of a resource which will shortly become unavailable.

G. The formal request shall be via memorandum from the U.S. Attorney to the Department, using the format set forth in USAM9-21.000.

In addition, both threat and risk assessment reports must be prepared.

1. The Threat Assessment Report must include a brief synopsis of the investigation including defendants, the criminal organization, the illegal activities and detailed information on the threat, whether direct or potential, to the witness and his/her family as a result of his/her cooperation with the government. It should further include names and identifying data for all individuals who may pose a danger to the witness, and information on the witness's association with defendants and/or his/her direct involvement in the illegal activity.

2. The risk assessment report, which is now required by statute, must provide a risk assessment on the witness and his/her family members/associates 18 years and older, and must include detailed information addressing the following issues:

a. Significance of the investigation or case in which the witness is cooperating.

b. The possible danger from the witness to other persons or property in the relocation area if the witness is placed in the program (applies to the witness and his/her family members or associates).

c. The alternatives to program use which were considered and why they will not work.

d. Whether or not the prosecutor can secure similar testimony from other sources.

e. The relative importance of the witness' testimony.

f. Whether or not the need for the witness' testimony outweighs the risk of danger he/she may pose to the public (applies to the witness and his/her family members or associates).

3. The risk assessment can be presented to the Government prosecutor for his/her endorsement to eliminate the necessity of a separate assessment. A risk assessment is not required for a prisoner witness unless family members are being considered for relocation or when a prisoner witness is authorized additional program services upon his release from custody.

H. In practice, these reports will likely be prepared by an Assistant United States Attorney and the DEA case agent. It is important that these reports be prepared accurately and carefully. The DEA field office should forward a copy of these reports, with a concurring cover memorandum by the SAC, to OS. If the DEA field office should have additional information, or a differing assessment from that contained in these reports from the U.S. Attorney, this should be included in the cover memorandum. This is particularly important with regard to the significance of the informant and the assessment of the threat.

I. OS will review the submission for completeness, evaluate the significance of the informant and his need for protection, and make a positive or negative recommendation to Headquarters (DO). Upon review, DO will issue DEA's formal recommendation to the Department. Upon receipt of the report from the U.S. Attorney and written concurrence by DEA, the Department will make the decision as to admission of the witness into the program.

J. If the individual has not been previously assigned an informant code number, and is being proposed for inclusion in this program as a result of testimony in a DEA case, then a code number should be assigned to him. The DEA-202 Establishment Report should contain an appropriate explanation in Item 58. He may be deactivated upon the Department's decision as to his inclusion in the program.

6512.73 Procedures

Paragraphs A - J remain unchanged.

6512.73 K. "Admission into this program is considered to be permanent, and, once admitted, a witness will not be used as an informant again. This prohibition also extends to any family member who is relocated with the witness. In certain instances, the Department may waive this prohibition and allow the re-use of a protected witness. The circumstances for such a waiver would have to be highly compelling. Any request for a Departmental waiver must be routed via Memorandum through DEA Headquarters, Office of Investigative Support (OS). This memorandum must explicitly detail the informant's personal history data and motivational factors; the nature, duration and location of the informant's anticipated service; the significance of the case; and the name of concurring Assistant United States Attorney. The approval process may take five to ten days to complete. Under no circumstances will the informant be actively utilized prior to receiving the Departmental waiver. This policy applies even if the informant claims to have withdrawn from the program. The witness may, of course, be called upon to testify in the immediate case or cases for which he is being provided protection. Requests for appearances at trial or pre-trial should be made by the U.S. Attorney to the Department at least 30 days in advance of any required appearance."

* Revision

Exhibit 1

U.S. PAROLE COMMISSION REGIONAL OFFICES

NORTHEAST REGIONAL OFFICES

U.S. Parole Commission
Custom House
2nd & Chestnut - 7th Floor
Philadelphia, Pennsylvania 19106
(215) 597-6392
FTS: 597-6392

SOUTHEAST REGIONAL OFFICE

U.S. Parole Commission
1718 Peachtree Street, N.W., Suite 250
Atlanta, Georgia 30309
(404) 881-4126
FTS: 257-4126

WESTERN REGIONAL OFFICE

U.S. Parole Commission
525 Griffin Square, Suite 820
Dallas, Texas 75202
(214) 767-0024
FTS: 729-0024

WESTERN REGIONAL OFFICE

U.S. Parole Commission
Crocker Financial Center Building
330 Primrose Road, 5th Floor
Burlingame, California 94010
(415) 347-4737
FTS: 415-347-4737

NORTH CENTRAL REGIONAL OFFICE

U.S. Parole Commission
Air World Center
10920 Ambassador Drive, Suite 220
Kansas City, Missouri 64153
(816) 891-1395
FTS: 752-1395

6614 BUSINESS RECORDS

6614.1 GENERAL. Business records can be an important source of intelligence and evidence in DEA investigations. Access to and use of these records, however, must be in accord with a number of legal requirements. This section presents an overview of these requirements, as well as DEA policies and procedures concerning them.

6614.2 ADMINISTRATIVE SUBPOENAS (DEA FORM 79)

6614.21 Authority. 21 USC 876 empowers the Attorney General to issue administrative subpoenas in any investigation involving controlled substances. The authority to issue these subpoenas has been redelegated, through the Administrator, to the Chief Counsel, the Administrative Law Judge, Special Agents in Charge, Assistant Special Agents in Charge, and Resident Agents in Charge.

An administrative subpoena may be served by any person designated in the subpoena to serve it.

6614.22 Features. An administrative subpoena may be served on any person or business entity to compel the attendance and testimony of witnesses, or require the production of any record (any tangible thing which constitutes or contains evidence).

If the subpoena compels the attendance of a witness at a hearing, there is a 500-mile limit between where the subpoena is served and the site of the hearing. (This is more stringent than judicial subpoenas, for which the distance limitation is 100 miles.) If greater distances are involved, either attendance is voluntary, or the hearing must be moved to a closer site. Witnesses must be paid the same fees and mileage that are paid to those served with a judicial subpoena.

A subpoena is served on a person(s) by personal delivery. A subpoena is served on a business entity by delivery to an officer, manager, or any other official designated by appointment or law to receive service of process.

The affidavit of the person delivering the subpoena, entered on the reverse side of both copies, constitutes proof of service. Where a person or business entity fails or refuses to obey an administrative subpoena, a court order may be obtained in either the jurisdiction of the investigation or that of the subject of the subpoena, directing the subject's compliance. Failure or refusal to obey this court order may result in contempt proceedings.

6614.23 Use

A. The subpoena powers provided in the Controlled Substances Act are the broadest presently afforded any Federal enforcement agency. This authority will be used judiciously and with appropriate restraint.

The primary use of these subpoenas should be for obtaining information or documents from business entities. Most business entities prefer that a subpoena be served on them prior to them providing information or documents, as it offers protection from civil action.

The agent serving the subpoena and the agents examining the records will have due regard for the convenience of the person or entity served and will, insofar as possible, permit compliance in a manner preferable to them.

B. The DEA Form 79 is the form on which administrative subpoenas will be issued. Blank DEA Form 79's will be stored securely.

The DEA Form 79 is a two-part form consisting of an original and an attested copy. The reverse side of both copies contains space for the agent to make his return. After service, the original will be kept in the case file. The attested copy is delivered to the person accepting service.

6614.3 REGISTRY OF MOTOR VEHICLES. State agencies responsible for registration of motor vehicles and licensing of operators are valuable sources of information. In most states three types of file searches can be made:

A. A motor vehicle registration file search should show owner's name, address, date of birth, description of vehicle, insurance company, and lien holder. A check with the insurance company and/or lien holder should develop personal history information.

B. A name check with the motor vehicle registration division may disclose the above information when the registration number is not known.

C. A name check with the operators license division should disclose name, address, date of birth, and description or photograph.

6614.4 CREDIT REPORTING AGENCIES

6614.41 General. All major cities have credit reporting agencies such as Retail Credit Bureau, Dun and Bradstreet, etc. These agencies conduct background investigations on individuals and firms and sell this service to merchants who are considering extending credit to customers. The scope of the investigation varies with the need of the client and the competence of the agency.

In addition to the background information available from these agencies, it is possible to obtain a list of firms which have made inquiry. This list will furnish the names of firms with which the subject does business and may include credit card companies.

6614.42 Fair Credit Reporting Act. Certain limitations on the dissemination of background information by a credit bureau have been established by the Fair Credit Reporting Act (Public Law 91-508; 15 U.S.C. 1681a-1681t). This law sets precise limits under which a credit bureau may furnish information concerning an individual. These limits are set forth in Section 1681b and may be summarized as follows:

A consumer reporting agency may furnish a consumer report on an individual "under the following circumstances and no other":

A. In connection with a credit transaction involving the extension of credit or collection of an account.

B. For employment purposes.

C. In connection with the underwriting of insurance involving the consumer.

D. In connection with a determination of a consumer's eligibility for a license or other benefit granted by a Federal, State, or local governmental instrumentality required by law to consider an applicant's financial responsibility.

E. In connection with a business transaction involving the consumer.

F. In addition, and regardless of the purpose for which the information is sought, Section 1681f provides that a credit bureau may furnish the following information concerning an individual to a governmental agency:

1. Name and address
2. Former addresses
3. Place of employment
4. Former places of employment

Under Section 1681b the applicable circumstances under which a DEA office might use the services of a credit bureau would be item 2, employment, and item 4, eligibility for an annual license (registration) to manufacture, distribute, or dispense any controlled substance under the Controlled Substances Act. As noted above, the very limited identification information provided by Section 1681f is available for any legitimate purpose whatever.

The Fair Credit Reporting Act makes it clear that it is intended to apply only to the protection of individuals and not to corporate or other organizational consumers about which information might be sought. Thus, for example, the restrictions of the Act do not apply to credit bureau reports on a corporate manufacturer of controlled substances. (Section 1681a of the act defines a "consumer" as an "individual.")

Great care must be taken in obtaining information from credit bureau services since the Congress has demonstrated a definite legislative intent to protect consumers by limiting the conditions under which information may be given. Should a credit bureau decline to furnish information requested by a DEA office, no further effort should be made to obtain that information from that credit bureau without prior consultation with the Office of Chief Counsel.

Since the act also provides that persons who are denied credit are entitled to be advised specifically why credit was denied, great care should also be taken in advising a prospective lender that the person seeking credit has a reputation for drug-related crime. Otherwise, DEA may become involved in a lawsuit.

6614.5 INTELLIGENCE REQUESTS RE FOREIGN BANK ACCOUNTS. Coded or numbered bank accounts, particularly in Switzerland and the

Bahamas, have been utilized to conceal illegal profits obtained from the sale of drugs and for the transfer of funds relative to drug transactions. To assist in developing investigations of international traffickers, procedures have been established to process specific requests for such information. All requests must be based on a sufficiency of information which will substantiate a contention that the foreign bank is being utilized.

6614.51 Submission of Requests. All requests for information on undisclosed foreign bank accounts will be directed to Headquarters (appropriate drug section) by memorandum from the SAC. The requesting memorandum will include the following information, as available:

A. Specific details as to name, possible aliases, citizenship, United States and foreign addresses of the trafficker reportedly responsible for the depositing of funds in the foreign account. Any agents of the individual, companies or corporate names, or any other names under which the account may be recorded should also be reported.

B. All available information on the account, such as name of the bank, location of the bank, account number and/or account name, etc.

C. Background information on the criminal activities of the individual involved, specifically such activities related to the concealment of funds in the foreign bank.

6614.52 Disclosure to Other Agencies. Certain restrictions have been placed by foreign countries on the disclosure of banking information, particularly with respect to possible income tax evasion. Consequently no disclosure will be made of information obtained from foreign banking authorities pursuant to this section without prior approval of the Headquarters (DO).

6614.6 THE RIGHT TO FINANCIAL PRIVACY ACT (12 U.S.C. 3401 ET. SEQ.)

6614.61 General. DEA's obtaining financial records from a financial institution is governed by the Right to Financial Privacy Act. It is important that we closely adhere to the provisions of this Act in obtaining such records, in that it also contains provisions for civil claims against the agency as well as administrative sanctions against the employee(s) involved for any action deemed to be a transgression of its requirements.

This subsection parallels information and instructions contained in the U.S. Attorney's Manual 9-4.800. Examples of the DOJ forms refered to herein are available at the United States Attorney's Office.

6614.62 Records and Circumstances Covered by the Act. Records and circumstances covered by the Act can best be expressed by its definitions:

A. Financial Institution. "Any office of a bank, savings bank, card issuer..., industrial loan company, trust company, savings

and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands."

Offices of financial institutions located on foreign soil, except those trust territories stated in the above definition, are not covered, provided that the financial records at issue originated on foreign soil.

Bonding companies, credit bureaus, brokerage houses, government lending agencies, small business investment companies, the U.S. Postal Service and Western Union are not covered by the provisions of the Act.

Businesses which issue credit cards to facilitate sales (e.g., department stores) are covered only with respect to records relating credit card use. Cash sales or credit sales other than pursuant to a credit card are not covered.

Credit card sales made to an entity, as defined in D below, are similarly not covered.

B. Financial Records. "An original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution." For a financial record to be protected by this Act, it must meet all four tests:

1. It must be held by a specific financial institution; and
2. It must reflect the transaction of a covered person as defined, below, with that institution; and
3. It must relate to an account maintained by that person with that institution; and
4. It must relate to an account maintained by that person in his true name.

The Act does not restrict a financial institution from providing information of suspected violations of law to the Government. This information may even be of a detailed nature provided there is no direct access by the Government to the records involved. The Act intends that the Government will use such information, as voluntarily provided by the financial institutions; to obtain direct access through the legal avenues provided.

C. Government Authority. "Any agency or department of the United States, or any officer, employee, or agent thereof". State, local, and foreign agencies, or any other non-Federal third parties, are not subject to the Act, nor are any financial records obtained by them and furnished to DEA. However, any information obtained in this manner will likely be scrutinized by the court to assure that the non-Federal third party was not circumventing the Act by acting as an "agent" of DEA.

D. Person. "An individual or a partnership of five or fewer individuals." Financial records on a company, corporation, trust, partnership of six or more individuals, or other entity are not covered.

E. Customer. "Any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name." Note that "customer" is further limited by the term "person" in whose name the account is recorded. Thus, even though information in a corporate account reflects individual transactions by a covered person, this information is not protected.

6614.63 Legal Bases for Obtaining Financial Records

A. Access to "financial records" on a "customer" may be gained from a "financial institution" by any of six methods:

1. Pursuant to the prior written consent of the customer;
2. Pursuant to a search warrant;
3. Pursuant to an administrative subpena;
4. Pursuant to a formal written request;
5. Pursuant to a judicial subpena; or
6. Pursuant to a grand jury subpena.

B. Each of these methods has its own particular limitations. Selecting among them in a specific situation shall be done in conjunction with the appropriate U.S. Attorney's Office. Exhibit 1, DOJ Form 475, obtainable from the U.S. Attorney's Office, or any of the following methods may be selected to obtain basic account identification information (i.e., name of customer, address, type of account, and account number) without complying with customer notification requirements.

1. Pursuant to Prior Written Consent. The "Statement of Customer Rights Under the Right to Financial Privacy Act of 1978" and "Customer Consent and Authorization for Access to Financial Records" (see Exhibits 2 and 3), must be presented to the customer, and the customer must sign and return the consent to either DEA or the U.S. Attorney's Office. If DEA transmits these documents to the customer rather than the U.S. Attorney's Office, they should be transmitted in the name of the SAC, ASAC, or RAC.

If the information to be gained from these records is to be shared with any other Federal agency, be certain that both DEA and the other agency are recorded on the consent form. Otherwise, the information may only be shared pursuant to a separate consent.

Note that consent, once given, is valid for only 3 months; it may be withdrawn at any time provided the customer does so in writing. It is important, therefore, that once a consent is received, the records be obtained without undue delay.

2. Pursuant to a Search Warrant. If probable cause exists that certain financial records being held by a certain financial institution contain evidence that the customer has violated any Federal drug law, access to them may be sought using a search warrant (served on the financial institution) pursuant to the Federal Rules of Criminal Procedure.

Within 90 days of serving the warrant, the customer must be notified by the U.S. Attorney's Office or DEA of the search unless

a court order is obtained which both authorizes the delay and prohibits the financial institution from disclosure (insure that a copy of any such order is served on the institution). Court ordered delays and extensions are granted in 90-day increments (see Section 1109 of the Act).

The delay order may be obtained on the grounds of "reasonable belief" (rather than "probable cause") that notification would:

- endanger the life or physical safety of any person, or
- result in flight from prosecution, or
- result in the destruction of or tampering with evidence, or
- result in the intimidation of a potential witness, or
- unduly delay a trial or other judicial proceeding, or
- otherwise seriously jeopardize an investigation or official proceeding.

See Exhibits 4, 5, 6, and 7. Although the U.S. Attorney's Office is primarily responsible for carrying out the functions connected with notification/delay of notification, it is incumbent upon the case agent to keep track of these matters and assure they are properly carried out.

3. Pursuant to an Administrative Subpena. Financial records may be obtained using an administrative subpena served on the financial institution. However, the customer must be notified by personal service or by mailing a copy of the administrative subpena to his last known address, and given ten days from personal service or fourteen days from mailing to contest the action. See Exhibits 8, 9, 10, and 11. Certification (see C. below) and demand for the records at the financial institution must await the completion of the contest period allowed to the customer.

The only means of avoiding prior notification is by obtaining a court order delaying notification as in 2. above (for an initial 90 days and extensions in 90 day increments). See Exhibit 12.

It should be noted that all requests for financial information pursuant to the R.F.P.A. may result in some judicial proceeding (i.e., motion to quash, request for delay of notice, etc.). Accordingly, all R.F.P.A. requests to a financial institution should be coordinated with the office of the appropriate U.S. Attorney.

4. Pursuant to a Formal Written Request. This method is provided for those agencies lacking administrative subpena power. It would only find application in DEA to obtain basic account identification information (see B. above) where the matter under investigation is non-drug related (e.g., an integrity investigation). As it is of such limited utility, it will not be discussed further here.

5. Pursuant to a Judicial Subpena. Financial records may be obtained using a judicial subpena upon a showing of reasonable belief that the records sought are relevant to a legitimate law enforcement inquiry. Notification provisions and procedures are the same as in 3. above.

6. Pursuant to a Grand Jury Subpena. Except for new restrictions on handling financial records subpenaed by grand juries (see C.3) and reimbursement (see C.2), grand jury subpenas are exempt from coverage by the Act. Thus, certification of compliance and customer notice do not apply to this process. A separate court order is necessary to prevent bank disclosure to customers.

It is DEA policy to use grand jury subpenas only in those situations where no other method can be reasonably applied. This policy will be brought to the attention of the U.S. Attorney's Office in the joint formulation of an appropriate method.

C. Obtaining and Handling Financial Records

1. Certification. Except for grand jury subpenas, all demands for financial records from a financial institution must be accompanied by a Certification of Compliance with the Right to Financial Privacy Act of 1978 (DOJ Form 461). See Exhibit 13. This form may be completed by the U.S. Attorney's Office or by a DEA manager authorized to issue administrative subpenas. Without this certification, the financial institution is not authorized to release its records. With this certification, the financial institution is legally obligated to release them, unless it can establish that the demand was too vague or would present an undue burden.

2. Reimbursement. The Act contains a provision whereby a financial institution will be reimbursed for costs which are reasonably necessary and which have been directly incurred in searching, processing, reproducing, and delivering the required financial records.

DOJ Order 2110.40 contains implementing procedures for reimbursement, specifying allowable versus nonallowable costs, and a fee schedule.

a. Allowable costs include:
- Search and processing: the total amount of personnel time involved in locating, retrieving, reproducing, packaging and preparing records ($2.50 per quarter hour per employee).
- Computer operation: actual cost.
- Reproduction: $0.15 per page (photographs, films, etc., may be at actual cost).
- Transportation of personnel to and from storage site, or to and from place of examination: actual cost.

b. Bills for these services must be itemized under the headings in (a) above. When DEA is to make payment in lieu of the U.S. Attorney's Office, the case agent and his immediate supervisor are responsible for reviewing each such bill and certifying its correctness. These certifications, together with the case file number, should be entered on the face of the bill.

c. If the records are obtained pursuant to a grand jury subpena, the bill should be forwarded to the U.S. Attorney's Office for payment.

3. Handling Records. Records obtained under this Act, as well as copies of all correspondence issued and received in

connection with these records, will normally be filed in the appropriate case file. If they have potential evidentiary value, they will be handled as documentary evidence (see 6663.65). If they were obtained pursuant to a grand jury subpena, they must be returned and actually presented to the grand jury, and they must be destroyed or returned to the financial institution if not used in connection with the return of an indictment, a criminal prosecution or other purpose authorized by Rule (c), Federal Rules of Criminal Procedure.

Except for grand jury related information, records obtained by DEA may be transferred to agencies within DOJ and to state, local or foreign governments (subject to Privacy Act of 1974). Execution of forms DOJ-474 and DOJ-476 must be made for all non-DOJ transfers (Exhibits 14 and 15).

D. Annual Report. The Act requires that an annual report be submitted to Congress reflecting activities carried out under its provisions.

For DEA purposes, each domestic field division will submit a report to the Statistical Services Section (PES) by February 1, in the format found in Exhibit 15. This report should reflect data covering the previous calendar year's activities.

Each field division must establish the appropriate divisional reporting and retrieval mechanisms to meet this requirement.

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

FORMAL WRITTEN REQUEST FOR ACCOUNT INFORMATION AND CERTIFICATE OF COMPLIANCE WITH THE RIGHT TO FINANCIAL PRIVACY ACT

TO: _____
(Name and Address of Financial Institution)

FROM: _____
(Name and Address of Government Agency)

In connection with a legitimate law enforcement inquiry and pursuant to Section 1113(g) of the Right To Financial Privacy Act of 1978, 12 U.S.C. §3413(g), you are requested to provide the following account information:

I hereby certify, pursuant to Section 1103(b), the Right To Financial Privacy Act of 1978, 12 U.S.C. §3403(b), that the provisions of the Act have been complied with as to this request for account information and that good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of this account information.

_____
(Name and Title of Official)

_____
(Signature)

_____ ____, 19___
(Date)

_____ _____
(Telephone) *(Government Agency)*

Remarks:

§1113(g) of the Right To Financial Privacy Act, 12 U.S.C. §3413(g)

FORM DOJ-475
3-10-79

EXHIBIT 2

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

CUSTOMER CONSENT AND AUTHORIZATION FOR ACCESS TO FINANCIAL RECORDS

I, _____, having read the
(Name of Customer)

explanation of my rights which is attached to this form, hereby authorize the _____
(Name and Address of Financial Institution)

to disclose these financial records:

to _____, _____,
(Names of Government Authorities Allowed Access)

_____, for the following purpose(s):

_____

_____.

I understand that this authorization may be revoked by me in writing at any time before my records, as described above, are disclosed, and that this authorization is valid for no more than three months from the date of my signature.

_____ __, 19____
(Date)

_____
(Signature of Customer)

_____

_____
(Address of Customer)

§1104(a) of the Right To Financial Privacy Act, 12 U.S.C. §3404(a)

FORM DOJ-462
4-4-79

EXHIBIT 3

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

STATEMENT OF CUSTOMER RIGHTS

UNDER THE

RIGHT TO FINANCIAL PRIVACY ACT OF 1978

Federal law protects the privacy of your financial records. Before banks, savings and loan associations, credit unions, credit card issuers or other financial institutions may give financial information about you to a Federal agency, certain procedures must be followed.

Consent to Financial Records

You may be asked to consent to make your financial records available to the Government. You may withhold your consent, and your consent is not required as a condition of doing business with any financial institution. If you give your consent, it can be revoked in writing at any time before your records are disclosed. Furthermore, any consent you give is effective for only three months, and your financial institution must keep a record of the instances in which it discloses your financial information.

Without Your Consent

Without your consent, a Federal agency that wants to see your financial records may do so ordinarily only by means of a lawful subpoena, summons, formal written request, or search warrant for that purpose.

Generally, the Federal agency must give you advance notice of its request for your records explaining why the information is being sought and telling you how to object in court. The Federal agency must also send you copies of court documents to be prepared by you with instructions for filling them out. While these procedures will be kept as simple as possible, you may want to consult with an attorney before making a challenge to a Federal agency's request.

Exceptions

In some circumstances, a Federal agency may obtain financial information about you without advance notice or your consent. In most of these cases, the Federal agency

will be required to go to court to get permission to obtain your records without giving you notice beforehand. In these instances, the court will make the Government show that its investigation and request for your records are proper.

When the reason for the delay of notice no longer exists, you will usually be notified that your records were obtained.

Transfer of Information

Generally, a Federal agency which obtains your financial records is prohibited from transferring them to another Federal agency unless it certifies in writing that the transfer is proper and sends a notice to you that your records have been sent to another agency.

Penalties

If a Federal agency or financial institution violates the Right To Financial Privacy Act, you may sue for damages or to seek compliance with the law. If you win, you may be repaid your attorney's fees and costs.

Additional Information

If you have any questions about your rights under this law, or about how to consent to release your financial records, please call the official whose name and telephone number appear below:

_____ *(Name)*

_____ *(Address)*

_____ *(Title)*

_____ *(Telephone)*

_____ *(Government Agency)*

IN THE UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF _____

_____ DIVISION

In Re _____)
)
) Misc. No. _____
)
) APPLICATION OF THE UNITED
) STATES DEPARTMENT OF JUSTICE
) FOR AN EX PARTE ORDER PURSUANT
) TO SECTION 1109 OF THE RIGHT
) TO FINANCIAL PRIVACY ACT OF 1978

The United States Department of Justice hereby applies to this Court, pursuant to Section 1109 of the Right to Financial Privacy Act of 1978, 12 U.S.C. §3409, for an order delaying for _____ days the customer notification required by Section _____ of the Act in connection with the _____ that _____
(Form of Process or Request) *(Departmental Unit)*

has issued to obtain financial records pertaining to _____ from _____
(Customer) *(Name of Financial Institution)*

and prohibiting _____, its officers,
(Name of Financial Institution)

employees, or agents, from disclosing that such records have been released or that a request for such records has been made, on the grounds that, as shown by the attached affidavit:

1. The investigation being conducted is within the lawful jurisdiction of the Government authority seeking the financial records;

2. There is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and,

3. There is reason to believe that the notice will result in: _____
(See 12 U.S.C. §3409(a)(3))

Respectfully submitted,

_____

Attachment

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

IN RE _____) Miscellaneous No._____

ORDER

Upon consideration of the application of the United States for an Order pursuant to Section 1109 of the Right To Financial Privacy Act of 1978, 12 U.S.C. §3409, and finding that:

(1) the investigation being conducted is within the lawful jurisdiction of the government authority seeking access;

(2) there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and

(3) there is reason to believe that customer notice will result in: (state specific grounds relied upon under 12 U.S.C. §3409(a)(3))

_____

_____,

it is ORDERED, that notification of _____
(Name of Customer)
that his/her records have been sought or obtained may be delayed for no more than _____days, and it is further ORDERED, that _____,
(Name of Financial Institution)

its officers, employees, and agents are prohibited, for a period of _____ days from the date of this Order from disclosing that records pertaining to _____
(Name of Customer)

have been released or that a request for such records has been made.

DATED,
this ____ day of _____, 19__

_____
UNITED STATES DISTRICT JUDGE
OR UNITED STATES MAGISTRATE

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

POST-NOTICE OF SEARCH WARRANT

Dear _____:
(Name of Customer)

Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by the _____
(Government Agency)

on _____ ___, 19___ for the following purpose:
(Date)

_____.

_____

You may have rights under the Right To Financial Privacy Act of 1978, 12 U.S.C. §§3401-3422.

_____ ___, 19___
(Date)

_____
(Name and Title of Official)

_____
(Telephone)

_____
(Address)

Attachment

§1106 of the Right To Financial Privacy Act, 12 U.S.C. §3406

FORM DOJ-469
3-10-79

EXHIBIT 7

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

POST-NOTICE OF SEARCH WARRANT AFTER COURT-ORDERED DELAY

Dear _____:
(Name of Customer)

Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by the _____
(Government Agency)

on _____ ___, 19__.
(Date)

Notification to you was delayed beyond the statutory ninety-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning: _____.

You may have rights under the Right To Financial Privacy Act of 1978, 12 U.S.C. §§3401-3422.

_____ ____, 19___
(Date)

_____
(Telephone)

_____
(Name of Official & Title)

_____
(Government Agency)

_____

_____
(Address)

Attachment

§1106 of the Right To Financial Privacy Act, 12 U.S.C. §3406

FORM DOJ-470
3-10-79

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

CUSTOMER NOTICE

Dear _____:
(Customer)

Records or information concerning your transactions held by the financial institution named in the attached subpoena, summons, or formal written request are being sought by the _____
(Government Agency)

in accordance with the Right To Financial Privacy Act of 1978, 12 U.S.C. §§3401-3422, for the following purpose(s):

_____

_____.

If you desire that such records or information not be made available, you must:

(1) Fill out the accompanying motion paper and sworn statement (as indicated by the instructions beneath each blank space) or write one of your own, stating that you are the customer whose records are being requested by the Government, and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

(2) File the motion and sworn statement by mailing or delivering them to the Clerk of any one of the following United States District Courts (in some cases, there will be only one appropriate court):

_____

_____

_____

_____.

The Right To Financial Privacy Act, 12 U.S.C. §§3401-3422

FORM DOJ-464
4-4-79

Certifications requesting nondisclosure for an initial 90-day period will be by letter from the SAC/ASAC/RAC issuing the subpoena. This letter will accompany the subpoena upon service, and will contain the following language:

"Pursuant to an official criminal investigation being conducted by the Drug Enforcement Administration of a suspected felony, we request that your company furnish on (date) toll record information pertaining to (name) for the period (month, day, year) through (month, day, year) inclusive, and that you not disclose the existence of such request for a period of 90 days from the date of its receipt. Any such disclosure could impede the investigation being conducted and thereby interfere with enforcement of the law."

E. Telephone companies have honored requests for additional 90-day periods if required. Recertification requests will use the following language:

"Pursuant to an official criminal investigation being conducted by the Drug Enforcement Administration of a suspected felony, we received on (date) toll record information pertaining to (name) for the period (month, day, year) through (month, day, year) inclusive and at that time requested that you not disclose the existence of such request for a period of 90 days."

"Inasmuch as this investigation continues, you should not disclose the existence of this request for another 90 days from the date of this request. Any such disclosure could impede the investigation being conducted and thereby interfere with enforcement of the law."

F. Interoffice requests for subscriber/toll information will be by DEA Form 6 or teletype. The initial paragraph of the request will explain the necessity or purpose of the request, and include the caller's name and telephone number. The receiving office will issue the subpoena and the initial nondisclosure letter. Upon receipt of the requested information, the receiving office will transmit it to the initiating office, accompanied by a copy of the nondisclosure letter. Any subsequent nondisclosure certifications will be the responsibility of the initiating office, mailed directly to the appropriate telephone company.

G. Subscriber and toll data will be reported back to the initiating office by DEA Form 6 or teletype when received from the telephone company. The response will reference the caller's name and telephone number, and divide the listings into two major headings: Nonindexed and Indexed. The nonindexed section will appear first and contain those listings which are deemed to be not of investigative potential; e.g., hotels, airlines, weather recordings. The indexed section will contain those listings which may have investigative potential, or those whose potential cannot be determined at the time.

H. Telephone companies (communication common carriers) are not required to be paid when complying with DEA administative subpoenas for toll records or subscribed information. (See 18 USC 2706(c).) However, if a court determines that information required is unduly burdensome to the company or unusually voluminous, reimbursement for reasonably necessary costs will be made.

6632.2 TELEPHONE DECODERS, AND TRAP AND TRACE DEVICES

A. Telephone decoders (vernacular terms include pen register, touchtone, etc.) can provide the following information:

1. Date and times a call is initiated and completed.
2. Whether the call is incoming or outgoing.
3. If outgoing, the number dialed.

B. Trap and Trace can provide the telephone number of incoming calls depending on the telephone company central offices capabilities.

1. If the central office has an ESS (Electronic Switching System), they can generally provide the telephone number from which the call was made and time on/time off.
2. If the central office is non-ESS, they can possibly provide the exchange (i.e., prefix) of the telephone number from which the call was made.

C. A decoder is not capable of identifying the number of an incoming caller. However, it is capable of identifying local as well as toll calls made from a telephone. The decoder or trap and trace can be used to further an investigation, or as a prelude to a nonconsensual intercept. When used for the latter, they can substantiate that a specific telephone is being used as a means of communication between suspects. As a matter of policy, a decoder will be installed prior to seeking a nonconsensual telephone intercept for the purpose of maintaining currency of probable cause. However, trap and trace devices are not routinely used prior to a non-consensual telephone intercept. Note that the use of trap and trace can be a very expensive procedure.

D. Court orders are required by law for use of telephone decoders and trap and trace devices. (18 USC 3121 et seq.) It is not necessary that "probable cause" exist to obtain a decoder or trap order, but only a reasonable belief that the telephone in question is being used to further illicit drug activities. An affidavit is not required. Any AUSA may make an application for installation and use of a telephone decoder or trap and trace device. The application must identify the AUSA and the law enforcement agency conducting the investigation. The application must include a certification that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the agency.

E. Judges and magistrates have the statutory authority to issue the order, including the order requiring technical assistance from the telephone company. In addition to the information required in the application, the order must specify the subscriber or customer of the telephone service, the person who is the subject of the investigation, the number and location of the telephone line (and geographic limits of a trap and trace order), and a statement of the offense to which the decoder/trap and trace information will relate. As a practical matter, the above information will be included in the application.

F. The duration of the order must not exceed 60 days. Should additional time be necessary, an extension may be applied for in no more than 60-day increments. The application for an extension need only meet the requirements for an original application as listed in paragraph D.

G. Upon obtaining the court order for the initial installation and for extension, the SAC/ASAC/RAC will submit a teletype to Headquarters, Investigative Support Section, subject: Installation of Telephone Decoder or Trap and Trace Device. The teletype should contain the following information:

1. File title, number, and G-DEP identifier.
2. Telephone number and listing.
3. Dates of court order and installation.
4. Number of days authorized.

H. The decoder may be installed in any convenient and secure location, including the field office itself. A copy of the court order should be served on the telephone company, who will furnish cable and pair information, as well as other assistance as directed by the court.

I. Paperwork provided by the telephone company on trap and trace information and the decoder's continuous strip of paper are to be handled and processed as documentary evidence. (See 6663.65.)

J. Field management must maintain careful administrative records on telephone lines leased for decoder operations, terminate these leases promptly when their usefulness is ended, and check telephone company bills for these lines to prevent improper charges.

K. In accordance with 18 USC 3125, an annual report on pen registers and trap and trace devices is required. The case agent is responsible for supplying to the respective Technical Operations Unit (either at the termination of the order or the end of the quarter) the DEA-477, Master Installation Record. This form will be initiated by the case agent in conjunction with the Technical Operations Unit. The case agent will be provided a copy of this form and is required to advise the technical group of any changes or updates.

The Technical Officer will submit the DEA-477 on a quarterly basis to the Investigative Support Section (OS). OS will prepare the annual report based on the quarterly report submissions.

6632.3 CONSENSUAL TELEPHONE INTERCEPTS

A. Consensual telephone intercepts are commonly used as a means of documenting a conversation between a suspect and the undercover agent (or informant). These intercepts require the prior approval of the immediate supervisor. Where circumstances preclude prior approval, the intercept may be conducted and subsequently reported to the immediate supervisor at the earliest practical time. No additional approvals are necessary.

B. Unless it is totally impractical, these intercepts will be recorded. Where recording is not possible, an agent should monitor the conversation from an extension telephone or some equivalent arrangement.

For recorded intercepts, it is generally sufficient to report the substance of a consensual intercept in a DEA Form 6, without having to transcribe the conversation. However, where the conversation is deemed to be of high significance to the investigation, it should be transcribed. Both the tapes and transcripts made of them will be handled as set forth in 6663.66.

C. Other than the above, no special reporting requirements apply to consensual telephone intercepts (e.g., DEA Forms 220, 220a, or 284).

6632.4 NONCONSENSUAL TELEPHONE INTERCEPTS. Interceptions of nonconsensual telephone communications (wire communications) are subject to the provisions of 18 USC 2510 et seq. (often referred to as Title III of the Omnibus Crime Control and Safe Streets Act of 1968, or simply as Title III). Title III prohibits all such intercepts except where authorized by a Court Order under strictly controlled circumstances. Deviation from the specified procedures may jeopardize the case, and potentially subject the agents to contempt proceedings and/or civil and criminal suits. Note that cellular telephone calls are protected as wire communications, but a Court Order is not required to monitor the radio portion of cordless telephone calls.

6632.41 Preliminary Planning and Evaluation. Where the use of a wire intercept is being contemplated, the following factors will be considered.

A. It is necessary that a particular telephone (or several particular telephones) is being used to transact illicit drug business. This is most often verified by toll checks, and a short-term decoder on the telephone in question. Further verifications should be obtained by the undercover agent (or informant) contacting the violator at the telephone in question to measure the extent of the violator's use of this telephone. There are two blanket circumstances under which a Title III intercept will not be approved:

1. Where the objective is to obtain additional evidence of an offense for which the subject has already been arrested and/or indicted (unless the objective is to obtain evidence of a different offense).
2. Where the circumstances are such that a substantial number of "privileged" communications will likely be intercepted. (This restriction does not apply, however, to situations where privileged communications may by chance occur, or to situations in which the spouse, attorney, physician, or clergyman is a party to the offense.)

B. There is an extraordinary exception to this particular requirement. Where it is shown that a target is thwarting

interception by changing facilities, a court order can permit the interception of a target individual's conversation without identifying the facility. A target who moves from pay phone to pay phone, or one who says he will, would demonstrate such purpose.

C. A court can authorize interceptions of mobile facilities (cellular phones) outside of its jurisdiction anywhere within the United States.

D. The law requires that other means of obtaining the objective of the intercept have either been tried without success or rejected as impractical. Generally, this does not mean that every conceivable technique must be documented as either having failed or been dismissed. The application package must clearly demonstrate, however, that the intercept has a high probability of success, and that it is not being used as a shortcut where other means have an apparently equal chance of success.

E. The law provides procedures for emergency telephone intercepts. Where there is immediate danger of death or serious injury, or organized crime conspiracies, and where there are sufficient facts for a court to otherwise authorize an interception, high level Departmental approval may be granted for immediate interception of communications. If this occurs, an application for an interception order must be made within 48 hours.

6632.42 Tactical Planning

A. The times of day and duration in which the intercept must be manned may vary on a case-by-case basis. Generally, it is advisable to plan to man the intercept 24 hours a day, 7 days a week, for as long as it is in operation. This may require rescheduling of the workweek into three 8-hour shifts for most of the personnel.

B. For overall investigative efficiency and security, the total manpower assigned to the wire intercept should be kept to a minimum. Furthermore, once a team is selected, substitutions and replacements should be kept to an absolute minimum.

C. Non-agents are authorized to monitor intercepts provided they are Federal employees or contract personnel who are acting under the supervision of an agent. This includes DEA deputized State and local law enforcement officers. Where non-DEA personnel are to be used in a DEA-controlled intercept, the court order authorizing the intercept must contain language providing for their participation.

D. If there is more than one telephone involved, this does not necessarily mean that the manpower per shift need be increased by multiples of the number of telephones involved. The intercept is generally geared to an individual violator. He may use several telephones, but can only use one at a time.

E. The U.S. Attorney's Office should be consulted at the earliest possible point on all aspects of the proposed intercept, including the assignment of a supervising attorney.

F. The intercept period should be kept to an absolute minimum. From the standpoint of resource expenditure as well as law, it is better to underestimate and seek extensions if necessary, rather than overestimate. Orders can authorize interceptions for up to 30 days. Generally the interception period begins to run the day interceptions first begin or ten days from the date of the order, whichever is earlier.

G. All planning and logistics should be completed by the time of application to the court, to minimize any delay in starting up.

6632.43 The Application Process

A. When a Title III intercept is anticipated, the SAC should notify Headquarters, Investigative Support Section, by teletype as early as possible. The teletype should include the following information:

1. Case number, file title, and G-DEP identifier.
2. Telephone number and subscriber's name and address.
3. Supervising attorney.
4. Supervising agent (and his office telephone number).
5. Affiant (case agent).
6. Anticipated date that affidavit/draft order package will be submitted to Headquarters.
7. Judicial District in which application will be made.
8. Brief statement substantiating that the telephone is being used to transact illicit drug business.
9. Brief statement as to availability of necessary equipment, technical expertise, etc.

B. The application package will consist of four documents:

1. An affidavit of the case agent.
2. An application by the supervisory attorney (in some cases this may be done by the case agent).
3. A draft of the Title III intercept order.
4. A draft of the order directing the service provider's (telephone company) assistance. Note that one order can be done as long as language has been included ordering the service provider's cooperation.

The preparation of this package requires detailed technical knowledge of the pertinent laws, regulations, and Departmental requirements. It should be prepared either in close coordination with or by the supervising attorney. Once the affidavit, application and orders are drafted, copies of the paperwork will be distributed as follows:

a. The original set is retained by the originating office for subsequent presentation to the court (after copies have been approved by the Department of Justice).
b. Three sets are submitted to Headquarters, Investigative Support Section.

C. Upon completing its review and concurrence, Headquarters will prepare a memorandum from the Administrator to the Assistant Attorney General, Criminal Division, requesting approval. Upon his review and concurrence, the Administrator will forward the package to the Assistant Attorney General. The Attorney General has designated the Assistant Attorney General in charge of the Criminal Division, any Acting Assistant Attorney General in charge of the Criminal Division and any Deputy Assistant Attorney General of the Criminal Division to authorize applications for interceptions of wire and oral communications. Upon the appropriate official's review and concurrence, that official will furnish written approval to the appropriate U.S. Attorney's Office. The original set, together with the written Departmental approval, may then be presented to the appropriate court. About 5 working days are needed to obtain Departmental approval, unless significant changes are required.

The statute requires sealing of applications and orders. Typically the Title III order includes language providing for sealing.

Upon the court granting (or denying) the intercept order, notify Headquarters via teletype as to the dates of the order and the activation of the intercept.

6632.44 Operation of the Intercept

A. Notification of Telephone Company. At the time the affidavit/draft order package is sent to Headquarters, coordinate with the appropriate telephone company to assure there is no delay between the court order approval and the start-up of the intercept. A by-product of an earlier-installed decoder is that the need for additional technical assistance from the telephone company can be minimized or eliminated.

Upon approval of the court order, a copy should be served on the telephone company. If necessary, the telephone company will furnish cable and pair information, and other assistance as directed by the court.

B. The Listening Post

1. Location. Technical personnel shall be consulted on the general location of the listening post, as certain technical considerations may limit the area of choice. Within this framework, however, the listening post should be as secure as possible from entrance by unauthorized personnel (anyone not covered by appropriate language in the order). Normally, this precludes anyone other than agents. Unauthorized personnel in the listening post can jeopardize the security of the investigation, and may also constitute grounds for an invasion of privacy suit. It should be soundproof, and in a place where personnel entering or leaving it will arouse little or no curiosity. The ideal location would be a secure room within the DEA field office itself.

2. Equipment. Generally, a decoder and at least two tape recorders will be installed on each intercepted line. One

recorder is designated for the "court copy" or "original" tape; the other for the transcribing copy. These equipment requirements may vary; e.g., in some instances, the supervising attorney or the court may require that three recorders be installed.

An additional recorder may be used to make rough notes of the important calls. This enables the transcribing personnel to pinpoint conversations at a designated index number on the reel they are transcribing.

A spare recorder should be kept in the listening post in case of a malfunction of one of the recorders being utilized.

The tapes to be used must be new, and in ample supply.

Headphones, rather than loudspeakers, are very useful for the agent monitoring the intercept, and become a necessity when there is more than one line being monitored in the same listening post.

Have radio communications capable of transmitting to all the surveillance units.

Have a telephone so that license plate and other pertinent information can be obtained as quickly as possible.

If the tape recorders are battery powered, have a sufficient stock of the correct batteries on hand so that they can be changed on a regular schedule.

3. Procedures. The listening post is the controlling position of the intercept, and most of the key decisions will probably be made from there. Generally, the shift supervisor will remain at the listening post. Normally, two agents per shift, per line, should staff the listening post (one to listen and one to log). The total number of agents actually monitoring the intercept should be kept to a minimum so as to ensure proper voice identification and minimize the number of witnesses needed with regard to the substance of intercepted conversations.

If the call contains references to drugs or narcotics, that portion of the conversation should be transcribed in longhand to aid the transcriber.

Where a telephone is used by individuals other than the targeted subject, (e.g., a pay phone), only the conversations of the targeted subject can be monitored. This will require a high degree of alertness on the part of listening post personnel, as well as close coordination with surveillance personnel.

In the event the subject's conversation is not drug related, all machines must be turned off and the log so marked as soon as it is determined as such. It is better to err on the side of turning off conversations prematurely than to continue monitoring to make sure they are not drug related. This determination must be made at the earliest practical moment. Generally, more latitude on this issue is permissible in the early stages of the intercept than in the latter stages.

When a determination to turn off a conversation has been made, it is generally permissible to check back periodically to assure that the topic has not shifted to drug-related information.

At any point where it is determined that the conversation is "privileged" (i.e., attorney, physician, clergyman, spouse), the intercept should be terminated immediately unless otherwise provided for in the court order. Any such conversation which is inadvertently or partially intercepted should be brought to the attention of the supervising attorney.

Where conversations are intercepted which may constitute evidence of a nondrug offense, the substance of that conversation should be recorded on the logsheet and the supervising attorney notified as soon as possible. A separate court order may be necessary to continue monitoring conversations pertaining to these offenses, and to preserve their value as evidence. Dissemination of this information will be handled as set forth in Subchapter 632.

When foreign language or codes are used and expert translators are not reasonably available during the interception period, that entire portion of the conversation should be recorded. If this occurs, minimization must occur as soon as practicable after the interception.

Calls must be numbered on the logsheet (prepared in duplicate) in numerical sequence starting with number 1 and continuing through the duration of the Title III. If the receiver is lifted but no ensuing number is dialed, that entry will be given the number of the preceding call followed by a letter "a". This will hold for any time there is a machine indication of receiver lift with no dial number following. However, if any conversation is received through the lifted receiver, it must be given a number in sequence the same as any regular call. The log should contain an appropriate comment next to the number.

For each call, the log should indicate the call number, tape index number, time, number called, identity of the individuals (if known), content of the conversation, and time of termination.

In lieu of manually maintained logs, an automated logging system has been developed and is being phased into field operations. Contact Headquarters (OMG) for details.

Generally, new tapes should be put on the recorders at the end of each shift. However, where the volume of interceptions is such that this would result in a considerable waste of blank tape, the same tape may be kept on the machine for more than one shift. Where this is done, however, a separate written record of custody must be maintained, and ultimately sealed with the court copy of the tape. When changing the tape, the recorded tape and the original of the logsheet should be identified by case number, date, agent's initials, reel number, and the telephone number. The court copy will be sealed in an evidence envelope and submitted to the evidence custodian via a DEA Form 7a. (See 6663.66.)

6632.44 Operation of the Intercept. Paragraphs A through B2 remain the same.

6632.44 B3 This section remain unchanged except cross out the seventh paragraph on page 304 which reads in part:

"In lieu of manually..., and substitute:

"An automated logging system has been developed and is being phased into field operations. Contact OST for details. Certain Federal Judicial Districts may still require manual log ledgers. Each office will fully coordinate this matter with the United States Attorney."

Prior to the start of a wire intercept, toll checks and probably a decoder will have furnished a list of frequently called numbers. These should be entered in an informal card index for ready reference. This index, plus a Criss-Cross Directory, should be checked prior to making requests of the telephone company. Newly identified numbers should be indexed and filed. Similarly, a list of known visitors will expedite the identification of known suspects visiting the location being monitored.

D. Master Affidavit. Oftentimes it is difficult to know the current status of the overall investigation at any one point in time. Although we may strive for ideal communications between the personnel on surveillance and those in the listening post, and between the personnel from one shift to the next, and between all of these personnel and management, there is strong potential for disruptions and/or distortions to occur.

To preclude such problems, a procedure has been developed whereby information from all sources is collated on a continuous basis throughout the course of the intercept. Thus, at any point in time we have a current list of defendants, a current status of the investigation, and a sound notion as to the continued productivity of the intercept. The technique is to assign one, or at most two, agents to preparing a chronological master affidavit. The necessary administrative procedures should be developed such that this agent receives the working copies of each tape, and copies of all reports written by surveillance agents or agents working other aspects of the investigation. These materials should be supplied to the agent on a timely basis, preferably the same or next day. The agent's task is to listen to each tape and transcribe only the key conversations, or passages of key conversations. He then ties together these conversations, the key observations by the surveillance agents, and the key findings of agents assigned to identification and background work.

His product is a chronological master affidavit incorporating all pertinent information from all sources. At the conclusion of the investigation, this master affidavit can be applied to all arrest and search warrants.

E. Requesting Extensions to a Wire Intercept. Extensions to a wire intercept may be granted for up to 30 days, and are

processed in essentially the same manner as the original application process, including the advance teletype to Headquarters. However, instead of sending Headquarters three sets of the application package, send one to Headquarters and two directly to the Assistant Attorney General, Criminal Division, Attention: Office of Enforcement Operations, Room 2229, Main Justice Building, 10th and Constitution Avenue, N.W., Washington, D.C., 20530.

F. Terminating the Intercept. The intercept must be terminated upon achieving the objective for which it was approved. However, determining this precise point can be a difficult decision. Although there is a tendency to prolong the intercept for the "ideal" time, the point of diminishing returns in a wire intercept may be reached quickly, beyond which it becomes a "more-of-the-same" situation. It is important that the progress of the intercept be the subject of daily discussion with the supervising attorney, and that continued potential of the intercept be a point included in each of these discussions.

Upon terminating the intercept, submit a teletype to Headquarters giving the date and time of termination. The leased line should be removed from the intercepted line as soon as possible, and the telephone company so notified. Field management must maintain careful administrative records on telephone lines leased for decoder operations, terminate these leases promptly when their usefulness is ended, and check telephone company bills for these lines to prevent improper charges.

6632.45 Reporting Requirements

A. Progress Report to the Supervising Attorney. Departmental guidelines indicate that we should prepare a daily, written summary to the supervising attorney. In practice, a copy of the logsheet(s) for that day has been acceptable.

B. Progress Report to the Court. The court may, when it grants the intercept order, require progress reports at specified intervals. It is in the government's interest to recommend to the court that these reports be required, as they demonstrate the intercept was under continuing supervision by the court, and they allow a continuing show of probable cause. The contents of these reports should reflect progress toward the objective (or reasons why progress has been hampered), and the need to continue the intercept. The supervising attorney should seek an order to seal these reports, if appropriate.

C. Notification of Subjects. 18 USC 2518(8)(d) states that within a reasonable time, but not later than 90 days after terminating the intercept, all persons whose telephonic conversations were intercepted, and who are so designated by the court, shall be notified of these interceptions.

Therefore, as soon as the intercept is terminated, a list will be prepared with the following headings:

1. Persons named in the order.
2. Other persons whose intercepted conversations implicated them in the offenses specified in the order.
3. Other persons whose intercepted conversations implicated them in offenses not specified in the order.
4. Other persons whose intercepted conversations did not implicate them in any offense.

This list is presented to the court, which will decide which of the subjects must be notified and direct DEA accordingly. Usually the court will only direct notification of those individuals who are defendants in the case and/or named in the order.

If the court directs that an individual be notified and that individual is not "sufficiently identified" (see E below), then every means must be taken to identify him, including direct personal interview.

If the investigation is not terminated, or if there is a collateral investigation being conducted such that notification would jeopardize its outcome, the court can be petitioned to delay the notification.

In notifying a person, include the date of the order, the period the intercept was conducted, and whether or not his conversations were monitored during that period. Notifications should be made via registered mail, return receipt.

D. DEA Form 220: Title III Intercept Report. Instructions for preparing and distributing the DEA Form 220 are attached to the form itself.

1. Within 30 days of terminating the Title III court order, an initial DEA Form 220 will be submitted to Headquarters, Investigative Support Section, with the Heading and Parts 1 through 7 completed (in Part 5, only the arrests and offenses columns need be completed).
2. At the point of closing the case file, a final DEA Form 220 will be submitted. This report should be fully completed, including any data for Parts 1 thorugh 7 that was lacking in the earlier submission. Part 8 will contain a judgmental statement as to the importance of the intercept to the investigation and prosecution.
3. Where the space on a DEA Form 220 is insufficient to fully report pertinent information, use a white bond addendum sheet.
4. Once application for the intercept order is filed with the court, the DEA Form 220 reporting requirement is binding, whether or not the court granted the order. Where the court denies the application, only a single submission of the DEA Form 220 is necessary.
5. The DEA Form 220 reporting requirement is geared towards monitoring the results of the court order, rather than the intercept itself. If more than one intercept is approved under a single court order, then only a single DEA Form 220 need be prepared. However, where a court order merely extends an earlier approved intercept, only a single DEA Form 220 (reporting the total intercept) need be submitted.
6. The DEA Form 220 is used to prepare a required annual report to the Department, due on December 31st of each year. In

preparing this annual report, Headquarters must have complete information on all Title III activity for the year (as well as information not previously reported for such activity in earlier years). If an intercept is being conducted under a court order which will not terminate by December 15th, prepare the initial DEA Form 220 (see above) as fully as possible, and submit it to Headquarters by December 15th. If any additional information is obtained between this initial submission and the end of the year, transmit it via teletype, and follow it with a new DEA Form 220 reflecting this information. If any previously unreported information is obtained for an intercept conducted in an earlier year, report it on a supplemental DEA Form 220.

E. DEA Form 220a, Title III and Pen Register Indices. Instructions for preparing and distributing the DEA Form 220a are on its reverse.

1. A DEA Form 220a must be submitted (with the initial DEA Form 220 as a package) to Headquarters, Investigative Support Section, for each person mentioned in the application for the court order whose conversations would likely be intercepted; or whose conversation was in fact intercepted, and is "sufficiently identified" (i.e., at least the full name, date of birth, and either a social security, police, or FBI number).
2. If a person has not been sufficiently identified by the foregoing minimal data, and there is no investigative or prosecutive need to pursue such identification, then he will be considered an unidentified person, and a DEA Form 220a is not required. However, if the court includes this person on the notification list (see C above), then every effort must be made to identify him. If successful, a DEA Form 220a is required.
3. If the intercepted telephone was located in a business, association, or government entity of any kind, then a DEA Form 220a must be submitted for that entity in addition to the other required submissions.
4. The DEA Form 220a is the input document for the Title III/Pen Register Index maintained at Headquarters. This index satisfies the requirements of 18 USC 2518(1)(e) and (10)(a), which necessitate that DEA track all individuals whose conversations have been intercepted, or whose conversations we have made application to intercept, or any persons, places, or facilities specified in any such application.

Field offices may make inquiries of this index in response to court orders regarding prior applications and intercepts.

6633 NONTELEPHONE COMMUNICATIONS

6633.1 CONSENSUAL INTERCEPT. The consensual monitoring of nontelephone verbal communications is governed by Departmental policy memorandum of November 7, 1983. This memorandum does not apply to consensual telephone intercepts (see 6632.3). The memorandum encourages the use of nontelephone consensual intercepts to gather evidence, protect informants or undercover agents, or for other similarly compelling purposes.

However, all uses of this technique must have U.S. Attorney concurrence, Headquarters (Chief OS) approval for nonemergency usages, SAC or his designee's approval for emergency usages,

and in some cases, Department approval. The approval is obtained through either of two methods: one for nonemergency circumstances and the other for emergency circumstances. Emergency circumstances are defined as those in which the need arises less than 48 hours before the intended intercept. The name of the concurring attorney is to be documented on the DEA Form 284.

NOTE: The intercept device may be concealed on the consenting person or anywhere else so as to overhear the conversation. If the latter, however, a consenting person must remain present to preclude any chance that a conversation will occur in his absence. The interception of a conversation in the absence of a consenting party is a nonconsensual intercept.

6633.11 Nonemergency Procedures

A. The case agent will obtain the verbal approval of the appropriate Assistant U.S. Attorney, complete Part I of a DEA Form 284, Authorization for Use and Report of Use of Consensual Eavesdropping Equipment (Non-Telephone), and notify the Division Office Technical Coordinator. A separate DEA Form 284 will be prepared for each specific instance in which the intercept equipment is to be used. The information in Part I may be transmitted verbally to the Technical Coordinator by the case agent's supervisor. The originating office will retain the DEA Form 284 and complete Part II when first usage has been attempted or accomplished.

B. The Technical Coordinator will transmit the information in Part I to Headquarters (Investigative Support Section) via telephone. Headquarters will provide the Technical Coordinator with the authorization dates and number, and initiate the necessary procedures to obtain Departmental approval. Generally this approval process takes 24 hours (not including holidays and weekends).

C. Upon Headquarters approval (and Department if required), OS will so notify the Technical Coordinator by telephone and comfirm it with a teletype. Departmental approval will be necessary if the intercept involves the following:

1. High Federal officials
2. Other public officials
3. Federal law enforcement officials
4. Members of the Diplomatic Corps
5. Protected witnesses
6. Federal prisoners
7. Where otherwise requested by the Department of Justice
8. Certain use of closed circuit television with or without audio (see 6634.4).

D. Within 48 hours after completing the intercept, the case agent will complete Part II of the DEA Form 284 (include a statement to the effect that verbal concurrence was obtained from the U.S. Attorney's Office) and distribute it as follows: original and two copies to Headquarters; one copy to Technical Coordinator; one

6633.2 NONCONSENSUAL INTERCEPTS

A. Nonconsensual, nontelephone intercepts are governed by the same statutes and policy as nonconsensual telephone intercepts. All provisions of 6632.4 shall apply, with the exception that the "object" in this instance is a place, rather than a telephone.

B. Where it is not practical to particularly describe the place or premises where interception will occur, a court order can pre-authorize the interception; but, monitoring cannot begin until the actual place is determined by the agent and the conversation is to begin. This procedure could be used where the violator moves from room to room in a hotel to avoid surveillance.

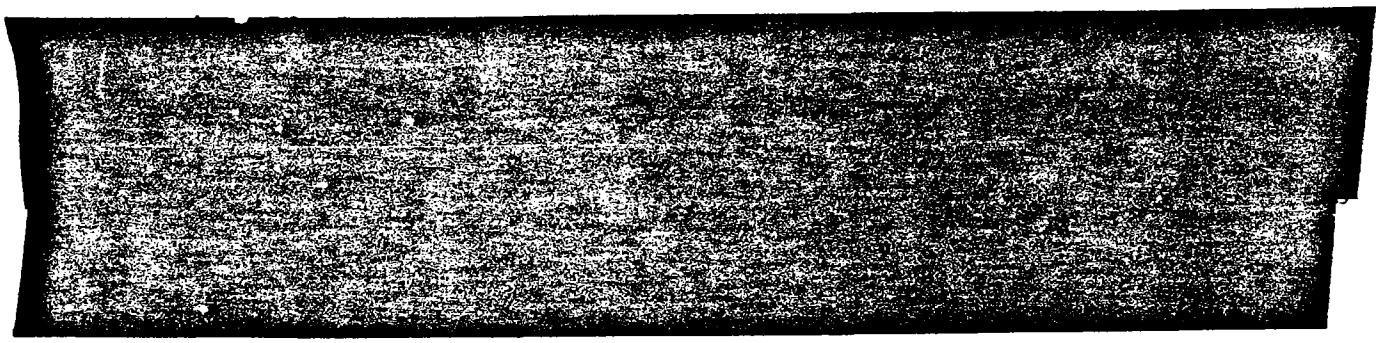
C. A court can issue a mobile interception order for oral interceptions (a bug placed in a container or car) which will be valid in every jurisdiction through which the object might travel anywhere within the United States. If the object in which the bug will be placed is moved to another jurisdiction after the court order is issued, the order will permit the installation in the new jurisdiction unless the object is moved to a Constitutionally protected area.

D. Depending upon circumstance, there may be situations in which a combination intercept (telephone and the place where the telephone is located) would be appropriate. This is legally feasible (provided suitable probable cause exists), but will compound the logistical planning and operation of the intercept.

6634 OTHER SURVEILLANCE OPERATIONS

6634.1 BEACON TRANSMITTERS. Beacon transmitters (beepers) may be placed on a conveyance or any other item of property whose movement we wish to surveil. However, Consititutional and case law considerations govern the utilization of these devices. The United States Supreme Court in U.S. v. KARO held that a warrant authorizing monitoring must be obtained prior to receiving beeper signals known to emanate from private areas out of public view. Based upon the current court standing, barring exigent circumstances, DEA will obtain a warrant to monitor these devices.

A. Installation of Beacon Transmitters. Depending upon the location and who has control over the object to which the beeper is to be applied, a warrant authorizing installation may be required.



[redacted]

3. In all cases where court approved authorization for installation is needed, the provisions for monitoring in section B, below, should be instituted concurrently.

B. Warrant Authorizing the Monitoring of a Beeper Signal. Agents are to initiate and document the steps to obtain a monitoring warrant as soon as the decision is made to install and use a beeper even though separate court authorization may not be required for the installation. The basic affidavit in support of a request for a warrant authorizing the monitoring of a beeper signal must, at a minimum, contain the following three elements:

1. A description of the object into which the beeper is to be placed.
2. A description of the facts and circumstances indicating a drug crime is being committed, including: a) why the installation and monitoring is deemed necessary; b) a general description of the device; and c) what information it will supply.
3. The length of time for which the beeper surveillance is requested.

Note: These devices, by their nature, can be easily transported across jurisdictional lines. Section 3117 of 18 USC provides extrajurisdictional effect to a court order that authorized the installation of a mobile tracking device if the device is installed while the object is in the court's jurisdiction. Also note that the authorization outside the jurisdiction of the court is not limited to the territorial jurisdiction of the United States for a mobile tracking device. If there is a possibility that the object will be monitored outside the issuing court's jurisdiction, care should be taken that the language of the order does not limit monitoring to only that court's jurisdiction.

C. Emergency Monitoring. In exigent situations where the installation of a device under A1, above, can be made, and there is documented initiation to obtain a monitoring warrant, the monitoring of the device may continue irrespective of its relocation to a private area. However, should the requested warrant be denied, the monitoring of the signal will cease immediately.

Due to the legal complexitities involved in the use of beepers, questions regarding installation and monitoring should be directed to the DEA Chief Counsel's Office, Criminal Unit.

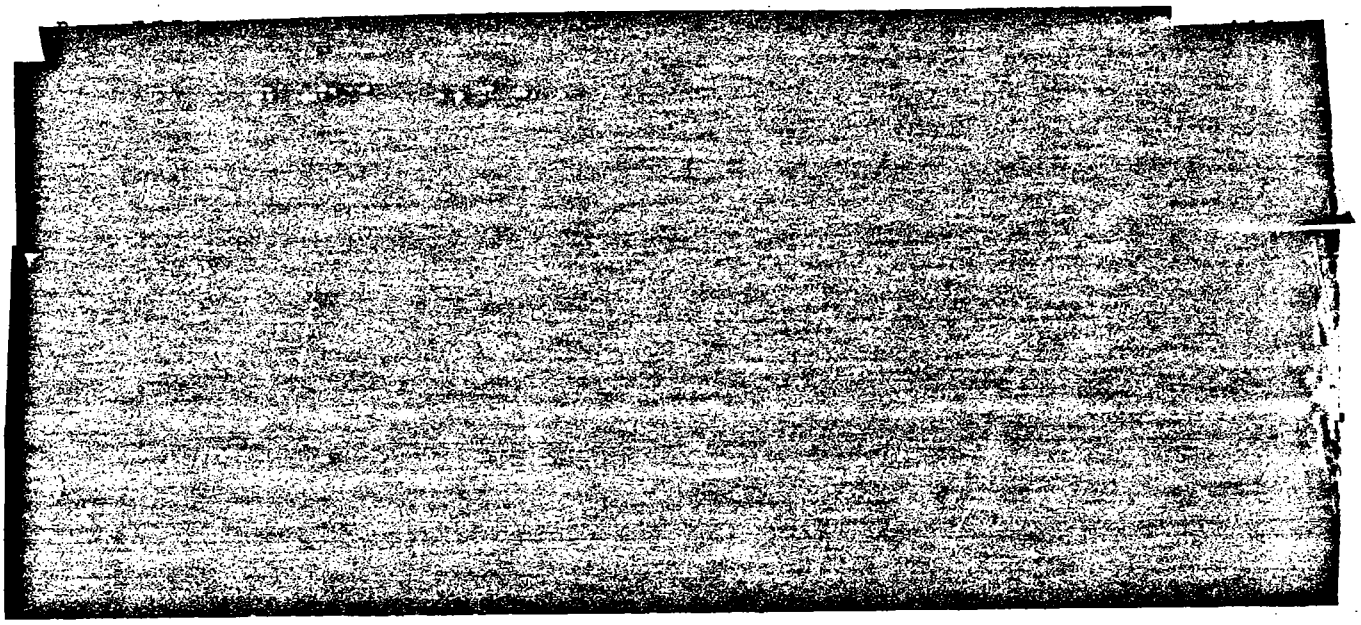
[redacted]

[redacted]

6634.3 AIRCRAFT LOOKOUTS. The FAA will, at the request of DEA, place a lookout for aircraft of interest to DEA. To place an FAA lookout, the following procedure will be utilized:

[redacted]

1. Search Area
2. Registration number
3. Manufacturer
4. Model
5. Color
6. Present location and destination (if known)
7. Name and telephone number of requesting agent
8. Cancellation date



6634.4 CLOSED CIRCUIT TELEVISION (CCTV) SURVEILLANCE. Closed circuit television cameras and related viewing and recording equipment are valuable investigative tools available to DEA field operations. This equipment can allow surveillance in areas where agent presence is not possible or practicable. However, privacy and Constitutional considerations prevent the unrestricted use of CCTV, and may require a court order and/or DEA Headquarters or Justice Department approval. DOJ Order 985-82 and U.S. Attorney Manual section 9-7.1000 govern the use of CCTV. DEA use of CCTV is restricted as indicated below:

6634.41 Special Considerations. Privacy rights must be evaluated both at the equipment installation site and at the site under video surveillance. This evaluation must recognize that rights of privacy may not initially exist at either site but may arise through changed circumstances after video surveillance has commenced. Where nontelephone audio interception (6633) is planned in tandem with CCTV, minimum approval standards must be satisfied for each.

Note: In situations where it is determined that violators are using video transmissions to further illicit activities, the interception of these nonconsensual video transmissions (electronic communications) by DEA must follow the guidelines set forth in paragraph 6636.1B. However, if the interception of nonconsensual video and audio transmissions of violators is sought, then the guidelines set forth in Subsection 6632.4 apply.

6634.42 Installation and Viewing in Public Places. Public places include such areas as open fields, public streets, public parking lots, and other places in which the public has continuous access. No prior court order or DEA Headquarters or DOJ approval is

required to install CCTV in public places, or to view places that remain continuously public.

6634.43 Installation and Viewing in Private Areas

A. Consensual CCTV Installation and Viewing

1. Installation. CCTV equipment may be installed without court order in a private area with properly obtained consent. No prior DEA Headquarters or DOJ approval is required. Properly obtained consent must cover the entire period of CCTV installation in a private area.

2. Viewing. CCTV surveillance of a private area even with a consenting party's approval requires prior DEA Headquarters and DOJ approval. Consensual video surveillance with DEA and DOJ approval must be stopped whenever the consenting party is absent from the viewing area.

B. Non-Consensual CCTV Installation and Viewing

1. Installation. No DEA Headquarters or DOJ approval is required prior to obtaining necessary court authorization.

2. Viewing. DEA Headquarters, DOJ approval and court authorization are required prior to viewing nonconsensually. Video surveillance must be minimized. (See 6632.44B3.)

6634.44 CCTV Approval Process

A. Instances requiring approval under paragraph 6634.43B will be submitted to DEA Headquarters, Office of Investigative Support (OS) by teletype. The request will include: a description of the nature and location of the area to be viewed; the type or kind of activities to be viewed/recorded; the identity, if known, of the subjects; the length of time the surveillance will be conducted; and, where appropriate, the steps to be taken to minimize viewing/recording.

B. A DEA Form 284 (Authorization for Use and Report of Use of Consensual Eavesdropping and/or CCTV Equipment) will be completed contemporaneously with each request. The Headquarters or Division number will include the letters TV at the end. OS will obtain the required DEA Headquarters and DOJ approval.

C. Emergency DEA/DOJ approval for consensual CCTV installation and viewing may be given by the SAC where a request cannot be submitted to OS at least 24 hours before the proposed use. Each emergency approval will be reported telephonically to OS, and a DEA-284 completed within 24 hours (excluding weekends and holidays). The Division Emergency Number on the DEA-284 will include the letters TV at the end.

6635 COOPERATIVE USE OF ELECTRONIC SURVEILLANCE

6635.1 DOMESTIC

A. The use of electronic surveillance equipment in any investigation controlled by DEA, regardless of the extent of other agency involvement, or who actually wears or uses the equipment, will be done in full accord with the requirements of this subchapter.

B. The applicability of these requirements to an investigation not controlled by DEA will depend on the circumstances. If an eavesdropping device is to be worn by a DEA agent, the requirements shall apply. If a case is ultimately prosecuted in Federal court, the admissibility of evidence gained through the use of this equipment will be measured against compliance with Federal law. Where this is known at the time the equipment is used, then all requirements of this subchapter will apply.

C. Electronic surveillance equipment may be loaned to another law enforcement agency provided that:

1. It is to meet a lawful need and will be used under lawful circumstances.
2. The requested equipment is not needed by DEA for the period of time it is to be on loan (to be coordinated by message with Headquarters, Investigative Support Section, Technical Operations).
3. The loan is made pursuant to a written request to the SAC from a responsible official of the requesting agency. (In exigent circumstances, this request may be after the fact.)

6635.2 FOREIGN

6635.21 Consensual

A. Domestic policies applicable to consensual telephone intercepts (6632.3) apply equally to foreign situations.

B. Domestic policies and procedures applicable to consensual nontelephone intercepts (6633.1) apply equally to foreign situations where the subject of the intercept is a U.S. citizen or resident alien. Verbal approval from a U.S. Attorney's Office is not applicable unless it is in connection with a domestic investigation.

C. Where the subject of the nontelephone consensual intercept is a foreign national, the intercept may be conducted upon approval by the Country Attache and the appropriate Chief of Mission.

6635.22 Nonconsensual

A. DEA agents are prohibited from engaging in unilateral nonconsensual electronic surveillance (including hiring or instigating others to do it for us). Assistance may be rendered to host country officials in such activity, including the loan of equipment, provided:

1. The activity being monitored is drug related.
2. The assistance has been approved by the Country Attache and the Chief of Mission.

3. If the assistance involves the loan of equipment, the provisions of 6635.1C are followed.
4. The equipment available for loan is compatible with the host country communications requirements.

B. Where bilateral nonconsensual electronic surveillance is to be directed against U.S. citizens or U.S. resident aliens, the following procedures must be followed.

1. An affidavit by the case agent will be prepared as set forth in 6632.43B, and submitted to Headquarters, Investigative Support Section.
2. Headquarters will process the affidavit as set forth in 6632.43C. Upon approval by the Department, Headquarters will so advise the submitting office by telephone.
3. Upon receipt of this approval, the submitting office may: request the host country authorities to conduct the intercept; conduct the intercept jointly with the host country authorities; and/or loan DEA equipment to the host country authorities for this purpose.
4. The DEA Forms 220 and 220a reporting requirements set forth in 6632.45 will be followed. Mark "FOREIGN" in the upper right corner of each form.

C. When information acquired from a foreign nonconsensual intercept is to be used in a domestic judicial procedure, it is likely that we will have to disclose the source of the information, and establish that the intercept was in compliance with host country laws.

Therefore, prior to initiating such a proceeding, determine whether the host country has reservations about the use of this information as evidence. If the host country objects, and the matter of source subsequently becomes an issue at trial, we must be prepared to request dismissal of the charges if necessary. This must be fully coordinated with the prosecuting attorney beforehand.

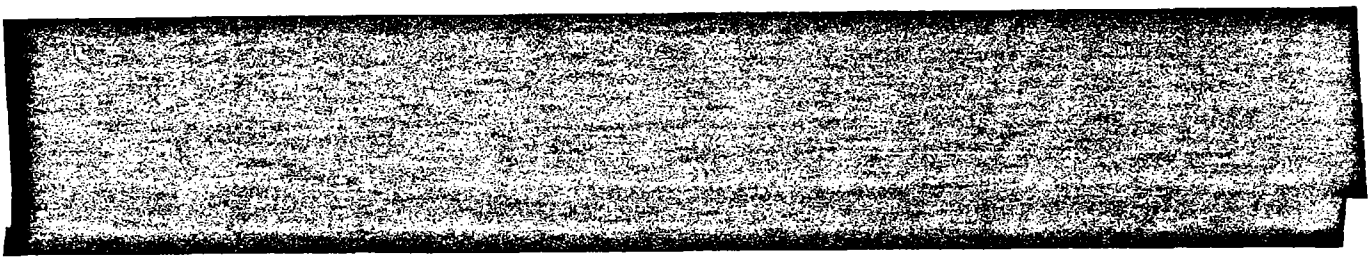
6636 ELECTRONIC COMMUNICATIONS

In addition to wire (telephone) communications and oral (voice, not carried over a communication system) communications, certain electronic communications are also protected and require Title III Court Orders for interception. Typical examples of protected electronic communications are display pager messages and electronic mail. Generally, these are communications which do not contain the human voice at any point during transmission. Radio communications which carry the human voice are protected as electronic communications, if carried entirely over a radio communications system configured so the communications are not readily accessible to the general public. Note: If a voice radio communication is carried in part over a telephone system, then the entire communication may be classified as a wire communication.

Other examples of protected electronic communications are telex, facsimile and computer transmissions, as well as private video

transmissions (CCTV). (Interception of private CCTV is distinguished from DEA video surveillance where no "interception" occurs.) Other similar transmissions are included if they are not readily accessible to the general public.

6636.1 PROTECTED ELECTRONIC COMMUNICATIONS



B. Approval Process. The field office will submit to Headquarters, Investigative Support Section (OS), an affidavit, application and order similar to those for telephone interceptions for each such request for nonconsensual interception of electronic communications. The Chief of the Investigative Support Section will be responsible for processing and transmitting a letter to the Department requesting their approval.

Restrictions on interceptions of protected electronic communications (less than those for wire or oral interceptions) are as follows:

1. Any Assistant United States Attorney may apply for an order for interception. (Higher-level Departmental approval will not be necessary, but see the restriction below.);
2. An application may be made in connection with any Federal felony; and
3. There is no statutory exclusionary rule. Only constitutional violations will permit a judge to exclude evidence gathered in violation of the statute.

However, until January 1990, applications for this type of interception must be approved by the same Departmental officials who approve wire and oral intercept applications. This is Departmental policy and the result of an agreement made with Congress to assure uniform implementation of this procedure.

Note there will be occasions when both wire and electronic communications may be intercepted. For example, while transmitting data over a telephone, the parties may use the line to speak with each other. A court order must be applied for under the wire standards where a tap may intercept mixed wire and electronic communications.

C. Reporting Process. Once the court order has been signed and installation made, the SAC will notify Headquarters, Investigative Support Section (OS) by teletype. The teletype will include the following information:

1. Case number, target's name and G-DEP identifier
2. Telephone number and subscriber's name and address
3. Supervisory attorney/judicial district

4. Case agent and telephone number
5. Date of court order and installation

Within 30 days after the completion of an electronic communication intercept, a DEA-220 and DEA-220A will be completed. Instructions for preparing and distributing the DEA-220 are attached to the form itself. The DEA-220A has the instructions on the back of the form. Note that a DEA-220A will be prepared for the subscriber and target. If the subscriber/target are one in the same, complete one DEA-220A.

6636.2 EXCEPTIONS: NON-PROTECTED COMMUNICATIONS. Because the general definition of "electronic communication" (18 U.S.C. 2510 (12)) is so broad and all-inclusive, it became necessary to carve out some forms of electronic communications that either appeared patently not to be deserving of privacy protection or where a policy decision was made by the Congress not to protect a specific form of electronic communication. Those exceptions appear in the legislation either as exclusions from the general definitions or as exceptions which will permit law enforcement interception of communications transmitted over certain communications (18 U.S.C. 2511 (2) (g)). The exceptions are as follows:

A. The radio portion of handheld or cordless telephone conversations. These use a radio transmission over a limited distance to a base station at a regular telephone. They are so easily intercepted, often over an ordinary AM radio, that there is no reasonable expectation of privacy in these communications. Such handheld, cordless, telephones should be distinguished from cellular telephones, which are protected the same as traditional telephones.

B. Tone only paging devices. It has been the Department's position that intercepting only tone beeps or vibrations from a pager is not a search and, therefore, such interceptions raise no Fourth Amendment implications; the law endorses this policy. By contrast, digital display and voice paging devices are covered by the new legislation. (Voice paging devices must be treated as telephone calls unless the pager uses a computerized voice system.)

C. Communications from tracking devices (beepers) placed in automobiles or packages to trace their location. These are specifically excluded from the definition because of the manner in which they function and the limited privacy implications related to their use. (See 6634.1.)

D. A partial exception for video transmission exists. The unauthorized interception of a closed circuit television broadcast between two points is an illegal interception of an electronic communication. For example, a business competitor breaking into the wire transmission of a teleconference violates the law, and a law enforcement interception of the video portion of that communication by tapping into the lines requires a court order under the statute. However, use of law enforcement video surveillance is not an "interception" and is therefore not affected by Title III. Existing DOJ/DEA policies and procedures must still be followed. (See Subsection 6634.4.)

E. Pen registers, and trap and trace devices. These investigative tools qualify as electronic communications as that term is broadly defined. Since the privacy interests involved are so limited with these techniques, they have been excluded from the same protection afforded other forms of electronic surveillance. The law does specifically regulate these techniques. The law codifies the existing Departmental policy and practices on pen registers and trap and trace devices. (See 6632.2.)

F. Certain electronic and radio communications. The definition of electronic communication is so broad that it sweeps in all forms of radio communications. Thus, it was necessary for the statute to specifically exclude various forms of radio communications that patently should not be subject to protection from interception such as electronic communications that are broadcast so as to be readily accessible to the public (AM and FM radio station broadcasts), ship to shore general public type communcations, public safety communications, citizen band radio, general mobile radio services, electronic bulletin boards designed to be accessed by the general public, and the like.

6636.3 ACCESS TO STORED ELECTRONIC COMMUNICATIONS (18 USC 2701-2710)

A. Contents of Electronic Communications in Electronic Storage. There will be many occasions when DEA will need to obtain the contents of electronic communications in electronic storage from a provider of electronic communication service in contrast to "intercepting" the communication. If the information required has been in electronic storage for 180 days or less, DEA must obtain a warrant issued under the Federal Rules of Criminal Procedure. An example of a stored communication is a displayed pager message which is stored, whether before transmittal to the intended recipient or after receipt of the message. The message remains a protected stored electronic communication whether the back-up copy is retained for re-access by the recipient or for communication company records.

If the information required has been stored for over 180 days, DEA can obtain that information by a variety of procedures including a search warrant, grand jury or administrative subpoena, or a court order, depending on the type of notification DEA wishes to provide the subscriber.

B. Records from an Electronic Communication Service or Remote Computing Service. These are records that pertain to the subscriber to, or customer of, an electronic communication service or remote computing service and which do not involve the contents of a communication. To access transactional records of an electronic mail company, a computer data processor or the like, DEA must obtain either an administrative or grand jury subpoena, a search warrant pursuant to Federal law or a court order issued based upon a finding that the information is relevant to a legitimate law enforcement inquiry (18 USC 2703(d). The procedures for obtaining subscriber/toll information from a telephone company are outlined in Subsection 6632.1.

C. Backup Preservation of Information in Storage. DEA is permitted to have a copy, in the nature of a picture of the records that exist on a given day, made of records of illegal activities in

which a computer storage or remote processing firm is used in the criminal activity.

When we seek the records being held by a remote computing storage company, we may include in the subpoena or court order a requirement that the service provider create a backup copy of the communication to preserve the communication. The provider is directed to create the requested backup as soon as practicable, consistent with its regular business **practices, but in any event within two business** days of the receipt of the order or subpoena, and then notify us that the copy has been made. The provider is also directed not to notify the subscriber of the order or subpoena.

Notification is required within 3 days after the receipt of the service provider's confirmation of the creation of the backup copy.

D. Customer Challenges. A customer or subscriber may move to vacate an order or quash a subpoena ordering that the backup copy be made. The customer/subscriber must do so within 14 days after notice by DEA that a backup copy has been requested. The customer must establish that he is the relevant customer or subscriber, and that the records sought are not relevant to a legitimate law enforcement inquiry or that DEA has failed to comply with statutory requirements for access to the records. If the court finds that the challenger has met the requirements outlined in 18 USC 2704 (b)(1), then DEA must file a sworn response. If the court determines that the challenger has failed to meet these requirements, it will order the process enforced. However, if the challenger has standing and can show either lack of relevance or noncompliance with procedural requirements, the court can vacate the order or quash the subpoena.

E. Delay of Notification. When seeking the contents, records or backup copy of electronic communications in electronic storage for over 180 days, notification to the subscriber or customer may be delayed for 90 days. This can be accomplished either by: including in the application for a court order a request, which the court shall grant, that notification be delayed because there is reason to believe that notification of the order may have an adverse result; or, in the case of an administrative or grand jury subpoena, a written certification of a supervisory official (SAC/ASAC/RAC) that there is reason to believe that notification may have an adverse result. Extensions up to 90 days each may be granted by the court upon application or by recertification of a supervisory official in the subpoena.

F. Cost Reimbursement. DEA must reimburse the person or entity assembling or providing records for all reasonable costs that have been incurred in providing the information. The amount of payment will be as mutually agreed upon by DEA and the provider, or, in the absence of such an agreement, as determined by the court.

** Addition

(It would simplify the proceeding if you would include with your motion and sworn statement a copy of the attached summons, subpoena or formal written request, as well as a copy of this notice.)

(3) Serve the Government authority requesting the records by mailing (by registered or certified mail) or by delivering a copy of your motion and sworn statement to _____

_____.

(4) Be prepared to come to court and present your position in further detail.

(5) You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.

Very truly yours,

_____ ___, 19___ _____
(Date)

_____
(Name and Title of Official)

_____ _____
(Address) *(Government Agency)*

_____
(Telephone)

Enclosures: Summons, Subpoena or Formal Written Request
Motion Form
Sworn Statement Form

The Right To Financial
Privacy Act, 12 U.S.C. §§3401-3422

IN THE UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF _____
(Name of District) *(State in which Court is located)*

_____ *(Your Name)* Movant	MOTION FOR ORDER PURSUANT TO CUSTOMER CHALLENGE PROVISIONS OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.
v.	
UNITED STATES DEPARTMENT OF JUSTICE Respondent.	

_____ hereby moves this
(Your Name)

Court, pursuant to Section 1110 of the Right To Financial Privacy Act of 1978, 12 U.S.C. §3410, for an order preventing the government from obtaining access to my financial records. The agency seeking access is _____.
(Name of Government Agency)

My financial records are held by _____.
(Name of Financial Institution)

In support of this motion, the Court is respectfully referred to my sworn statement filed with this motion.

Respectfully submitted,

_____ _____
(Your Signature)

_____
(Your Address)

_____
(Your Name

_____
(Your Telephone #)

CERTIFICATE OF SERVICE

I have mailed or delivered a copy of this motion and the attached sworn statement to _____
(Name of Official listed at item 3 of Customer Notice)

on _____ ____, 19___.
(Date)

_____
(Your Signature)

§1110 of the Right to Financial Privacy Act of 1978, 12 U.S.C. §3410

FORM DOJ-465
4-4-79

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF _____
(Name of District) *(State in which Court is located)*

_____ *(Customer's Name)* Movant	Miscellaneous No. _____ *(Will be filled in by Court Clerk)*
v.	
UNITED STATES DEPARTMENT OF JUSTICE	SWORN STATEMENT OF MOVANT
Respondent	

I, _____, (am presently/was previously)
(Customer's Name) *(Indicate One)*

a customer of _____,
(Name of Financial Institution)

and I am the customer whose records are being requested by the Government.

The financial records sought by _____
(Name of Government Agency)

are not relevant to the legitimate law enforcement inquiry stated in the Customer Notice that was sent to me because

_____

_____, or

should not be disclosed because there has not been substantial compliance with the Right to Financial Privacy Act of 1978 in that _____

_____

_____,

or should not be disclosed on the following other legal basis _____

_____.

I declare under penalty of perjury that the foregoing is true and correct.

_____ ____, 19___ _____
(Date) *(Customer's Signature)*

§1110 of the Right to Financial Privacy Act, 12 U.S.C. §3410

FORM DOJ-466
3-10-79

Exhibit 11

INSTRUCTION FOR COMPLETING AND FILING THE ATTACHED MOTION AND SWORN STATEMENT

1. Except where signatures are required, the indicated information should be either typed or printed legibly in ink in the spaces provided on the attached motion and sworn statement forms. The information required for each space is described in parentheses under each space to be completed.

2. The most important part of your challenge application is the space on the "sworn statement" form, where you must state your reason for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated in the attached notice. You may also challenge the government's access to the financial records if there has not been substantial compliance with the Right to Financial Privacy Act, or for any other reasons allowed under the law. You should state the facts that are the basis for your challenge as specifically as you can.

3. To file your challenge with the Court, either mail or deliver the original and one copy of your challenge papers together with cash, certified check, or money order in the amount of $____ to the "Clerk" of the Court; this amount will cover the Court's filing fee.

4. One copy of your challenge papers (motion and sworn statment) must be delivered or mailed (by registered or certified mail) to the government official whose name appears on the Customer Notice.

5. If you have further questions, contact the government official whose name and telephone number appear on the Customer Notice.

EXHIBIT 12

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

POST-NOTICE FOLLOWING COURT-ORDERED DELAY

Dear _____,
(Name of Customer)

Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on _____ ____, 19___.
(Date)

Notification was withheld pursuant to a determination by the United States District Court for the _____ District of _____ under the Right To Financial Privacy Act of 1978, 12 U.S.C. §§3401-3422, that such notice might: _____

_____.

The purpose of the investigation or official proceeding was:

_____.

_____ ____, 19___
(Date)

_____
(Telephone)

_____
(Name and Title of Official)

_____
(Government Agency)

_____

_____
(Address)

Attachment

§1109(b)(3) of the Right To Financial Privacy Act, 12 U.S.C. §3409(b)(3)

FORM DOJ-471
3-10-79

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

CERTIFICATE OF COMPLIANCE WITH THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

TO: _____

_____
(Name and Address of Financial Institution)

FROM: _____
(Name of Government Agency)

I hereby certify that the applicable provisions of the Right To Financial Privacy Act of 1978, 12 U.S.C. §§3401-3422, have been complied with as to the

_____
(Summons, Subpoena or Formal Written Request)

presented on _____ _____, 19____ for the following
(Date)

financial records of _____:

_____

_____

_____ ___, 19___ _____
(Date) *(Signature)*

_____ _____

_____ _____
(Address) *(Name and Title of Official)*

_____ _____
(Telephone) *(Government Agency)*

Pursuant to the Right To Financial Privacy Act of 1978, good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of these financial records.

§1103(b) of the Right To Financial Privacy Act, 12 U.S.C. §3403(b)

FORM DOJ-461
3-10-79

EXHIBIT 14

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

CERTIFICATION FOR TRANSFERRING RECORDS OBTAINED PURSUANT TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

TO: _____
(Name and Address of Receiving Agency)

FROM: _____
(Name and Address of Transferring Government Agency)

The records of the following customer of a financial institution are in our possession:

_____
(Name of Customer)

_____
(Address of Customer)

_____
(Type of Records and Account Number)

_____
(Name of Financial Institution)

Pursuant to Section 1112(a) of the Right To Financial Privacy Act of 1978, 12 U.S.C. §3412(a), the records described above are being transferred to you. I certify that there is reason to believe that the records being transferred are relevant to a legitimate law enforcement inquiry within the jurisdiction of your agency or department.

_____ ____, 19___ _____
(Date) *(Name of Official and Title)*

_____ _____
(Telephone) *(Government Agency)*

Copies to the Following Files:

§§1112(a) of the Right to Financial Privacy Act, 12 U.S.C. §3412(a)

FORM DOJ-474
4-4-79

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

NOTICE OF TRANSFER OF FINANCIAL RECORDS

Dear _____,
(Name of Customer)

Copies of, or information contained in, your fihancial records lawfully in the possession of _____
(Government Agency)

have been furnished to _____ pursuant
(Government Agency)

to the Right to Financial Privacy Act of 1978 for the following purpose: _____

_____.

If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Right To Financial Privacy Act of 1978 or the Privacy Act of 1974.

_____ ____, 19___ _____
(Date)

_____
(Name and Title of Official)

_____
(Telephone)

_____
(Government Agency)

_____

_____
(Address)

§1112(b) of the Right To Financial Privacy Act, 12 U.S.C. §3412(b)

FORM DOJ-476
3-10-79

EXHIBIT 16

FINANCIAL PRIVACY ACT REPORT

_____
(Division)

CALENDAR YEAR 19__

1w USC Section	Number of Requests Presented	Occasions of Delayed Notice
S3404 - Customer Authorizations		
S3405 - Admin. Subpoenas & Summonses		
S3406 - Search Warrants		
S3407 - Judicial Subpoena		
S3408 - Formal Written Requests		
Subtotal:		
S3414 - Special Procedures		
Total:		

	Number of Requests Presented
S3420* - Grand Jury Information	

Assessment of Experience

Organizations shall show the amount of payments made to the financial institutions for direct costs incurred for providing requested information (pursuant to Section 3415). Also, they shall specify the operational impact of the Act (e.g., time delays encountered; number of times injunctive relief sought, and granted; experience with the courts and financial institutions; workload impact; etc.)

*Will not be included in the congressional report.

SUBCHAPTER 662 UNDERCOVER ACTIVITIES

(See Exhibit 1 for organizational symbols/nomenclature used in this subchapter)

*6621 GENERAL

A. An undercover activity is defined as the assumption of a fictitious role or identity on a temporary basis by a DEA agent, or an officer of another law enforcement agency or an informant under the direction of DEA, to obtain evidence or other information relating to violations of the Controlled Substances Act or other drug related laws.

B. An undercover activity may be initiated upon the approval of the immediate supervisor if he determines that:

1. The activity is reasonably necessary to develop evidence of criminal conduct.
2. Initiating investigative activity in this instance is in conformity with the Domestic Operations Guidelines.
3. The activity will be conducted with only that amount of intrusiveness necessary to accomplish lawful investigative objectives.
4. There is no immediate expectation that the activity will involve any sensitive circumstance as set forth in Subchapter 660.

Supervisory approval of an undercover activity will be documented in the Case Initiation Report or, if the activity is to be conducted in an ongoing investigation, in the DEA Form 6 reporting the activity.

C. Undercover activities extending beyond 30 days, or which extend beyond the geographic boundaries of the divisional/country office, must be approved by the ASAC/ACA.

D. At any point in an undercover activity where a sensitive circumstance arises, or an investigative plan is developed that will involve a sensitive circumstance, the SAC/CA will be apprised, and a determination made as to whether the requirements of Subchapter 660 apply.

E. Except in extraordinary circumstances, non-Agent DEA personnel are expressly prohibited from participating in operational undercover activities. Where the use of such personnel is contemplated, it must be clearly explained to them that their participation is voluntary, the security aspects of the investigative plan must take into account that

**Addition
* Revision

they will be neither armed nor properly trained in law enforcement operations or techniques, and prior approval must be obtained from the appropriate Operations section/office.

F. A situation may arise in which undercover personnel learn of, are witness to, or are requested by the violators to participate in an illegal activity. See Paragraphs II D and III G of the Domestic Operations Guidelines. Additionally:

1. Where information is gained concerning a crime that has already occurred, it will be disseminated to the appropriate agency. If there is a concern that immediate dissemination may pose a security risk, then the information may be held until the risk has passed.
2. Where information is gained concerning a crime that has not yet occurred, the SAC/CA will be immediately apprised, and decide upon an appropriate course of action. Any decision not to take steps to prevent the crime from occurring must be weighed against the criteria for a sensitive investigative activity as set forth in Subchapter 660.
3. Non-prevention of a non-serious crime must be approved in advance and in writing by the SAC/CA. If an unforeseen situation arises in which undercover personnel are witness to a non-serious crime, such approval will be sought after the fact.
4. Non-prevention of a felony or an otherwise serious crime is subject to the SARC authorization process (see Subchapter 660). If an unforeseen situation arises in which the undercover personnel are witness to a felony or otherwise serious crime, such approval will be sought after the fact. Even with prior authorization, undercover personnel should make every effort to prevent a felony or other serious crime from occurring. If it is a crime in which there is a probability that serious physical harm will be inflicted on a third party, then preventing it will take precedence over furthering the investigation. This may necessitate terminating the undercover activity, if this can be done without placing the safety of undercover personnel in grave jeopardy.
5. Undercover personnel are not authorized, nor can they be authorized, to commit or participate in the commission of illegal acts. This also includes unlawful investigative acts such as illegal wiretaps, illegal mail openings, illegal breaking and entering, and illegal searches.

6622 UNDERCOVER BUYS

A. Each undercover buy will be thoroughly planned by the immediate supervisor with all participating personnel. Insofar as possible, this planning will encompass all potential developments that could occur.

B. In the planning and execution of an undercover buy, first priority will be given to the safety of the participating personnel and third parties; second priority to the security of official funds; and third priority to the attainment of the investigative objectives.

C. Official funds normally will not be "fronted" (advanced on the promise of a subsequent delivery of drugs). When this approach is deemed necessary, it will be thoroughly planned such as to minimize risk of loss. Even where it is not part of the intended approach, the possibility of such a necessity developing after the operation is underway (i.e., so as to avoid placing undercover personnel or a critical investigation in jeopardy) will be included in the planning. The immediate supervisor will set the parameters for the planned or unplanned fronting of official funds.

D. The planning and execution of the undercover buy will be further guided by the following:

1. Whenever possible, determine in advance the suspect's full identity, method of operation, associates, places frequented, vehicles utilized, etc.
2. Make provisions for adequate auditory and/or visual surveillance prior to, during, and after the purchase.
3. For reasons of corroboration and safety, avoid a situation in which an unaccompanied agent or informant makes the buy without adequate surveillance.
4. Prearrange methods of communication, signals, rendezvous points, etc. The use of cellular telephones in undercover vehicles is strongly recommended.
5. Keep informant buys to a minimum. Make every effort to effect the buy by DEA agents or other law enforcement officers. Also see Paragraph 6612.31G.
6. If possible, obtain a pre-delivery sample to assure that the substance is what it is purported to be. If this is not possible, the undercover personnel should attempt to field test the substance prior to releasing the official funds.

If the substance subsequently is found to be non-controlled, the transaction will not be considered a loss of funds (see 6136) provided that, in the judgment of the SAC/CA, there was no obvious negligence on the part of the personnel involved.

If official funds are released with nothing received in exchange (whether through fronting the funds, robbery, etc.), this will be considered a loss of funds under Section 6136.

E. Prior to making the undercover buy, a money list will be prepared as set forth in Section 6624.

F. Expenditures for the purchase of evidence will be documented on DEA Form 103 (see Subsection 6133.34.)

G. Undercover personnel may not "purchase" controlled substances by exchanging contraband or otherwise illegal goods or services for them, or in any other manner engage in transactions that constitute a crime, absent SARC authorization as set forth in Subchapter 660.

H. Informants may not be given, nor allowed to keep, controlled substances or other contraband as payment or reward for services or information provided to DEA.

6623 FLASHROLLS

(Also see Section 6133 of the Agents Manual and Section 0553 of the Administrative Manual, Volume I.)

The use of official funds as a flashroll will parallel their use in a PE expenditure with the following differences.

A. Authorization for all flashrolls, regardless of amount, must be approved by SAC/CA. No Headquarters approval is required for amounts up to $500,000 for a Field Division or $300,000 for a Country Office. Flashrolls up to $1,500,000 require approval of the appropriate Operations section/office chief. Flashrolls above this amount require the approval of DO. In no case may a flashroll exceed the unobligated balance of PE/PI and Operating funds under the control of the SAC/CA without approval from the appropriate Operations section/office chief.

B. Domestically, if sufficient funds are not available at the field level to make up a flashroll, it will be necessary for Headquarters to issue funds via wire transfer.

1. Requests for funds via wire transfer should be via teletype to the appropriate Operations section/office at least 24 hours in advance of their need. In emergency circumstances, requests may be via telephone, followed by teletype. Requests should specify the following:

a. Case number, title, and G-DEP code.
b. Amount of flashroll required.
c. Name of agent who will assume custody and responsibility.
d. Name, address, and ABA number of financial institution which will receive the wire transfer (select either a Federal Reserve Bank or a Federally-chartered "national" bank).

e. Name, title, and telephone number of bank official coordinating the transaction.

f. Date and time the funds are required.

g. Date the funds will be returned to the financial institution.

h. A description of the operational plan in which the flashroll will be used, including security arrangements.

2. Flashrolls must be returned to the issuing financial institution within 48 hours. If an extension is needed, an additional 48 hours may be granted by the approving Operations section/office upon telephone request. If the flashroll is required for a period beyond 96 hours, it should be returned, and a new request made if necessary.

3. Upon return of the flashroll to the financial institution, a teletype should be sent to the approving Operations section/office advising of the date/time of return, and the results of its use.

C. Flashrolls required by Country Offices will be arranged on a case specific basis. Generally, the same procedures set forth in B above regarding the request, duration of use, and return of the flashroll will apply here as well. The request teletype should be directed to the appropriate Operations section/office, copy to OF.

D. Official funds advanced for use as a flashroll in a specific instance may only be used for that instance. If not used in that instance, or upon termination of that instance, or upon termination of the 48 hour advance period (or any approved extension to it), the flashroll will be returned either to the issuing cashier or the processing bank, depending upon how the funds were advanced. Flashrolls must be returned after a lapse of 96 hours, after which they may be readvanced if necessary.

E. Prior to using the flashroll, a money list will be prepared as set forth in Section 6624 below. Do not submit the money list to file unless the flashroll is lost. The requirement to prepare a money list may be waived by the SAC/CA <u>if</u> the amount of money involved is such as to make this an unreasonable task, <u>and</u>, the money is to be flashed from a highly secure location (e.g., without removing it from a safe deposit box).

F. Flashrolls will be recounted by the receiving agent and the cashier and documented by a DEA Form 12 each time they are transferred between the agent and the cashier.

G. Flashrolls will not be held as evidence.

H. Unless the safety of the undercover agent or an innocent bystander is in immediate jeopardy (e.g., a robbery situation), custody of the flashroll will not be relinquished to a suspected violator at any time.

6624 MONEY LISTS

A. Prior to using official funds in an undercover buy or a flashroll, a money list will be prepared on a separate DEA Form 6a. The list may be handwritten in ball point pen if done legibly. It will be prepared by at least two individuals, although the number involved should be kept to a minimum. Each individual helping to prepare the list will sign it.

The list will open with the statement "The following official funds were used to purchase exhibit_____ from _____on (date)", or, "The following official funds were presented as a flashroll to _____ on (date)".

The currency will be listed by denomination (100's, 50's, 20's, etc.). Under each denomination, list each bill by its 10-character serial number, series (year) and whether it is a Federal Reserve Note (F) or a Silver Certificate (S). (Foreign offices will note what country's currency they use, as well as the denomination, any serial number available, and the date of the currency.)

B. If the funds are to be returned to the cashier unspent or their use as a flashroll is completed, the money list should be discarded.

C. If funds are partially expended, the serial numbers of the unexpended bills on the list will be crossed through and initialled (all copies of the list). All money lists containing expended or lost funds will be attached to the DEA Form 6 documenting the situation and distributed as described in Section 6211.

D. Recovered funds and the related money list should be handled as indicated in Paragraph 6663.67D.6.

6625 TRAFFICKER-DIRECTED FUNDS
(Also see Subchapter 660)

6625.1 GENERAL

A. Situations arise in which a trafficker provides funds to undercover personnel to pay for expenses arising in connection

with activities integral to the undercover role (e.g., travel expenses, purchase of goods or services, etc.); or a trafficker provides funds to undercover personnel for laundering purposes. Funds received in such situations are considered "trafficker directed funds," and may be utilized provided that the expenditure is in accordance with the trafficker's instructions. However, any such use constitutes a sensitive investigative activity (see Subchapter 660).

B. If funds are received from a trafficker without any instructions as to their use (e.g., as compensation for services rendered), they must be held as evidence and eventual forfeiture.

C. An Attorney General exemption is required to operate a proprietary business on a commercial basis. If provided for in the exemption, then proceeds from its operation may be used to offset necessary expenses such as replenishment of stock.

6625.2 PROCEDURES

A. Any proposed use of trafficker directed funds constitutes a sensitive investigative activity (see Subchapter 660). The application should clearly address the intended use of the funds, the trafficker's reason for providing them, and what directions, if any, the trafficker provided as to how they should be spent.

B. The SAC/CA will institute those measures necessary to assure that the acquisition, handling, security, expenditure, and disposition of these funds are properly supervised and fully documented. Each expenditure should be reviewed at the ASAC/ACA level to assure that it remains within the parameters of existing authorizations.

C. Where a series of receipts and/or disbursements of trafficker directed funds is anticipated, at a minimum a Cash Receipt/Disbursement Journal will be established. This Journal will be used exclusively for funds received from a specific trafficker or group of traffickers. Funds originating from other sources (e.g., appropriated funds) will not be included in this Journal. The Journal will have the following entries:

1. Receipts: date, amount, form (check, cash, wire transfer, etc.), denomination (if applicable), source, receiving agent.
2. Disbursements: date, amount, form, payee, purpose (be specific).
3. Running balance. All entries must be supported by transaction documents. Where no documentation of a

transaction is possible, a memorandum should be prepared explaining the Journal entry. Funds provided to an informant must be documented via a DEA Form 103. All transaction documents (as will the Journal itself upon completion of use) will be processed as non drug evidence (see Subsection 6663.65).

D. Domestically, any remaining balance of trafficker-directed funds beyond those actually spent for purposes specified by the trafficker and not returned to him will be processed for forfeiture in accordance with paragraph 6663.67 and Section 6654. Likewise, funds unconditionally received from the trafficker or funds provided for a promised delivery of drugs, or for other requested goods and services, will be processed for forfeiture. Tangible property acquired as a result of expenditure of trafficker-directed funds will be similarly processed. These funds may not be applied to cover the costs of the investigation.

E. If the trafficker directed funds are to be transported or wired to, from, or through a foreign country, it is essential that any such transaction be fully coordinated with the DEA Country Office having jurisdiction, which will coordinate the matter with host country authorities. Such coordination will be initiated via a request teletype to the Country Office, copy to the appropriate Operations section/office and OF. The teletype should contain sufficient detail for the Country Office to properly carry out its task. In emergency situations, this coordination may be initiated via telephone, with teletype to follow.

Failure to properly coordinate such matters may not only jeopardize the investigation and host country relationships, but constitute a violation of host country law. Should a highly unusual circumstance dictate that host country authorities not be advised, this shall be considered a sensitive investigative activity, and authorization must be sought as per Subchapter 660.

F. Where trafficker directed funds come under DEA control in a foreign country, their ultimate disposition will be handled on a case specific basis, depending upon the circumstances of the activity, host country laws, the terms of agreement under which DEA operates in the country, and requirements imposed by the U.S. Mission. The objectives of full documentation, full accountability, and full compliance with host country law will be accomplished, regardless of the means required to achieve them.

6626 REVERSE UNDERCOVER ACTIVITIES

6626.1 GENERAL

A. "Reverse Undercover" is a generic term for any variation of the traditional role of undercover personnel as the "buyer" of an illegal product or service, such that the role is one of seller of illegal products or services.

B. Reverse undercover activities will not be used in the fashion of a general "advertisement", with little idea as to who may appear. The only exception to this may be in "storefront" operations involving the sale of precursor chemicals. The reasons for this are as follows:

1. DEA's enforcement activities center on the immobilization of major trafficking organizations. We will not depart from this objective.
2. Focusing on identified targets decreases the probability of robbery attempts, adverse court rulings, and operating at cross purposes with other law enforcement agencies.

C. Although reverse undercover activities generally are productive in terms of asset seizures, asset seizures per se are not grounds for the use of this approach. The objective must be to immobilize major violators, with asset seizures being just one facet of this immobilization.

6626.2 FURNISHING A "DIFFICULT TO OBTAIN" ITEM OR SERVICE

A. Paragraph III D of the Domestic Operations Guidelines sets forth requirements to be followed whenever an "item necessary to the commission of an offense other than a controlled substance", or a "service in furtherance of illegal trafficking", "which are difficult to obtain" are furnished in an undercover activity.

B. The standard for the term "difficult to obtain" is necessarily subjective, and will depend upon the circumstances of a specific situation. When in doubt, the rule of thumb shall be to err on the side of caution and consider it a sensitive investigative activity as set forth in Subchapter 660.

NOTE: Excluded from the above are instances where such items or services are furnished in a manner in which no public harm could accrue (e.g., the items will be recovered through imminent arrest).

6626.3 Use of Controlled Substances. A reverse undercover activity may require the use of controlled substances. Where controlled substances are required, the following policies and procedures shall apply:

A. Paragraph III E of the Domestic Operations Guidelines sets forth requirements to be followed whenever a controlled substance is to be furnished to a violator. The term "furnish" is interpreted to cover all situations in which a violator is supplied with a controlled substance except:

1. Where the controlled substance is to be used only for flash; or
2. Where it is to be supplied in a controlled setting with imminent recovery through arrest; or
3. Where the amount supplied does not exceed that required for testing purposes, insufficient for redistribution.

B. Where the investigative plan is to use controlled substances without actually losing control of them (i.e., 1. and 2. above), the SAC/CA shall be the approving authority.

C. Where the investigative plan is to supply a controlled substance to the violator, this constitutes a sensitive investigative activity as set forth in Section 6602. If the amount is sufficient only for testing purposes and realistically could not be redistributed by the violator (i.e., 3. above), DO may authorize the activity without initiating the full SARC review/authorization process (see Subsection 6603.32).

D. Where the investigative plan is to supply a controlled substance in an amount sufficient for redistribution, this constitutes a sensitive investigative activity requiring full the SARC review/authorization process (see Section 6603). Any such authorization will be granted on a highly selective basis, where this approach is the only means of implicating a highly significant violator.

6626.4 Handling/Processing of Controlled Substances. Where using a controlled substance is necessary in a reverse undercover activity, the following procedures will be followed:

6626.41 Marijuana

A. Marijuana used in reverse undercover activities will be drawn from earlier seizures. It is important that these

exhibits are no longer needed as evidence in the earlier case, and that our subsequent use of them does not conflict with any disposal instructions issued by the court. Where the use of a marijuana exhibit for this purpose is contemplated, the court should be requested to frame such instructions as "return to DEA for disposal" or some equivalent phrase, rather than that it be destroyed forthwith.

B. At the discretion of the SAC/CA (and the concurrence of the U.S. Ambassador), a limited amount of marijuana may be kept in secure storage for use in reverse undercover activities within this Division/Country Office. The precise amount to be held for this purpose will be established by the SAC/CA in accordance with anticipated need. As marijuana becomes stale after a period of time (thus detracting from its marketability), it will be necessary for the SAC/CA to incorporate measures to "turn over" this stock periodically.

C. To process a marijuana exhibit into a field office stockpile, the case agent should indicate "transferred to reverse undercover stockpile" in Part I of the DEA Form 48. The Evidence Technician will complete Part II per instructions in Part I, and enter the exhibit in a separate ledger maintained for this purpose (see G below). Upon completion of the DEA-48, this exhibit may be considered disposed of in terms of closing the former case. If only a portion of a drug exhibit is to be transferred in this manner, the complete disposition of the exhibit will be reported on a single DEA Form 48.

D. Withdrawals from this stockpile will be done by at least two employees (e.g., Evidence Custodian and the receiving agent), and documented via a DEA Form 12. The agent to whom the marijuana is released will be held responsible for its safekeeping and prompt return to the stockpile as soon as the need for it has ended. The logistics of the operation should be designed such that the marijuana is out of the stockpile the shortest possible time (preferably less than 24 hours), and that rigid security measures are taken to safeguard its use. Unless the bulk of the marijuana is such as to make it impractical, it will be weighed upon release from and return to the stockpile, with the weights recorded in the ledger (see G. below). If the weights differ, the full circumstances of this difference will be explained in the DEA Form 6 reporting the activity in which the marijuana was used (copy to the Evidence Custodian).

E. If the use of the marijuana is such that it has taken on evidentiary value, it will be submitted as such via a DEA Form 7 in accordance with Subsection 6662.51, with an appropriate notation made in the stockpile ledger. The "Remarks" section

of the DEA Form 7 should contain the notation "this is material provided by DEA in an undercover investigation". If it has not taken on evidentiary value, it will be returned to the Evidence Technician on a DEA Form 12. If the amount submitted or returned is less than the amount issued, the full circumstances will be documented in a DEA Form 6.

F. Where the marijuana has become stale or for any other reason requires disposal, the Evidence Technician will document a witnessed destruction in the ledger and in a cosigned memorandum to the SAC/CA.

G. The ledger referenced above will be permanently bound, with all entries made in ink. It will show: a balance on hand; each "receipt" into the stockpile by date, case number, exhibit number, and amount; and each "disbursement" by date, case number (if applicable), amount (both the amount released and the amount returned), and purpose. It will be supported by a chronological file containing copies of all DEA Form 48's, DEA Form 12's, DEA Form 7's, approval memoranda, etc.

H. The SAC/CA will designate a senior division manager to conduct a routine, quarterly audit of these records versus stock on hand. This manager will certify the results of his audit via memorandum to the SAC/CA.

6626.42 Controlled Substances Other Than Marijuana

A. The DEA laboratory system will maintain reverse undercover stockpiles of the most commonly abused controlled substances. See Section 7311 of the Laboratory Operations Manual. These stockpiles are built from selected drug exhibits which have been cleared for disposal via DEA Form 48's.

B. Where a reverse undercover activity will require the use of any of these drugs, it is important that the Laboratory Director be consulted as far in advance as possible with regard to the kind, (i.e., tablets, powder, etc.), purity (if applicable), packaging, amount, and date needed. Reflect this coordination in the request for Headquarters approval, if required (see Subchapter 660).

C. The SAC/CA will forward a memorandum to the Laboratory Director specifying the file number, full information as to the drug required (see B above), the anticipated dates of withdrawal and return to the laboratory, and the name of the agent to be charged with its custody. If Headquarters approval is required, the SAC/CA will attach a copy of the Headquarters approval teletype to his memorandum.

D. The drug will be issued under seal to that agent via a DEA Form 12. The seal should remain intact until the drug is actually required, and returned as soon as possible after use (see Paraagraph 6662.23D).

[redacted]

E. At the conclusion of its use, the drug will be returned to the laboratory under seal. If not needed as evidence, its return will be documented via a DEA Form 12. If needed as evidence, it will be documented via a DEA Form 7. If the amount returned differs from the amount withdrawn, the full circumstances of this difference must be explained in a DEA Form 6 (copy to Laboratory Director).

F. Schedule II controlled pharmaceutical drugs may not be sought from commercial sources without prior coordination with OD. The reason for this is that annual production quotas are established for these substances based upon medical and scientific requirements. No latitude has been provided in these quotas for uses other than these.

6626.5 COORDINATION WITH OTHER AGENCIES

A. To preclude the chance of two undercover activities clashing with each other, it is important that reverse undercover activities be coordinated with appropriate law enforcement agencies operating in the area. This will include the FBI and, insofar as possible without sacrificing security, appropriate state and local agencies.

B. As a matter of policy, DEA will not supply drugs (other than marijuana) to any state or local agency for reverse undercover use on a unilateral basis. At the discretion of the SAC, marijuana may be supplied to state or local law enforcement entities provided a high ranking authority of agency submits a written request to the SAC that DEA supply marijuana for this purpose. The request must certify the following:

1. The marijuana is supplied to the agency for the exclusive purpose of reverse undercover activities;
2. The marijuana will not be released into the traffic;
3. The agency agrees to assume responsibility for adequate security and storage of the marijuana; and

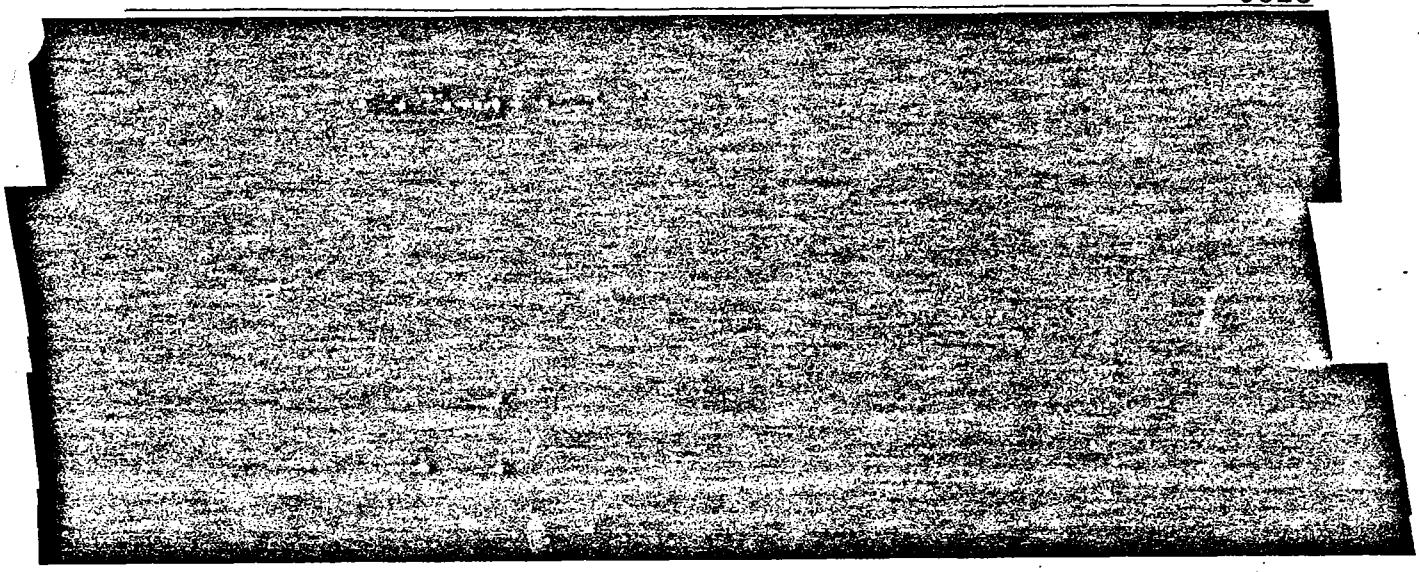
4. The agency understands that the transfer of marijuana is permanent and that upon completion of its use it will be destroyed according to the rules and regulations of the receiving agency. Under no circumstances will the marijuana be returned to the DEA.

A DEA Form 12 will be used to document the transfer of DEA supplied marijuana.

C. Where the SAC feels that significant interagency relations are at stake, he may handle the supplying of drugs other than marijuana as a cooperation case, with a DEA agent assigned to monitor the investigation and use of the drugs. All other provisions of this section shall apply.

D. Insofar as possible, our policies with regard to state, local, and foreign agencies shall apply to other Federal agencies as well. An exception to this will be drugs furnished to the FBI. However, FBI policy dictates that its use of these drugs be coordinated with DEA at both the field and Headquarters levels with regard to targets and operations.

E. If, in a CA's judgement, significant interagency relations are at stake, drugs (marijuana or otherwise) may be furnished to counterpart foreign law enforcement agencies for reverse undercover use. The head of the drug law enforcement agency for the host country must submit a written request as in B above. In addition to covering points 1 through 4, this request must also certify that DEA's furnishing these drugs, as well as the agency's proposed use of them, are not in violation of any host country law. The CA will forward this request, together with a written endorsement setting forth how this action will enhance interagency relationships, to the appropriate Operations section/office. Upon concurrence, the section/office will forward the request through OF to DO for approval. If DO concurs, the request will be forwarded to AF for action. The drugs will be sent to the CA, who will make the interagency transfer as in B above.



6628 NON-SEIZURE OF CONTROLLED SUBSTANCES

A. Situations may arise in which undercover personnel gain specific knowledge of a shipment, delivery, or cache of controlled substances of non-governmental origin. While the usual course of action in such circumstances is to seize them, there may be instances where the investigative objectives can be better achieved by not doing so.

B. Factors to consider in making a determination in these situations shall include:

1. The significance of the violator.
2. The amount and kind of drug involved.
3. The status of the investigation (i.e., is non-seizure the only feasible alternative to implicate the major targets of the investigation).
4. The impact of seizure on the outcome of the investigation (i.e., would seizure result in an inability to implicate the major targets).

C. Where the information is specific, and the amount of drugs is substantial, and the SAC/CA determines that non-seizure is the appropriate course of action, this shall be handled as a sensitive investigative activity as set forth in Subchapter 660.

NOTE: Excluded from the foregoing are situations in which controlled substances are intercepted in transit and a decision is made to temporarily not seize them, but to proceed with a controlled delivery.

6629 UNDERCOVER DOCUMENTS

6629.1 GENERAL

The use of documents to support or enhance an undercover role is encouraged. However, the procurement, utilization, and control of these documents will be such as to assure that they are properly accounted for at all times, and are used only for authorized purposes. The use of these documents for unofficial purposes is expressly prohibited. For the purpose of this section, policies and procedures governing undercover documents shall be divided into three categories:

- Those obtainable at the field division level.
- Those which must be obtained via request to another field division.
- Those which must be obtained via request to Headquarters.

NOTE: Although this section is directed primarily towards the domestic procurement, utilization, and control of undercover documents, it also applies to foreign offices and personnel. In the foreign offices, the authorizing official will be the Country Attache.

6629.2 DOCUMENTS AT THE FIELD OFFICE LEVEL

This category will comprise the majority of undercover documents needed for DEA operations. It includes all those which are obtainable from state, local, and commercial entities within divisional boundaries.

A. Other than documents such as personal business cards, the use of commercial printers to manufacture counterfeit licenses, birth certificates, registrations, credit cards, etc., should be avoided. Such actions inevitably are prohibited under some Federal, state, or local law; for which DEA, the printer, or both may be held to account. Arrangements should be made with the agency responsible for issuing such documents to obtain genuine copies made out in the undercover name.

B. The procurement of any undercover document is subject to the prior approval of the SAC. At the SAC's discretion, this authority may be delegated to the ASAC and RAC's. Such approval shall be sought via DEA Form 457, Undercover Document Request.

C. The SAC will maintain a file consisting of copies of DEA Form 457.

D. In addition to the foregoing, OD can furnish undercover DEA registrations upon written request. Contact OD for further details.

6629.5 DEA FORM 457, UNDERCOVER DOCUMENT REQUEST. This is a four-part manifold, to be handled as follows:

A. For documents obtainable at field division level, send all copies to SAC or his designee for approval. Upon approval, distribute as follows:

Copy 1 - requesting SAC file
Copy 2 - employee having custody of document
Copy 3 - employee procuring document
Copy 4 - extra.

B. For documents obtainable at another field division, send all copies to the procuring SAC. Upon procurement, distribute as follows:

Copy 1 - requesting SAC file
Copy 2 - employee having custody of document
Copy 3 - procuring SAC file
Copy 4 - extra.

C. For documents obtainable at Headquarters, forward all copies to Headquarters (OS). Upon procurement, distribute as follows:

Copy 1 - requesting SAC file
Copy 2 - employee having custody of document
Copy 3 - for Headquarters use
Copy 4 - Headquarters file*

* Revision

Subchapter 663 Electronic Surveillance Operations

6631 GENERAL

A. This subchapter contains those policies and procedures applicable to the use of electronic surveillance by domestic and foreign offices. Its contents are based upon law and Departmental policies.

Federal law regulates law enforcement monitoring of wire, oral and electronic communications. These three terms are defined in *18* USC 2510 and are mutually exclusive.

Generally wire communications are voice communications which are transmitted over a wire telephone system, and include cellular telephones. (See 6632.)

Oral communications are voice communications which are not carried by a communications system, but which are uttered under circumstances exhibiting a justifiable "reasonable expectation of privacy". (See 6633.2).

Electronic communications are generally transmissions of voice, data or message over electronic or radio communications systems which are not readily accessible to the general public, but do not include voice telephone communications. (See 6636.)

These laws and policies govern consensual and nonconsensual monitoring, which are defined as follows:

1. Consensual: Where a conversation between two or more individuals is monitored, and at least one of them is aware of and consents to this monitoring. The consenting party may be an agent, an informant, or any other individual.
2. Nonconsensual: Where a conversation between two or more individuals is monitored, and none of the participants is aware of or has consented to this monitoring.

B. The contents of this subchapter do not apply to either of the following situations:

1. Monitoring conversations with the consent of all participants (e.g., the overt tape recording of an interview, see 6211.6).
2. Monitoring conversations which take place without any "reasonable expectation of privacy" (e.g., monitoring a loud conversation in a public place without the use of a device or technical aid, *or monitoring radio communications which are readily accessible to the general public.

NOTE: The term "reasonable expectation of privacy" is a legal term of art which is not susceptible to a definition in absolute terms. It is a constitutional concept founded in the Fourth Amendment principles of search and seizure, and must be measured on a case-by-case basis. In the context of electronic surveillance of conversations, a reasonable expectation of privacy exists when all parties to the conversation have taken reasonable steps

* Revision

to ensure that their conversations are not intercepted or monitored through the use of any electronic, mechanical, or other device. If a conversation can be overheard by a nonparty through the utilization of his normal hearing capacity (e.g., placing an unaided ear against a party wall), there is no reasonable expectation of privacy. However, violations of the statutes prohibiting electronic surveillance of conversations can lead to both criminal and civil sanctions. Therefore, caution should always be exercised in this area and doubt should always be resolved in favor of the privacy of the conversation. Questionable situations should be discussed beforehand with the appropriate United States Attorney and/or the Office of Chief Counsel.

C. The SAC, at his discretion, may delegate authority to approve actions or originate communications under this subchapter to ASAC's in charge of District Offices.

D. Technical equipment used under the policies of this subchapter will be maintained in accordance with Section 8616 of the Planning and Inspection Manual. The SAC may designate one or more individuals to maintain, issue, and--where appropriate--install this equipment. It is important that planned use of this equipment be coordinated with technical personnel as far in advance as possible.

E. The SAC should assign a responsible employee to serve as the "Technical Coordinator". This employee will act as the central point of coordination to process requests for Headquarters approval for those types of electronic surveillance which require it (as specified herein).

F. Where a need arises to use electronic surveillance in an area outside the originating office's jurisdiction, it is incumbent upon the originating office to obtain the necessary approvals and to comply with any reporting requirements as appropriate.

G. Any use of electronic surveillance equipment outside the confines of an official investigation is expressly prohibited.

6632 TELEPHONE COMMUNICATIONS

Law and Departmental policy regarding telephone (wire) communications are sufficiently distinct to warrant separate treatment in this subchapter. Four telephone-related areas are covered here: subscriber/toll information; use of telephone decoder; consensual monitoring; and nonconsensual monitoring.

6632.1 SUBSCRIBER/TOLL INFORMATION

A. Law enforcement access to transactional records or other information (but not the contents of a communication) pertaining to a subscriber or customer of a service provider (telephone company) is regulated by 18 USC Section 2703(c). The authorized procedures are:

1. An administrative subpoena (see 6614.2) or grand jury subpoena.
2. A warrant issued under the Federal Rules of Criminal Procedure;
3. A court order for such disclosure as long as the Government entity shows that there is reason to believe the records or other information sought are relevant to a legitimate law enforcement inquiry;
4. Consent of the subscriber or customer to such disclosure.

Information commonly available in this manner includes (for a specified telephone number):

a. Name and address of the subscriber, number of telephones at that address, and the date of installation.
b. General information such as marital status, name of spouse, employment, and history of previous service.
c. Charges to that number for a specified period of time: toll, collect, credit card calls, and telegrams.

B. Routine requests for subscriber/toll information, without some indication that the information sought will be pertinent to an investigation, are prohibited. Note that the court issuing an order pursuant to procedures detailed in paragraph A, on a motion made promptly by the service provider, may quash or modify such order if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

C. DEA is not required to notify the subscriber/customer that his records have been subpoenaed. Telephone companies often will notify customers that toll records have been subpoenaed, but there is no requirement under Federal law that they do so. Generally, telephone companies honor requests by DEA to delay customer notification for a 90-day period when toll records are subpoenaed. A DEA subpoena can request, but not require, a company to delay notification. Some telephone companies have suggested they will only honor a Court Order directing a delay in notification. Keep in mind that a Court Order is the only legal mechanism to prevent a company from automatically notifying a customer. Since the divestiture of AT&T, policies on notification to the subscriber/customer by telephone companies may vary from region to region. When requesting this information, you must take into consideration the policies practiced by the respective company in notifying their customers and plan accordingly what legal process serves you best. Do realize that the only assurance DEA does have against premature notification is to obtain a court order ordering the telephone company not to disclose a law enforcement inquiry.

D. To request that the telephone company delay any customer notification, when using a subpoena, DEA must certify that notification to a subscriber/customer could impede an investigation. DEA certification requesting nondisclosure should be a matter of course in all active investigations, and in those completed investigations where there is a basis for belief that disclosure would impede the investigation or prosecution.

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6641 ARRESTS

This section is a general guide to the laws of arrest, as well as DEA policies and procedures pertaining to arrests. It is not intended to be an in-depth legal treatise on the subject; technical legal questions should be directed to the Office of Chief Counsel and/or the appropriate U.S. Attorney's Office.

The Domestic Operations Guidelines (Appendix B) contain a number of requirements relating to the coordination of arrests with the prosecuting attorney. See 6214.23 for details.

See Subchapter 651 for guidelines on DEA participation in arrests in foreign countries.

6641.1 GENERAL

6641.11 Authority

A. DEA agents are delegated authority under 21 USC 878 to execute arrest warrants and serve summonses issued under authority of the United States (not just the Controlled Substances Act).

B. DEA agents are further empowered to make arrests without a warrant for any Federal felony or misdemeanor committed in their presence, or any Federal felony based upon probable cause that the person has committed or is committing the offense.

C. DEA agents may also be empowered to make arrests for offenses under state law; however, this varies from state to state. It is incumbent upon the agent to be cognizant of his status as a peace officer in the states encompassed by his post of duty. It should be recognized that, lacking this status, an agent's authority in these situations is that of an ordinary citizen.

D. As a general rule, arrests for nondrug offenses should be made only in the case of felonies or violent misdemeanors committed in the agent's presence, and immediate intervention by the agent is necessary to prevent escape, serious bodily injury, or destruction of property. While a determination as to legal representation must depend on the specific facts and circumstances, the Government will, as a general rule, provide representation to agents who intervene (including making an arrest) in these situations. However, under current law the Government cannot pay money judgments rendered against agents who acted in their individual capacities. (See 6113.)

E. The term "arrest" is defined as "the apprehending or restraining of one's person in order to be forthcoming to answer an alleged or suspected crime." An arrest is based upon probable cause, with the full expectation of it being the first step in a judicial process. For reporting purposes, a "surrender" or an answer to a summons (6641.15) is considered an arrest requiring a DEA-202 arrest submission (6223).

The law also provides for "stops" and "contacts," which are short of an arrest. A stop is a limited restraint on a suspect's

freedom of movement for the purpose of building probable cause or reducing suspicion. It may be based upon an articulable "reasonable suspicion". A contact is a request for cooperation under circumstances where the suspect is free to leave.

F. Should an agent receive instructions from a Federal or state prosecutor to participate in an arrest in a manner which is contrary to the policy guidelines contained in this section, he will not comply with them, but instead refer the matter to his supervisor.

Likewise, should an agent be requested to participate in an arrest/search situation being directed by another agency in a manner which is contrary to the policy guidelines contained in this section, he will disassociate himself from the activity and report the matter to his supervisor.

6641.12 Probable Cause. Arrests must be based upon the Fourth Amendment standard of "probable cause". This term may be defined as that set of facts and circumstances which would lead a reasonable law enforcement officer (not an untrained citizen) to believe a crime has been committed, and that the subject committed it.

Probable cause does not require the same quantum of proof necessary to establish guilt at trial. Nevertheless, it must be based upon sufficiently articulable information to justify the action taken.

6641.13 Arrest With vs. Without Warrant. There are two disadvantages to a warrantless arrest:

1. The probable cause has not yet been examined by the court (or magistrate) and found to be sufficient. We are presuming that the court (or magistrate) will agree with our finding of probable cause in an after-the-fact examination; and
2. We are restricted as to where the arrest may be made. In the absence of unusual circumstances, we may not forcibly enter the subject's home to make the arrest (Payton vs. New York, 100 S. Ct. 1371 (1980)). In fact, the only completely "safe" location to make a warrantless arrest, from a legal standpoint, is in a "public place" (U.S. vs. Watson, 96 S. Ct. 820, 828 (1976)).

Therefore, it is DEA policy that, unless instructed otherwise by the U.S. Attorney, warrantless arrests will only be made where:

1. Probable cause exists that the subject:

   a. has committed or is committing a felony offense; or
   b. is committing a misdemeanor in the agent's presence;

and

2. There is insufficient time to obtain a warrant.

Where a warrantless arrest has been made, the agent must be prepared to to swear out the complaint or affidavit at the initial appearance.

6641.14 Obtaining the Warrant

A. Rule 41 of the Rules of Criminal Procedure authorizes the issuance of an arrest (or search) warrant by any Federal magistrate or judge of a state court of record within the district wherein the person (or property) sought is located. In practice, warrants will be obtained from a Federal judge or magistrate after full coordination with the U.S. Attorney's Office (or, for state prosecutions, from a state judge or magistrate after full coordination with the state prosecutor).

B. The judge or magistrate will issue a warrant upon a showing of sufficient probable cause. This showing can be in the form of a complaint, an affidavit, testimony before a grand jury, or, should circumstances dictate, oral or telephone testimony before the judge or magistrate. The approach chosen in a particular instance will be decided by the prosecuting attorney. All require a written or oral statement of similar content by the agent. For the purpose of clarity, only the term "complaint" will be used below.

C. Although not a requirement, the complaint will generally be filed in the judicial district having venue. The U.S. Attorneys' Offices involved are primarily responsible for resolving any questions of venue.

D. Complaints generally will be prepared on forms supplied by the U.S. Attorneys' Offices. However, use of these forms is not mandatory. Either the case agent or another agent having complete knowledge of the investigation will prepare the complaint in concert with the prosecuting attorney.

E. The complaint must state:

1. The identity of the subject by full name if known, or by any name or description by which he can be identified with reasonable certainty. The fact that a name subsequently is found to be erroneous, or an alias, will not in and of itself invalidate the probable cause.
2. The specific statutory citation involved.
3. The statement of probable cause, limited to facts refined so as to present clear and persuasive evidence.

In stating probable cause, do not include any conclusions which are not specifically supported by facts contained therein. There are certain prosecutive (or investigative) considerations which may favor limiting the amount of evidence presented in the complaint. This must be balanced against the need to clearly demonstrate probable cause, as well as the fact that any evidence not stated in the complaint cannot be introduced after the fact to bolster probable cause.

Probable cause need not be based on the personal knowledge of the complainant. Hearsay is acceptable if each such fact is attributed to its source. If the source is a confidential informant, an appraisal of his reliability, plus corroborative facts, must be included.

Hearsay grows rapidly weaker with each person involved in the hearsay chain. Whenever possible, eliminate middle parties in favor of attributing the facts to the original source.

The guiding principle in setting forth probable cause is to clearly demonstrate that an offense has been committed by this individual.

F. If more than one subject is involved, a single complaint will suffice, provided that it contains sufficient probable cause to arrest each one.

6641.15 Summons in Lieu of Arrest. In some instances the U.S. Attorney may wish to proceed by summons in lieu of arrest. Where the defendant is a corporation, a summons must be used.

A summons is obtained and returned in the same manner as a warrant. It is served by presenting the defendant with a true copy. If the defendant is a corporation, it is served on its agent authorized by law to receive service of process (an officer or manager).

If the summons cannot be served personally (i.e., the defendant cannot be located within a reasonable time), then it may be left with someone of suitable age at the defendant's dwelling and mailed (via registered mail) to his last known address.

If the defendant fails to appear as directed, a warrant will be issued for his arrest.

6641.2 ARREST PROCEDURES

6641.21 Preplanning

A. Unless the arrest must be made out of spontaneous circumstances, it will be thoroughly coordinated with the U.S. Attorney's Office (or other prosecutor) beforehand. If appropriate, the potential use of the defendant as an informant should be included in this discussion so as to minimize delays in utilization or misunderstandings at a subsequent stage.

B. Unless the arrest must be made out of spontaneous circumstances, it will be thoroughly preplanned beforehand. This preplanning will be led by the immediate supervisor, and include at least the following points:

1. If the immediate supervisor will not be present at the arrest, he will designate a senior agent to be in charge at the scene.
2. All defendants will be considered at least potentially armed and dangerous and possibly under the influence of drugs.
3. Barring unusal circumstances, the area police should be notified that an arrest will be made in their jurisdiction. Preferably, there active assistance should be sought.
4. Insofar as possible, defendants should be located and kept under surveillance once the process to obtain the warrant has begun. In this manner, the warrant can be executed expeditiously, and the arrest can be made under more controlled circumstances.

5. Once issued, an arrest warrant should generally be executed promptly. While there is no time limit on executing an arrest warrant (unlike search warrants), the arrest should be made without prolonged delay. This does not mean, however, that the defendant must be arrested on sight.

6. An arrest should not be attempted by a single agent. At least two should participate, with provision for additional backup support so as to ensure physical superiority, the covering of all exits from a premises, etc.

7. Based on the circumstances, planning should focus on the best means of executing the warrant quickly, quietly, and with minimal chance of violence. Ideally, this would be in a location where the defendant is in plain view, out of the company of associates, with few if any bystanders present. Such ideal conditions will of course rarely exist, and compromises will have to be made accordingly. One basis for compromise is the collocation of the defendant with drugs or other incriminating evidence (or other defendants). Nevertheless, the prime consideration will always be to minimize the chance of violence.

8. If the defendant is known to be located inside a premises under his legal control, the arrest warrant is sufficient basis to force entry and conduct a search for the defendant if necessary. However, if he is in a premises under the legal control of a third party, then a search warrant is necessary for any such action. The only exceptions to this are where the third party consents, or where the circumstances are "exigent" (Steagald vs. U.S., 101 S. Ct. 1642 (1981)). The preplanning should thus consider the need for search warrants (which can be obtained by telephone if necessary) under the Steagald requirement.

10. Insofar as possible, the agents who will make the arrest should have the warrant in their possession. This is a matter of policy rather than a legal requirement. Having the warrant at hand can serve as a further element to control the situation. Legally, the arresting agent need only have positive knowledge that a warrant is outstanding.

6641.22 Making the Arrest

A. The conduct of the arresting agents has a distinct bearing on the defendant's reaction to being arrested. The agents will clearly display their badges or credentials, and, in a confident, forceful manner, inform the defendant that:

1. They are Federal agents; and
2. He is under arrest for violation of Federal drug laws. (A general statements of the charge is sufficient at this point. The full charges will be read to the defendant at his initial appearance in court).

If the arresting agents have the warrant at hand, and the defendant wishes to examine it, they should display it to him. If they do not have the warrant at hand and he wishes to examine it, then he should be given the opportunity to do so at the earliest practical point.

The defendant will be searched incident to arrest (see 6641.23 below) and handcuffed.

Handcuffing is mandatory in all instances. If there is more than one defendant and not enough handcuffs available, their hands will be bound with a belt, rope, or some other substitute.

B. Should the defendant resist arrest, attempt to flee, or attempt to destroy evidence, then reasonable force may be used to restrain him. "Reasonable force" may be broadly defined as that amount of force necessary to protect the arresting officers and innocent bystanders. The use of "unreasonable force" may lead to the dismissal of the charges, as well as civil and/or criminal action against the officers.

Firearms may only be fired in self-protection or protection of others, not to prevent flight or destruction of evidence. However, there is no restriction on drawing the firearm in any threatening situation (e.g., a serious physical confrontation, a forced entry of a premises, a vehicle stop, etc.).

C. If there is probable cause to believe the defendant is inside a premises, the agents must knock, announce their identity and purpose in a loud and clear manner, and wait a "reasonable amount of time" for the door to open. The precise definition of this term will vary with circumstances; however, in the absence of any mitigating factor, it must be that amount of time necessary to reach the door from the furthest part of the premises. After waiting a reasonable amount of time, or at any point where there is indication that evidence is being destroyed or the defendant is taking flight or defensive action, entry may be forced. Entry may also be forced, without prior announcement of authority and purpose, where such an announcement would be a "useless gesture" (i.e., is it a virtual certainty that the defendant already knows your purpose).

Alternatively, a ruse may be used to gain entry provided that the ruse does not include the use of forced entry. (The mere opening of a door has been held to be a "forced entry".)

NOTE: See 6641.21B8 above regarding the need for a search warrant where the defendant is located in a premises under the legal control of a third party.

6641.23 Search Incident to Arrest

A. Search incident to an arrest, without benefit of a seperate search warrant, is permissible as long as it is done within certain legal parameters.

The basis for allowing this warrantless search is that the defendant may be in possession of a concealed weapon or evidence, and that, within the confines of the arrest, may move to use the weapon or destroy the evidence.

Therefore it is legally permissible to search the defendant's person, as well as any things in the area of his immediate environment which could serve as a place of concealment and to which he would have quick and ready access. The parameters of this warrantless search may be extended in certain circumstances (see E and F below).

B. Contemporaneous with placing the defendant under arrest, he will be carefully frisked for weapons or evidence. This will include examining the contents of any containers or packages in his immediate possession. All items of property in the defendant's immediate possession should be taken into custody for safekeeping. See 6663. The rule of thumb with regard to searching containers in the immediate area of arrest is whether or not they could reasonably contain weapons or evidence, and whether or not the defendant could quickly gain access to their contents. *If the defendant disclaims possession, yet there is probable cause to believe otherwise, the item should be taken into custody and inventoried for safekeeping. See 6663.

C. At some point in the arrest process the defendant should also be strip-searched, at least down to underclothing. Preferably, this should be at the time of arrest. In any event, he should not be released to another agency (U.S. Marshals Service, detention center, etc.) without positive knowledge that he is not concealing weapons or evidence.

NOTE: Both a frisk search and a strip search are permissible as long as they are done in a reasonable manner. Both types of searches should be performed by a member of the same sex as the defendant. Strip searches will be done in a private environment, and limited to a thorough examination of all articles of clothing (i.e., not body cavities). If there is probable cause to believe that a weapon or evidence is being concealed in a body cavity, do not attempt any such search (either physically or visually) without first consulting with the prosecuting attorney. Such searches may only be conducted by a qualified physician, and pursuant to either the consent of the defendant or a court order.

D. All containers taken into custody must be thoroughly examined to inventory their contents. See 6663. Assess each item of property taken into custody as a result of the arrest for its evidentiary value and/or forfeitability. Evidence and property subject to forfeiture will be so processed.

E. Where an entry to the premises has been made to effect the arrest, then a cursory inspection of the entire premises may be made for the exclusive purpose of assuring the safety of the arresting agents (e.g., to discover an armed accomplice in another room or closet). This cursory inspection may not include examining places or things that could not reasonably conceal a person.

If, in the course of a search incident to an arrest or a cursory inspection of a premises, evidence or contraband is observed in plain view, it may be seized as such. Plain view evidence or

contraband may also be used as probable cause to obtain a search warrant for a more thorough search.

In the period it takes to obtain a search warrant, the premises will be "secured". Essentially, this means guarding it from access by nonlaw enforcement personnel or, if such access is justifiable, escorting the person so as to prevent the destruction of evidence, etc.

F. If the defendant is arrested in a vehicle, the incident search may encompass the entire passenger compartment and any container located therein.

There are two situations in which the entire vehicle may be searched without a warrant. These are:

1. If probable cause exists to search (whether through the plain view doctrine or otherwise), and if the vehicle cannot reasonably be secured before obtaining a warrant. Although the courts have allowed searches under such emergency circumstances, it can be expected that the admissibility of any resulting evidence will be closely scrutinized.
2. If the vehicle is seized for forfeiture, it will be thoroughly inventoried for the purpose of identifying returnable property. This search need not be contemporaneous with the arrest. Property deemed returnable will be handled according to 6663.54.

G. Weapons, evidence, or contraband found in a search incident to arrest will be handled in accordance with Subchapter 666.

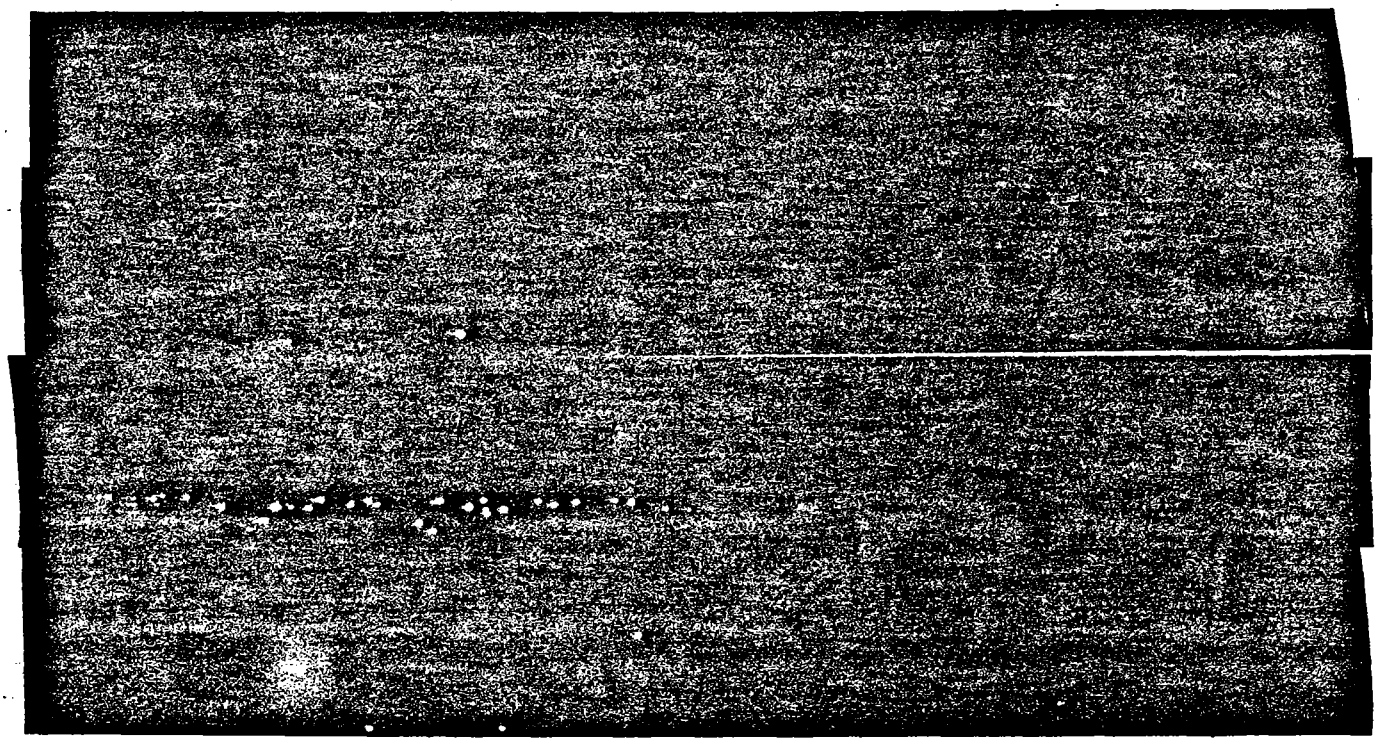
6641.24 Transporting Prisoners

A. Generally, prisoners should be transported from the scene of arrest to the DEA office or other processing facility as soon as possible. However, circumstances may dictate exceptions to this (e.g., an unforeseen number of defendants temporarily exceeds the preplanned means of transportation; or it may be desirable to have the defendant present during the execution of a search warrant on his premises - see 6663.67D).

B. In transporting a prisoner by vehicle, the following guidelines shall apply:

1. The prisoner will be thoroughly searched beforehand.
2. He should be placed in the rear seat, after having first carefully checked the rear seat area to ensure there is nothing present that could be used as a weapon or means of escape.
3. He will remain handcuffed throughout. However, do not handcuff him to a fixed object (e.g., door post, headrest, etc.).
4. At least two agents, and no more than two prisoners, will be present in a single vehicle. If two prisoners are being transported, both will be placed in the rear seat. Where more defendants are arrested than can be safely transported, assistance should be sought from local authorities.
5. Insofar as possible, a radio-equipped vehicle should be used with the radio placed "out of service" (10-10) during transport. Conversation between prisoners should be prevented or controlled.

6. Once the transporting has begun, the vehicle will proceed directly to its destination. Only in extreme circumstances (e.g, coming to the assistance of agents in physical jeopardy) may the mission be interrupted.



6641.3 PROCESSING DEFENDANTS. The arresting agents will have primary responsibility for processing the defendant, which includes interviewing, obtaining personal history information, photographing, fingerprinting, additional searching (if necessary), and bringing him before the court or magistrate for his initial appearance.

NOTE: Should a defendant be a juvenile (not attained his 18th birthday at the time of arrest), the following special procedures shall apply:

1. Immediately notify the U.S. Attorney that the defendant is a juvenile.
2. Immediately notify the defendant of his rights, and make no attempt to interview him.
3. Immediately notify his parents or guardian of his arrest, the offense charged, and his rights.
4. Unless the defendant is to be tried as an adult, he should not be fingerprinted or photographed.
5. Arrange for his initial appearance without further delay.

6641.31 Interviewing

A. Prior to interviewing the defendant, he must be advised of his constitutional rights as follows (using DEA Form 13a or 13b):

- Before we ask you any questions, you must understand:
- You have the right to remain silent.
- Anything you say can be used against you in court.
- You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during the questioning.
- If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- Do you understand?
- Are you willing to answer some questions?

NOTE: A "Miranda interrogation" has been defined as "any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the subject" (Rhode Island vs. Innis, 100 S. Ct. 1682 (1980)). Therefore, unless made spontaneously and without solicitation by the agent, any self-incriminating statements made by the defendant without first being advised of these rights will probably be deemed inadmissible.

B. If the defendant elects to exercise his rights, the interview will be terminated at that point. No threats or coercion may be used to influence this decision. Similarly, no promises may be made as an inducement, other than that his cooperation will be brought to the attention of the prosecuting attorney.

C. If the defendant cannot speak English, the advising of rights and any subsequent interviewing must be conducted in his native language.

If the defendant appears to be insane, drunk or otherwise not in control of his faculties, any waiver of rights may be declared invalid, and any evidence gained inadmissible.

D. If the defendant elects to waive his rights, then a full, witnessed interview will be conducted, culminating in a signed statement. The interview will begin with matters pertinent to the immediate case, and then extend to the defendant's full knowledge of all criminal matters (see 6612).

As this interview could be extensive, it may be divided such that the initial session covers just those points of immediate relevance. After reducing these to a brief written statement, proceed with the remaining facets of processing, with a further interviewing session scheduled later.

NOTE: Where a defendant is reinterviewed, he should be advised of his rights at the start of each such interview.

E. Written statements are useful for the following reasons:

1. Should the defendant subsequently deny or change the information furnished at the time of his arrest, the statement may be used for rebuttal.
2. Should the defendant decline to provide direct testimony as to the contents of the statement, the statement may be introduced as evidence.
3. As a means of refreshing the defendant's memory.

The statement may be typed or handwritten in ink, as long as it is legible. It should have the following format:

"Statement of_____, in the presence of_____and _____, Special Agents of the Drug Enforcement Administration.

I, _____, make the following free and voluntary statement to _____and _____, who have identified themselves to me as Special Agents of the Drug Enforcement Administration. I have been advised that I have a right to remain silent, that anything I say may be used against me in court, that I have a right to talk to a lawyer before making this statement, and to have him present during the taking of the statement, that if I cannot afford a lawyer one will be appointed for me by the U.S. Magistrate or court, and that I may stop this statement at any time for the purpose of consulting with a lawyer. No threats, force, or promises of rewards have been used to obtain this statement.

(Set forth here the facts of his statement, with as much specific detail as possible).

I have read this statement, consisting of ___ pages. To the best of my knowledge and belief, it is true and correct. I have initialed each page and all corrections, and have signed this statement below."

_____
(Signed)

_____
(Date)

_____

_____
(Signatures of Witnesses)

_____
(Date)

F. The original of the statement will be handled as documentary evidence (see 6663.65). Additional copies will be attached to each copy of the arrest report.

G. If the defendant is willing to answer questions but not sign a written statement, then all information which would have been incorporated in a statement will be reported in a DEA Form 6, signed by two witnessing agents.

H. Rough notes prepared in connection with taking the statement will be handled in accordance with Subsection 6211.6. If the interview is to be electronically recorded, even just for stenographic purposes, the recording equipment must be in plain view, the consent of the defendant must be clearly indicated on the tape, and the tape itself handled in accordance with Subsection 6211.6.

I. Depending upon circumstance, it may be desirable to establish the defendant as an informant. This being the case, all provisions of 6612 pertaining to defendant/informants shall apply. Again depending upon circumstance, it may be advisable to refer to

the defendant in his statement only by his assigned informant code number. Only the original copy should be signed, and then placed in the informant file.

J. Once an attorney has been obtained or appointed for the defendant, any subsequent contact with the defendant must be made through or with the concurrence of his attorney. Where the defendant attempts to contact DEA without the knowledge of his attorney, refer the matter to the prosecuting attorney.

K. If the defendant requests to make a telephone call to an attorney, relative, or friend, his request should be granted (unless there is reason to believe that the purpose of the call is to facilitate the destruction of evidence or some other purpose counter to the interests of justice).

6641.32 Obtaining Personal History

A. Regardless of whether a defendant waives his constitutional rights (see 6641.31 above), he will be questioned regarding essential, nonincriminating personal history information.

Should he refuse to provide this information, he should be informed that this will be brought to the attention of the U.S. Magistrate or the court at his initial appearance, and may be considered, along with other factors, in the setting of his bail.

B. The DEA Form 202, Personal History Report, will be used to report this information, and should be used as a questioning guide to cover all the necessary information. This report will also be used to classify the defendant under G-DEP. See 6223 for further details on preparation and distribution of the DEA Form 202.

6641.33 Photographing. The defendant will be photographed in accordance with standard procedures. The identification plate should contain, at a minimum, the case file number and date of arrest. The reverse side of each photograph should be labeled with at least the defendant's full name, date of birth, and NADDIS number.

At least two sets of photographs should be taken and attached to the originating office's copy of the DEA Form 202. If the defendant subsequently becomes a fugitive, attach one of these sets to the Fugitive Declaration Report (see 6642).

6641.34 Fingerprinting

A. Blank FD-249 Fingerprint Cards are issued to each field office, bearing that office's preprinted name, address, and ORI number. All DEA Federal defendents must be fingerprinted on these cards (2 sets) for DEA to be properly recorded in the FBI's criminal history records as the arresting agency. DEA field elements will ensure that any custodial agency is advised that fingerprints have been taken and will be submitted for the arrest. Should the custodial agency require an FBI criminal record history, its ORI number will be included in the "Send Copy To" section. If the custodial agency insists or requires that additional prints be taken, DEA will advise the custodial agency to use the term "criminal inquiry" in the charge section. In the event that the custodial agency will be the initial and only

agency processing a DEA defendant, preprinted DEA FD-249 fingerprint cards will be provided. The ORI number of the custodial agency will then be added to the "Send Copy To" section if the processing agency requires an FBI criminal record history.

B. It is essential that these cards be completed fully and accurately. All prints must be fully legible. The card having the clearest set of prints will be submitted to the FBI (see D below).

1. Prints which the FBI determines to be unclassifiable will be returned to the submitting office. Should this occur, and if a better set is not available from the case file, a new set of prints will have to be taken. If the defendant is still in custody, this requirement should be simple. However, if he has been released on bond, arrangements must be made through the U.S. Attorney's Office to obtain a new set pursuant to a court order (if necessary).

2. If a clear set of prints cannot be obtained due to the defendant's fingers being heavily scarred or rough, be sure to indicate this in the appropriate print block.

C. The card will be completed as follows:

1. Front

a. Name - self-explanatory. Capitalize the last name.
b. State Usage - leave blank.
c. Signature of Person Fingerprinted - self-explanatory.
d. Aliases - Do not allow entry to overlap into the Contributor block.
e. Contributor - preprinted.
f. Date of Birth - self-explanatory. If this cannot be determined, enter the best approximation.
g. Date and Signature of Official Taking Prints - self-explanatory.
h. Date of Arrest - self-explanatory.
i. Sex, Race, etc. - self-explanatory.
j. Charge - DEA fingerprint submissions will use the term "Violation of Federal Controlled Substance Act". In the case of a DEA arrest for local offenses, the term "State" should be substituted for "Federal".
k. Your Number - Enter the DEA case file number.
l. FBI Number - Every effort must be made to determine this number, if one exists, as it expedites FBI handling and response.
m. SID Number - Leave blank.
n. Final Disposition - Leave blank.
o. Social Security Number - self-explanatory.
p. Caution - Check this block if caution should be exercised in handling this subject (armed and dangerous, suicidal, history of assault, drug user, etc.). If this block is checked, then the basis for this judgment must be entered on the reverse of the card (see 2g below).

2. Reverse

a. Statute Citation - Enter 21 USC 841 in the "Charge" block. **If CCE (21 USC 848) or RICO (18 USC 1962) are charged, ** Addition

these citations should be shown.** In the case of a DEA arrest for local offense, enter the general state citation.

b. Arrest Disposition - Enter the disposition up to and including the initial appearance (e.g., "released on bond," "held pending trial," etc.).

c. Employer - Enter full identification of the defendant's employer. If the U.S. Government, indicate the exact agency, branch, etc., so that notification can be made by the FBI.

d. Occupation - self-explanatory. If the individual is a pilot or otherwise associated with private or commercial aircraft, it is important that this occupation be reported accurately, using the "Additional Information" block for specific details if necessary.

The FBI routinely screens fingerprint cards for such individuals arrested on a drug charge and reports them to the FAA.

e. Residence - self-explanatory.

f. Scars, Marks, etc. - self-explanatory. Be sure to report any amputations of fingers, hands or arms in the appropriate fingerprint blocks on the front of the card (in addition to completing this block).

g. Basis for Caution - Complete only if the "Caution" block was checked on the front of the card.

h. Date of Offense - Complete only if different from the date of arrest. Where multiple purchases of evidence were made, enter the date of the first purchase.

i. Skin Tone - self-explanatory.

j. Miscellaneous Numbers - Report any miscellaneous number such as a military ID number, passport number, driver's license, etc. Be sure to identify the number entered.

k. Send Copy to: - Enter "DCDEA0000" (DEA Headquarters), as well as the name and ORI number of the U.S. Marshal's Service processing facility. If an arrest of another DEA office's defendant, see 6641.36D. In the case of an informant inquiry, leave this section blank. (See Appendix G for DEA ORI numbers.)

l. Reply Desired - Always check "yes". The FBI will send a copy of the defendant's criminal record to those DEA offices identified in k above. If the originating office is a subordinate office to a Division or District Office, it will forward a xeroxed copy of the criminal record to the parent office(s) case file(s) upon receipt.

D. The best copy of the completed FD-249 will be sent directly to the Identification Division, Federal Bureau of Investigation, Washington, DC 20537. DEA field offices will discontinue the use of cover letters and simply mail fingerprint cards to the Bureau in FBI supplied envelopes. Special handling or additional material needs will be indicated directly on the FD-249. The remaining copy should be held in the originating office's case file.

E. For those offices so equipped, an FBI Datalog terminal may be used to electronically transmit fingerprint data to the FBI. The use of this system does not obviate the need for submission as in D above but rather serves as a supplemental method of obtaining a rapid response for positive identification and/or criminal history.

** Addition

It should be used in any situation where there is some doubt concerning the defendant's actual identity, or where criminal history data is needed on a rapid basis. A usage log will be maintained for each Datalog terminal. For each usage, the log will list the defendant's name, time/date of transmission, time/date of return transmission, and the result.

6641.35 Initial Appearance

A. Rule 5 of the Federal Rules of Criminal Procedure requires that the defendant be taken before the nearest available Federal Magistrate without unnecessary delay. **The nearest available magistrate means the magistrate nearest the place of arrest and in the same Federal district. This Magistrate will not always be the one geographically nearest the place of arrest.** If a Federal Magistrate is not available, he may be taken before any state or local judicial officer authorized by 18 USC 3041.

B. Although the term "unnecessary delay" has not been precisely defined, 18 USC 3501 places a general limitation of 6 hours between the time of arrest and the initial appearance with regard to the admissibility of a confession obtained in this period (allowance may be made for the time it takes to transport the defendant to the nearest magistrate, provided the actions of the officers are otherwise reasonable). Although this time limit does not have applicability beyond the admissibility of a statement, it should serve as a general goal, barring long distances or arrests made after business hours.

C. Where the initial appearance cannot be arranged on the same day as the arrest, the defendant should be lodged in a federally approved detention facility. A list of such facilities is available at the nearest U.S. Marshal's office.

D. Unlike a search warrant, there is no specific time limit on returning an arrest warrant. Once executed, however, it should be returned within a reasonable time. Normally, this will be done at the initial appearance. A warrant issued by a U.S. Magistrate can be returned to any U.S. Magistrate or District Court. A bench warrant, however, must be returned to the issuing District Court unless the distance is more than 100 miles (in which case it may be returned to any District Court or U.S. Magistrate).

If the defendant was arrested without warrant, the complaint will be sworn and filed at the initial appearance.

E. At the initial appearance the magistrate will:

1. Advise the defendant of the substance of the complaint filed against him.
2. Advise him of his rights.
3. Assign a defense counsel, if the defendant is not already represented.
4. Set the date of preliminary examination (unless the defendant has been indicted or waives his right to a preliminary examination).
5. Set the conditions of bail.

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F. *At the initial appearance, the magistrate must decide whether to release or detain the defendant. Any pretrial restraint must be the least restrictive means that will reasonably assure the appearance of the defendant, the safety of any other person or the community's safety. Conditions of bail are governed by 18 USC 3141. The magistrate may release the defendant on personal recognizance or subject to certain conditions. The magistrate may decide to temporarily detain the defendant for ten days for disposition to other authorities if the defendant is:

1. Pending trial for any other Federal, state or local felony;
2. On release under Federal, state or local law pending imposition or execution of a sentence, appeal of a sentence or conviction, or completion of a sentence;
3. On probation or parole for any Federal, state or local offense; or
4. Not a citizen of or lawfully admitted into the United States.

G. In the alternative, the magistrate may order the defendant detained pending trial where no other condition of release will assure his presence, the safety of any other person or the community, and the government moves at the initial appearance for such a detention order in cases involving:

1. A crime of violence;
2. An offense punishable by life imprisonment or death;
3. A Controlled Substances Act or Import-Export Act violation punishable by ten or more years imprisonment;
4. Any felony if the defendant has been previously convicted of two or more violations set forth in 1-3, or two or more equivalent state or local violations; or
5. A serious risk of flight to escape prosecution, obstructing or attempting to obstruct justice, or attempting to threaten, injure, or intimidate a prosepective witness or juror.*

**H. Since the Government must move for pretrial detention at the defendant's initial appearance, DEA Agents should inform the United States Attorney's office, as soon as possible, of the decision to seek pretrial detention. The detention hearing must be held at the initial appearance unless the Government or defendant, for good cause, obtains a continuance. Such continuance shall not exceed three days for the government or five days for the defendant who remains in the detention during this time. These time constraints require that DEA Agents bring to the initial appearance all background and criminal history information. If available, this information should address:

1. The nature and circumstances of the charged offense;
2. The weight of the evidence against the defendant;
3. The defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, past record concerning

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court appearance, defendant's current status regarding parole, probation, release pending trial, sentencing, appeal or completion of sentence for any Federal, state or local offense;

4. The nature and seriousness of the danger to any person or the community posed by the defendant's release; and

5. The source, whether legitimate or illegitimate, of property which the defendant may offer as collateral to secure a bond.

Strict rules of evidence do not apply to the presentation and consideration of information. Information may be presented by proffer, subject to the magistrate's discretion.

I. A rebuttable presumption for detention arises if probable cause indicates the defendant is charged with either a Controlled Substances Act, an Import-Export Act or a 18 USC 924(c) firearms violation, which is punishable by ten or more years imprisonment. This presumption can be singularly established in some jurisdictions by introducing the indictment charging the offense, while in other jurisdictions DEA Agents should be prepared to provide testimony on the nature of the offense. A rebuttable presumption for detention can also be established if probable cause indicates the defendant has previously committed a Federal or equivalent state or local offense set forth in items 1-4 of paragraph G while awaiting trial for any Federal, state or local offense; and, the defendant was convicted within the last five years of the paragraph G offense.**

6641.36 Reporting the Arrest

A. A DEA Form 6 entitled "Report of Arrest" will be prepared setting forth:

1. Details of obtaining the warrant.
2. Details of the arrest.
3. Details of processing.
4. Summary of the interview, including any admissions made, or refusal to make a statement.
5. Details of the initial appearance.

B. Attach to the originating office case file copy the following additional documents:

1. Copy of complaint, affidavit, or indictment.
2. Copy of warrant.
3. Any written statements or inventories.
4. FD-249, Fingerprint Card.
5. Photographs.
6. Copy of the DEA Form 202, Personal History Report.

C. Two Copies of the DEA-202 will also be sent directly to Headquarters (PES). All submissions from Resident Offices are to be routed through Division or Country Offices. (See 6223G.2.)

D. Where an arrest is made by one office based upon a warrant issued in connection with another office's investigation (originating), the reporting procedures will be as follows:

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1. The arresting office will prepare the DEA-6 and DEA-202 which will be forwarded with one completed FD-249 and photographs to the originating office. The arresting office will keep copies of the DEA-6 and DEA-202 for its "foreign office" case file. The arresting office will immediately submit a classifiable FD-249 to the FBI with the originating office's ORI number in the "Send Copy To:" section described in paragraph 6641.34C2k. See Appendix G for ORI numbers.

2. The originating office will distribute the DEA-6 and DEA-202 upon receipt as described in Sections 6242 and 6243. The originating office may attach a supplemental DEA-202, setting forth additional details on the defendant (e.g., justification of G-DEP level).

E. The Domestic Operations Guidelines require that the prosecutor's copy of the Report of Arrest be forwarded to him within 5 working days of the arrest. The case agent will assure that this requirement is met.

F. Any shootings or assaults occuring during the arrest will be reported as set forth in 6122.5.

G. Any inquiries from the media regarding the arrest or events leading up to the arrest will be handled in accordance with 6326.

H. If the defendant is foreign national, send a copy of the arrest report, a copy of the fingerprints, and a photograph to the appropriate Country Office. The Country Office, in turn, should contact the appropriate local authorities and, using the fingerprints and photographs attempt to verify the defendant's true identity, conduct a local record inquiry on his criminal background and report results to the arresting office. As well, the United States is obligated by treaty to inform the governments of certain countries when their nationals are arrested or detained. This treaty obligation cannot be waived by the national. Therefore, DEA must notify the appropriate consul and advise the national that his consulate has been notified when a national of the following countries is arrested or detained:

Antigua
Bahamas
Barbados
Belize
Brunei
Bulgaria
China (People's Republic)
Costa Rica
Cyprus
Dominica
Fiji
The Gambia
German Democratic Republic (East Germany)
Ghana
Grenada
Guyana
Jamaica
Kiribati
Poland
Romania
Seychelles
Sierra Leone
Singapore
St. Christopher & Nevis
St. Lucia
St. Vincent & Grenadines
Tanzania
Tonga
Trinidad & Tobago
Tuvalu
United Kingdom (Please contact this consulate or embassy when nationals of Anguilla British Virgin Islands, Hong Kong, Bermuda, Monserrat and Turks & Caicos are detained)

Kuwait
Malta
Malaysia
Mauritius
Nigeria
Philippines
U.S.S.R.
Zambia
Zimbabwe

In all other instances, notification of the national's government is not imposed by any treaty obligation. Therefore, when a national of any country other than those listed above is arrested or detained, DEA must inform the national that he has a right to have his government informed. If the national asks to exercise this right, DEA must inform the appropriate consul without delay and make a written record of such notification. Guidelines and telephone numbers issued by the Department of State are filed in each field office.

I. Upon disposition of the charges against the defendant, a DEA Form 210 (Defendant Disposition Report) will be prepared and submitted in accordance with the instructions on the reverse side of the form.

J. Arrests for nondrug violations will be reported under the associated DEA case file, and in the same manner as a drug-related arrest. Depending on circumstance, the defendant may or may not require classification under G-DEP.

Where an arrest is made for a nondrug violation and is not associable to a DEA case, report it via memorandum; no DEA Form 202 or 210 are required.

6642 FUGITIVES

6642.1 GENERAL

**DEA's fugitive policy is designed in accordance with Department of Justice guidelines to ensure the timely apprehension of fugitives through interagency cooperation but with minimal duplication of effort.

A. Arrest Warrants. DEA will have apprehension responsibility on all Federal arrest warrants resulting from DEA or DEA TAsk Force investigations. DEA may, however, delegate apprehension responsibility to the U.S. Marshals Service (USMS) whenever the subject of a DEA arrest warrant is not apprehended within 7 days after issuance of the arrest warrant. The delegation become effective upon notification of the USMS by DEA (see 6642.3). DEA may elect to retain this responsibility in individual cases if it so desires. The delegation is not automatic but may be made at any time after the initial 7 day period. In cases of joint FBI-DEA investigations, it shall be the decision of the lead agency whether to have the investigating agencies maintain apprehension responsibility themselves or delegate apprehension responsibility to the USMS.

B. Post-Arraignment. The USMS shall have apprehension responsibility in DEA cases whenever there is a bond default prior to adjudication of guilt. The USMS shall have responsibility for all 18 USC 3150 (Failure to Appear) arrest warrants.

C. Post Conviction/Other than Escapes. The USMS shall have apprehension responsibility whenever after adjudication of guilt there is a Federal probation, parole or bond default or mandatory release violation.

D. Escape. The USMS shall have apprehension responsibility whenever there is a violation of Federal Escape and Rescue Statutes. The USMS will promptly notify DEA upon the escape of a convicted DEA defendant.

E. Exceptions. Upon written notice to the USMS, DEA may assume apprehension responsibility in any case where DEA is seeking the fugitive on an arrest warrant based on charges filed for additional offense(s) beyond the one(s) for which the subject is a fugitive. This will be accomplished via teletype to DEA Headquarters (OS) requesting the assumption of apprehension responsibility based on the new charges filed. Headquarters OS shall immediatley notify USMS Headquarters. DEA's assumption of apprehension responsibility becomes effective 7 days after receipt of the notice by USMS. However, the USMS may request that DEA consent to the continuation of USMS apprehension efforts and may also make such a request to the Associate Attorney General if DEA declines to consent. If the reason for the exception becomes no longer applicable, DEA should return apprehension responsibility to the USMS. This will also be accomplished via teletype to OS.

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F. Interagency Coordination. If state or local authorities request the assistance of the USMS in locating or apprehending a fugitive and it is determined that the fugitive is the subject of a DEA warrant, the USMS shall refer the requesting agency to DEA and notify DEA of the request by the state or local authority. If cases where the USMS is requestd to provide apprehension assistance or to seek the apprehension of a fugitive sought by a Federal agency other than DEA and it is determined by the USMS through the NCIC or other appropriate inquiry that DEA has an existing warrant, the USMS will notify the requesting agency of the existing DEA warrant. If the requesting Federal agency continues to seek USMS assistance, the USMS will notify DEA of the request for assistance by the other agency. DEA will either defer to the USMS the fugitive apprehension responsibility in the particular case or assert the need to continue its apprehension responsibilities in regard to the fugitive. Any continuing conflict concerning apprehension responsibility will be resolved by a meeting among the requesting agency, the USMS and DEA at the Headquarters level, or by the Associate Attorney General if a resolution of the issue is not reached by the involved agencies.

Conversely, DEA shall coordinate all requests it receives from other Federal, state and local agencies for fugitive apprehension assistance with the USMS whenever the fugitive falls within the apprehension responsibility, either by prior DEA delegation or by definition, of the USMS. Barring exigent circumstances, DEA will not take unilateral action with regard to a fugitive for whom the USMS has apprehension responsibility.

Likewise, the USMS will not take unilateral action, except under exigent circumstances, with regard to a fugitive for whom DEA has apprehension responsibility. Close coordination/cooperation between DEA and the USMS is imperative.

The foregoing supersedes the procedures previously set forth under the FBI/DEA 1982 Memorandum of Understanding on fugitive apprehension responsibilities.**

6642.2 CRITERIA

A. A defendant in a DEA or DEA Task Force investigation will be declared a DEA fugitive when the following criteria are met:

1. The arrest warrant, charging violation of either the CSA **and/or related Federal statutes cannot be executed with 2 working days; and**
2. The defendant is being prosecuted in Federal court.

B. A defendant will <u>not</u> be declared a DEA fugitive when either:

1. The individual is not charged with a Federal violation.
2. The outstanding warrant is based on a failure to appear for a <u>post</u>-conviction proceeding. **However, DEA Headquarters, Investigative Support (OS), must be notified in these instances to ensure the defendant's entry into NADDIS as a USMS fugitive. Within 5 working days of the issuance of the failure to appear warrant, a teletype or telefax will be sent to OS bearing the following information in the order indicated:

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a. Post-arraignment fugitive
b. File number
c. Name of fugitive
d. NADDIS number (If not yet assigned, list full identifying data from DEA Form 202)
e. NCIC number (USMS will make NCIC entry immediately upon default)
f. Charges
g. Warrant number, date and place of issue, and USMS office holding warrant
h. DEA case agent's name and FTS number.**

C. A defendant need not have knowledge of an outstanding warrant for his arrest to be considered a fugitive.

6642.3 FUGITIVE DECLARATION

A. Within 48 hours after the issuance of an arrest warrant, the field office will investigate all leads at the local level as to the defendant's whereabouts (see paragraph 6641.36 for arrest reporting procedures). DEA Headquarters, Investigative Support (OS), is to be notified within the 48 hour period if the defendant has not been located and arrested. At that time, the subject will be considered a DEA fugitive.

B. The means of advising Headquarters OS will be by the *telefax* containing the following information in the order indicated:

1. File Number
2. G-DEP Identifier
3. File Title
4. Subject's Name
5. Last Known Address
6. Aliases
7. NADDIS Number/FBI Number
8. Date of Birth
9. Place of Birth
10. Citizenship
11. Illegal Alien (Yes or No)
12. National Origin
13. Race
14. Sex
15. Height
16. Weight
17. Eyes
18. Hair
19. Social Security Number (If Known)
20. Other Identifying Numbers (If Known)
21. Offense Charged
22. USCODE, Title and Section
23. Warrant Issued by and Date of Warrant
24. Warrant Held By
25. Warrant Number
26. Armed, Dangerous or any Other Caution
27. Class of Violator
28. Special Agent's Name and FTS Number.
29. **Indicate whether the SAC elects to retain apprehension responsibility or delegate this responsibility to the USMS after the initial 7 day period.**

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Note: This information must also be coordinated with the local USMS office. Upon notification of DEA Headquarters, the field office will pass this information to the local U.S. Marshals office.

C. SACs are encouraged to retain responsibility for fugitives who meet all of the following criteria:

1. Principal subject of major investigation.
2. The fugitive is believed to remain within the Division's area of jurisdiction.
3. The fugitive's arrest is expected to yield additional evidence, intelligence or cooperation.

SACs may originally elect to retain responsibility for a fugitive and at some later point in time decide to delegate this responsibility to the USMS. This may be accomplished via teletype to OS setting forth the following information:

1. File Number
2. Fugitive Name
3. NADDIS Number
4. NCIC Number
5. Date originally declared as a DEA fugitive
6. Case Agent's name and FTS Number
7. Synopis of efforts to locate the fugitive, including any leads to the fugitive's possible whereabouts.
8. A statement that the SAC has determined to delegate apprehension responsibility to the USMS.

D. A DEA Form 202, Fugitive Declaration Report, must be submitted on every fugitive the SAC elects to retain as a DEA responsibility. This form should be completed as fully as possible with special instructions as follows:

Item 64, Enter the charge, drug, date and number of the warrant, name and location of official holding the warrant, name and location of agent to contact if the fugitive is apprehended, and whether the fugitive is armed and dangerous and/or has suidical tendencies.

The original plus one copy of this form shall be sent to Headquarters OS within 5 days of the fugitive declaration teletype or telefax, with a copy each to the originating office's and Divisional office's case files.

It is also necessary to submit fugitive declaration 202s on those fugitives that the SAC has delegated to the USMS.

E. On a quarterly basis, OS will forward to each field office a listing of all fugitives resulting from DEA investigations as reflected by Headquarters records. The lists will indicate whether DEA or the USMS has apprehension responsibility. Field offices will review these listings and notify OS by memorandum of any necessary corrections. For fugitives not on the listing or not reflecting the correct responsible agency designation, attach appropriate copies of the OS notification or fugitive declaration/delegation teletypes. For fugitives that should be deleted, list their names, file number and a brief explanation.**

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6642.4 **FUGITIVE APPREHENSION

A. Notwithstanding the fact that apprehension responsibility for most fugitives resulting from DEA investigations will be carried by the USMS, DEA has an important obligation to aggressively develop intelligence and seek leads as to the whereabouts of all fugitives in DEA cases and to ensure that all leads are investigated as soon as possible. With regard to those fugitives for whom the USMS has apprehension responsibility, information developed by DEA will be promptly furnished to the USMS, and DEA will offer additional assistance, as appropriate, including apprehension. The foregoing does not preclude DEA from effecting a unilateral arrest if exigent circumstances so demand. In such instances, the USMS will be notified immediately.

B. When the USMS arrest or places a detainer on a fugitive in a DEA case for whom they have apprehension responsibility, they will promptly notify EPIC, and EPIC will send the pertinent information via teletype to the originating DEA office and to OS. The USMS will handle the custody, processing and transportation of the subject and related administrative matters such as warrant return and deletion form NCIC. Headquartes (OS) will remove the name from its fugitive listings and cancel the subject's fugitive alert in NADDIS. The originating DEA office will notify the appropriate AUSA of the subject's arrest and prepare an arrest DEA Form 202 if the subject's arrest was pursuant to a warrant based on the original violation charged. Do not submit arrest 202s on post-arraignment fugitives.

C. There are a number of centralized systems available to DEA to assist in the location and apprehension of fugitives. Although these systems can be extremely useful for this purpose, the tendency to over-rely on them must be avoided. **They are intended to compliment, not replace, aggressive investigative pursuit. All entries into and deletions from these systems will be accomplished by the USMS in coordination with DEA Headquarters (OS).

The instructions set forth below (Subsection 6642.41 thru 6642.46) apply only to DEA retained fugitives. The USMS will handle administrative (systems entry/deletion, notifications, returns, etc.), apprehension and transportation detail on all other fugitives.**

6642.41 National Crime Information Center (NCIC). NCIC is a telecommunications system operated by the FBI. The system is accessible to various Federal, State and local law enforcement agencies throughout the country.

A. If the system is queried on the fugitive's name by another agency, the inquiring agency will be directed to contact EPIC. EPIC will:

1. Confirm the individual's fugitive status through NCIC.
2. Advise the inquiring agency of this status, and that it will be contacted by the originating DEA office at the first opportunity during normal business hours.

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3. Advise the originating DEA office of the query with full details.

4. Document the above by teletype to the originating office, the apprehending office, and Headquarters (OS).

B. The originating and apprehending DEA offices will adhere to the following procedures:

1. Originating Field Office. The originating field office is identified by the case number associated with the fugitive. Immediately after verifying the inquiry, the originating field office will:

a. Telephone or teletype the DEA office nearest to the location where the fugitive is being detained. The United States Marshal holding the warrant will be promptly requested to forward a certified copy of the complaint, indictment, or information (with warrant attached) to the United States Marshal's Office nearest to the location where the fugitive is being detained.

b. Teletype Headquarters (OS) requesting cancellation of the entry. The subject of the teletype will be "Fugitive Apprehension." The text will include:

(1) Name, case file number, and G-DEP identifier of the DEA fugitive.
(2) Date and place of apprehension.
(3) Name of arresting agency.
(4) Where the fugitive is lodged.

2. Apprehending Field Office. Upon notification that a DEA fugitive is being detained by an agency in its area, the DEA field office will immediately dispatch a team of agents to make the arrest. Upon arresting the defendant, the agents will contact the appropriate United States Attorney and request instructions regarding the defendant's initial appearance and transportation to the originating judicial district. The apprehending field office will prepare the report of arrest (see paragraph 6641.31). If possible, a United States Marshal should transport the prisoner.

6642.42 Treasury Enforcement Lookout System (TECS). TECS is a telecommunications system with terminals located in Department of Treasury facilities, including those of the United States Customs Service at ports of entry. These terminals are used to process people, vehicles, baggage, cargo and mail arriving in the United States. NCIC wanted-persons information is accessible on TECS terminals when queried on the individual's name. The notification and apprehension procedures in paragraph 6642.41 are applicable when a TECS query results in the access of the NCIC wanted persons record on a DEA fugitive.

6642.43 Department of State Passport and Visa Lookout Systems

A. The Passport Lookout System is designed to locate United States citizens who are attempting to leave the country. [redacted]

[redacted]

B. The Visa Lookout System operates in the same manner as the Passport Lookout System except the individual's name is placed in a Visa Lookout Book, which is published quarterly and distributed to all American consulates overseas. The names of all aliens applying for visas are checked against the Visa Lookout Book. Notification procedures are the same as the Passport Lookout System.

[redacted]

1. Upon arresting the fugitive, the apprehending field office will notify the originating field office by teletype.
2. The originating field office will forward a certified copy of the complaint, indictment, or information (with warrant attached) to the apprehending field office and notify OS via teletype of the fugitive's arrest.

6642.44 INS Lookout System. This is a surveillance system maintained by the Immigration and Naturalization Service (INS), consisting of a list maintained at ports of entry of individuals (not necessarily fugitives) entered into the system for surveillance purposes by participating agencies.

[redacted]

B. Unless cancelled, an individual's name remains in the system for one year. There is an approximate 4-week period between OS' submission and the appearance of the person's name on the list. In cases where a 4-week delay is not acceptable, the field office may ask the El Paso Intelligence Center (EPIC) by telephone to place an immediate INS lookout on the subject.

C. Since INS officers will inform the nearest DEA field office upon locating a fugitive, all DEA field offices will establish appropriate liaison with INS offices in their geographic areas.

D. Originating Field Offices. If intelligence indicates that a fugitive may leave the country, include this information in the fugitive declaration (DEA Form 202, or teletype). Notify OS by teletype when a fugitive is apprehended.

[redacted]

5. Contact the appropriate United States Attorney regarding instructions for the defendant's initial appearance and transfer.

6642.45 Interpol International Wanted Circulars. Multilingual wanted-circulars are prepared by Interpol and distributed to Interpol offices throughout the world for distribution to interested law enforcement agencies.

A. There are three types of Interpol alerts: red, blue, and green. Only the blue alert will be used by DEA. It will be used for significant fugitives, requesting that DEA be notified if the individual is located in a foreign country, or has been apprehended for violation of its laws.

B. Complete identifying data (plus photograph and fingerprints) are required to enter a fugitive in this system. The data will be furnished to OS by the field office. Include, if available, information regarding the subject's family, such as father's and mother's names and their places of birth.

C. OS will be notified by Interpol if a fugitive is located as a result of an Interpol circular. OS will notify both the originating office and the office in whose jurisdiction the fugitive is located. Instructions described in Subsection 6642.5 will be followed.

6642.46 FBI Wanted Notice. This notice is an alert placed on a fugitive's fingerprint card in the FBI's Record Division. Should another agency arrest the individual under his true name or an alias and submit a fingerprint card to the FBI, DEA Headquarters (OS) will be notified. OS will telephone pertinent details of the arrest to the originating office, as well as the field office in whose jurisdiction the fugitive is located. Both field offices will initiate appropriate action, i.e., see that the arrest is made or detainers lodged. The office in whose jurisdiction the fugitive is located will be responsible for preparing the arrest report and ensuring that the necessary documents (arrest warrant,

indictment, etc.) are forwarded to the proper official for court appearance, removal hearing, etc.

6642.5 FUGITIVES LOCATED IN A FOREIGN COUNTRY. **The following applies to all fugitives in DEA cases, including those for whom the USMS has primary responsibility.**

A. When a fugitive is located in a foreign country, the discovering office (domestic or foreign) will notify Headquarters (OS) and EPIC by teletype, with a copy to the other field office. Both field offices will make every effort to verify that the individual is in fact the fugitive in question. If feasible, the foreign office should request the host country's police to monitor the fugitive's movements and activities.

B. Extraditions are based upon individual treaties entered between the United States and various countries, the specific terms of which vary considerably. This, coupled with the fact that we do not have extradition treaties covering drug violations with all countries, means extradition will not be possible in many instances. However, several alternatives may be possible, including extradition under the terms of the Single Convention (1972 Amendment), deportation, or even prosecution under the host country's laws.

C. The U.S. Attorney's Office in the judicial district of indictment (extradition must be based upon an indictment) should be requested to initiate the necessary proceedings. Generally, the U.S. Attorney will first want to review the case to assure that prosecution of the fugitive is feasible, and that the fugitive is significant enough to warrant international efforts. If so, he will contact the Department of Justice's Office of International Affairs (OIA), where the matter will be reviewed vis-a-vis the applicable treaties and host country laws.

D. The requesting office should be prepared to provide the U.S. Attorney with the following:

1. True name and all known aliases.
2. Current citizenship.
3. Date and place of birth, plus any false dates and places of birth known to have been used.
4. Passport number and country of origin (genuine and/or false).
5. Complete physical description (including photograph and fingerprints, if available).
6. Present location, as precise as possible.
7. A certified copy of the indictment and warrant.
8. The significance of the fugitive in the illicit traffic.

E. If international action is deemed legally feasible by OIA, it will forward the matter to the State Department, which after review for foreign policy impact, will forward it to the appropriate U.S. diplomatic post for action.

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The U.S. diplomatic post must then present the matter to the host government for final determination as to whether the request will be honored. In most countries, the fugitive has the right to appeal extradition.

F. Formal extradition proceedings can take months to complete. In the interim, the fugitive is otherwise free to depart the country. For this reason, *unless the fugitive is living openly in the foreign country and is unaware that his presence has been detected by U.S. authorities,* the U.S. Attorney should request OIA to initiate proceedings for provisional arrest of the fugitive by the host government. Provisional arrest proceedings may take as long as several weeks. However, in emergency circumstances (e.g., the fugitive will merely be transiting the host country), this can be done in a matter of hours. So as not to abuse this emergency procedure, it should be limited to only the most significant of violators, and only where there is little probability of apprehending him by any other means.

The length of time a fugitive can be detained under provisional arrest is governed by the terms of individual treaties. Generally, it is 40 days. If the formal extradition documents are not received within this specified period, the fugitive will be released.

G. Upon completion of all proceedings, the fugitive will be escorted back to the United States, *generally by members of the USMS.* He may be transported directly to the judicial district having venue for his initial appearance.

H. In the absence of a formal extradition treaty, the host government may decide to deport the individual. Where this appears to be a potential option, the DEA/U.S. Attorney/Department of Justice process described above for extradition should be used to request the State Department to invalidate the fugitive's passport, and issue a one-way certificate of identification allowing direct passage to the United States. If an individual is returned as a result of deportation rather than extradition, he must be brought before the U.S. District Court at the port of entry for his initial appearance, and subsequently removed to the district of venue.

I. Should an individual be located abroad who is known to be a United States fugitive, but for a nondrug violation, transmit all known informtion to OS via teletype. The teletype should bear the additional routing "RUEBWJA", with the narrative instruction: "Please pass to U.S. Marshals Service."

6642.6 FUGITIVE STATUS REPORTING

A. **The case agent will prepare a fugitive status report on a DEA Form 6 every 30 days for each DEA retained fugitive. The status report will summarize efforts taken to locate to fugitive,

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any leads developed as to the fugitive's whereabouts, and give a brief statement justifying the retention of this fugitive as a DEA responsibiltity. The DEA Form 6 will not be used to delegated fugitive responsibility to the USMS (see 6642.3C.)

B. For fugitives assigned to the USMS, reports will be prepared on an event oriented basis, and at least on an annual basis the case agent will report the results of his consultation with the AUSA regarding the continued feasibility of prosecuting the fugitive if apprehended. In any incident where the charges are dismissed and the warrant withdrawn, notify OS by teletype and close the case (provided no other defendants remain fugitives or otherwise not yet prosecuted).

C. A case file may not be closed while one or more defendants remain in fugitive status. Exceptions to this are cases involving post-conviction fugitives and certain cases involving state and local fugitives (see 6232.32C).**

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Subchapter 665 Search and Seizure

6650 GENERAL

A. Search and seizure is one of the most dynamic and potentially confusing areas of law today. The reason for this is that the law of search and seizure has been established for the most part by court decisions rather than statute. This chapter is a general distillation of the laws of search and seizure as they apply to Federal drug law; it is not an in-depth legal treatise on the subject.

If all law relating to search and seizure could be summed into a simple rule-of-thumb, it would be that the courts are viewing actions of law enforcement officers with a sense of "fair play." If an officer acts in a reasonable fashion, with due consideration for the rights of the person upon who he acts, then in all probability his action will be judged reasonable by the court.

B. Non-DEA Warrants. It is recognized and expected that DEA agents will on occasion involve themselves in joint Federal/State operations. When participating in non-DEA sponsored efforts, agents will nevertheless conduct themselves in accord with Federal standards. Agents will immediately disassociate themselves from compromising situations and report the facts to their supervisors.

C. Unless approved in exceptional cases by the SAC in advance, no press representation or other non-enforcement personnel will be present during any DEA search activity.

D. In the event that advice is received from local or Federal prosecutors which is in conflict with DEA guidelines, that conflict will be reported to the SAC who will seek advice from Headquarters if necessary for resolution.

6651 AUTHORITY TO SEARCH

There are three means by which we may gain legal access to a property, search it, and make a resulting seizure:

A. Search Warrant;

B. Consent searches generally or consent to inspect a registrant's controlled premises;

C. Search incident to arrest or other warrantless searches.

Whenever possible, agents will obtain a warrant for the search of a person or premises prior to commencing a search. Other than searches incident to arrest, there must be probable cause to believe that evidence or contraband is on a premises or person before a legal search can be made. By obtaining a warrant beforehand, the agent has subjected his probable cause to judicial review before making the search. Do not routinely rely on consent searches or other warrantless searches to seize necessary evidence or contraband.

6651.1 SEARCH WARRANTS

6651.11 Obtaining the Warrant

A. Requirements. The agent(s) most familiar with the investigation will consult with the appropriate U.S. Attorney with regard to obtaining the warrant. The warrant may be obtained from either a U.S. District Court Judge or a U.S. Magistrate. In either case, the agent must be prepared to swear out a written affidavit setting forth the following points:

1. A precise description of the property to be searched. Vague descriptions are insufficient. Limitations must be established on the area to be searched. Example:

Poor: "The Smith house located on Main Street, Annville, Pennsylvania."

Good: "The two-story red brick dwelling located on the property belonging to John Smith at 1234 Main Street, Annville, Pennsylvania."

If the property is an apartment, then the apartment number should be included. If the property is a vehicle, then a full description of the vehicle should be set forth, including license number, name of owner, etc. If necessary, photographs, charts, or diagrams may be attached to the affidavit.

2. A clear statement as to what illegally held articles are believed to be on the property. Agents should give careful consideration to the wording of this statement. It should be precise enough to be legal, but general enough to provide flexibility to the agents. The requirement of "particularity" relates the area of search to the items believed to be on the property. For example, if the article listed on the warrant was a piano, then the agents could not look in file drawers or breadboxes. If it is suspected that a clandestine laboratory is operating on a property, then the articles listed on the warrant should include equipment, chemicals, manufacturing records, paraphernalia, etc.

3. A complete and accurate statement of probable cause. "Probable cause" for a search warrant may be defined as facts and circumstances sufficiently strong in themselves to warrant a prudent agent to believe that articles subject to seizure are being held on the property. (The reasonableness of the facts and circumstances is viewed through the eyes of an experienced law enforcement officer, not an ordinary citizen.)

The agent may have either first or secondhand knowledge of these facts. If he only has secondhand knowledge, he must be able to support it by other relevant information either before or after he receives the secondhand knowledge. If the secondhand knowledge involves information from an undisclosed informant, he must support the informant's trustworthiness by explaining that prior dealings with this source have demonstrated a pattern of reliability, and that the informant had a reasonable basis for obtaining the information. He need not state all the facts in the investigation, just enough to assure that the judge or magistrate reading the affidavit by itself believes there is sufficient cause to issue a search warrant.

More than one agent may enter his observations on the affidavit. In this instance, the affidavit must clearly distinguish between the observations of each agent. Each agent must sign the affidavit and swear to his portion of its contents.

4. The warrant should be addressed to "Any Special Agent of the Drug Enforcement Administration," not just to the applying agent. This provides greater flexibility in its execution.

B. Nighttime Warrants. The Controlled Substances Act provides: 21 U.S.C. 879(a) "A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or United States magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time." Sec. 879(a) authorizes service of a search warrant at any time of the day or night if probable cause as to both the issuance of the warrant and the need for nighttime service has been established to the satisfaction of the judge or United States magistrate issuing the warrant. This section continues the authority previously available in connection with investigation of narcotic and marihuana offenses contained in 18 U.S.C. 1405 and expands the authority to include investigations concerning all controlled substances.

However, in any application for a nighttime warrant or in any affidavit in support thereof, not only must a violation of the Controlled Substances Act be alleged, but such application or affidavit must also contain reasons for requesting a nighttime warrant. The Supreme Court decision in Gooding v. United States (April 29, 1974, No. 72-6902, 15 Cr.L 3019) held that no specific finding by the magistrate or judge is necessary in this regard, but rather, that normal probable cause to believe that the contraband is likely to be on the property or person to be searched at the time will justify the nighttime search under 21 U.S.C. 879(a).

Sec. 879(a) is an authorizing or enabling provision and not a mandatory provision--that is, these statutes relate to issuing search warrants and not to their service. Thus, a search warrant must specifically contain nighttime search warrant authority or the agent will be restricted to daytime entries.

The requirement of "reasonable cause shown" expressed in rule 41(c) of the Federal Rules of Criminal Procedure with regard to nighttime warrants is not applicable in investigations relating to controlled substances as long as the requirements of section 879(a) are met. Rule 41(h) of the Federal Rules of Criminal Procedure defines daytime to mean "the hours from 6 a.m. to 10 p.m. according to local time." Rule 41 also provides that a Federal search warrant may be issued by "....a judge of a State....", but such authority should not be utilized except in unusual circumstances.

6651.12 Returning the Warrant. The search warrant must be returned to the issuing judicial officer within 10 days of its issuance, whether or not it was executed. If not executed within this time, it becomes void. If conditions still merit searching

the premises, then the agent must reapply for a new warrant just as he did for the initial one. The agent primarily responsible for obtaining and executing the warrant is also responsible for its return. A warrant that has been served will be returned as soon as possible after it is executed.

6651.13 Sealed Warrants With Delayed Notice (Covert Execution of Warrants. Limited situations may require that the copy of the warrant and related documents not be served at the time of a search. For example, there may exist compelling circumstances where facts must be promptly verified or developed by entering a private area to view things or to search for or seize items without alerting the subjects of the search or seizure.

A. Procedure. The affidavit for this specialized warrant must specifically detail the facts relied upon to justify sealing and delaying notice. The magistrate who signs the warrant should issue a separate order sealing the warrant and related documents and delaying service of a copy of the warrant and related documents. The affidavit must request and the order must set a maximum period of time for sealing the warrant and delaying notice. This time frame, while flexible in duration, may provide for automatic termination upon the occurance of an event, but in all cases must provide for automatic termination upon the expiration of a fixed amount of time. The order should make provision for obtaining additional extensions of time if necessary. It should direct the service of a copy of the warrant and related documents at the expiration of the delay.

B. Headquarters Review and Approval. The use of this specialized warrant is reserved for extraordinary circumstances. Headquarters approval as a Sensitive Investigative Activity is required in accordance with 6621D.

6651.2 CONSENT SEARCHES. The courts are continually narrowing the legal scope of consent searches. The burden of proof is on the Government to show that a consent to search was given freely and intelligently and that no actual or implied duress or coercion was used to obtain that consent.

Mere acquiscence or failure to assert constitutional rights does not necessarily constitute true consent, free of fear or pressure. A consent, once given, may be withdrawn at any time during the search.

6651.21 Situations Where a Consent Search is Valid

A. Certain Compliance Investigations. To make an inspection of a registrant, it is generally sufficient to obtain the consent of the owner or responsible individual. However, if it is clearly known beforehand that evidence of a violation will be found as a result of the inspection, obtain a warrant. (See 6651.3.)

B. Where a Confession of Guilt Precedes the Consent. A confession of guilt preceding a consent to search tends to show that the consent was indeed voluntary, and will probably be acceptable to the court. However, a denial of guilt accompanied by a consent to search will probably not be acceptable to the court. The courts have held that no sane man would deny guilt

while at the same time voluntarily consenting to a search which will undoubtedly reveal evidence of guilt. Therefore, do not search on a consent basis where a person denies guilt.

C. Where Resulting Evidence does not Incriminate the Consentor. Where evidence of a crime is being stored on a premises without the complicity of the premises' owner, then the owner's consent is sufficient to perform a search. This does not apply to obtaining the consent of a landlord to search a leased apartment, or obtaining the consent of a bank to search a safety deposit box, etc.

6651.22 Procedures. Written consents are stronger evidence of a true waiver than oral consents. Therefore, the agents should have the person read and sign DEA Form 88, Consent of Search. If he grants his consent but refuses to sign the DEA-88, then his oral waiver should be witnessed by at least two agents. A consent to search, whether written or oral, may be withdrawn at any time. If this occurs, withdraw and obtain a search warrant. Do not attempt to persuade the person otherwise.

Agents may be left on a premises to guard it while another agent withdraws to obtain the warrant.

6652 ARTICLES SUBJECT TO SEIZURE AS EVIDENCE

In performing a search, agents must be discretionary in deciding what specific articles within a premises are subject to seizure. They are not limited to seizing just those items listed in the warrant. However, recent court cases have held that generally, there must be some relation between the seized items and the items described in the warrant unless the items seized are contraband. It is important, therefore, that affidavits for search warrants are drafted carefully to avoid problems in this area. An article must fit into one (or more) of these categories to be subject to seizure.

6652.1 EVIDENCE. See 666.

6652.2 CONTRABAND. Contraband is defined as articles the possession of which is inherently illegal. Schedule I substances and source plants of scheule I and II substances are contraband and will be seized as evidence. (The only exception is when these substances are possessed by authorized researchers.)

Contraband also includes such articles as counterfeit money and equipment to make counterfeit money, untaxed liquor and equipment to make untaxed liquor, and weapons covered by the National Firearms Act (automatic weapons, sawed-off shotguns, etc.).

6652.3 WEAPONS. See 6663.61.

6653 EXECUTION OF THE SEARCH WARRANT

A DEA supervisory agent will approve all procedures to be utilized in cases which involve the execution of a search warrant on a

premises, and he will specifically designate an agent on the scene to be in charge of the entry if the supervisor does not personally accompany the agents.

6653.1 PLANNING PRIOR TO ENTRY

A. The supervising agent should obtain as complete a physical description of the premises as possible (e.g., address, description etc.).

B. He should as far as possible, determine the number, nature, and sex of all probable occupants of the premises (e.g., violence-prone, armed, female, children, etc.).

C. He should determine how many agents he will need to sufficiently conduct a thorough, controlled search. He should also determine the need for personnel having specialized skills (e.g., chemistry, foreign language, etc.). He should limit the size of the search party to the number of personnel needed to adequately carry out the search.

D. He should conduct a detailed briefing, to include the use of charts, photographs, etc., where necessary, and assign specific duties to each individual.

E. He should arrange for all necessary equipment to be available. This may include, but need not be limited to the following:

1. Badges or other means of identifying members of the search party.
2. Evidence envelopes, tags, containers, and boxes.
3. Miscellaneous equipment such as flashlights, cameras, gloves, first aid kit, fire extinguisher, sledge hammer, drug test kit, etc.

F. When advisable, he should arrange to notify the local police department of the location just prior to the execution of the warrant to avoid any possible confrontation between agents and police officers who may be called to the scene by neighbors, bystanders, etc. The assistance of uniformed police officers should be requested when their presence will provide recognizable authority in appropriate situations, such as forced entry.

G. When possible, personnel should be dressed in suits and ties. Often, casual clothing increases the possibility of resistance or violence as the agents are mistaken for other than enforcement officers. When it is necessary to execute a search warrant dressed in casual clothing, extra attention must be given to ensure that the subjects are clearly advised of the agent identity as quickly as possible. Where appropriate, DEA agents should utilize operations jackets when executing search warrants.

H. The location and telephone number of the nearest hospital/trauma center/parademic unit should be identified during the planning process. See 6674 for additional precautions on laboratory raids.

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6653.2 GAINING ENTRY. This is the most crucial aspect of the entire search. It is the point some cases are lost due to the agents acting improperly. It is also the point where violence can most readily erupt. The supervising agent will be guided by the following:

A. If all members of the search party are not totally familiar with each other, then they should wear some obvious, external means of identification.

B. The perimeter of the premises should be secured before entry. All doors and windows should be under observation.

C. Force may be used to enter a premises only after the agents have given aloud a clear notice of their authority and purpose (e.g., "we are Federal agents and have a warrant to search these premises") and have waited a "reasonable" amount of time for the occupant to open the door.

A reasonable amount of time may be defined as that amount of time necessary for the occupant to reach the door. In the absence of any indication to the contrary, this must be the time it would take him to reach the door from the furthest part of the premises. If, while waiting for door to open, there is some indication that the occupant is taking flight, destroying evidence or contraband, or taking some action that may jeopardize the safety of the agents, then entry may be forced immediately.

The agents first entering the premises will display their badges as quickly as possible. The agents must announce their identity and purpose.

6653.3 SEARCH PROCEDURES. Thoroughness is the primary consideration when a search is being conducted; however, agents will not unnecssarily damage or destroy property while conducting a search.

A. In an orderly fashion, each occupant should be completely identified and frisked for weapons. Female occupants should be searched by a female agent or policewoman. If no female agent or policewoman is available, only a cursory search of the female occupant may be performed (handbag, coat, etc.). Females not thoroughly searchcd should be guarded closely to avoid the possibility of them drawing concealed weapons or destroying evidence.

B. It is the supervising agent's responsibility to read and/or explain the search warrant to the responsible occupant.

C. After searching all the occupants for weapons, direct them to a previously searched area. Determine from the occupants if there are any valuable articles (money, jewelry, etc.) anywhere on the premises. If so, the responsible occupant and two agents should locate and secure these articles. If anything of value is to be seized as evidence or contraband, include it on the written inventory. (See G below.)

NOTE: Never allow a subject to reach into a drawer, closet, cupboard, etc., to produce valuables. Determine the exact location from the subject and retrieve the property in the subject's presence.

D. Designate at least two agents to remain with the occupants. The occupants should not routinely accompany or have any dialogue with the searching agents or with each other.

E. Proceed to search the premises in a thorough, orderly fashion. Upon uncovering an article subject to seizure, the finding agent will summon a witnessing agent. If practical, photographs should be taken of the article in the location where it was found.

The item should be marked or tagged. The mark or tag should contain at least the date and the initials of both agents. The agents should make notes to include a description of the item and exactly where it was found.

F. If any valuable articles not subject to seizure are encountered, take rigid measures to assure their security. If the lawful owner of such articles is not present, or will not be present after the agents leave, the premises should be completely locked and secured. If exterior doors or windows were damaged during the search, nail or board them back up unless the owner or someone designated by the owner is available to secure the property. (If necessary, make arrangements to guard the premises until it can be secured or until the owner returns.) If unusually valuable merchandise is encountered (large amounts of cash, jewelry, etc.), it is advisable to take it into custody for safekeeping and provide the owner with a receipt.

G. Inventories of seized items will be prepared in the following manner:

One agent will be designated to take possession of all articles seized as evidence or taken into custody for safekeeping. The agent so designated should not turn these items over to other agents for transportation or processing as this will unnecessarily extend the chain of custody.

Controlled substances or other property seized as evidence pursuant to a search warrant will be listed on the reverse side of the warrant. If the space available on the reverse side of the warrant is inadequate to list all items seized as evidence, a continuation sheet will be prepared to complete the list. A copy of the continuation sheet will be attached to each copy of the warrant and reference to the continuation sheet will be made on the reverse side of the warrant itself. The continuation sheet will have a heading which adequately identifies it as a continuation of the inventory of seized property from the warrant itself. Sample heading:

"Continuance of Inventory of Seized Property Pursuant to the Attached Search Warrant for 122 West Main St., Chicago, Illinois, Which Was Executed on 6/10/71."

Each article seized will be described on the inventory list as completely as possible.

A copy of the continuation sheet (if required) will be attached to the copy of the warrant left at the premises, the copy returned to the issuing judicial authority, and the copy retained in the investigative file.

Keep careful notes as to the description of each item taken into custody, the location where found, the seizing and witnessing agents' names, and the name of the agent who takes custody of the property for transportation and processing. See Subchapter 666.

6653.4 REPORTING THE SEARCH. Upon completing the search, processing of prisoners and evidence, etc., the supervising agent will debrief each participant as to his role in the search. DEA Form 6, Report of Investigation, will be prepared within five working days setting forth pertinent information surrounding the obtaining and execution of the warrant (including method of entry). DEA Form 7's and DEA Form 7a's will be prepared for all items seized. The supervising agent will assure that the following documents are included in the case files:

A. Copies of the search warrant and inventory.
B. DEA Form 6.
C. DEA Form 7(s).
D. DEA Form 7a(s).
E. DEA Form 12(a).

6654 CIVIL SEIZURES AND FORFEITURES

6654.1 GENERAL

A. The concept of attaching guilt to "things" used in the commission of a crime originated in Biblical, Greek, and Roman law. A sword used to kill a man, for example, was deemed to possess an evil quality independent of the killer. The sword would be confiscated and sold, and the proceeds used for pious deeds, thereby purging it of its guilt.

More recently, this concept appeared in international maritime law, which provided for the confiscation of ships as a method of settling claims or punishing wrongdoers. The rationale for this action was an inability to achieve compensation from foreign parties by alternative means. Current forfeiture statutes, including DEA's, are based upon this country's Admiralty and Maritime Laws.

B. Although forfeiture is a civil proceeding, its purposes and results more closely resemble those of a criminal proceeding. This apparent dichotomy has contributed to divergent and at times conflicting case law on the subject. A detailed analysis of this case law is beyond the scope of this manual. However, in a general sense, it could be summed under two considerations:

1. Although forfeiture is an action against property (i.e., "in rem"), that action inevitably impacts on a person, or persons. The court can be expected to view the action in terms of its impact on the constitutional rights of the person so affected.
2. The property seized for forfeiture must have "some substantial connection to, or be instrumental in, the commission of a crime" (U.S. vs One 1972 Datsun).

C. In the course of their activities, agents commonly encounter "property" which there is probable cause to believe was in some manner connected with a drug-related crime. Some of this property will have evidentiary value, but some will not, either because it is not directly useful in prosecuting a defendant, or because it is encountered under circumstances where there is no defendant to prosecute. Such property in all likelihood is subject to forfeiture.

Even property taken for evidence must eventually be disposed of. If the property is not controlled drugs or contraband, forfeiture proceedings are the only alternative to considering it returnable property.

D. The policies and procedures contained in this section apply only to civil forfeitures. Forfeitures under 21 USC 853 and 18 USC 1961-64 are criminal, rather than civil, and the contents of this section consequently cannot apply. Criminal forfeitures are under the exclusive direction of the court. In most instances, DEA's role in these forfeitures is limited to supplying evidence to the court via the indictment, testimony, etc., while the actual seizure and disposition of the property is carried out by

the U.S. Marshal's Service. In those instances where the court directs that DEA make the seizure, handling and disposition instructions should be sought from the court. Note: DEA is not administratively equipped to process real property forfeitures; any forfeiture involving real property must be processed by the U.S. Marshal's Service.

6654.2 SEIZURE PROCEDURES

6654.21 General. The seizure process leading to forfeiture is essentially the same regardless of the type of property involved. For some types of property (i.e., drugs in possession of a registrant, conveyances, financial proceeds and real property), however, there are specific legal and procedural considerations involved. This subsection treats first the common process, then those procedures which specifically apply to these special types of property. Where an item of property is encountered which is unusual to the point that the guidance set forth in this section is not sufficient, contact the Office of Chief Counsel, Asset Forfeiture Unit.

6654.22 Common Process

A. 21 USC 881(b) sets forth the circumstances under which DEA may effect a civil seizure "executively" (i.e., prior to filing a compliant for forfeiture). Generally, there is sufficient latitude in these provisions to effect an executive seizure under any conditions likely to be encountered in our activities. However, seizing property without prior process is the civil equivalent of arresting a person without a warrant: the probable cause for the seizure has not undergone prior judicial examination. Furthermore, there is growing case law to the effect that the Government must show a need for urgent action in executive seizures. For these reasons, it is a DEA policy that seizures likely to be processed administratively may be made executively. However, where it is known beforehand that the forfeiture is likely to be processed judicially, and there is sufficient time to do so, then prior process will be sought (see 6654.33).

B. Prior to making the seizure, the agents will determine, insofar as possible, what items are to be seized and their locations at the site. Plans will be made to have any special equipment on hand (e.g., trucks, dollies, boxes, tags, etc.).

Should authority be granted in one judicial district for property to be seized in another, the group supervisor responsible for the seizure order will notify by teletype the appropriate supervisor or asset removal team in the division where the property is to be seized. Case agents should remind the AUSA that a call to his/her counterpart in the other district would be useful.

C. If the item subject to forfeiture is on private property, then access to the property is governed by the laws of criminal search and seizure (see 6653). If the owner or possessor refuses to surrender the item, then reasonable force may be used to accomplish the seizure.

D. Once it is known that the ultimate disposition of property seized as evidence will be forfeiture, those proceedings should be initiated as soon as possible. If the initiation of forfeiture proceedings could adversely affect a parallel criminal action, a stay of discovery and an order sealing pertinent documents may be sought in the civil action pending resolution of the criminal proceedings.

There are several reasons for initiating these proceedings promptly. From an administrative standpoint, it enables DEA to ultimately dispose of the property expeditiously, minimizing problems with storage and maintenance. From a legal standpoint, the court can be expected to examine any undue delay in terms of the claimant's right to due process. Although a pending criminal proceeding will be considered a "weighty factor" in favor of the Government, the delay will be examined from the perspective of whether it has adversely affected the defendant's ability to mount a proper defense in the forfeiture action.

NOTE: Forfeiture proceedings are considered "initiated" upon the seizure of the property. Recent court decisions do not look favorably upon an unreasonable delay in mailing notices to parties. Notices to parties which have not been mailed within six months from the date of seizure, and for which there is no reason to delay (such as case jeopardy), are considered untimely. Forfeiture proceedings should be abandoned if the initiation of such proceedings falls outside the six month timeframe. Inquiries concerning possible delayed forfeiture proceedings should be directed to Headquarters, Office of Chief Counsel, Asset Forfeiture Section (CCF).

E. The prompt initiation of proceedings requirement does not apply to property subject to forfeiture but not yet seized or otherwise taken into custody. The property need not be seized immediately or at the first opportunity. The outside limit for seizure is that the proceedings must be initiated within the statute of limitations.

F. All property seized for forfeiture (except conveyances and real property) will be marked and sealed as set forth in 6663.2.

G. If the seizure is by prior complaint (see A above and 6654.33C), then copies of the Complaint for Forfeiture and the Warrant will be presented to the person holding the property, or left on the premises. If an executive seizure, then a DEA Form 12 will be issued for the seized property. If the property is already in DEA custody from a prior action (e.g., seized earlier as evidence), this step is not necessary.

H. 21 USC 881(c) provides that DEA may: place the property under seal (in place); or remove it to an appropriate storage site; *or require the U.S. Marshals Service (USMS)* to take custody and store it for disposition in accordance with law.

1. Whenever possible, sealing in place will be avoided, as it leaves little security over the property. It should only be used where the physical bulk of the property is such that it is not practical to remove it. It may also be used in certain

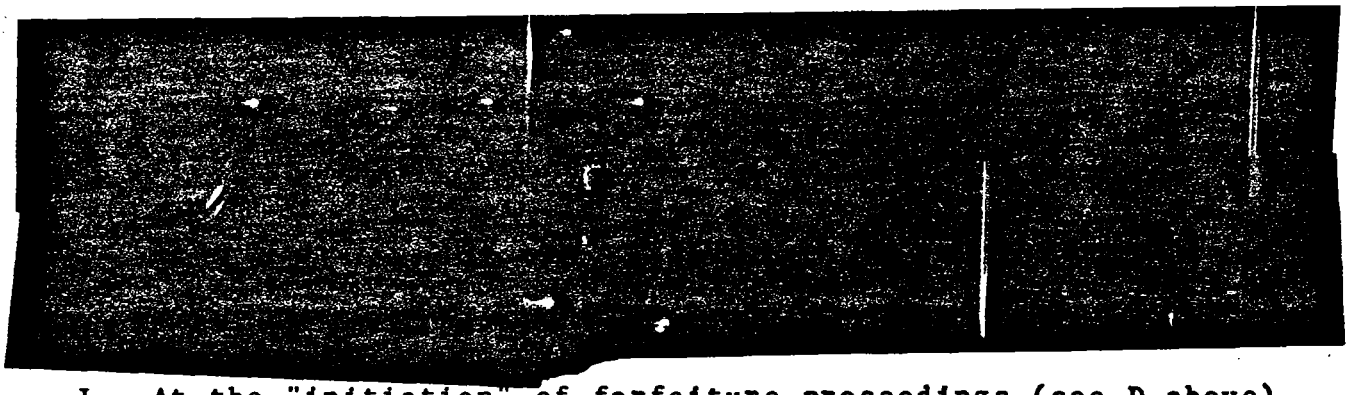
regulatory situations, where large amounts of drugs or equipment in the possession of a registrant may be seized for only a short period of time. Other than this, controlled drugs will never be sealed in place.

Where property is sealed in place, it should be sealed in a manner that prevents accessibility to it without breaking the seal. The way this can be accomplished will vary depending on the property. One method, depending upon circumstance, is assembling the items in one location, such as a separate room, and sealing the room. If several boxes are involved, seal each one. If necessary, wrap a large sheet of plastic around the property and seal the plastic.

2. Seized property usually should be stored in the judicial district in which it was seized. Where the property is removed from the judicial district of seizure, the U.S. Attorney of that district should be so advised.

3. All non-evidentiary seized property that is pending forfeiture will be released to the USMS. Evidentiary seized property should be stored at DEA, facilities whenever possible. When this is not possible, a bonded warehouse may be considered. Store all items of a seizure in the same location within the storage site, but segregated from any other seizures also being stored there. If the items must be stored in separate locations, store any controlled drugs in the location having the highest degree of security.

Note: A copy of all DEA-453's must be provided to the USMS within ten days of seizure on evidentiary evidence to indicate DEA's intent to place it into official use.



J. At the "initiation" of forfeiture proceedings (see D above) against any property, the DEA Form 453 will be prepared under the file number of the parallel criminal investigation. If there is no parallel criminal investigation, as in adopted seizures, then a new case file number will be assigned, with the name of the individual from whom the property was seized as the file title using a "Zero" G-DEP identifier. The DEA-453 was designed to streamline the forfeiture process and is not to be construed as an investigative reporting/indexing vehicle. Where the initiation of forfeiture procedures does not parallel a criminal investigation, the Field Division may require a DEA-6 outlining pertinent details leading to a seizure, and to provide a vehicle for name indexing in NADDIS. This DEA-6 should not be routed to Headquarters CCF.

The DEA Form 6, entitled Forfeiture Initiation Report, will no longer be prepared. Such a report was used only to identify the facts to establish probable cause. While this report is no longer prepared, this change does not preclude the seizing agent from preparing a DEA Form 6 outlining the circumstances surrounding the seizure. The DEA Form 453 will be used to report the probable cause for forfeiture to Headquarters CCF. It is extremely important that the DEA Form 453 be completed accurately and must always include the following information:

1. Suitability for DEA official use.
2. Description of Property: Enter a brief description of the property to include year, make, and model if conveyance; street address if real property; dollar amount, and fiscal control number. Money denominations, i.e., 1x$10.00, 5x$20.00, will be reported in block 22 of the DEA-453.
3. Details of Ownership: The complete name and address of the individual from whom the property was seized as well as the known or registered owner and the lienholder are to be identified on the DEA Form 453. If the seizing agent is aware that an individual is incarcerated at the time of the completion of the DEA Form 453, the complete address of the incarceration location and booking number should also be provided. (See DEA-453 examples at the end of the section.)
4. Facts to Establish Probable Cause: The details concerning the probable cause should be provided in a simple, concise manner. Name and address of requesting equitable share agency and name of individual to whom the property will be delivered must be provided.
5. Details of Storage: The complete name, address, and telephone number of the custodian should be provided as well as the date the property was stored and the storage rate if applicable.
6. Distribute the DEA Form 453 as follows:

   a. Original - send to input operator for input into the computerized asset program.
   b. Copy 1 - returned to submitting agent as receipt from custodian; this copy is filed into the case file.
   c. Copy 2 - retained by custodian for inventory and record control.
   d. Copy 3 - attached directly to the property as an identifier.

The agent preparing the DEA-453 is responsible for the completeness and accuracy of the data. The approving supervisor is responsible to ensure that all necessary data is provided and accurate. The input operator is responsible for the correct entry and verification of each DEA Form 453 into CAP. Once the record has been established in the CAP database, the input operator will forward a copy of the full record printout from CAP to the submitting agent as his record that the DEA Form 453 was keyed into CAP. This printout will also identify the DEA seizure number under which all subsequent actions will be filed. The seizure numbers must appear on all DAG-71 and DAG-72 submissions (requests for equitable sharing). Separate DAG-71 and DAG-72 must be submitted on each seizure number.

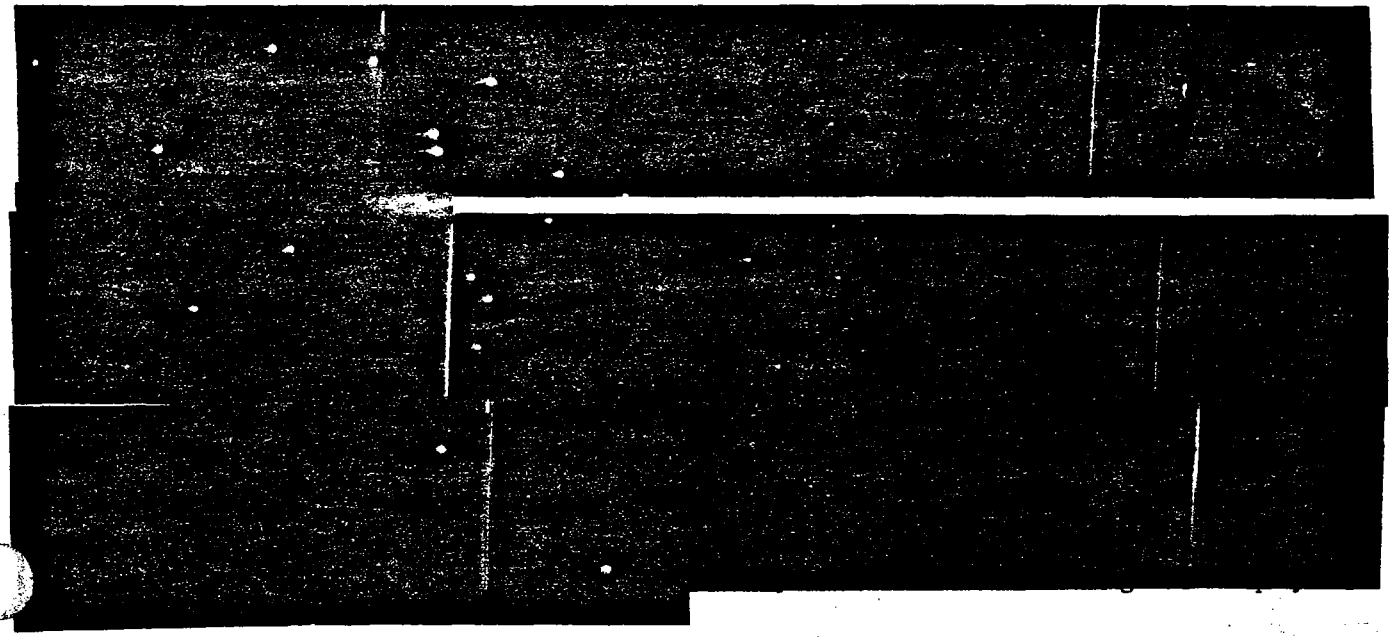
K. In a strict legal sense, property is "forfeited" at the moment of illegal use or acquisition. Subsequent forfeiture proceedings merely confirm or proclaim the forfeiture. All rights and legal title to property being held by the Government pending resolution of forfeiture proceedings rests with the Government. Therefore, theft of property in this status constitutes a violation of 18 USC 641 (Theft of Government Property); and the commission of "damage or mischief" to such property constitutes a violation of 18 USC 1361. A DEA-29 must be prepared when a seized asset under the control of DEA is stolen, lost, damaged or destroyed.

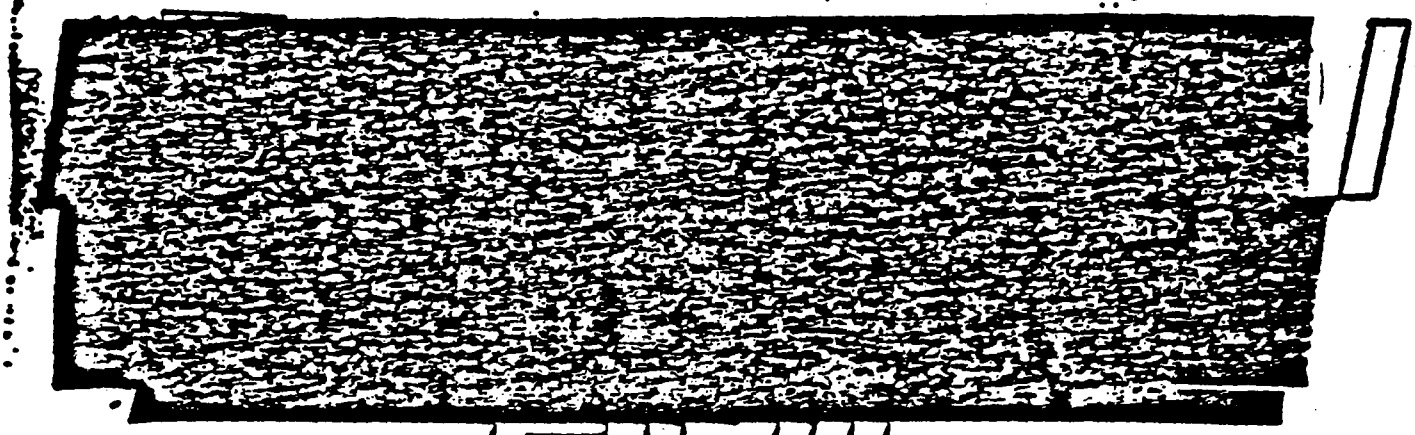
6654.23 Drugs or Other Property in Possession of a Registrant

A. Any seizure of controlled drugs or other property from a DEA registrant will be pre-cleared by telephone with Headquarters (ODO).
B. Upon arriving at the scene of the seizure, the senior agent/investigator will advise a responsible official of the firm of what is taking place. He will state his authority under the CSA, specifically what is to be seized, and the recourses open to the registrant (see 6654.3).
C. Civil seizures of pharmaceutical drugs from a registrant will be handled as nondrug property pursuant to 6663.

6654.24 Conveyances. (See Section 0324 of the Administrative Manual.)

A. 21 USC 881(a)(4) provides that any conveyance (aircraft, vehicle, vessel, etc.) is subject to forfeiture if it is used, or intended to be used, to transport or facilitate the transportation, sale, receipt, possession, or concealment of controlled drugs, raw materials, or equipment in violation of the CSA. It excludes from this innocent common carriers and stolen vehicles. The law thus provides DEA with latitude to seize conveyances under a broad range of circumstances. It is DEA policy that, in any circumstance where probable cause exists to believe that a conveyance was used or intended to be used in a manner meeting the criteria of 21 USC 881(a)(4), the conveyance will be seized.





NOTE: If special circumstances exist which justify the seizure of property valued at less than the stated amounts, the SAC may authorize such seizure. The special circumstances must be explained on the DEA Form 453. This approval may not be delegated below the SAC level.

5. Where the conveyance is inoperable to the point *where* it reasonably could not be used again in a drug violation.

6. Where the conveyance is in a repair shop, and the cost of the repairs is substantial versus the value of the conveyance. Note: Where this is not the case, attempt to have the repair shop release the conveyance and file a petition to recover the charges. If this is not possible, pay the repair bill and charge the payment as cost of seizure.

7. Where the conveyance has been rented from a reputable rental agency, and there is no reason to suspect collusion between the violator(s) and the rental agency officials. When such vehicles are taken into custody for safekeeping, i.e., seized incident to arrest, they should be released to the rental agency pursuant to the execution of a Vehicle Indemnity Agreement (DEA Form 292) by an authorized representative of the rental agency. It is not necessary to prepare a DEA Form 453 unless the conveyance was taken into custody for forfeiture consideration and subsequently determined to be quick-released (See 6654.24 G).

8. Where, in the period between the time the conveyance was used in a violation and the time it may be seized, possession has transferred to an innocent party. Examples:

* Revision
** Addition

*a. If a lienor has repossessed the conveyance for reasons other than that he knows the conveyance is subject to forfeiture (if there is indication that this was the reason for repossession, then the conveyance will be seized).

b. If, prior to seizure, the conveyance is sold to an innocent purchaser (if there is indication that this sale was initiated to defeat the seizure, then the seizure should be made.*

9. Where only trace amounts of drugs are involved. A trace is defined as less than a dosage unit of a controlled drug (or less than one-half gram of marijuana).

10. Where the conveyance was stolen and was in this status during the violation.

11. Where the conveyance is a common carrier, unless the person in charge or owner had knowledge of its intended use in violating the law.

12. DEA will not adopt seizures (where the conveyance is seized as a result of an investigation in which DEA did not participate) unless a substantial amount of drug is involved. In the case of an aircraft or vessel, consult with Headquarters (OS) prior to adopting the seizure.

(Paragraphs C, D thru H remain unchanged).

* Revision

7. Where, in the period between the time the conveyance was used in a violation and the time it may be seized, possession has transferred to an innocent party. Examples:

a. If a lienor has repossessed the conveyance for reasons other than that he knows the conveyance is subject to forfeiture (if there is indication that this was the reason for repossession, then the conveyance will be seized).

b. If the conveyance was rented at the time of the violation, but is returned to the rental company prior to seizure.

c. If, prior to seizure, the conveyance is sold to an innocent purchaser (if there is indication that this sale was initiated to defeat the seizure, then the seizure should be made).

8. Where only trace amounts of drugs are involved. A trace is defined as less than a dosage unit of a controlled drug (or less than one-half gram of marijuana).

9. Where the conveyance was stolen and was in this status during the violation.

10. Where the conveyance is a common carrier, unless the person in charge or owner had knowledge of its intended use in violating the law.

11. DEA will not adopt seizures (where the conveyance is seized as a result of an investigation in which DEA agents did not participate), unless a substantial amount of drug is involved. In the case of an aircraft or vessel, consult with Headquarters (OS), prior to adopting any seizure.

C. Where a special circumstance exists in which an exception to A or B above is felt warranted (either not to seize a conveyance that otherwise should be, or the converse), then Headquarters (CCF) should be consulted by telephone.

D. Upon seizing the conveyance, it must be thoroughly searched, including opening all containers within the conveyance, to inventory its' contents. This search need not be contemporanebus with an arrest, and no search warrant is needed. All articles not part of the conveyance and not having evidentiary value, or not subject to separate forfeiture action, will be removed and returned to the owner without delay (see 6663.63). Accessories, jacks, and standard maintenance tools are considered part of the conveyance. Installed radios, tape players, etc., are also part of the conveyance. Tapes found in a tape player are part of the conveyance, but loose tapes are not.

E. In seizing an aircraft/vessel, do not attempt to inventory or move it without the assistance of a qualified pilot/boathandler. Headquarters (OS) must be contacted by telephone to initiate assistance of this nature.

F. Within 5 calendar days of the seizure, a DEA-453 must be prepared. Preparation instructions are provided on the reverse of the form. Probable cause and suitability for official use or equitable share information must be provided on DEA Form 453. Submit the original to the computer terminal operator for input into the computerized asset program. Affix DEA Form 453, Copy No. 3, inside the windshield of the conveyance or in some other prominent place on the property seized. The DEA-453 will be used to transfer all conveyances to to the USMS within ten (10)

days of seizure. A copy of the DEA-453, signed by the USMS designee, will be retained in the DEA case file.

G. Quick Release Policy. Since DEA will not respond to inquiries from lenders regarding criminal records of potential customers, it is DEA policy that, upon satisfactory showing, conveyances will be released to innocent registered owners or lienors prior to initiating forfeiture proceedings. Quick releasing a conveyance is merely an expeditious means of resolving seizures which, if pursued through forfeiture proceedings, would ultimately result in DEA granting relief through the petition process. Conveyances for quick-release must be returned within 48 hours of seizure. (DEA field offices are responsible for updating the CAP data base record to reflect release of the property.)

Note: Once seizure is referred to the U.S. Attorney, it cannot be processed under this quick-release policy unless the matter is referred back to DEA. Referrals back to DEA will be coordinated by the Chief Counsel, Asset Forfeiture Section (CCF).

1. Upon receipt of the DEA Form 453, the Group Supervisor will determine if quick-release of the conveyance is warranted. The following questions bearing on the innocence of the registered owner are pertinent to this determination:

a. Did the registered owner have knowledge of the violation?
b. Does the registered owner have a prior record or reputation as a drug violator?
c. Was a straw purchase involved?
d. Was the conveyance registered to the parent for insurance purposes because the violator was under age?
e. Did the violator have principle use and control over the conveyance?
f. Do other conditions exist that justify the initiation of formal forfeiture proceedings?

2. If the answers to the foregoing questions are determined to be No, the conveyance should be returned to the registered owner provided the owner completes a Vehicle Indemnity Agreement (DEA Form 292). The details concerning the seizure and return of the property will be reported on DEA Form 453. Prior to releasing a conveyance to a registered owner, determine whether a lien exists on it. If so, indicate the name and address of the lienor on the DEA Form 453.
3. If the answer to any question in 1 above is YES, and no lien exists, proceed with appropriate forfeiture procedures.
4. If the answer to any question in 1 above is YES, and a lien exists, conduct a full lien inquiry to determine the extent of the lienholder's equity.

a. If the difference between the lien and appraised value is more than $2,500 ($5,000 for vessels and aircraft), proceed with the appropriate forfeiture proceedings.
b. If the difference between the lien and appraised value is less than $2,500 ($5,000 for vessels and aircraft), the vehicle should be released to the lienholder, provided the following conditions are met:

(1) He had no prior knowledge of the violation.
(2) He provides satisfactory proof of interest (sales contract, installment note, certificate of title).
(3) He executes a DEA Form 292.
(4) He agrees to pay all costs of seizure.

Note: DEA is limited by law not to pay liens in excess of one-third (1/3) of the appraised value of an asset desired for official use. In highly unusual circumstances, exceptions may be sought through AA/AMP by the Administrator to the Attorney General.

5. Any conveyance that is valued less than $2,500 ($5,000 for vessels and aircraft) will not be processed for forfeiture. All such conveyances will be returned to their owners or their appointed representatives within 48 hours of seizure. All owners must pay any costs incident to the seizure. Seized conveyances that cannot be returned should be processed for abandonment.

6. Where a conveyance is quick-released, prepare the DEA Form 453 as above. In block 34, provide the name and title of the person to whom the property was returned. In Block No. 43, Facts to Establish Probable Cause, a complete justification for releasing the conveyance, as well as details of the return, will be provided. The details must also include the date the DEA Form 292 was executed and the parties involved. The executed DEA Form 292 will be filed in the local field office files. DEA field offices are responsible for updating the CAP data base record to reflect the release of the property to the owner/lienor.

H. Once it is determined that a conveyance will undergo forfeiture proceedings, custody must be transferred to the US Marshals Service, unless the conveyance is designated solely for undercover use and unique storage requirements are needed which are not available through the USMS. Concurrence to retain custody must be obtained from AA/AMPP and documented with the USMS. (If the vehicle is suitable for official use, it must be noted on the DEA-453.) A copy of the DEA-453 will be provided to the USMS. DEA will retain a copy of the DEA-453, signed by the USMS designee, in the case file. Conveyances retained by DEA will be processed as follows:

1. Remove the exterior accessories such as hub caps and lock them in the trunk.
2. Inflate tires to correct pressure.
3. Make sure battery is properly filled.
4. When climate dictates, add sufficient anti-freeze to radiator.
5. Affix a DEA Form 453, Copy No. 3, to the inside of the windshield (if not done previously).
6. Lock all doors, shut all windows.

Where the conveyance is an aircraft or vessel, notify Headquarters OS regarding the seizure. The USMS will take custody of all property that is pending forfeiture proceedings.

Note: If the conveyance is part of a judicial seizure and the circumstances exist as described in H. above, DEA must obtain an order of substitute custodianship from the court.

6654.25 Financial Proceeds

A. 21 USC 881(a)(6) pertains to various forms of money which are used to facilitate violations of the CSA, or various forms of money or "other things of value" which are used to purchase controlled drugs, or which are proceeds of such violations. The facilitation aspect is in essence an extension of the prior forfeiture concept to encompass an additional type of instrumentality. The proceeds aspect, however, represents the addition of a new dimension to the concept itself.

B. Definitions under 21 USC 881(a)(6):

1. Money - official currency of the United States or any foreign country.
2. Negotiable Instruments - documents which are legally transferrable by endorsement or delivery and which contain an unconditional promise to pay a sum of money.
3. Securities - stocks, bonds, notes, or other evidence of debt or property.
4. "Other Things of Value" - virtually anything furnished, or intended to be furnished, in exchange for a controlled drug. Presumably, "value" need only exist in the eyes of the seller.
5. Proceeds - anything received as payment for controlled drugs, or anything traceable to such payments. Proceeds are not limited to money. Further, if the direct proceeds of a sale are used to obtain something, then this secondary proceed is subject to forfeiture. There is no limit to the theoretical chain of transformations, as long as the chain can be documented.

When proceeds become mingled with nonproceeds, the amount known to be proceeds is still subject to forfeiture even though it cannot be specifically isolated from nonproceeds.

Proceeds are not subject to forfeiture, and are no longer to be considered proceeds, once transferred to a bonafide purchaser (an innocent third party who gives something of value for the proceeds, with no knowledge that what he is acquiring are proceeds from an illegal drug transaction).

C. Innocent third-party owners are protected under 21 USC 881(a)(6) if they can establish ignorance of the illegal activity that resulted in the seizure. An owner is any person or institution having a provable equity in the seized article. The burden of proof for innocence lies with the owner. Furthermore, if the owner does not have full interest in the article, his innocence does not extend beyond his equity.

D. Although monies, negotiable instruments, securities, and other things of value are forfeitable when used or intended to be used to purchase controlled drugs, only the first three types of articles are subject to forfeiture when used or intended to be used to facilitate a violation of the CSA. "Other things of value" used to facilitate a violation of the CSA are not forfeitable under 21 USC 881(a)(6). (They may be forfeitable, however, under other provisions of 21 USC 881(a).)

E. Minimum Seizure Policy. Monies, negotiable instruments, securities, and other high-value items (value at less than $1,000) will not be seized for forfeiture without the specific approval of the SAC. This approval may not be delegated below the SAC level.

Approval will be documented in the probable cause section of the DEA-453.

6654.26 Real Property

A. The legal definition of "real property", and what must be handled as real property, varies by State law. Generally, it is defined as land, or whatever is erected or growing upon, or affixed to land. For the purposes of this guideline, it shall also include any financial interests in the foregoing. In determining whether an item of property is real property in the jurisdiction of seizure, consult with the U.S. Attorneys' office.

B. Real property may be subject to forfeiture under 21 USC 881(a)(6) or (a)(7), 21 USC 853, or 18 USC 1963.

C. It is DEA policy that real property subject to forfeiture under 21 USC 881(a)(6) or (a)(7) will be seized only upon consultation with and the concurrences of the United States Attorney. The basis for this policy is the complexity of processing and obtaining title to real property that is forfeited. Real property will only be seized with a complaint for forfeiture and arrest in rem. The seizure and all ensuing process will be handled by the U.S. Marshals Service. A DEA-453 will be completed and entered into the CAP database.

D. The seizure of real property under 21 USC 853 or 18 USC 1963, and all ensuing process, will be handled by the U.S. Marshals Service.

6654.3 FORFEITURE PROCEDURES

6654.31 Classes of Forfeiture - Criteria. There are three means of processing a forfeiture under 21 USC 881, each requiring a distinct set of procedures:

A. Summary Forfeiture. Any item falling under the provisions of 21 USC 881(f) or (g) is subject to seizure and forfeiture, without the necessity of any further proceedings. Property meeting either of these criteria is considered contraband, and will be handled as drug evidence (see 6662).

B. Administrative Forfeiture. Any item **with the exception of real property,** falling under the provisions of 21 USC 881(a) and having a unit value of $100,000 or less may be handled administratively (by DEA rather than the court). Conveyances used to transport contraband will he processed administratively regardless of value.

C. Judicial Forfeiture. Any item falling under the provisions of 21 USC 881(a) and having a unit value of over $100,000 (or any item of lesser value, but where an affected party submits a claim and cost bond) must be handled judicially. **All seizures of real property must be handled judically.**

D. Responsibilities for Processing. All seizures of property subject to forfeiture which were made after January 1, 1986, are reported into the CAP database and processed by CCF. For these seizures, field office responsibilities are generally reduced to

** Addition

local care and custody of the property prior to its transfer to assigned petition investigations. (Seizures made before CAP implementation in the original six CAP divisions are the responsibility of those offices - Atlanta, before 12/1/85; Boston, before 11/1/85; Miami before 8/1/83; Newark, before 4/1/84; Philadelphia, before 10/1/85; and Washington, before 1/1/83.) On all pre-CAP seizures, field offices are responsible for completing the administrative forfeiture process and for tracking the judicial forfeiture process. In the procedural instructions outlined below, certain steps are identified as being handled by CCF. These are the steps that the field offices must use to complete processing a forfeiture action that commenced prior to their becoming part of the Computerized Asset Program.

6654.32 Administrative Forfeiture

A. Overview. Administrative proceedings are initiated by notifying the affected parties in writing that the seized item will be forfeited to the Government unless they request relief or contest the seizure in court. The notification process will be handled by the Asset Forfeiture Section (CCF).

B. Notification. Notification will take two forms: personal notice to those owning, having a financial interest in, or from whom the property was seized; and constructive notice in a newspaper of general circulation. All notifications, except by those divisions prior to the dates identified in 6654.31, will be handled by the Asset Forfeiture Section.

NOTE: Any seizure files that are the responsibility of the field office, and which require notification, should be processed immediately. The field should contact CCF for any instructions needed to complete the process.

C. Forfeiture Proceedings. All claimant inquiries concerning petitions should be directed to CCF.

6654.33 Judicial Forfeiture

A. Referral to a U.S. Attorney. If a seizure is to be handled under judicial forfeiture proceedings based upon the monetary value of the seized property or if a claimant files a claim and bond for the asset, all notifications and referrals, except by those divisions prior to the dates identified in 6654.31, will be handled by Chief Counsel/Asset Forfeiture Section.

B. Relief. Relief from a judicial forfeiture is requested by petitioning the U.S. Attorney for remission or mitigation. Inquiries on petition procedures should be directed to CCF.

C. Forfeiture Proceedings. Upon the filing of a Complaint for Forfeiture, the court will issue a Warrant for the Arrest in Rem of the Articles, directing the United States Marshal "to arrest" the property. Legally the United States Marshal assumes custody of the property.

1. A trial situation then ensues, in which the basis for DEA's seizure is examined. The quantum of proof required in a civil proceeding differs from that in a criminal proceeding. The

test is a "preponderance of evidence" rather than "proof beyond a reasonable doubt." It is, in effect, a probable cause hearing. As such, a wider spectrum of evidence is admissible (e.g., hearsay).

2. The forfeiture proceeding is separate and distinct from any corresponding criminal proceeding involving the defendants whose property is in question. It is even technically possible (although not likely) that a defendant will be found not guilty in a criminal action, yet the seizure of his property will be upheld. As the converse of this can happen quite readily, the Government must prepare a distinct and thorough case against the property, as well as the defendant.

3. The disposition of a civil forfeiture action will not be a factor in any plea bargaining that may occur in a parallel criminal case. (Note, however, that forfeitures under 21 USC 853 and 18 USC 1961-64 are criminal--not civil--forfeitures.)

4. Upon completion of the forfeiture proceeding, the court will issue a final decree of forfeiture. If the judicial proceeding is based upon the value of the property (not in response to a claim), and if no action is taken by the owner or interested party by the return date of the warrant, then the court may issue a default decree of forfeiture with no further proceeding.

Note: The field upon receiving court documents, will update CAP to include docket number, date of complaint/indictment and date of final decree. The only documents to be sent to CCF is the final decree. All law suits resulting from forfeiture action will be forwarded to CCF immediately.

6654.4 PETITION INVESTIGATIONS

6654.41 Initial Handling of Petitions

A. A petition may be filed any time before the forfeited property is sold, equitable shared or actually placed into official use. Once the property is sold, equitably shared or placed into official use, a petition for remission or mitigation is inappropriate. A petition for restoration of proceeds of sale or for the value of the property placed into official use is the appropriate legal mechanism (see 6654.46B).

B. Persons making inquiries on petitions should be advised to refer to 21 CFR 1316.79-81. Petitions in an administrative forfeiture should be addressed to the Administrator of DEA, sworn to by the person alleging interest in the property, and sent to the Office of Chief Counsel, Asset Forfeiture Section (CCF). Petitions in a judicial forfeiture should be addressed to the Attorney General, sworn to by the person alleging interest in the property, and submitted in triplicate; one copy to CCF; and two copies to the Office of the United States Attorney in the appropriate Judicial District.

C. All petitions should contain the following three elements:

1. Complete description of the property (including identifying numbers), and the date and place of seizure.
2. The petitioner's exact interest in the property, supported by documentation.
3. The facts and circumstances relied upon by the petitioner to justify remission or mitigation.

D. CCF will screen all petitions to ensure that each element has been addressed. Petitions found lacking information will be referred back to the petitioner or attorney. A petition will be considered until the asset has been disposed of. Further consideration from a petitioner will only be in those instances wherein a petitioner can demonstrate that proper notice was never received. If that is successfully documented, a 90-day period from the time of disposal of the property exists for the filing of a petition for restoration of proceeds.

6654.42 Policy on Granting or Denial

A. The "deciding official" on petitions in administrative forfeitures is the Forfeiture Counsel of DEA, and in judicial forfeitures, the Chief, Asset Forfeiture Office, Criminal Division, Department of Justice. Decisions on petitions are not subject to judicial review.

B. If the petitioner is the person who used the property in the violation of the law, the petition will be denied.

C. If the petitioner made the property available to the violator or has a remaining financial interest in the property, and had actual knowledge of the violator's record or reputation for drug-related crime, or the violator's use of controlled drugs, or involvement in illicit drug activities, then the petition will be denied.

D. If none of the conditions in either B or C above exist, then the petition will be granted. If the property is a vehicle and is to be released to the petitioner, this release is contingent upon his signing a DEA Form 292, Vehicle Indemnity Agreement, and his payment of all costs incident to seizure. The respective field office will be advised that a conveyance will be returned and for what cost by CCF.

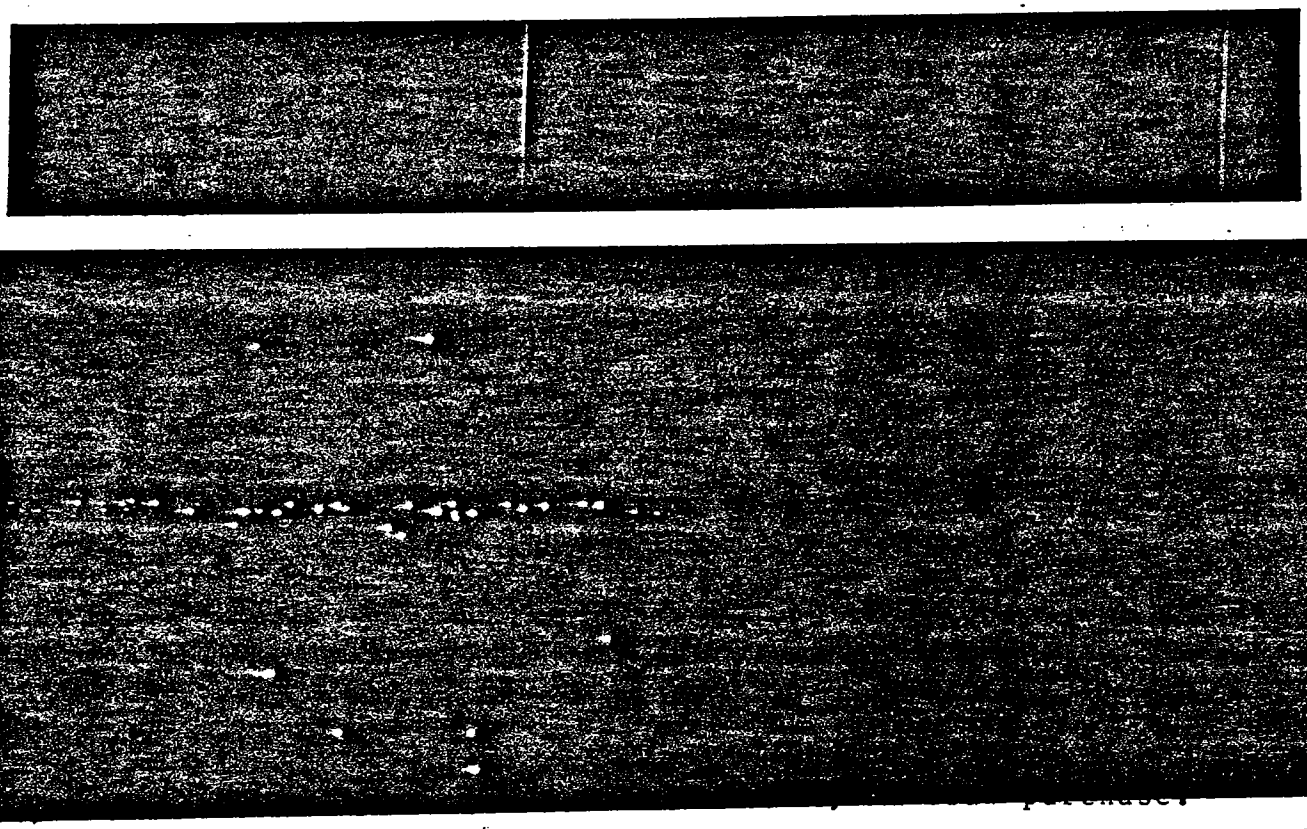
6654.43 Assignment of the Investigation. The investigation into the merits of the petition will be assigned to the field office handling the case by CCF. The completed report of petition investigation will be returned to CCF within 21 days of the date of the referral memo.

6654.44 Conducting the Investigation

A. The thrust of the investigation is to determine the merits of the petition to a degree sufficient for the SAC to make a recommendation to the determining official. It will fully explore the following points:

1. The petitioner's precise financial and legal interest in the property.
2. All circumstances under which the violator came into possession of the property; specifically the interaction between the violator and the petitioner before, during, and subsequent to the transaction.
3. Whether or not the violator had a record or reputation for drug-related crime; whether the petitioner was in a position to know of his record or reputation; what measures the petitioner

took to determine this record or reputation; and whether the petitioner had knowledge that the property was likely to be used in a drug-related crime.



6654.45 Reporting the Investigation. The DEA Form 6 will be reported under the file number of the parallel criminal investigation. In the "Report RE" block, enter "Petition Investigation: (name the property)." The report should have the following format.

A. Background. Briefly state the probable cause as provided on the DEA-453.

B. Petitioner's Interest. State the complete details of the petitioner's interest. If he is a lienor, report the basis of his interest, the names and addresses of persons to whom credit was extended (including co-signor), the date and place where credit was extended, and all details as to the lienor's net equity.

C. Record or Reputation for Drug-Related Crime. Set forth in specific detail the violator's record or reputation for drug-related crime, and the details as to whether the petitioner knew or likely knew of this record or reputation. Set forth the degree of knowledge the petitioner had or likely had of the violator's criminal activities. If the petitioner is a person, set forth the circumstances under which the vehicle or other property was loaned to the violator. If the petitioner is a lienor and it is believed that a straw purchase took place, set forth the basis for this belief and whether it was known to the lienor.

D. Other Facts Bearing on the Petition. Set forth any other facts which have a bearing on whether the petition should be

granted or denied. Include the cooperativeness of the petitioner, the truthfulness of his statements, etc.

E. Summary. Summarize all the foregoing as it bears on the determination to grant or deny the petition.

F. The field office will forward the petition investigation to CCF for review. CCF will make any necessary referrals and recommendations. The petition investigation report will be distributed as follows:

1. Original to Asset Forfeiture Section.
2. Copy to Headquarters (AMRI).
3. Copy to Division/District forfeiture case file.
4. Copy to originator's forfeiture file (if applicable).

6654.46 Disposition of a Petition

A. Ruling

1. Administrative Forfeiture. The Forfeiture Counsel will send a letter of ruling to the petitioner, including any special terms or conditions. A copy of this letter will be sent to the appropriate field office.
2. Judicial Forfeiture. The Asset Forfeiture Office of the Department of Justice will send a letter of ruling to the petitioner. CCF will forward a copy of this letter to the appropriate field office once the copy is received from DOJ.

B. Subsequent Petitions

1. Petition for Reconsideration. 28 CFR 9.4(e) provides that the petitioner may seek reconsideration of a denial. It must be submitted, within 10 days in an administrative forfeiture or 20 days in a judicial forfeiture, to the Office of Chief Counsel (CCF). It must be based upon "evidence recently developed or not previously considered." The SAC will be advised if any further investigation is warranted.
2. Petition for Restoration of Proceeds of Sale. 28 CFR 9.3(f) provides that the petitioner may seek the proceeds of sale or the value of property placed in official use. The petition must be submitted within 90 days of the date the property was sold or placed in official use, to the Office of Chief Counsel (CCF). The petition must be based upon proof that the petitioner did not know of, and the existence of circumstances prevented knowing of, the seizure prior to the Decree of Condemnation of forfeiture.

6654.5 DISPOSITION OF FORFEITED (OR ABANDONED) PROPERTY

6654.51 General. This subsection provides a general overview of agency policy pertaining to the disposition of forfeited or abandoned property. Detailed policies and procedures on this are to be found in the Administrative Manual 0313.47. See also 6663.55 Abandonment Proceedings.

6654.52 Placing Property into Official DEA Use

A. The Attorney General has issued guidelines dated April 9, 1987, which require that property placed into official use must be used for a "significant law enforcement purposes." A special

justification must be prepared for all property appraised at $20,000 or more, detailing the reasons the property was placed into official use rather than sold.

Note: DEA has defined significant law enforcement purpose as that which promotes the safety of investigative personnel and related Government property, or, direct support of any criminal investigative activity or related training.

B. Forfeited property placed into official use will be limited to conveyances with limited exceptions where it can be demonstrated that items of a non-conveyance nature will meet the "significant the enforcement purpose" criterion. All assets requested for official use must have been identified initially in item 21 on the DEA Form 453 as suitable for official use.

C. Headquarters AM concurrence must be obtained prior to placing any forfeited item into official use as outlined in Administrative Manual 0313.47.

D. Placing forfeited or abandoned firearms into official DEA service is specifically prohibited. Disposition of firearms, ammunition or destructive devices is outlined in 6663.61

E. Any asset obtained through Plea Agreement which was not seized orginally under 21 USC must be entered into the CAP system. Assets forfeited under 21 USC 853 will be entered for statistical purposes. Assets obtained from the defendant agreeing not to contest civil forfeiture must be entered into CAP and processed according to 881 procedures. Concurrence to place any asset obtained through plea agreement into official use will be obtained as outlined in Administrative Manual 0313.47.

F. All items seized as evidence which are not contraband or a controlled substance, which were not entered into CAP because they did not meet the criteria outlined in 6654.24 and which are not returned to the owner, must be processed as abandoned property as outlined in 6663.55. Upon abandonment, concurrence to place the abandonment item into official use will be obtained as outlined in Administrative Manual 0313.47. DEA may not arbitrarily place any item seized as evidence into official use without following the procedures outlined in 6663.54.

6654.53 Disposition by GSA

A. Forfeited items not approved for official use as outlined in Administrative Manual 0313.47 and not meeting the criteria of 6654.24 will be sold by GSA and the proceeds deposited in the Asset Forfeiture Fund.

B. Abandoned items not approved for official use as outlined in Administrative Manual 0313.47 will be sold by GSA and the proceeds deposited to the general fund, U.S. Treasury.

C. AMPP will prepare the necessary SF-126, Report of Personal Property for Sale.

6654.54 Disposition by the U.S. Marshals Service (USMS)

A. The USMS, through its National Asset Seizure and Forefeiture Program (NASAFP), is responsible for the care, custody and disposition of all seized and forfeited non-evidentiary property; the exception is property which will be utilized solely for undercover purposes, and that requires unique storage requirements unavailable through the USMS. (Prior concurrence must be obtained through AM/AMPP to retain custody, and documentation provided to the USMS.) All non-evidentiary property seized under 21 USC 881 (a)(6) must be turned over to the USMS within 10 days of seizure. DEA must--within 30 days from the date of forfeiture--reclaim assets approved by AM as suitable for official use which were originally indicated as suitable in item 21 on the initial DEA Form 453. After the 30 day time limit, the USMS has been directed to initiate disposition action.

B. Assets initially determined to be of evidentiary value, which were seized under 21 USC 881, must be turned over to the USMS utilizing a DEA-48a when no longer needed as evidence.

C. Concurrence to place a forfeited asset into official use will be obtained in accordance with Administrative Manual 0313.47. It is prohibited to utilize a seized item prior to forfeiture or to place an item into official use without obtaining prior AM concurrence.

6654.55 Disposition of Money. All money will be handled in accordance with the guidelines in pargraph 6663.67 of this manaul, and Chapter 057 of the Administrative Manual (when published).

6654.56 Disposition of Property - Federal Equity Sharing Program

A. General. The Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986 provided new provisions to existing forefeiture statutes to allow for the distribution of forfeited property to participating Federal, state and local agencies.

1. Property not retained for official use is eligible for equitable transfer.
2. Any Federal, state or local law enforcement agency that participates in the acts leading to a seizure or forfeiture may file a request for equitable transfer of property. Sharing requests not received in the field office within 30 days of the seizure will not be guaranteed action and in no case, will sharing requests be honored if received after issuance of the Declaration of Forfeiture orginial disposition whichever is later.
3. In those cases where a request for equitable sharing has been submitted by a participating agency, the determining official will decide upon an equitable share that reflects the relative contribution of the participating agency to the investigation leading to the seizure and forfeiture of the property to be shared.
4. Upon receiving a request for an equitable share, the case agent must ensure that in the "Facts to Establish Probable Cause" section of the DEA-453 the name and address of the receiving agency and the name of the individual to whom the property will be delivered is entered. The CAP data base must contain this information.

B. Procedures for Requesting Equitable Distribution

1. DAG-71, Application for Transfer of Federally Forfeited Property. Within 30 days of seizure of property for forfeiture, the participating Federal, state, or local agency should submit the DAG-71 to the DEA field office managing the seizure. The DAG-71, which provides a description of the property requested and estimates of the requesting agency's participation, must be completely and accurately completed including all necessary certifications. An information copy of the request will be forwarded by the field office to the United States Attorney in the district where the sharing request originated.

2. DAG-72, Decision Form for Transfer of Federally Forfeited Property. Within 10 days or receiving the DAG-71, the DEA field office should complete the DAG-72 and refer both the DAG-71 and DAG-72 to CCF for subsequent processing. In completing the DAG-72, DEA field office will provide all information in Part I accurately and correctly. In making his recommendation, the Special Agent in Charge of the DEA field office should outline how the property should be distributed when completing Part I, Section 5, of the DAG-72.

Upon receiving the DAG-71 and DAG-72 from the DEA field office, the CCF will forward a copy of the DAG-71 to the USMS/NASAF Program Headquarters. A separate DAG-71 and DAG-72 must be submitted for each seizure identified; the seizure number (SYID) must be identified on each DAG-71 and DAG-72. Note: Requests for DAG-71 and DAG-72 Forms should be directed to the DEA Headquarters warehouse, AMGO.

3. Subsequent Processing - Judical Forfeitures. In matters where the property is to be judicially forfeited, CCF will send a letter to the requesting agency advising of the pending judicial forfeiture. CCF will forwarded copies of the DAG-71/72 to the DOJ Criminal Division, Asset Forfeiture Office, for referral to the appropriate U.S. Attorney. Once forfeiture is completed, the Asset Forfeiture Office will coordinate the equitable distribution of the property with the USMS.

4. Subsequent Processing - Administrative Forfeiture. In matters where the property is administratively forfeited and the value of the property is $100,000 or less, a written ruling on the sharing request will be sent to the requesting agency by the Chief, Asset Forfeiture Section. For administratively forfeited property valued over $100,000 the Chief, Asset Forfeiture Section will forward his recommendations concerning the sharing request to the Director, Asset Forfeiture Office, Department of Justice, for a decision. A letter advising that the matter has been forwarded to the Asset Forfeiture Office will be sent by CCF to the requesting agency.

C. Once forfeiture has been completed, a decision concerning the sharing request will be made by the Chief, Asset Forefeiture Section. All necessary documentation will be sent to the DEA field office amd to the USMS to transfer the property. Once the transfer has been executed, the DEA field office is responsible for correctly updating and coding the corresponding automated CAP record so the file can be closed. Any checks received by the field office for expenses reimbursed will be sent to the USMS for deposit. Copies of all transfer documentation should be retained by the DEA field office. (NOTE: No expenses will be reimbursed when the transfer is to another agency of the Department of Justice.)

D. Direct Property Transfer - USMS Custodian. In situations where the USMS is the custodian, and the forfeiture has been completed a decision concerning the sharing request will be made by Chief, Asset Forfeiture Section. The decision letter will be sent to the requesting agency by CCF. All necessary documentation to release to the property will be sent to USMS/NASAF Program Headquarters by CCF. The USMS will execute the transfer to the requesting agency.

E. Distribution of Cash or Proceeds of Sale. All money and any property which is to be sold for distribution of proceeds is to be transferred to the USMS before a decision will be made concerning any sharing requests. The DEA field office is responsible for updating the automated CAP record to reflect the property transfer. The disposition code should be changed to reflect the proper custodian, the date of transfer, and the name of the custodian.

Upon verification of a property transfer, a decision on the sharing request will be made by the Chief, Asset Forfeiture Section. The decision letter will be sent to the requesting agency by CCF. All necessary documentation authorizing the distribution of money or proceeds of sale will be forwarded to the USMS/NASAF Program Headquarters by CCF. The USMS will execute the sharing distribution for the requesting agency(s). CCF will request that the USMS provide the checks to the appropriate DEA office for presentation to the requesting agency.

RECORD / RECEIPT OF SEIZED ASSET

Form must be LEGIBLY filled completed with Ball Point Pen. Shaded items will NOT be completed. See REVERSE for Codes and Item instructions.

1. FILE NO.	2. SEIZURE NO.	3. DEP IDENTIFIER	4. PROGRAM CODE	5. PROCESSING AGENCY
QC-83-0011	[redacted]		N/A	DEA
6. DATE OF SEIZURE	**7. ASSET TYPE**	**8. EXHIBIT NO.**	**9. APPRAISED Retail VALUE**	**10. JOINT AGENCY**
6/1/83	A	N-3	$ 13,500.00	

11. DESCRIPTION (Provide Year, Make, Model, Style, Serial Address, Dollar Amount, Postal Control No., etc.)
1982 BMW 320i 2 DOOR COUPE

12. CONDITION CODE	13. LEGAL CODE (Primary)	14. LEGAL CODE (Secondary)	15. ACTION CODE	16. LICENSE (Year/State/No. or Registration No.)
B-1	J	N	D	83/VA/WBW-320

17. ID / SERIAL NO.	18. COLOR	19. MILEAGE/HOURS	20. CYLINDERS	21. SUITABLE FOR USE?
82320I5632A	GOLD	16752	4	☒ YES ☐ NO

22. EQUIPMENT AND ACCESSORIES (Describe)
4 SPD/PS/PB/AC/AM-FM STEREO-CASSETTE/SUNROOF/
"S" PKG/UNLEADED FUEL

23. REPAIRS REQUIRED (Describe and include estimated cost)
NONE APPARENT

24. PERSON SEIZED FROM (Name)	25. PLACE SEIZED (City & State)	26. JUDICIAL DISTRICT CODE (Place Seized)
FORD, VERSAILLES	ARLINGTON, VA	AEVIR

27. ADDRESS OF PERSON FROM WHOM ASSET WAS SEIZED (No., Street, Apt. No., City, State, ZIP Code)
334 HIDEAWAY AVE HILLSIDE MD 21047

28. REGISTERED OR KNOWN OWNER'S NAME (Last, First, Middle Initial)	29. JUDICIAL DISTRICT CODE (Owner's Address)
ST. REGIS, MARQUIS L.	AERVA

30. REGISTERED OR KNOWN OWNER'S ADDRESS (No., Street, Apt. No., City, State, ZIP Code)
8819 CHALLENGER DR, CATALINA, VA 22302

31. NAME OF LIEN/MORTGAGE HOLDER	32. LIEN AMOUNT
2ND NATIONAL BANK OF VA	$ 8,500

33. LIENOR'S ADDRESS (No., Street, City, State, ZIP Code)
8791 PHOENIX ST, LYNX, VA 21321

34. IF IMPOUND RELEASE, PROVIDE NAME / TITLE OF RECIPIENT	35. IMPOUND EXPENSES REIMBURSED
N/A	$ N/A

36. CUSTODIAN (Name of Agency / Person)
HARRY'S GARAGE / HARRY JOHNSON

37. CUSTODIAN'S ADDRESS (No., Street, City, State, ZIP Code)
6618 SMITH AVE, ARLINGTON, VA 22130

38. DATE STORED	39. STORAGE RATE	40. SEIZURE EXPENSE	41. APPRAISAL EXPENSE
6/2/83	$ 5 - PER DAY	$ N/A	$ N/A

42. FACTS TO ESTABLISH PROBABLE CAUSE (When this form is completed, this report is administratively controlled as DEA SENSITIVE and will be marked accordingly.)
ON 6/1/83, VERSAILLES FORD USED EXH. N-3 A GOLD 1982 BMW 320i, VA LICENSE NO. WBW-320, TO DELIVER 5 KILOS OF COCAINE TO UNDERCOVER S/A JOSEPH BURNS, AT THE SLEEPY HOLLOW LODGE, ARLINGTON, VA

43. Field Office/FA (Print Name and Initials)	Date	44. Prosecutor Concurs	45. Field FA (Print Name and Initials)	Date
46. Preparing Agent (Print Name and Initial)	**Date**	**47. Group No.**	**48. Approving Supervisor (Print Name and Initial)**	**Date**
HOWARD BROWN HB	6/2/83	33204	MELVIN EDWARDS ME	6/2/83
49. Submitting Agent (Print Name and Initial)	**Date**	**50. Custodian (Print Name and Initial)**		**Date**
HOWARD BROWN HB	6/2/83	HARRY JOHNSON HJ		6/2/83
Entered By (Print Name and Initial)	**Date**	**Verified By (Print Name and Initial)**		**Date**

DEA Form 453 (Dec. 1984) — DEA-33, DEA-33a, DEA-425 and DEA-449 ARE OBSOLETE. Orig - INPUT OPERATOR

EXAMPLE - Automobile Seizure

Exhibit 1B

RECORD / RECEIPT OF SEIZED ASSET

Form must be LEGIBLY Hand completed with Ball Point Pen. Shaded items will NOT be completed. See REVERSE for Codes and Item Instructions.

1. FILE NO.	2. SEIZURE NO.	3. G-DEP IDENTIFIER	4. PROGRAM CODE	5. PROCESSING AGENCY
QC-83-0011		[redacted]	N/A	USCS
6. DATE OF SEIZURE	**7. ASSET TYPE**	**8. EVIDENCE NO.**	**9. APPRAISED RETAIL VALUE**	**10. JOINT AGENCY**
6/1/83	B	USCS	$ 50000	

11. DESCRIPTION (Provide Year, Make, Model, Style, Street Address, Dollar Amount, Postal Control No., etc.)
1980 SEA DOGS 25 FT SAILBOAT

12. CONDITION CODE	13. LEGAL CODE (Primary)	14. LEGAL CODE (Secondary)	15. ACTION CODE	16. LICENSE (Yr/State/No. or Registration No.)

17. ID / SERIAL NO.	18. COLOR	19. MILEAGE/HOURS	20. CYLINDERS	21. SUITABLE FOR USE ?
				☐ YES ☐ NO

22. EQUIPMENT AND ACCESSORIES (Describe)

23. REPAIRS REQUIRED (Describe and include estimated cost)

24. PERSON SEIZED FROM (Name)	25. PLACE SEIZED (City & State)	26. JUDICIAL DISTRICT CODE (Place Seized)

27. ADDRESS OF PERSON FROM WHOM ASSET WAS SEIZED (No., Street, Apt. No., City, State, ZIP Code)

28. REGISTERED OR KNOWN OWNER'S NAME (Last, First, Middle Initial)	29. JUDICIAL DISTRICT CODE (Owner's Address)

30. REGISTERED OR KNOWN OWNER'S ADDRESS (No., Street, Apt No., City, State, ZIP Code)

31. NAME OF LIEN/MORTGAGE HOLDER	32. LIEN AMOUNT
	$

33. LIENOR'S ADDRESS (No. Street, City, State, ZIP Code)

34. IF IMPOUND RELEASE, PROVIDE NAME / TITLE OF RECIPIENT	35. IMPOUND EXPENSES REIMBURSED
	$

36. CUSTODIAN (Name of Agency / Firm)

37. CUSTODIAN'S ADDRESS (No., Street, City, State, ZIP Code)

38. DATE STORED	39. STORAGE RATE	40. SEIZURE EXPENSE	41. APPRAISAL EXPENSE
	$	$	$

42. FACTS TO ESTABLISH PROBABLE CAUSE (When this form is completed, this report is administratively controlled as DEA SENSITIVE and will be marked accordingly.)

43. Field Office P.A. (Print Name and Initial)	Date	44. Prosecutor Contact	45. PDFO P.A. (Print Name and Initial)	Date

46. Preparing Agent (Print Name and Initial)	Date	47. Group No.	48. Approving Supervisor (Print Name and Initial)	Date
JESSE JAMES JJ	6-2-83	338204	MELVIN EDWARDS ME	6-2-83

49. Submitting Agent (Print Name and Initial)	Date	50. Custodian (Print Name and Initial)	Date

Entered By (Print Name and Initial)	Date	Verified By (Print Name and Initial)	Date

DEA Form (Dec. 1984) — 453 DEA-23, DEA-23a, DEA-425 and DEA-440 ARE OBSOLETE. Orig - INPUT OPERATOR

EXAMPLE - Referral of Seizure to other agency

RECORD / RECEIPT OF SEIZED ASSET

Form must be LEGIBLY Hand completed with Ball Point Pen. Shaded items will NOT be completed. See REVERSE for Codes and Item Instructions

1. FILE NO.	2. SEIZURE NO.	3. G-DEP IDENTIFIER	4. PROGRAM CODE	5. PROCESSING AGENCY
QC-83-0011			N/A	DEA
6. DATE OF SEIZURE	**7. ASSET TYPE**	**8. EXHIBIT NO.**	**9. APPRAISED Retail VALUE**	**10. JOINT AGENCY**
6/1/83	A	N-3	$ 13,500	

11. DESCRIPTION (Provide Year, Make, Model, Style, Serial Address, Dollar Amount, Federal Control No., etc.)
A82 BMW 320i 2 DOOR COUPE

12. CONDITION CODE	13. LEGAL CODE (Primary)	14. LEGAL CODE (Secondary)	15. ACTION CODE	16. LICENSE (Yr/State/No. or Registration No.)
B-1	J	N	D	1983/VA/WOW-320

17. ID / SERIAL NO.	18. COLOR	19. MILEAGE/HOURS	20. CYLINDERS	21. SUITABLE FOR USE ?
82320I56329	GOLD	16752	4	☒ YES ☐ NO

22. EQUIPMENT AND ACCESSORIES (Describe)
4-SPD/PS/PB/AC/AM-FM STEREO-CASSETTE/SUNROOF/ALLOY RIMS/"S" PKG/UNLEADED FUEL

23. REPAIRS REQUIRED (Describe and include estimated cost)
NONE APPARENT

24. PERSON SEIZED FROM (Name)	25. PLACE SEIZED (City & State)	26. JUDICIAL DISTRICT CODE (Place Seized)
FORD, VERSAILLES	ARLINGTON, VA	AEVIR

27. ADDRESS OF PERSON FROM WHOM ASSET WAS SEIZED (No., Street, Apt. No., City, State, ZIP Code)
334 HIDEAWAY AVE, HILLSIDE, MD 21047

28. REGISTERED OR KNOWN OWNER'S NAME (Last, First, Middle Initial)	29. JUDICIAL DISTRICT CODE (Owner's Address)
ST. REGIS, MARQUIS C.	AEVA

30. REGISTERED OR KNOWN OWNER'S ADDRESS (No., Street, Apt. No., City, State, ZIP Code)
8819 CHALLENGER DR, CATLINA, VA 22302

31. NAME OF LIEN/MORTGAGE HOLDER	32. LIEN AMOUNT
2ND NATIONAL BANK OF VA	$ 12,500

33. LIENOR'S ADDRESS (No. Street, City, State, ZIP Code)
8791 FARENT ST, LANE, VA 21321

34. IF IMPOUND RELEASE, PROVIDE NAME / TITLE OF RECIPIENT	35. IMPOUND EXPENSES REIMBURSED
HARRY HARRISON, V-P SPECIAL COLLECTIONS	$ 15.00

36. CUSTODIAN (Name of Agency / Firm)
HARRY'S GARAGE

37. CUSTODIAN'S ADDRESS (No., Street, City, State, ZIP Code)
6618 SMITH AVE, ARLINGTON, VA 22130

38. DATE STORED	39. STORAGE RATE	40. SEIZURE EXPENSE	41. APPRAISAL EXPENSE
6/1/83	$ 5 — P/DAY	$ N/A	$ N/A

42. FACTS TO ESTABLISH PROBABLE CAUSE (When this form is completed, this report is administratively controlled as DEA SENSITIVE and will be marked accordingly.)

ON 6/1/83, VERSAILLES FORD USED A 1982 BMW 320i, VA LICENSE WOW320, TO DELIVER 5 KILOS OF COCAINE TO U/C SA BURNS AT ARLINGTON, VA. ON 6/4/83 UPON EXECUTION OF DEA FORM 382, SA BROWN DESIGNED THE VEHICLE TO THE 2ND NATIONAL BANK / HARRY HARRISON, V-P SPECIAL COLLECTIONS, $15.00 WAS PAID BY THE BANK TO COVER STORAGE EXPENSES

43. Field Office RA (Print Name and Initial)	Date	44. Prosecutor Concur	45. FSRO RA (Print Name and Initial)	Date
46. Preparing Agent (Print Name and Initial)	**Date**	**47. Group No.**	**48. Approving Supervisor (Print Name and Initial)**	**Date**
HOWARD BROWN HB	6/2/83	338204	MELVIN EDWARDS ME	6/2/83
49. Submitting Agent (Print Name and Initial)	**Date**	**50. Custodian (Print Name and Initial)**		**Date**
HOWARD BROWN HB	6/2/83	HARRY JOHNSON HJ		
Entered By (Print Name and Initial)	**Date**	**Verified By (Print Name and Initial)**		**Date**

DEA Form (Dec. 1984) — 453 DEA-33, DEA-33a, DEA-425 and DEA-449 ARE OBSOLETE. Orig - INPUT OPERATOR

EXAMPLE - Impound Release

Exhibit 1D

RECORD / RECEIPT OF SEIZED ASSET

Form must be LEGIBLY Hand completed with Ball Point Pen. Shaded items will NOT be completed. See REVERSE for Codes and Item Instructions.

1. FILE NO.	2. SEIZURE NO.	3. G-DEP IDENTIFIER	4. PROGRAM CODE	5. PROCESSING AGENCY
QC-83-0011		[redacted]	N/A	DEA
6. DATE OF SEIZURE	**7. ASSET TYPE**	**8. EXHIBIT NO.**	**9. APPRAISED RETAIL VALUE**	**10. JOINT AGENCY**
6/2/83	E	N-5	$ 40.000	

11. DESCRIPTION (Provide Year, Make, Model, Style, Serial Address, Dollar Amount, Postal Control No., etc.)
$40,000 US CURRENCY, FISCAL CONTROL NO 83-501

12. CONDITION CODE	13. LEGAL CODE (Primary)	14. LEGAL CODE (Secondary)	15. ACTION CODE	16. LICENSE (Yr/State/No. or Registration No.)
F	J	N	D	N/A

17. ID / SERIAL NO.	18. COLOR	19. MILEAGE/HOURS	20. CYLINDERS	21. SUITABLE FOR USE?
N/A	N/A	N/A	N/A	☐ YES ☐ NO

22. EQUIPMENT AND ACCESSORIES (Describe)
300 x $100.00
200 x 50.00

23. REPAIRS REQUIRED (Describe and include estimated cost)
N/A

24. PERSON SEIZED FROM (Name)	25. PLACE SEIZED (City & State)	26. JUDICIAL DISTRICT CODE (Place Seized)
FORD VERSAILLES	ARLINGTON, VA	AEVR

27. ADDRESS OF PERSON FROM WHOM ASSET WAS SEIZED (No., Street, Apt. No., City, State, ZIP Code)
334 HIDEAWAY AVE, HILLSIDE, MD 21047

28. REGISTERED OR KNOWN OWNER'S NAME (Last, First, Middle Initial)	29. JUDICIAL DISTRICT CODE (Owner's Address)
ST. REGIS, MARQUIS L	AERVA

30. REGISTERED OR KNOWN OWNER'S ADDRESS (No., Street, Apt. No., City, State, ZIP Code)
8819 CHALLENGER DR, CATALINA, VA 22302

31. NAME OF LIEN/MORTGAGE HOLDER	32. LIEN AMOUNT
N/A	$ N/A

33. LIENOR'S ADDRESS (No. Street, City, State, ZIP Code)
N/A

34. IF IMPOUND RELEASE, PROVIDE NAME / TITLE OF RECIPIENT	35. IMPOUND EXPENSES REIMBURSED
N/A	$

36. CUSTODIAN (Name of Agency / Firm)
DEA / WASHINGTON DIV.

37. CUSTODIAN'S ADDRESS (No., Street, City, State, ZIP Code)
400 SIXTH ST, SW, WASHINGTON, DC 20407

38. DATE STORED	39. STORAGE RATE	40. SEIZURE EXPENSE	41. APPRAISAL EXPENSE
6/3/83	$ N/A	$ N/A	$ N/A

42. FACTS TO ESTABLISH PROBABLE CAUSE (When this form is completed, this report is administratively controlled as DEA SENSITIVE and will be marked accordingly.)
On 6/2/83, $40,000 US Currency was seized from Marquis St. Regis as he attempted to purchase 2 kilos of cocaine from SA Robert Jones in a reverse U/C operation at the Deep-In Restaurant, Alexandria, VA. Money was seized and counted by SA Mark Hopkins on 6/2/83 who submitted Exh. N-5 to Mary Smith, Fiscal Cashier for storage on 6/3/83.

43. Field Office/Area Office (Print Name and Initial)	Date	44. Program Coord.	45. RD/SAC (Print Name and Initial)	Date
46. Preparing Agent (Print Name and Initial)	Date	47. Group No.	48. Approving Supervisor (Print Name and Initial)	Date
ROBERT JONES (RJ)	6.3.83	338204	MARSHALL FIELDS MF	6.3.83
49. Submitting Agent (Print Name and Initial)	Date	50. Custodian (Print Name and Initial)		Date
MARK HOPKINS Mark Hopkins	6.3.83	MARY SMITH Mary Smith		6.3.83
Entered By (Print Name and Initial)	Date	Verified By (Print Name and Initial)		Date

DEA Form (Dec. 1984) – 453 DEA-23, DEA-23a, DEA-425 and DEA-449 ARE OBSOLETE. Orig - INPUT OPERATOR

EXAMPLE - Currency Seizure

RECORD / RECEIPT OF SEIZED ASSET

Form must be LEGIBLY Hand completed with Ball Point Pen. Shaded items will NOT be completed. See REVERSE for Codes and Item Instructions

1. FILE NO.	2. SEIZURE NO.	2-DIGIT IDENTIFIER	4. PROGRAM CODE	5. PROCESSING AGENCY
QC-83-0011	[redacted]		N/A	DEA
6. DATE OF SEIZURE	**7. ASSET TYPE**	**8. EXHIBIT NO.**	**9. APPRAISED RETAIL VALUE**	**10. JOINT AGENCY**
6/1/83	K	N-20	$ 25,100	

11. DESCRIPTION (Provide Year, Make, Model, Style, Serial Address, Dollar Amount, Postal Control No., etc.)
ASSORTED JEWELRY

12. CONDITION CODE	13. LEGAL CODE (Primary)	14. LEGAL CODE (Secondary)	15. ACTION CODE	16. LICENSE (Yr/State/No. or Registration No.)
B-1	J	N	D	N/A

17. ID / SERIAL NO.	18. COLOR	19. MILEAGE/HOURS	20. CYLINDERS	21. SUITABLE FOR USE ?
N/A	N/A	N/A	N/A	☐ YES ☐ NO

22. EQUIPMENT AND ACCESSORIES (Describe)
GENT'S 14 K GOLD WEDDING BAND SET W/5 DIAMONDS; LADIES 14K WHITE GOLD TRIANGLE SHAPED PENDANT W/10 DIAMONDS, GENTS BULEK GHT MASTER WATCH

23. REPAIRS REQUIRED (Describe and include estimated cost)
N/A

24. PERSON SEIZED FROM (Name)	25. PLACE SEIZED (City & State)	26. JUDICIAL DISTRICT CODE (Place Seized)
ST. REGIS, MARQUIS	LYNC, VA	ABERVA

27. ADDRESS OF PERSON FROM WHOM ASSET WAS SEIZED (No., Street, Apt. No., City, State, ZIP Code)
8819 CHALLENGER DR, CATTLINA, VA 22302

28. REGISTERED OR KNOWN OWNER'S NAME (Last, First, Middle Initial)	29. JUDICIAL DISTRICT CODE (Owner's Address)
ST. REGIS, MARQUIS	ABERVA

30. REGISTERED OR KNOWN OWNER'S ADDRESS (No., Street, Apt. No., City, State, ZIP Code)
8819 CHALLENGER DR, CATTLINA, VA 22302

31. NAME OR LIEN/MORTGAGE HOLDER	32. LIEN AMOUNT
N/A	$ N/A

33. LIENOR'S ADDRESS (No. Street, City, State, ZIP Code)
N/A

34. IF IMPOUND RELEASE, PROVIDE NAME / TITLE OF RECIPIENT	35. IMPOUND EXPENSES REIMBURSED
N/A	$ N/A

36. CUSTODIAN (Name of Agency / Person)
DEA / WASHINGTON DIV.

37. CUSTODIAN'S ADDRESS (No., Street, City, State, ZIP Code)
400 SIXTH ST, SE, WASHINGTON, DC 20407

38. DATE STORED	39. STORAGE RATE	40. SEIZURE EXPENSE	41. APPRAISAL EXPENSE
6/2/83	$ N/C	$ N/A	$ 100

42. FACTS TO ESTABLISH PROBABLE CAUSE (When this form is completed, this report is administratively controlled as DEA SENSITIVE and will be marked accordingly.)
ON 5/13/83 CI #6 X513X REVEALED TO SA BOWEN THAT ST. REGIS WAS INVESTING HIS DRUG PROCEEDS INTO JEWELRY AND FINE ART. SUBSEQUENT INVESTIGATION REVEALED THAT S. REGIS DID PURCHASE JEWELRY FROM DRUG PROCEEDS AND STORED THE ITEMS AT THE 2ND NATIONAL BANK, LYNC, VA. ON 6/1/83, A FEDERAL SEIZURE WARRANT WAS SERVED ON THE SAFE DEPOSIT BOX LEASED TO ST. REGIS WHERE THE ABOVE ITEMS WERE RECOVD. ALL SEIZED UNDER 21 U.S.C. 881(A)(6).

43. Field Office V.A. (Print Name and Initial)	Date	44. Processed Case	45. HQ's V.A. (Print Name and Initial)	Date
46. Preparing Agent (Print Name and Initial)	Date	47. Group No.	48. Approving Supervisor (Print Name and Initial)	Date
ROBERT JONES RJ	6.2.83	33204	M MARSHALL THOMAS MT	6.2.83
49. Submitting Agent (Print Name and Initial)	Date	50. Concurrence (Print Name and Initial)	Date
ROBERT JONES RJ	6.2.83	HOTTY SMITH HS	6.2.83
Entered By (Print Name and Initial)	Date	Verified By (Print Name and Initial)	Date

DEA Form (Dec. 1984) — 483 DEA-23, DEA-23a, DEA-425 and DEA-440 ARE OBSOLETE. Orig - INPUT OPERATOR

EXAMPLE - Jewelry Seizure

Exhibit 1F

RECORD / RECEIPT OF SEIZED ASSET

Form must be LEGIBLY Hand completed with Ball Point Pen. Shaded items will NOT be completed. See REVERSE for Codes and Item Instructions

1. FILE NO.	2. SEIZURE NO.	3. G-DEP IDENTIFIER	4. PROGRAM CODE	5. PROCESSING AGENCY
QC-83-0011	[redacted]		N/A	DEA
6. DATE OF SEIZURE	**7. ASSET TYPE**	**8.**	**9. APPRAISED Retail VALUE**	**10. JOINT AGENCY**
6/1/83	H	N-7	$ 250,000	

11. DESCRIPTION (Provide Year, Make, Model, Style, Street Address, Dollar Amount, Fiscal Control No., etc.)
2 STORY BRICK COLONIAL HOUSE LOCATED AT 613 LAFAYETTE ST, ARLINGTON, VA.

12. CONDITION CODE	13. LEGAL CODE (Primary)	14. LEGAL CODE (Secondary)	15. ACTION CODE	16. LICENSE (Yr/State/No. or Registration No.)
B-1	J	N	D	N/A

17. ID / SERIAL NO.	18. COLOR	19. MILEAGE/HOURS	20. CYLINDERS	21. SUITABLE FOR USE ?
N/A	N/A	N/A	N/A	☐ YES ☐ NO

22. EQUIPMENT AND ACCESSORIES (Describe)
2 STORY, 4 BEDROOM, 2½ BATH, BRICK COLONIAL WITH OUTDOOR, IN-GROUND POOL, FLAGSTONE PATIO; FINISHED CLUB BASEMENT WITH EXERCISE CENTER, SAUNA

23. REPAIRS REQUIRED (Describe and include estimated cost)
REPLACE HOT WATER TANK ($200)

24. PERSON SEIZED FROM (Name)	25. PLACE SEIZED (City & State)	26. JUDICIAL DISTRICT CODE (Place Seized)
ST. REGIS, MARQUIS	ARLINGTON, VA	AEVIR

27. ADDRESS OF PERSON FROM WHOM ASSET WAS SEIZED (No., Street, Apt. No., City, State, ZIP Code)
8819 CHALLENGER DR, CATALINA, VA 22302

28. REGISTERED OR KNOWN OWNER'S NAME (Last, First, Middle Initial)	29. JUDICIAL DISTRICT CODE (Owner's Address)
ANDERSON, DAVIS AND JANE	AEVIR

30. REGISTERED OR KNOWN OWNER'S ADDRESS (No., Street, Apt. No., City, State, ZIP Code)
613 LAFAYETTE ST, ARLINGTON, VA 22061

31. NAME OF LIEN/MORTGAGE HOLDER	32. LIEN AMOUNT
3RD FEDERAL BANK	$ 50,000

33. LIENOR'S ADDRESS (No., Street, City, State, ZIP Code)
60 HERNDON ST, ALEXANDRIA, VA 80320

34. IF IMPOUND RELEASE, PROVIDE NAME / TITLE OF RECIPIENT	35. IMPOUND EXPENSES REIMBURSED
N/A	$

36. CUSTODIAN (Name of Agency / Firm)
U.S. MARSHAL SERVICE

37. CUSTODIAN'S ADDRESS (No., Street, City, State, ZIP Code)
200 HAMMOND AVE, ALEXANDRIA VA 22601

38. DATE STORED	39. STORAGE RATE	40. SEIZURE EXPENSE	41. APPRAISAL EXPENSE
6/2/83	$ 175 PMO (MAINTENANCE)	$ N/A	$ N/A

42. FACTS TO ESTABLISH PROBABLE CAUSE (When this form is completed, this report is administratively controlled as DEA SENSITIVE and will be marked accordingly.)
ON 5/15/83, A FEDERAL SEARCH WARRANT WAS EXECUTED UPON THE RESIDENCE OF DAVIS ANDERSON, ARLINGTON, VA. DURING THE SEARCH 8 LBS OF COCAINE, CUTTING EQUIPT, LEDGERS, DOCUMENTS WERE SEIZED. THE LEDGERS DOCUMENTED THE CONTINUED NARCOTICS ACTIVITIES OF ANDERSON AND ST. REGIS WHO INDICATED THAT ST. REGIS TRANSFERRED $5,000 TO ANDERSONS PRIVATE ACCOUNTS. USING AN ADDITIONAL $25,000 OF HIS OWN, ANDERSON PURCHASED 613 LAFAYETTE ST. WITH A $200,000 DOWN PAYMENT. INVESTIGATIONS REVEALED THAT NEITHER ST. REGIS OR ANDERSON IS EMPLOYED; FOR WHOM THEY MADE THESE NARCOTICS TRADE. ON 6/2/83 THE U.S. MARSHAL EXECUTED AN ARREST WARRANT ON THE PROPERTY.

43. Field Office/A.O. Official Name and Initials	Date	44. Processor Comments	45. FSPO P.A. (Print Name and Initial)	Date
46. Preparing Agent (Print Name and Initial)	**Date**	**47. Group No.**	**48. Approving Supervisor (Print Name and Initial)**	**Date**
JESSE JAMES	6-3-83	338204	MELVIN EDWARDS	6-3-83
49. Submitting Agent (Print Name and Initial)	**Date**	**50. Custodian (Print Name and Initial)**		**Date**
JESSE JAMES	6-3-83	ULYSSES JACKSON USMS		6-3-83
Entered By (Print Name and Initial)	**Date**	**Verified By (Print Name and Initial)**		**Date**

DEA Form (Dec. 1984) — 453 DEA-23, DEA-23e, DEA-425 and DEA-449 ARE OBSOLETE. Orig - INPUT OPERATOR

EXAMPLE - Real Property Seizure

RECORD / RECEIPT OF SEIZED ASSET

Form must be LEGIBLY Hand completed with Ball Point Pen. Shaded items will NOT be completed. See REVERSE for Codes and Item Instructions.

1. FILE NO.	2. SEIZURE NO.	3. G-DEP IDENTIFIER	4. PROGRAM CODE	5. PROCESSING AGENCY
QC-83-0011	[redacted]		N/A	DEA
6. DATE OF SEIZURE	**7. ASSET TYPE**	**8. EXHIBIT NO.**	**9. APPRAISED RETAIL VALUE**	**10. JOINT AGENCY**
6/11/83	C	N-12	$ 95000	

11. DESCRIPTION (Provide Year, Make, Model, Style, Serial Address, Dollar Amount, Postal Control No., etc.)
A70 PIPER CHEROKEE 140

12. CONDITION CODE	13. LEGAL CODE (Primary)	14. LEGAL CODE (Secondary)	15. ACTION CODE	16. LICENSE (Yr/State/No. or Registration No.)
B-1	A	N	D	N6307X

17. ID / SERIAL NO.	18. COLOR	19. MILEAGE/HOURS	20. CYLINDERS	21. SUITABLE FOR USE ?
PC140-110	BLUE	960	—	☒ YES ☐ NO

22. EQUIPMENT AND ACCESSORIES (Describe)
STANDARD RADIOS / AUTO PILOT / RCA RADAR / PRESSURIZED CABIN

23. REPAIRS REQUIRED (Describe and include estimated cost)
UNKNOWN - NO LOG BOOK

24. PERSON SEIZED FROM (Name)	25. PLACE SEIZED (City & State)	26. JUDICIAL DISTRICT CODE (Place Seized)
ST. REGIS MARQUIS	COLLEGE PARK MD	AMARY

27. ADDRESS OF PERSON FROM WHOM ASSET WAS SEIZED (No., Street, Apt. No., City, State, ZIP Code)
8819 CHALLENGER DR, CATALINA, VA 22302

28. REGISTERED OR KNOWN OWNER'S NAME (Last, First, Middle Initial)	29. JUDICIAL DISTRICT CODE (Owner's Address)
ST. REGIS, MARQUIS L.	AERVA

30. REGISTERED OR KNOWN OWNER'S ADDRESS (No., Street, Apt. No., City, State, ZIP Code)
8819 CHALLENGER DR, CATALINA, VA 22302

31. NAME OF LIEN/MORTGAGE HOLDER	32. LIEN AMOUNT
TOTAL AIRCRAFT FINANCE CORP.	$ 15000

33. LIENOR'S ADDRESS (No. Street, City, State, ZIP Code)
8342 COLLEGE PARK DR, COLLEGE PARK, MD 22617

34. IF IMPOUND RELEASE, PROVIDE NAME / TITLE OF RECIPIENT	35. IMPOUND EXPENSES REIMBURSED
N/A	$ N/A

36. CUSTODIAN (Name of Agency / Firm)
COLLEGE PARK AIRFIELD

37. CUSTODIAN'S ADDRESS (No., Street, City, State, ZIP Code)
18 HARTIN BLVD, COLLEGE PARK, MD 26260

38. DATE STORED	39. STORAGE RATE	40. SEIZURE EXPENSE	41. APPRAISAL EXPENSE
6/2/83	$100 PER MONTH	$ N/A	$ 25.00

42. FACTS TO ESTABLISH PROBABLE CAUSE (When this form is completed, this report is administratively controlled as DEA SENSITIVE and will be marked accordingly.)

ON 5/31/83, MARQUIS ST. REGIS AND U/C SA ROGER MOORE FLEW N/C ST. REGIS' PIPER AIRCRAFT N6307X, FROM COLLEGE PARK, MD TO ATLANTA, GA TO PICK UP A QUANTITY OF COCAINE. ON 6/11/83, ST. REGIS AND SA MOORE FLEW BACK TO COLLEGE PARK, MD WITH 10 KILOS OF COCAINE. AFTER UNLOADING THE COCAINE, ST. REGIS WAS ARRESTED BY AGENTS OF THE WASHINGTON D.C. FIELD DIVISION. THE PLANE WAS SEIZED AT THE TIME OF ARREST. THE PLANE WAS SUBSEQUENTLY INVENTORIED AND STORED AT COLLEGE PARK ON 6/3/83.

43. Field Division P.A. (Print Name and Initial)	Date	44. Prosecutor Concurs	45. FSPO P.A. (Print Name and Initial)	Date
46. Preparing Agent (Print Name and Initial)	Date	47. Group No.	48. Supervising Supervisor (Print Name and Initial)	Date
ROGER MOORE RM	6.3.83	338704	ROBERT SMYTHE RMS	6.3.83
49. Submitting Agent (Print Name and Initial)	Date	50. Concurs (Print Name and Initial)		Date
ROGER MOORE RM	6.3.83	SMITH JONES SJ		6.3.83
Entered By (Print Name and Initial)	Date	Verified By (Print Name and Initial)		Date

DEA Form (Dec. 1984) - 453 DEA-23, DEA-23a, DEA-425 and DEA-448 ARE OBSOLETE. Orig - INPUT OPERATOR

EXAMPLE - Aircraft Seizure

Exhibit 1H

USER CODES

PROCESSING AGENCY (Enter Code in Item 5)

- ATF
- DEA
- FBI
- INS
- IRS
- TREAS = Treasury
- USCS = US Customs
- LOCAL = Local Agency
- STATE = State Agency
- OTHER

TYPE OF ASSET (Enter Code in Item 7)

- A = Vehicle
- B = Vessel
- C = Aircraft
- D = Other Conveyance
- E = Seized Currency
- F = Recovered Currency
- G = Other Financial Instrument
- H = Real Property
- J = Clandestine Lab. Equipment, Chemicals, etc.
- K = Jewelry
- L = Weapons
- M = Electronic Equipment
- N = Works of Art, Antiques, etc.
- O = Other
- P = Business Interests, whole or part

CONDITION (Enter Code in Item 12)

- UNUSED:
  - A1 = Good
  - A2 = Fair
  - A3 = Poor
- USED:
  - B1 = Good
  - B2 = Fair
  - B3 = Poor
- REPAIRS REQUIRED:
  - C1 = 15% of appraised value or less
  - C2 = 16-40% of appraised value
  - C3 = 41-65% of appraised value
- D = Salvage
- E = Scrap
- F = N/A

LEGAL ACTION (Enter Primary Code in Item 13 and Secondary Code in Item 14)

- A = 15 USC 1177 - Gambling Devices and Conveyances
- B = 17 USC 509 - Copyright Infringement Devices
- C = 18 USC 1465 - Obscene Materials
- D = 18 USC 1955 - Property Used in Illegal Gambling
- E = 18 USC 1963 - RICO
- F = 18 USC 2513 - Illegal Wire Intercept Devices
- G = 18 USC 3612 - Bribe Money Offered in Evidence
- H = 21 USC 848 - CCE
- J = 21 USC 881 - Drugs/Related Assets
- K = 21 USC 955(d) - Drugs/Related Assets on Board Vessels
- L = 22 USC 401 - Arms/Munitions of War
- M = 49 USC 782 - Conveyances Transporting Contraband
- N = None

ACTION CODE (Enter Code in Item 15)

- A = Hold as Evidence after Forfeiture
- B = Abandonment Proceedings
- C = Delay Forfeiture
- D = None

INSTRUCTIONS

Form must be LEGIBLY Hand completed with Ball Point Pen.
Complete Items 1 - 11 and 46 - 48 for all REFERRED Assets, EXCEPT shaded items.
Complete ALL items for DEA Assets, EXCEPT shaded items.
Enter N/A if information is not applicable.

NOTE: Numbered items NOT identified below are self-explanatory.

5. Processing Agency Enter the appropriate code (listed above) for the agency that is responsible for the actual processing of the asset (i.e., DEA, FBI, etc.)
7. Asset Type Enter the appropriate code (listed above) that best describes the asset.
8. Exhibit No. Enter exhibit number (i.e., N-1, N-2, etc.) NOTE: Enter the agency code if the asset is referred to or processed by another agency.
11. Description Enter the complete description of asset seized (i.e., 1982 BMW 320i 2-door sedan; $11,500 US Currency, Fiscal Control No. 83-0011; 2-story brick colonial house located at 41 Main Street, Jackson, Miss.; 27 ft. Fiberglass Sports Fisherman).
12. Condition Code Enter the appropriate letter and/or number code (listed above) that best describes the exhibit.
13-14. Legal Codes Enter the appropriate letter code (listed above) for the U.S. Code under which the exhibit was seized in block 13. Subsequent or alternative action should be entered in block 14.
15. Action Code Enter the appropriate letter code (listed above) for any administrative action, if required.
17. License Enter license Year, State and Number or aircraft or vessel registration number.
22. Equipment Enter all items that directly affect appraised value for official use (i.e., AT/PS/PB/AC, type of fuel, etc.).
23. Repairs List those repairs required to make the asset suitable for use. Include the estimated cost if available.
26. Judicial District Enter code for judicial district in which asset was seized.
27. Seized From Address Enter complete, most current street address of person from whom asset was seized (i.e., residence, penitentiary, etc.)
29. Judicial District Enter code for the judicial district of the owner's registered address.
30. Owner's Address Enter complete, most current registered address of owner (i.e., residence, penitentiary, etc.)
39. Storage Rate Enter rate of storage if item is stored at commercial location (i.e., $5/day, $25/week, etc.)
40. Seizure Expense Enter all expenses relating to seizure of asset (i.e., locksmith, gasoline, hanger fees, dock fees, etc.)
41. Appraisal Expense Enter all expenses incurred for appraisals.
42. Probable Cause Describe the probable cause in clear and concise manner. Attach separate sheet if additional space is required.
46. Preparing Agent Print date and name of agent preparing this form, then initial beside the printed name.
47. Group No. Enter the cost center group number of preparing agent.
48. Approving Supervisor Print date and name of supervisor reviewing this form, then initial beside the printed name.
49. Submitting Agent Print date and name of agent who submits the asset into storage, then initial beside the printed name.
50. Custodian Print date and name of custodian who accepts property into custody, then initial beside the printed name.

DISTRIBUTION of Completed Form

Original - Input Operator for on-line entry.
Copy 1 - Preparing Agent's File.
Copy 2 - Receiving Custodian's record.
Copy 3 - Affix to Asset in prominent location.

Exhibit 2

Case: R1-74-0192
RE : Seized 1974 Cadillac
ID : #372498H173

AFFIDAVIT TO PROCEED IN FORMA PAUPERIS
IN LIEU OF COST BOND

I, _____, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

I further depose and say that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes ( ) No ( )

A. If the answer is "yes", state the amount of your salary or wages per month and give the name and address of your employer. _____

_____

B. If the answer is "no," state the date of last employment and the amount of salary or wages per month which you received.

_____

_____

2. Have you received within the past 12 months any money from any of the following sources?

A. Business, profession, or form of self-employment? Yes ( ) No ( )

B. Rent payments, interest, or dividends? Yes ( ) No ( )

C. Pensions, annuities, or life insurance payments? Yes ( ) No ( )

D. Gifts or inheritances? Yes ( ) No ( )

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past 12 months. _____

_____

_____

3. Do you own any cash, or do you have money in a checking or savings account? Yes ( ) No ( ) (Include any funds in prison accounts.) If the answer is "yes," state the total value of the items owned. _____

4. Do you own real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothings)? Yes ( ) No ( ) If the answer is "yes," describe the property and state its approximate value. _____

_____

_____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. _____

I certify that the foregoing is true and correct.

_____

If you are incarcerated, the following certificate must be completed by an authorized officer of the institution.

CERTIFICATE

I hereby certify that the petitioner herein has the sum of $ _____ on account to his/her credit at the _____ institution where he/she is confined. I further certify that petitioner likewise has the following securities to his/her credit according to the records of said institution: _____

_____

_____

_____

(Authorized Officer of Institution)

Subchapter 666 Physical Evidence

6661 GENERAL

A. Physical evidence may consist of drugs, precursor chemicals, equipment, packaging, documents, fingerprints, money, or any other tangible property used to establish a violation of law. Once acquired, physical evidence must be handled, stored, presented, and eventually disposed of in such a manner as to assure its accountability and integrity.

B. There are two "systems" in DEA for processing physical evidence; one based upon the need for laboratory analysis (generally intended for drug evidence), and one based upon a need for secure handling without analysis (nondrug evidence). Within each of these systems provisions have been made to facilitate the processing of special types of physical evidence. This subchapter contains all policies and procedures relating to these two systems, as well as their adaptations to special types of physical evidence.

C. The system used to process nondrug evidence shall also be used to process other nondrug property acquired in connection with enforcement activities.

D. Field office management will appoint an agent or other qualified employee in each office to serve as Evidence Custodian, as well as one to serve as an Alternate in the other's absence. In large offices, Assistant Evidence Custodians may also be appointed. Specific responsibilities for this position shall be as set forth throughout this subchapter.

6662 DRUG EVIDENCE

6662.1 GENERAL

A. All drug evidence acquired in DEA-controlled investigations (including DEA Task Force investigations) will be submitted to a DEA laboratory for analysis. Drug evidence acquired by another agency in cooperative investigations with DEA may also be submitted to a DEA laboratory for analysis, if deemed necessary by field office management.

B. In emergency situations (as determined by the first-line supervisor), drug evidence acquired by DEA may be field tested by another agency's laboratory. Such submissions will consist of a sample, with the remainder of the exhibit submitted to the DEA laboratory for complete analysis. In extraordinary circumstances (as determined by the SAC), drug evidence may be submitted to a non-DEA laboratory for complete analysis. Such submissions will be documented on a DEA Form 12, in addition to an Information DEA Form 7 (see instructions on the reverse of the form).

C. Evidence obtained by another agency which is to be used in a prosecution brought by DEA may be handled in one of three ways:

1. The other agency maintains custody throughout, and its' chemist testifies as to its' analysis (prepare an Information DEA Form 7).

2. Custody is transferred to DEA without analysis (submit evidence to DEA laboratory for analysis on a DEA Form 7).

3. Custody is transferred to DEA after analysis by the other agency's laboratory. This should be avoided if possible, in deference to one of the other procedures set forth above. Except in extraordinary circumstances, the DEA laboratory will not reanalyze evidence already analyzed by another agency. Where evidence must be held by DEA, then it may be submitted to the DEA laboratory using a DEA Form 7, with the notation in Item 5 "for safekeeping only-no analysis necessary."

D. Where field office management determines that drug evidence already in the custody of a DEA laboratory should be transferred to another agency for prosecution purposes, the DEA laboratory will be notified of this determination via DEA Form 48 (see 6662.46).

E. Normally, drug evidence may only be submitted to a DEA laboratory under a case file number. Exceptions to this policy are special foreign and domestic programs for which specific general file numbers have been assigned.

F. Drug evidence acquired by DEA field offices will be submitted to the appropriate DEA laboratory (see Exhibit 1).

Insofar as practical, all drug evidence exhibits in an investigation will be submitted to the same DEA laboratory. This precludes the need for testimony by more than one DEA chemist per case.

G. Containers, packaging, equipment, etc., suspected of containing trace amounts of drugs will be considered drug evidence. Precursor chemicals submitted to a DEA laboratory for analysis shall also be considered as drug evidence (see 6674):

6662.2 COLLECTION AND PROCESSING

6662.21 Collection Techniques

A. Field tests on suspected drug evidence will be conducted as appropriate (see Appendix D). Such tests are useful for on-the-spot investigative planning, but are not conclusive. Do not dispose of suspected drug evidence based upon a negative field test. Do not attempt to identify a substance by taste or odor.

The fact that a field test was performed, its results, the name of the agent performing the test, and the witnessing officers will be included in the DEA Form 6 reporting the activity in which the test was conducted. Do not report this information on DEA Form 7.

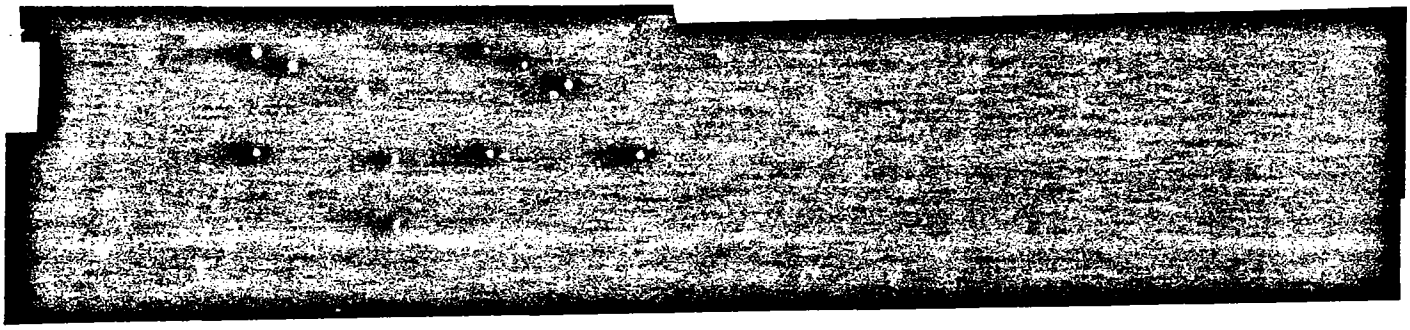
B. During a search, the suspected drug evidence should be photographed, if practical, in its original location prior to removal for processing. Process the photographs as documentary evidence (see 6663.65).

C. The following guidelines apply to the division of suspected drug evidence into separate exhibits:

1. Evidence acquired at different times or locations (e.g., different addresses or different places of concealment at the same address) will be separate exhibits.
2. Quantities with differing packaging or labeling will be separate exhibits.
3. Evidence which appears to be of a different composition (e.g., color, shape of tablets, etc.) will be separate exhibits unless the several types are commingled to the point of making this impractical.
4. Several like containers, holding apparently the same substance, found in the same location, at the same time, will constitute a single exhibit.

D. If the suspected drug evidence is loose or is in a badly damaged or untenable container, place it in a substitute container. The substitute container must be uncontaminated and must fully contain and safely preserve the evidence during subsequent handling. Plastic evidence envelopes will not suffice as substitute containers for loose, powdered or liquid substances. If a substitute container is used, submit the original container as a subexhibit (see 6662.22A below).

E. Exercise care that the evidence does not become contaminated or lost through spillage. If a spillage does occur, submit the evidence recovered from the spillage as a subexhibit (e.g., Subexhibit 1a).



G. Liquid evidence may be hazardous or non-hazardous depending on the nature of the liquid. The hazardous nature of the liquid must be presumptively identified prior to submission to the DEA laboratory. Consultation with the laboratory or, where appropriate, arranging for a DEA chemist to determine the hazardous nature of the liquid may be necessary. Those samples deemed hazardous will be sampled and the bulk destroyed while those liquids that are non-hazardous will be submitted to the laboratory.

6662.22 Identification, Marking, and Sealing

A. Identification. Within each investigative file number, drug exhibits will be assigned consecutive numerical designations beginning with Exhibit 1. If a suspected drug substance is transferred to a substitute container, the substance in the substitute container will be assigned the primary exhibit number, and the original container will be designated as a subexhibit (e.g., Subexhibit 1a).

B. Marking. Prior to sealing, mark each exhibit (plus each subunit within the exhibit) for identification as follows:

1. The initials of the agent who acquired the exhibit and the agent(s) (or other law enforcement official) who witnessed the acquisition or handled the exhibit in any manner.
2. The exhibit number.
3. The investigative file number.
4. The date of acquisition.

These markings, where practicable, should be made directly on the exhibit, using a permanent marker.

C. Sealing

1. Use of Evidence Labels. When using a plastic heat-sealable evidence envelope, use the label permanently affixed to the envelope. When using another means to package the exhibit, use a gummed label containing the same information. These labels will be completed in ink as follows:

a. Case Number. Enter the investigative file number.
b. Exhibit. Enter the exhibit number.
c. Date of Seizure or Purchase. Enter the month, day, and year of acquisition.
d. Sealing Official. Print the name of the agent sealing the evidence. Normally, this should be the agent who acquired the exhibit.
e. Witnessing Official. Print the name of the agent or officer who witnessed the sealing. Normally, this should be the agent or officer who witnessed the acquisition.
f. Laboratory Number. For laboratory use only.
g. Date Opened by Lab. For laboratory use only.
h. Gross Weight After Analysis. For laboratory use.

2. Use of Evidence Seals. The gummed DEA seals are only required when a plastic evidence envelope is used. They will be prepared and affixed as follows:

a. The agent and the witness will initial the name block, enter the date of sealing, and the investigative file number.
b. The seal will be affixed to the outside of the plastic evidence envelope, parallel to the opening, such that it will be centered over the line of the heatseal. Do not affix the seal to the inside of the envelope.
c. Heat-seal the plastic envelope and inspect the seal to assure it is fully sealed.

*3. When submitting a bulk exhibit to a DEA laboratory, boxes of uniform size should be used throughout the exhibit. This facilitates stacking for transporting and storage of the exhibits. Weight of the individual boxes should be limited to 15-20 kilograms. Experience has shown that a box with dimensions of 17" x 13.5" x 12" meets these requirements.

a. Boxes should be submitted to the laboratory as full as possible, with packing material added if necessary. Partially filled boxes tend to get crushed when other boxes are placed on top. Additionally, when handling partially full boxes, the weight inside the boxes continuously shifts during transfer.

* Revision

b. Encircle the container with fiber-reinforced plastic tape such that the ends meet at one place on the package.

c. Prepare the evidence label as listed in 6662.22(C)(1). Add the date of sealing and the initials of the sealing agent and witness to the items of information called for in 6662(C)(1) above. Affix the label so that it covers the connecting point of the tape ends. Information and signatures on the DEA seals should be covered with clear plastic tape to prevent mutilation during handling.

d. Each box should be numbered consecutively (1 of 10, 2 of 10, etc.,) with a bold, easily recognizable number. Several sides of the box should be marked to allow for the boxes to be accounted for from any angle of view.

e. The contents of each box (e.g., number of packages, heat-sealed envelopes, etc.,) should be listed on the outside of the box, as well as with the accompanying documentation.*

4. Not more than one exhibit will be sealed in a single evidence envelope or package (e.g., box).

D. Opening and Resealing of Evidence. Under normal circumstances, an exhibit--once sealed--should not be opened except by the chemist or as required in a court proceeding. Where sealed evidence must be opened for other purposes, the following procedures shall apply:

1. Sealed evidence must be opened in the presence of another DEA agent, or, in the absence of a DEA agent, by a law enforcement officer of another agency.
2. The evidence package will be opened in a manner that will preserve the informantion on the evidence seal and/or label.
3. Upon completing the action for which the package was opened, the evidence and all parts of the old envelope will be placed in a new evidence envelope or package and resealed as in C above.
4. The reason for opening and resealing the evidence, as well as the date and name of the person(s) doing it, will be reported on DEA Form 6.
5. See 6662.45 about resealing evidence opened in court.

6662.23 Determining Gross Quantity

A. The gross metric weight of each sealed drug exhibit (substance, container, and envelope) will be determined and reported in item 14 of DEA Form 7, as well as the DEA Form 6 reporting the activity. If the exhibit consists of tablets and capsules, the total count will be reported in item 12; if a liquid, as volume in item 12. If the exhibit is in a factory-sealed container, include this fact in these reports.

B. If the gross weight is under one kilogram, determine to the nearest tenth of a gram. If over one kilogram, determine to the nearest gram.

(NOTE: Field office management will assure that the office balances are calibrated at least on an annual basis. This may be done either by commercial arrangement or by arrangement with DEA laboratory personnel.

* Revision

Field office management will also assure that its agent personnel are properly trained in the use of these balances.)

C. Tablets and Capsules. The number of tablets or capsules may be determined in either of two ways: if a small quantity, by actual count; if a large quantity, by computation based on relative weights (i.e., count and weigh 100 units to determine unit weight. Divide this into the net weight of the entire exhibit to determine the total number of units.).

If the exhibit consists of legitimately manufactured drugs in factory-sealed containers, and there is no reason to suspect tampering, then the count shown on the label will suffice.

D. Liquids. The gross quantity will be reported by volume, derived as precisely as possible under the prevailing circumstances. Base the estimate on the known or apparent size of the container. If the original container is not sealable against leakage, use a substitute container.

E. Powders or Loose Solids. The gross quantity need only be determined after sealing the exhibit.

6662.24 Latent Print Analysis

A. Frequently, latent finger or palm prints on a container or other item will be of evidentiary significance. Where a latent print analysis is deemed appropriate, the item should be submitted to the DEA laboratory for this purpose. Requests for such analyses may only be made of other agencies where time precludes submission to a DEA laboratory or where the prosecutor directs it be done by another agency.

Where a container of a suspected drug is to be submitted to another agency for latent print analysis, its suspected drug contents will be placed in a substitute container for submission to a DEA laboratory.

B. When an item is to be submitted for latent print analysis, extreme caution must be exercised in its handling and packaging to avoid obliteration of the prints. To avoid deterioration, it must also be submitted promptly.

C. If marking the container as required in 6662.22B would risk obliteration of the latent prints, then the container may be placed in a protective container which can be marked and handled as usual. When placing an item to be analyzed for latent prints in any outer container or wrapping, ensure that it is not free to move or rub against its wrapping.

D. The evidence label (see 6662.22C) should bear the warning "LATENT FINGERPRINT EVIDENCE - DO NOT TOUCH."

E. Submit the exhibit via a DEA Form 7 if it is a container holding suspected drug evidence, or a DEA Form 7a if no drug analysis is required. In either case, indicate in the Remarks section, in a prominent manner, that latent print analysis is being requested.

F. Also in the Remarks Section, report--insofar as known--the names of all suspects who handled or may have handled it. For each suspect, report his full name, and as much of the following as possible: D/POB, FBI number, physical description, other Federal identification numbers. Use an attached sheet, if necessary.

G. In a cover memorandum submitted with evidence and/or fingerprint exemplars, include a brief description of the circumstances surrounding the obtaining of the exhibit(s). If possible, the location(s) on the exhibit(s) which may have been touched or handled by the suspect(s). Many times due to operational necessities, i.e., "buy/bust" seizure, size of exhibits, sealing or repacking, the evidence is handled by law enforcement personnel. For elimination purposes in the latent print analysis procedure, include in the cover memorandum (not on the DEA-7 or DEA-7a) the name, social security number and date of birth of any law enforcement personnel or any non-suspect who may have handled the evidence.

6662.3 REPORTING

A. Continuing congressional inquiry necessitates that DEA maintain accurate statistics on worldwide drug seizures with or without DEA participation. SACs and CAs must take a personal interest in ensuring timely and continual reporting of all significant seizures as outlined in the Agents Manual. Significant seizures, whether made by DEA or another agency, will be immediately reported by cable to the appropriate drug desk. Details of the seizure including the specific nature of any DEA supplied information leading to the seizure are required. The drug desks will compile the information to submit to DO on a monthly basis. A significant seizure for the purposes of this reporting requirement will be consistent with the criteria established in paragraph 6662.32 of the Agents Manual.

B. The circumstances surrounding the acquisition of drug evidence will be fully reported on DEA Form 6. The acquisition itself will be reported on DEA Form 7, which serves four purposes:

1. A written request for drug analysis by a DEA laboratory.
2. A receipt for drug evidence received by the DEA laboratory.
3. A record of the results of the analysis.
4. A source document for statistical information.

2. Who Obtains the FDIN. Normally, the first Federal agency to take custody of drug evidence that requires an FDIN will be responsible for obtaining the FDIN from the El Paso Intelligence Center (EPIC). Within DEA, the Special Agent taking custody of the the evidence will usually be the individual responsible for obtaining the FDIN.

If custody of drug evidence meeting the above threshold weights is transferred to DEA from Customs, Coast Guard, the FBI, or INS, the FDIN must be provided to DEA as part of the custody transfer. If an FDIN is provided to DEA for evidence not requiring an FDIN, report the FDIN in accordance with paragraph 4, below.

3. How to Obtain the FDIN. Telephone EPIC at FTS [redacted] Be ready to provide the following information, which will be recorded in a log maintained by EPIC:

Name and Title of Official Requesting the FDIN
Agency and Telephone Number of the Official Requesting the FDIN
Date and Local Time Collected
Place Collected (City, State)
Conveyance Type (e.g., vehicle, vessel, aircraft, or person)
Conveyance Identifier (e.g., name, number)
Quantity of Drug Collected (including unit of measure)
Type of Drug Collected (e.g., heroin, cocaine, or marijuana).

EPIC will then issue an FDIN, which will be an eight digit number beginning with the last two digits of the fiscal year in which the drug evidence was collected, e.g., 87000010. There will be no dashes or periods in the number.

4. How to Report the FDIN. Report the FDIN in item 10 of the DEA Form 7. If a DEA Form 7 is used to report two or more exhibits and any of the exhibits has an FDIN, refer to the exhibit number and its' associated FDIN, e.g., Exh. 1 FDIN 87001569; Exh. 3 FDIN 87001573. An FDIN must be reported on any DEA Form 7 reporting drug evidence as described in paragraph 1 above.

6662.31 For Evidence in DEA Custody

A. Except under extenuating circumstances, the agent who acquires the evidence will also prepare the DEA Form 7.

B. No more than three separate exhibits may be placed on a single DEA Form 7 with the following special conditions:

1. A series of samples from the same bulk evidence seizure (e.g., Subexhibits 1a through 1k) may be placed on the same DEA Form 7.
2. Where an original container is being submitted separately, the drug substance and the container (e.g., Exhibit 1 and Subexhibit 1a) will be considered as two exhibits.
3. Only exhibits from the same defendant, or in the same location at the same time, and in the same investigation, may be submitted on the same DEA Form 7.

* Revision

C. Items 1 through 17 will be completed by the agent as follows:

Item 1: Largely self-explanatory. "Money Flashed" will be checked only where drugs were seized as the result of using a flashroll. "Compliance Sample" will be checked for authentic samples, or requests for potency analysis or some other regulatory purpose.

Items 2-5: Self-explanatory.

Item 6: Complete only if drugs were initially acquired by another agency. This block must be completed for any evidence submitted under cases where the second GDEP character is H, J, or T (i.e., initially acquired by INS, Customs, or Coast Guard).

Items 7-11: Self-explanatory.

Item 12: Specify the number and description of the containers included in the exhibit. Describe fully any labels on the original containers and specify whether the seals were intact. This entry may be continued in item 16 if necessary. Where any exhibit consists of a number of packages, enter a description. For example, "Exhibit 1, 15 bricks of (a substance) wrapped in butcher's paper and further wrapped in clear cellophane." For samples from bulk seizures, enter "samples 1a through 1k in (describe the containers)."

Items 13-14: Item 13 will only be completed when it differs from item 14 (e.g., bulk seizures). The amount should be reported in such a manner that they can be quantified (i.e., "pounds", "kilograms", etc.; not "bales", "spoons", etc.).

Item 15: Complete only if the exhibit was acquired through an undercover purchase.

Item 16: Self-explanatory.

Remarks: Enter the time, date, and location of acquisition, the name of the defendant acquired from (if no identifiable defendant, so state), and the name of the acquiring agent(s). If requesting a ballistics examination, enter "BALLISTICS EXAMINATION REQUESTED."

Items 17-18: Enter typed names and signatures.

D. For evidence handcarried to the DEA laboratory, the transfer of custody (items 19-24) will be completed by the agent and the Laboratory Evidence Technician.

For evidence shipped to the DEA laboratory, leave items 19-24 blank, and keep copy 6 for temporary placement in the case file. Copies 1 through 5 will be forwarded to the DEA laboratory.

E. The DEA laboratory will enter the results of analysis in items 25 through 39, and return copies 1 through 3 to the submitting office (distribution of the remaining copies will be made by the DEA laboratory, see 7302.54). Copies 1 through 3 will be distributed to the appropriate case file by the submitting office. Upon receipt of its copy from the laboratory, the submitting office will purge copy 6 from the case file.

F. The mechanics of certain intelligence programs require that the laboratory extract a small sample from randomly selected exhibits for special analysis. Exhibits sampled will be identified by the chemist with the notation "Portion Removed for Special Programs" on DEA Form 7.

The result of these special analyses will be reported back to the originating office on a separate profile sheet (not concurrent with the return of DEA Form 7). Upon receipt of a profile sheet, attach it to the prosecutor's copy of DEA Form 7; or if the DEA Form 7 has already been forwarded to the prosecutor, forward it separately.

It should be pointed out to the prosecutor that, although Rule 16 of the Federal Rules of Criminal Procedure requires that all such tests be disclosed to the defendant, these special analyses have little relevance to the case at hand. The special analysis does not determine the quantitative purity of the exhibit, but is largely concerned with the presence of trace substances other than controlled drugs. Furthermore, the chain of custody over the extracted samples is not tightly controlled.

6662.32 For Evidence Not in DEA Custody

A. There are two circumstances in which drug evidence will be reported without actually being processed by a DEA laboratory:

1. Where DEA participates in or contributes to an investigation that results in a drug acquisition by another agency, and DEA neither takes custody nor submits a sample to a DEA laboratory.
2. Where another agency makes a significant seizure of drugs in an investigation in which DEA did not participate, did not take custody, nor is submitting a sample.

For the purposes of this reporting requirement, a significant seizure is any seizure which meets or exceeds the following criteria:

a. 1/2 kilogram heroin
b. 50,000 dosage units of other narcotics (if of foreign origin)
c. 1 kilogram cocaine
d. 1 liter hashish oil
e. 50 kilograms hashish
f. 1,000 kilograms marijuana
g. Any combination of Schedule II, III, or IV legiti mate pharmaceuticals totaling 50,000 dosage units.

(Note: Where, with DEA concurrence, Customs or INS refer an independent seizure to State or local authorities for prosecution, or Customs exercises its penalty assessment authority, no reporting is required.)

B. In either of the above circumstances, an "INFORMATION ONLY DEA-7" will be prepared as follows:

1. Type "INFORMATION ONLY" immediately above Item 3, G-DEP Identifier.
2. Complete Items 1-8 as appropriate.
3. Complete Items 10-16 as appropriate.

4. Explain pertinent details of the acquisition in Remarks.
5. Complete Items 17 and 18.
6. Distribute the "INFORMATION ONLY DEA-7" as follows:
Copy 1 - PES (Submit with monthly asset removals-see 6142.1.)
Copy 3 - Originating office

The remaining copies may be discarded.

C. Send DEA-7's to PES on a monthly basis. Also include seizures reported by cable, as described above, in the "Information Only" DEA-7 submissions. This requirement for both domestic and foreign offices is needed to produce required reports, such as United Nations, Interpol, etc.

6662.4 HANDLING AND DISPOSITION

6662.41 Documenting Transfer of Custody

A. The initial transfer of custody from the submitting agent to the DEA laboratory will be documented by a DEA Form 7. Any subsequent transfer of custody, no matter how brief, will be documented on a DEA Form 12. A transfer of custody may be defined as the transfer of physical control from one party to another.

B. Any number of drug exhibits may be placed on the same DEA Form 12, provided they are all part of the same transfer and are all part of the same investigation (same file number).

C. The DEA Form 12 may be typed (or, if done legibly on all copies, in ball-point pen) and completed in triplicate. The releasing party will keep the original, the receiving party will keep the first copy, and the second copy will be placed in the investigative file.

D. The DEA Form 12 will be completed as follows:

1. To: Enter the name and title of the releasing party.
2. Division/District: Enter the duty office of the releasing party.
3. File Number: Self-explanatory.
4. Date: Enter the actual date of transfer. When using the mail, enter the date of mailing.
5. Amount or Quantity: Enter the exhibit designators.
6. Description: Describe the exhibit, how it is packaged, and whether it is sealed.
7. Received By: The receiving party will sign here and enter his title.
8. Witnessed By: This need only be completed when transferring evidence to a non-DEA official.

6662.42 Temporary Storage. Custody of drug evidence shall be transferred to a DEA laboratory as expeditiously as possible. Where this cannot be done immediately after processing, the following guidelines shall be followed:

A. Drug evidence must be fully processed (identified, marked, and sealed) prior to temporary storage.

B. All field offices will have a secure short-term storage facility, accessible for the deposit of evidence during off-duty hours.

This facility will be used to store evidence pending transfer to the DEA laboratory. Nonevidentiary property (e.g., DEA firearms, office supplies, etc.) will not be stored in the same storage facility as evidence.

C. Where a DEA facility is not available, the evidence storage facility of another law enforcement agency may be used (receipted via a DEA Form 12).

D. Where neither of the facilities in B or C above are available, evidence may be stored under secure lock and key in some other facility, provided that access is limited solely to the responsible agent. The use of unoccupied vehicles, hotel rooms, or locked desks for storage is prohibited.

E. Where temporary storage of drug evidence will exceed 20 days, it will be returned to the DEA laboratory. In instances where drug evidence not analyzed by a DEA laboratory is to be stored in excess of 20 days, it will be returned to the analyzing laboratory.

6662.43 Domestic Delivery

A. Drug evidence may be delivered to a DEA laboratory by any of three methods: handcarried; registered mail (return receipt); or commercial carrier.

The following factors will be considered in selecting a method for a particular situation:

1. Proximity of the laboratory.
2. Attractiveness of the evidence to theft and the consequences to DEA from such a theft.
3. Weight and bulk of the evidence.
4. Urgency for analytical results.
5. Availability of personnel.

B. Handcarrying Evidence. Where, in the judgment of field office management, the amount of suspected drug evidence is such as to pose a security risk, it will be handcarried by an agent. Where the amount is such as to pose a high risk, then additional agent personnel should be assigned as appropriate. The DEA Form 7 (or DEA Form 12 if the sample was processed earlier) will be handcarried with the evidence and receipted in person.

NOTE: In certain situations it may be advantageous to handcarry evidence via DEA aircraft. Factors to consider in the use of this method include: urgency, distance, unsuitability of alternative methods, and the nature of the evidence (i.e., weight, size, hazardous characteristics, etc.).

C. Registered Mail. The DEA Form 7 will be placed in an envelope, which will be securely fastened to the sealed exhibit. Mark the envelope "INVOICE." Wrap the sealed exhibit, with the envelope attached, in a sturdy package or carton, suitable for mailing. The outer wrapping should bear no indication as to the nature of its contents. Upon delivery to the Post Office, enter the file and exhibit numbers in the margin of the return receipt (Postal Form 3811) affixed to the package, and also the registry receipt provided by the postal clerk.

File both documents in the case file (the registry receipt upon mailing, the return receipt after delivery). If the exhibit was processed earlier and a DEA Form 12 is to document the transfer, all copies will be placed in the INVOICE envelope. Upon delivery to the addressee, the addressee will receipt the DEA Forms 7 and 12 and keep one copy. Distribution of the original and remaining copy will be made so that the original is filed in the case file and the copy is returned to the sender.

D. Commercial Carrier

1. Only those carriers whose operations allow for precise, point-to-point traceability may be used. This includes those having wholly-owned and operated conveyances, or the express services of the various domestic airlines, or others who, in the judgment of the field office management, meet this standard in a reliable manner.

2. The evidence and invoice envelope will be packaged as in C above.

3. The package will be delivered to the point of shipment and a signed receipt will be obtained from the carrier's receiving official (the carrier's customary document for this purpose will suffice). The case and exhibit number will be entered on this document and a copy of the document will be placed in the case file.

4. Details of delivery (arrival time, pickup point, etc.) will be ascertained and forwarded to the addressee via telephone. Should the package not be received within the expected time frame, the addressee will notify the sender, who will request an immediate tracing of the shipment by the carrier.

5. The carrier must require a signature from the addressee prior to releasing custody.

6662.44 Foreign Delivery

A. Controlled drugs imported into the United States for analysis by a DEA laboratory are exempt from the United Nations reporting requirements under the Single Convention (i.e., the need for import permits) provided that the procedures set forth herein are followed.

B. Controlled drugs may be imported by DEA for use as evidence in a domestic case or for intelligence purposes (e.g., the ballistics program, Heroin Signature Program, etc.).

C. Export and/or receipting requirements of those countries from which DEA obtains controlled drugs under this exemption vary. Generally, they are either nominal or the transfer is carried out on an informal basis. DEA will conform to whatever procedures or requirements which may exist in the host country. Where feasible, it is recommended that the transfer of the controlled drug sample be receipted.

D. Where the controlled drug is obtained from a foreign government, it should be advised that whatever amount remains after analysis will be disposed of and not exported from the United States. In extraordinary circumstances, this limitation may be waived (e.g., where the controlled drug is to be used as evidence and the condition for our using it is return to the foreign government) (see K below).

Except when using the provisions in Section K, a DEA Form 48 is not required to close the case (per Laboratory Operations Manual 7304.3).

E. All foreign drug samples will be submitted to the Special Testing and Research Laboratory with the exception of evidence (for use in a domestic prosecution) originating in Canada, the "26 kilometer" zone in Mexico, and those Pacific, Atlantic, and Carribean islands normally serviced by one of the DEA Field Laboratories. Any sample submitted for intelligence purposes, or any drug to be used as evidence but submitted from areas other than these, will be sent to the Special Testing and Research Laboratory.

F. Delivery may be carried out by either of two methods: handcarried by a DEA agent (or foreign enforcement official) or shipped via diplomatic pouch. Evidence will always be handcarried. Samples submitted for intelligence purposes may be delivered by whichever method is most expeditious. (NOTE: There is no provision to pouch a sample to any DEA laboratory other than the Special Testing and Research Laboratory.)

G. Normally, the size of the sample submitted for intelligence purposes will be limited to 1 to 5 grams net weight (or 100 tablets or capsules). The maximum amount that may be sent via diplomatic pouch is 85 grams net weight. Any sample exceeding this amount must be handcarried by an agent or foreign official.

H. Any importation of a controlled drug by DEA (or a foreign official under the auspices/protection of DEA), whether handcarried or pouched, must be documented on a DEA Form 360, Authorization to Import Controlled Substances for Analysis or Evidentiary Purposes.

I. The following procedures apply when submitting a sample via diplomatic pouch.

1. Originating Office

a. All samples will be sealed and processed in accordance with 6662.2, 3, and 4. Double-wrap the sealed sample. (Place the DEA Form 7 in an INVOICE envelope attached to the sealed sample, inside the inner wrap.) Address the inner wrap to the DEA Special Testing and Research Laboratory, McLean, Va. Address the outer wrap to the Pouch Control Officer, Department of State. Also include the registry number and the designation "Limited Official Use."

b. Prepare a DEA Form 360 (original plus four copies). Under identifying number, enter the State Department registry number plus either the case or general file number. The DEA Authorizing Official will be the senior DEA field office official. Keep one copy of the DEA Form 360; enclose the original and remaining copies in an envelope. Attach the envelope in a secure manner to the inner wrap.

c. Dispatch the sample via courier pouch (do not send it via unaccompanied pouch).

d. At the same time the sample is dispatched, send a teletype to "SECSTATE (ATTN: OC/P)," information copy to DEA Headquarters (ATTN: Special Testing and Research Laboratory).

The teletype will include: the case or general file number; the amount and suspected kind of drug; the pouch, registry, and invoice numbers; and the date of dispatch.

2. Department of State. Upon receipt, the Department of State will forward the sample to the Port Director, U.S. Customs Service, Washington, D.C., for Customs clearance, and so notify DEA Headquarters (AMG) via memorandum.

3. Facilities and Property Management Section (AMP). Upon notification by the Department of State, AMP will obtain the sample from Customs (receipted on the DEA Form 360, one copy kept by Customs) and deliver it to the Special Testing and Research Laboratory (receipted on the DEA Form 360, one copy kept by AMP). The Special Testing and Research Laboratory will keep the original of the DEA Form 360 and forward the remaining copy to AMRI for filing.

4. Special Testing and Research Laboratory. The Special Testing and Research Laboratory will analyze the sample and dispose of whatever balance remains. It will then transmit a teletype to the originating office (copy to AMRI), including the case or general file number, the registry number, the amount of drugs received, and the results of the analysis.

J. The following procedures apply for handcarrying a sample:

1. All samples will be sealed and processed in accordance with 6662.2, 3, and 4.

2. The originating office will prepare a DEA Form 360 (original plus three copies). The identifying number will be either the case or general file number. The receiving official will be the DEA agent (or foreign official) who will transport the sample across the border. The DEA Authorizing Official will be the Country Attache (or designee) or senior official of the originating office.

3. Arrangements will be made so that the agent (or foreign official) who is transporting the sample has all copies of the form in his possession at the point of entry.

4. The sample will be cleared through Customs and properly receipted on the DEA Form 360. A copy of the receipted DEA Form 360 will be given to the Customs official.

5. The transporting agent will either handcarry the sample directly to the appropriate laboratory, or ship it to the laboratory from a domestic field office via registered mail. If handcarried, the laboratory official will document the transfer of custody on the DEA Form 360, keeping one copy of the form. The originating office will keep the original for its files and send the remaining copy to AMRI.

6. If shipped via registered mail (within the USA), the original and two copies of the DEA Form 360 will accompany the sample. The laboratory will document its receipt on DEA Form 360, return the original copy to the originating office, and the remaining copy to AMRI.

7. If a foreign official is transporting the sample, the responsible DEA office will prepare the DEA Form 360 as above. While in possession of the sample within the borders of the USA, the foreign official will be escorted by a DEA agent.

K. The following procedures apply when <u>exporting</u> a controlled drug (see D above):

1. The export of controlled drugs by DEA is exempt from U.N. reporting requirements (i.e., the need for export permits) in either of two circumstances:

a. Where they are needed for use in a trial in the receiving country. Or,

b. Where they were obtained from the foreign country on a loan basis for use in a domestic trial and are being returned as a condition of our use.

2. The exportation from this country must adhere to whatever importation requirements that may exist in the receiving country.

3. The transfer of custody must be to a responsible and authorized official of the receiving country and documented on DEA Form 48. If it is necessary that the evidence be returned to DEA after prosecutive use in the foreign country, or if there is any chance that it may be returned to DEA rather than disposed of by the foreign country, do not submit a DEA Form 48. The transfers to and from will be documented on DEA Form 12's. The reimportation of such evidence must adhere to the Foreign Delivery requirements set forth above. Submit a DEA Form 48 only when the final transfer has taken place.

L. The export or import of controlled drug reference standards to or from foreign forensic laboratories are sometimes exempt from the reporting requirements under the Single Convention. For procedures, see Section 7001 of the Laboratory Operations Manual and Section 5191 of the Diversion Investigators Manual, or contact the Special Testing Laboratory directly.

6662.45 Production in Court

A. It is the case agent's responsibility to assure that all evidence needed for trial is available at the appropriate time, but not so far in advance as to require storage outside the laboratory any longer than necessary.

B. Further, the case agent will coordinate with the prosecutor regarding the chemist's testimony. If possible, an attempt should be made by the prosecutor to gain a defense stipulation as to the analysis of the drug evidence. Except in emergency situations (e.g., an immediate, unforeseen need), DEA chemists will not transport drug evidence.

C. Where the case agent takes custody of drug evidence from the DEA laboratory or Evidence Custodian, only sealed evidence will be accepted. In those emergency situations where the DEA chemist maintains custody up to the point of transfer to the court, the SAC (or his designee) and the Laboratory Chief will mutually decide the need for and extent of escort by agent personnel (see 7303.51B of the Laboratory Operations Manual).

D. Where handcarrying the evidence from the laboratory to the court is not feasible, the laboratory will ship it to the appropriate DEA field office pursuant to a written request by the SAC or his designee (see 6662.43 or 6662.44).

E. Where it is determined that drug evidence from one DEA case is needed as evidence in another case, the SAC/RAC will notify the Laboratory Chief in custody of that evidence by memorandum. This memorandum will specify the exact evidence and the name, title and complete address of the person to receive that evidence. The drug evidence will remain under the original case number and will be returned to the original DEA Laboratory promptly upon completion of the judicial proceeding.

F. Should the judical proceeding for which the evidence was required be postponed, follow the policy guidelines for temporary storage (6662.42).

G. The case agent will transfer custody of evidence to the court via a DEA Form 12. If the clerk of the court takes custody of the evidence but refuses to sign a receipt, the case agent will have another agent or another responsible person witness the DEA Form 12 to the effect that the evidence was transferred to the court. The case agent will also request that the transfer of evidence to the court be entered in the court record. If the court will not formally accept custody of the evidence introduced in a proceeding, the case agent will be responsible for its security.

H. Should the prosecutor specifically request that custody of the evidence be transferred to him, or if his facilities afford better overnight security than otherwise available, the transfer will be documented on a DEA Form 12.

I. Procedures vary among court jurisdictions as to the return of drug evidence to DEA upon completion of judicial proceedings. To assure proper disposal, its return to DEA should be encouraged. An exception to this is where a State or local laboratory has handled its analysis and custody. In this instance, the evidence should be returned to that laboratory and disposed of in accordance with its procedures.

J. The case agent is responsible for obtaining drug evidence from the court, receipted by a DEA Form 12. If the court official refuses to witness the DEA Form 12, then another agent or another responsible person will witness the transfer of custody. Where the seal is broken, the case agent will inventory its contents in the presence of the court official to assure all subdivisions are present and reseal it. Upon returning to the field office, the case agent will promptly verify its gross weight in the presence of a witnessing agent.

K. The case agent will promptly return the drug evidence to the DEA laboratory, either directly or through the Evidence Custodian. It will not be left in the custody of the case agent or the Evidence Custodian any longer than necessary to accomplish its return to the DEA laboratory.

6662.46 Disposition

A. This subsection applies to all drug evidence, regardless of whether it was actually used as such in court.

B. From the standpoint of security, it is important that drug evidence be disposed of as soon as it is no longer of evidentiary value. This determination may be made administratively in the case of surrendered drugs (see 6662.52), or by the prosecutor concluding that the case is not prosecutable, or that all judicial proceedings are concluded and the time for filing an appeal has lapsed.

If an appeal has been filed, the case agent will check with the prosecutor at least every 60 days to determine if it has been decided by the appellate court. The fact that this inquiry was made, together with the prosecutor's response, will be the subject of a DEA Form 6.

*C. Intermediate disposal methods are now superseded by the following procedures which are intended to prevent the warehousing of large quantities of Schedule I and II drug evidence which is unnecessary for due process in criminal cases and to retain an amount sufficient for prosecution purposes.

Note: These procedures do not apply to civil seizures of pharmaceutical drugs from a registrant.

1. When drug evidence is seized in quantities greater than the "threshold amount," which is defined below, or, in the case of marijuana, the representative sample, the SAC will immediately notify the appropriate U.S. Attorney, or the responsible state/local prosecutor, that the amount of seized drugs exceeding the threshold amount and its packaging will be destroyed after 60 days from the date notice is provided of the seizure, unless DEA is requested in writing by the authority receiving notice not to destroy the excess contraband drug.

2. Notification to the U.S. Attorney or equivalent state/local prosecutor will be in writing and forwarded no later than 5 days subsequent to the seizure. A copy of this notification will be furnished to the DEA laboratory to which the evidence is submitted. See Exhibit 1 at the end of this subchapter for a suggested notification letter. At a minimum, this notification should include the 60-day deadline date, the drug(s) and amounts involved, the amount of drugs to be retained, the case agent's name, the DEA case and exhibit number(s), the prosecutor's name (if known), the U.S. Attorney's office or state/local prosecutor's Criminal Matter Number (if known), the defendant or subject names known to DEA, and instructions for the U.S. Attorney (or equivalent) to follow if requesting an exception.

3. When notified by DEA of an intent to destroy excess contraband drugs, the U.S. Attorney or the District Attorney (or equivalent) may agree to the destruction of the contraband drug evidence in excess of the threshold amount, or for marijuana in excess of the representative sample, prior to the normal 60-day period. The U.S. Attorney or equivalent state/local prosecutor may delegate to his/her assistants authority to enter into such agreement.

* Revision

4. If the U.S. Attorney or equivalent state/local prosecutor agrees to the destruction in excess of the threshold amount, the case agent will forward a DEA-48 to the laboratory authorizing the destruction.

Note: For each bulk drug evidence exhibit, the case agent will indicate in the Drug column of the DEA-48 the amount of drug to be destroyed (e.g., "Destroy amount in excess of the threshold.") The laboratory will note the exact amount destroyed and retained in the Remarks section of the DEA-48.

5. The U.S. Attorney or equivalent state/local prosecutor may request an exception to the destruction policy in writing to the Special Agent in Charge of the responsible division prior to the end of the 60-day period when retaining only the threshold amount or, in the case of marijuana, the representative sample, will significantly affect any legal proceedings; and, in the event of a denial of the request, may appeal the denial to the Assistant Attorney General, Criminal Division of the Department of Justice. Such authority may not be redelegated. Appeal shall stay the destruction until the appeal is complete.

Note: The following reasons do not constitue a valid basis for requesting or granting an exception to the destruction process: "The drugs are needed for jury appeal." "The drugs should be saved to forestall legal challenges." "The drugs should be saved because that has been the practice in this district."

6. In the event of an appeal, the SAC must receive, within 30 days of denial, a copy of the appeal letter that was sent by the U.S. Attorney or equivalent prosecutor to the Assistant Attorney General, Criminal Division. A copy of this appeal letter will be furnished to the laboratory and to the DEA Drug Destruction Coordinator. If a copy of this letter is not received within 30 days of the denial, destruction will be initiated per previous notification.

7. If a request for an exception or an appeal to prevent destruction has been filed and granted, the case agent will provide a copy of the decision to the appropriate field laboratory. A copy of the request and the approval shall be forwarded to the DEA Drug Destruction Coordinator. Additionally, any court order prohibiting destruction, as well as any legal challenge to the destruction policy, shall be immediately forwarded to the DEA Drug Destruction Coordinator. The laboratory will not dispose of the exhibit until a DEA-48 is issued.

8. If a request for exception is denied and a subsequent appeal to the Assistant Attorney General, Criminal Division, is also denied, a copy of the ruling will be provided to the appropriate field laboratory. The material comprising the remainder of the exhibit after sampling may be destroyed, provided the 60-day period noted in the original notification from the SAC to the prosecutor has expired. A DEA-48 authorizing destruction of the bulk portion will be provided to the appropriate DEA laboratory.

Note: For each bulk drug evidence exhibit, the case agent will indicate in the Drug column of the DEA-48, the amount of drug to be destroyed (e.g., "Destroy amount in excess of the threshold amount.") The laboratory will note the exact amount destroyed and retained in the Remarks Section of the DEA-48.

9. If samples for the defense are requested, procedures should be followed by the appropriate DEA laboratory as indicated in the Laboratory Operations Manual, paragraphs 7301.6(F) and 7301.6(G).

10. When an amount greater than the appropriate threshold amount is seized, the evidence will be photographed by the case agent as described in paragraph 11 below and submitted to the servicing DEA laboratory. The servicing laboratory will isolate and retain the appropriate threshold amount and photograph the evidence as described in the Laboratory Operations Manual, paragraph 7301.6(G).

Note: When less than the appropriate threshold amount of contraband drugs has been seized, the evidence may be submitted to the servicing DEA laboratory without first being photographed by the case agent. The servicing laboratory will retain the entire amount of the seizure. In the case of marijuana, conduct sampling, storage, photography and submission procedures per the Agents Manual, Section 6662.51.

11. The evidence will be photographed by the case agent and, if requested by the prosecutor, videotaped as originally packaged or otherwise appropriately displayed so as to create evidentiary exhibits for use in judicial proceedings as instructed below where possible.

a. Photograph and/or videotape the entire seizure "in situ." Use a 35mm camera and/or video camera. Duplicate prints/videos should be made for the prosecutor and for the case agent. The negatives and one set of prints/video cassette will be placed in non-drug evidence. Instant-developing color cameras should be used as a back-up only.

b. These photographs and videos must be self-documenting. A sign will be prepared containing the following: file number, seizing agent's name, exhibit number, amount of seizure, date, time, and location of the seizure. The sign will be positioned so as to appear in all the photographs. Also, position an object by which to measure the physical size of the seizure (a yard stick or even a person).

c. An evidence sticker bearing the name of the agent taking the photograph will be fixed to the reverse side of each picture (or to each video).

12. Threshold Amounts are defined as:

a. Two kilograms of a mixture or substance containing a detectable amount of heroin.

b. Ten kilograms of a mixture or substance containing a detectable amount of:

(1) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine or their salts have been removed;

(2) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(3) Ecgonine, its derivatives, their salts, isomers and salts of isomers; or

(4) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraph 12.b.(1) through (3) above;

c. Ten kilograms of a mixture or substance described in paragraph 12.b(2) which contains cocaine base.

d. Two hundred grams of phencyclidine (PCP) or two kilograms of a mixture or substance containing a detectable amount of phencyclidine (PCP).

e. Twenty grams of a mixture or substance containing a detectable amount of Lysergic Acid Diethylamide (LSD).

f. Eight hundred grams of a mixture or substance containing a detectable amount of fentanyl or 200 grams of a mixture or substance containing a detectable amount of any analogue of fentanyl.

g. Twenty kilograms of hashish or two kilograms of hashish oil.

h. There is no threshold amount defined for marijuana. Instead, for purposes of this procedure, a representative sample as defined in Section 6662.51 will be retained. This representative sample will be a one kilogram exemplar and 10 five gram aggregate samples. For further clarification see 6662.51(A).

i. Two kilograms or 2000 dosage units (i.e., tablets, capsules) of a mixture or substance containing a detectable amount of any Schedule I or II controlled substance in the Controlled Substances Act for which no specific threshold amount has been specified above.

j. In the event of any change to Section 401(b)(1) of the Controlled Substances Act (21 USC 841(b)(1)) as amended, ocurring after the date of these regulations, the threshold amount of any substance therein listed, except marijuana, shall be twice the minimum amount required for the most severe mandatory minimum sentence.

13. The retained portions of the contraband drugs will be maintained until the evidence is no longer required for legal proceedings, at which time it may be destroyed, first having obtained consent of the United States Attorney, Assistant United States Attorney or the responsible state/local prosecutor. Where all legal proceedings have been completed, the case agent will submit a DEA-48 to the DEA laboratory to destroy the retained portions.

14. The case agent will notify the appropriate United States Attorney, Assistant United States Attorney or the responsible state/local prosecutor to obtain consent to destroy the retained amount or representative sample whenever the related suspect(s) has been a fugitive from justice for a period of five years. An exemplar sufficient for testing will be retained consistent with this section.*

D. DEA Form 48, Disposition of Drug Evidence.

1. Drug exhibits held by a DEA laboratory will be retained and held in an open status pending receipt of disposition instructions on a DEA Form 48.

2. Within 10 days of a determination that a drug exhibit no longer has evidentiary value, the case agent will submit a DEA Form 48 with Part I completed (except for the laboratory portion) to the immediate supervisor for approval. An exception to this is where the evidence was analyzed by a State or local laboratory and was not entered into the DEA evidence inventory. In this instance, the Case Closing Report (DEA Form 6) will indicate the means of diposals.

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3. When submitting a DEA-48 in accordance with pretrail bulk drug evidence procedures described in paragraph C, the case agent, as appropriate for each exhibit, should indicate in the Drug column the amount of drug to be destroyed (e.g., "Destroy amount in excess of the threshold amount."). The laboratory will note the exact amount destroyed and retained in the Remarks Section of the DEA-48.

*4. More than one drug exhibit within the same case may be submitted on a single DEA-48. Exceptions to this are:

a. The exhibits are being held by different DEA laboratories.

b. The means of disposition differs among the exhibits (i.e., disposal vs. transfer).

5. Where the court directs a means of disposition other than return to DEA, this will be indicated and explained in the Remarks block of the DEA-48.

6. Where it is determined that evidence already in custody of a DEA laboratory should be transferred to another agency for prosecution, this shall be so indicated in Part I of DEA-48. The Remarks block should indicate specifically to whom to transfer the evidence, the date it should be transferred, and the means of transfer (e.g., pickup, registered mail, etc.).

7. DEA-48 is a seven-page manifold. The original and five copies of DEA-48 should be submitted to the DEA Laboratory Chief. The sixth copy should be kept as an interim record in the originating office case file.

8. Upon disposal of the evidence, the DEA laboratory will complete Part II of the DEA-48 and forward three copies to the originating office for distribution to the appropriate case files and the Evidence Custodian. The laboratory will make the necessary Headquarters distribution (AMRI). Upon receipt of its copies from the laboratory, the originating office will purge its case file of copy 6.

9. With the exception of drug exhibits submitted to a non-DEA laboratory (see 2 above), a case file may only be closed upon receipt of fully executed DEA-48's for all drug exhibits (and DEA-48a's for all non-drug exhibits, see 6663.5). Prior to approving the closing of a case file, the immediate supervisor will reivew it to assure that all drug and non-drug exhibits are properly disposed of pursuant to either a DEA-48 or DEA-48a.*

6662.47 Drug Evidence Inventories. Subsection 7303.7 of the Laboratory Operations Manual requires that *evidence audits be conducted of each laboratory at least annually.* When such an audit is complete, the Laboratory Chief will notify the SAC of each Division Office within his area of responsibility of all those drug exhibits either in the laboratory custody or transferred to the court. The SAC, upon receipt of this inventory, will initiate an audit of DEA field office records to assure that all drug exhibits are properly accounted for. **Additionally, the SAC will notify each appropriate prosecutor's office as to which exhibits have not yet been authorized for destruction. The purpose of this notification is to ensure that each prosecutor is aware of outstanding exhibits and that DEA is notified as soon as possible when it may proceed with final destruction.** Results of this audit will be reported back to the Laboratory Chief within 90

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days. Unresolved discrepancies will be reported immediately to Headquarters (PR).

6662.5 SPECIAL SITUATIONS

*6662.51 Bulk Marijuana Evidence. (Note: See 6674 for additional instructions on bulk chemicals).

A. Individual marijuana exhibits of up to 10 kilograms will be submitted directly to the laboratory and will be sampled by the assigned chemist, pending pretrial destruction in accordance with procedures described in 6662.46(C). Marijuana exhibits in excess of 10 kilograms will be photographed and sampled by Special Agents and submitted as described below.

1. The evidence will be photographed, and--if requested by the prosecutor--videotaped so as to create evidentiary exhibits for use in judicial proceedings.
2. Photograph and/or videotape the entire seizure "in situ." Use a 35mm camera and/or video camera. Duplicate prints/videos should be made for the prosecutor and for the case agent. The negative and one set of prints/video cassette will be placed in non-drug evidence. Instant-developing color cameras should be used as back-up only.

a. These photographs and videos must be self-documenting. A sign will be prepared containing the following: file number, seizing agent's name, exhibit number, amount of seizure, date, time and location of the seizure. The sign will be positioned so as to appear in all the photographs. Also, position an object by which to measure the physical size of the seizure (a yard stick or even a person).
b. An evidence sticker bearing the name of the agent taking the photograph will be affixed to the reverse side of each picture or to each videotape.

3. Unload, assemble, or stack the evidence in such a manner as to make clear visual display of the sampling technique. If the evidence is in closed containers, open several to display the contents.
4. Prepare a representative sample as follows:

a. Extract a sample from one location consisting of about 1 kilogram of substance. Place a clearly visible marker bearing the letter "a" at this location.
b. Proceed to extract from 10 dispersed locations additional samples of about 5 grams each. Consecutively mark each of these locations "b" through "k".
c. Each of these samples will be submitted as subexhibits to the total exhibit (e.g., Subexhibits - 1a, -1b, etc.). Together, they constitute the "representative sample" described in Section 6662.46.

5. The entire display, containing all the marked sampling locations, will again be photographed and/or videotaped as in 2 above.

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6. The gross and net weights of the total exhibit will be determined. Because of mandatory minimum sentencing laws, all weights should be determined in the most precise manner possible. Only properly calibrated scales (e.g., truck scales) should be used. Amounts up to those sufficient for clearly establishing the highest possible penalty must be determined by actual weighing, not by computation based on partial weighing. If necessary, weighing procedures may be coordinated with the servicing DEA laboratory. All weights, weighing procedures, etc. (including calibration of scales) should be throughly documented.

7. Each subexhibit will be placed in an identified substitute container. All substitute containers will then be placed into a single, sealed container for submission to the laboratory.

B. The evidence remaining after sampling will be stored in a secure location pending receipt of DEA laboratory analysis and disposition conducted in accordance with 6662.46(C). If the evidence was seized in a conveyance, the conveyance may be moved to a site more convenient for off-loading; however, the evidence will not be left in the conveyance any longer than necessary. Where space is available, the evidence will be stored in a DEA facility. Where DEA space is not available, the evidence will be stored in a [redacted] (receipted by a DEA-12, plus the usual business documents [redacted] (See Section 8617 of the Planning and Inspection Manual). Each subunit (e.g., bales, cartons, etc.,) will be identified and, if feasible, sealed. If sealing is not feasible, then the subunits must be stored in a manner that will prevent pilferage. The details of storage will be included in the DEA-6 reporting the seizure.

C. If the defense chooses to sample the evidence, request that it be done pursuant to a court order. The court should be petitioned to assure that the analysis for the defense is conducted by a competent analytical laboratory, registered as such with DEA.

1. The samples will be drawn by a DEA agent. They will be limited to the smallest size and number mutually agreeable to the defense and the government. In arriving at the size and number of samples, the DEA Laboratory Chief will be consulted. The defense counsel may witness the sampling if he/she so desires.

2. The DEA agent will seal the samples and deliver them as directed by the court order, and obtain a DEA-12 documenting their transfer. If the samples are shipped to a laboratory rather than hand carried, they will be sent via registered mail (return receipt).

3. The complete procedure will be reported on a DEA-6.

D. Upon completion of laboratory analysis, the bulk marijuana evidence will be destroyed in accordance with procedures established in 6662.46(C). The destruction will be carried out by a least one agent and one additional DEA witness (or officer of another law enforcement agency). The bulk marijuana evidence will be destroyed by burning in a suitable incinerator.

Note: Bulk marijuana may also be used in subsequent official activities (e.g., as an investigative prop) rather than be

destroyed forthwith. In such instances, documents directing the disposal should read: "to destroy or use for other law enforcement purposes".)*

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*6662.52 Surrendered Illicit Drugs. The following procedures will be used to dispose of controlled substances acquired through referral or surrender by a cooperating citizen where there is no identifiable defendant involved and no potential evidentiary value of the substance.

1. The Group Supervisor or RAC will be fully briefed on the details of the acquisition and must concur that the substance has no evidentiary value. If quantities are involved that meet or exceed local criteria for Federal prosecution, the Group Supervisor will notify the ASAC who must obtain concurrence for destruction from the SAC. The Group Supervisor may authorize destruction of smaller quantities.

2. Destruction will be carried out by a DEA Agent or Diversion Investigator and at least one additional DEA witness (or officer of another law enforcement agency). As with all drug destructions, care must be taken to ensure that the destruction is complete and that local EPA standards are not violated.

3. The agent will prepare a DEA-6 under GF XX-XX-9009, Surrendered Illicit Drugs, setting forth the circumstances of acquisition, the suspect drug type and amount, the justification for not further investigating the matter, the name of the management official authorizing destruction, the manner of destruction and witnesses to the destruction. Where significant quantities are involved (see 6662.32A), the agent will also prepare an Information Only DEA-7 (under GF XX-XX-9009).*

* Revision

Exhibit 1

Date of Notice _____

Dear (United States Attorney's Name): _____

Re: Drug Evidence Destruction Notice

By authority of the United States Attorney General under Title 21, USC, Section 881(f)(2), notification is hereby given that for the case described herein the amount of seized contraband drug exceeding the threshold amount (or, in the case of marijuana, the amount exceeding the representative sample), and its packaging, will be destroyed after 60 days from the date of this notice unless a written request for an exception to this destruction policy is received by this office prior to the expiration of the 60-day period. Any request for exception must be submitted in writing to:

Name of Special Agent in Charge: _____
DEA Address, etc.

_____

_____

_____

_____

DEA File Number	DEA Exhibit Number(s)	60 Day Deadline
Drug	Amount of Drug Seized	Amount of Drug to be Retained
U.S. Attorney's Office Criminal Matter Number	Case Prosecutor's Number	DEA Case Agent Name/ Office

Name of Defendant/Subject Carried by DEA File

(Signature, Special Agent in Charge)

cc: DEA Laboratory

6663 NONDRUG EVIDENCE AND OTHER PROPERTY

6663.1 GENERAL

A. Nondrug property may be acquired in the course of official operations through a variety of circumstances. In general, however, the basis for acquiring property is limited to one of the following:

1. Property to be used as evidence.
2. Property seized for forfeiture.
3. Property which is apparently abandoned.
4. Property taken into custody for safekeeping.
5. Property which is evidence or contraband under statutes enforced by another agency.

B. The acquisition, processing, and disposal of nondrug property fitting any of the foregoing categories (except conveyances and real property seized for forfeiture) will be done in accordance with this section. Conveyances and real property seized for forfeiture will be handled as set forth in 6654. Property other than conveyances which is subject to forfeiture will be handled under the custodial system set forth in this section, but the forfeiture proceedings against it will be as set forth in 6654.

C. The Attorney General has designated the United States Marshals Service as the Custodian for all non-evidentiary seized property that is pending forfeiture.

6663.2 COLLECTION AND PROCESSING. The collection and processing of nondrug property will parallel the handling of drug evidence with the following distinctions:

A. The division of nondrug property into separate exhibits, and their identification, marking, and sealing shall be as in 6662.21 and 22 for drug evidence. However, instead of consecutive numerical designators (Exhibits 1, 2, 3, etc.) consecutive "N-" designators shall be used (Exhibits N-1, N-2, N-3. etc.).

B. The gross weight of nondrug property is generally not relevant. However, if the ultimate disposition of the property involves DEA instituting forfeiture or abandonment proceedings, then its condition and fair market value is relevant. (See Exhibit 2).

6663.3 REPORTING

6663.31 Reporting on the DEA Form 7a, Acquisition of Non-Drug Property and Regulatory Seizures

A. The circumstances surrounding the acquisition of any nondrug property will be fully reported on a DEA Form 6, including purchases, criminal and civil seizures, and abandoned property. With the exception of property seized for forfeiture or abandonment, or any seized and recovered monies, any such acquisition will also be reported on a DEA Form 7a, Acquisition of Nondrug Property and Regulatory Seizures, which serves three purposes:

1. A receipt for property received by the field office Evidence Custodian, or the DEA laboratory (as applicable).

2. If applicable, a request for latent print analysis or film development by the DEA laboratory. In the case of latent print analysis, it is also a record of that analysis.
3. The initiating document for introducing the item into the DEA nondrug property control system.

B. The agent who acquires the property will also prepare the DEA-453 for all property subject to forfeiture or abandonment proceedings. Note: If an arrest has been made and the subject is in jail, the jail address must be entered on the DEA-453. Include the prisoner identification number if a number has been assigned.

C. No more than five separate exhibits may be placed on a single DEA Form 7a, with the following conditions:

1. All exhibits must be from the same case.
2. All exhibits must have been collected from the same defendant, or in the same location, based on the same probable cause, e.g., a residence, and within the same continuing chain of events not to exceed 48 hours.
3. Property that will require different processing and/or disposal should not be mixed on the same DEA Form 7a (e.g., do not mix property seized as evidence with property taken for safekeeping).

D. Items 1 through 11 will be completed by the agent as follows:

Item 1: Basis: Check the appropriate basis for acquisition.

Evidence: Check if acquired for evidentiary purposes, even though it may not be ultimately used as such, or even if its ultimate disposition may be forfeiture or return to the owner.

Temporary Custody: Check only where property is taken into custody for safekeeping, or where it is evidence or contraband under statutes enforced by another agency, and is seized by DEA pending transfer to that agency.

Item 2: Type of Property: Check as appropriate.

Items 3, 4, and 5: Self-explanatory.

Item 6: Complete only if the property was initially acquired by Customs. This item must be completed for evidence submitted under a "J" source code (see 6222.2).

Item 7-8: Self-explanatory.

Item 9: Each item of property taken into DEA custody will be assigned an exhibit designator.

Item 10: Enter a complete description of the exhibit, including brand name, quantity, color, model and serial number, or any other appropriate information.

Item 11: If money, a regulatory drug seizure, or documentary evidence, leave blank. If anything else, enter the appropriate one-digit code from Exhibit 2.

Item 12: Enter the fair market (or appraised) value of the exhibit. If money, leave blank (the amount of money will be reported in item 10).

Item 13: Enter the time, date, and location of acquisition, the name of the acquiring agent(s), and the identity of the party from whom acquired.

If requesting photographic development or latent print analysis, state this request in a prominent manner here.

Items 14 and 15: Enter types names and signatures.

E. Items 16 to 21 will be used to document the initial transfer to the field office Evidence Custodian, or the DEA laboratory.

F. Items 22-26 are for use by the field office Evidence Custodian (see 6663.4).

G. Item 27 may be used as necessary by the Evidence Custodian. If for latent print analysis, the DEA laboratory will report its results here. If for film development, the facts of development will be reported here.

H. Items 28-31 are for completion by the DEA laboratory (if for latent print analysis or film development).

I. If the exhibit is submitted to the Evidence Custodian, all copies of the DEA Form 7a will accompany it. Upon completing items 16 to 21, the Evidence Custodian will distribute the form as indicated on the individual copies.

J. If the exhibit is submitted to the DEA laboratory for latent print analysis or film development, keep copy 8 of the DEA Form 7a as an interim record, and submit all remaining copies to the laboratory. The laboratory will enter the result of its activities and return copies 1, 2, and 3. Submit copy 2 to the Evidence Custodian. If the originating office is a Resident Office, it will be necessary to make an extra copy for its case file.

K. If circumstances warrant, as in the case of multiple search warrants, blocks of exhibit numbers may be issued by location to facilitate the processing of evidence (i.e.; N-100 to N-199 = location A, N-200 to N-299 = location B, etc.). This procedure, and any resulting lapses in sequential numbering, is to be explained in the DEA Form 6 reporting the evidence.

6663.32 Reporting on DEA Form 453, Record/Receipt of Seized Asset

A. As identified in previous chapters, the DEA Form 453 has been designed to implement DEA's forfeiture procedures. The DEA-453 will be used to report any property seized for forfeiture, including property which may also be required as evidence. The DEA- 453 will also be used to report any property for which

abandonment proceedings are required. Finally, the DEA-453 will also be used to report all seized and recovered monies. These requirements apply to foreign offices also. The DEA-7a will not be used for any of the purposes identified above. The DEA-453 has been designed to serve several purposes:

1. A receipt for property received by the custodian of seized and recovered monies, a commercial custodian used by DEA to store bulk evidence, or the U.S. Marshals Service (USMS). Currency and other property entered into the inventory system outlined in 6663.4 and 6663.64 that will not be returned to DEA will be released on the DEA-48a.
2. The initiating document introducing the item into the Computerized Asset Program (CAP), DEA's centralized database for tracking seized property subject to forfeiture, for tracking seized and recovered monies, and for tracking DEA's statistics.

B. The agent who seizes the property will also prepare the DEA-453. The preparing agent and his immediate supervisor must ensure the information on the DEA-453 is complete and accurate.

C. All non-conveyance items that are seized in the same chain of events, not to exceed 48 hours, from the same individual, at the same locations (i.e., residence), and using the same probable cause, must be aggregated by type of item (i.e., assorted jewelry, assorted gold bars, assorted works of art, etc.). These will be entered on one DEA-453 under one SYSID number. This does not preclude individual items being identified, e.g.: N1, N1a, N2, N3, etc. Conveyances meeting the above criteria will be cross-referenced on the DEA-453 in the probable cause section by SYSID numbers for forfeiture processing purposes, i.e.: see 29129, 29130, 29131. This also applies to all related seizures reported on separate DEA-453's, which are seized as described in the first sentence above.

D. Items 1 through 50 will be completed by the agent as indicated on the DEA-453, which is self-explanatory. All necessary information for completion of the DEA-453 can be found on the reverse side. The codes for the judicial districts and the field office group numbers can be found in the "User's Handbook, The Computerized Asset Program." The computerized files generated as a result of submitting the DEA-453 will be processed by Headquarters, Office of Chief Counsel, Asset Forfeiture Section (CCF). When all processing action is completed, the files will be referred to the appropriate office for disposition. Files concerning property dispositions managed at Headquarters will be closed by CCF. Pre-CAP files concerning property dispositions managed by Field Offices will be closed by those offices. Each office handling a disposition is responsible for updating the automated CAP database record with all necessary information. During forfeiture proceedings, the field is responsible for modifying information in the CAP data base that has previously been entered incorrectly or new information received by the field; e.g.: change of custodian, DAG 71/DAG 72, etc.

6663.4 HANDLING AND INVENTORY. (Note: This subsection does not apply to conveyances and items taken into custody for safekeeping per 6663.63.)

A. All nondrug evidentiary property taken into DEA custody will be entered into the DEA nondrug property system, regardless of the length of time it is to be held. For the purpose of this section, regulatory seizures of controlled pharmaceutical drugs shall be considered as "nondrug" property.

B. All nondrug evidentiary property will be introduced into the system as a sealed, identified exhibit.

C. The document which admits the property into the system is DEA Form 7a. Evidentiary property taken into DEA custody will be reported on DEA Form 7a.

6663.41 DEA Custodial System

A. With the exception of property set forth in B below, physical custody of evidentiary property will be transferred by the acquiring agent to either the Seized and Recovered Monies Custodian (if property is money) or the field office Evidence Custodian. The Evidence Custodian (or Seized and Recovered Monies Custodian) will store the property pending written and approved instructions via DEA Form 12 or DEA Form 48a.

B. Property which may be excluded from physical transfer to the Evidence Custodian per A above includes property submitted to a DEA laboratory for analysis or development, bulk drug seizures (see 6662.51), and bulk regulatory seizures. Property submitted to the DEA laboratory for analysis or processing and subsequently returned to the originating office will be transferred to the Evidence Custodian via DEA Form 12, with copy 2 of DEA Form 7a attached.

Bulk drug or regulatory seizures may be transferred to the Evidence Custodian if the storage facility under his control permits. Otherwise, the case agent (or Diversion Investigator) will make direct arrangements for secure commerical storage.

C. The Evidence Custodian will maintain a recordkeeping system for property transferred to his custody.

The recordkeeping system for the first category shall consist of a DEA-453, DEA-7a, DEA-48a, and all DEA Forms 12 documenting transfers in between the receipt of these forms. For the second category the recordkeeping system need only consist of DEA-7a and DEA-48a.

D. Upon receipt of DEA Forms 7a and 453, the Evidence Custodian shall establish an active inventory file under that case file number. All subsequent DEA Forms 7a, DEA Forms 453, DEA Forms 12, and DEA Forms 48a received under that file number will be placed in this file by sequential exhibit numbers. Upon receipt of a DEA Form 48a, the Evidence Custodian will dispose of the exhibit and complete Part III of DEA Form 48a and items 20 to 24 on his copy of DEA Form 7a. When the final DEA Form 48a in the case is received and processed, the file will be moved to a closed inventory file. Note: Property on which a DEA-453 has been submitted to initiate forfeiture or abandonment action cannot be disposed of prior to the declaration of forfeiture/abandoment.

The computerized files generated as the result of submitting the DEA-453 will be closed by Headquarters CCF (except in those Pre-CAP cases where seizure is prior to the dates shown in 6654.31D).

For property not in the custody of the Evidence Custodian (e.g., seized money), the custodial party will complete Part III of DEA Form 48a.

Closed inventory files shall be kept for a period of 2 years and then destroyed. An exception to this is where the exhibit is a recording or transcript of a nonconsensual intercept and DEA Form 48a indicates long-term storage. Closed files containing such a DEA Form 48a will be flagged in a prominent manner and kept pending receipt of a court order authorizing destruction of the exhibit.

E. In addition to the foregoing files, the Evidence Custodian will maintain a permanently bound ledger with chronological listings of all nondrug property transferred to or from his custody. Entries in this ledger will be made in ink. Each entry will reflect the date, file number, exhibit designator, the name of the releasing party, the name of the receiving party, and the type of form documenting the transfer (i.e., DEA Form 7a, DEA Form 12, or DEA Form 48a). Any erroneous entries will be marked through rather than erased or obliterated.

F. The Evidence Custodian shall not accept custody of an exhibit without an accompanying DEA Form 7a shall not release custody of it without a DEA Form 12, and shall not dispose of it without a DEA Form 48a. Conversely, he shall not accept a DEA Form 7a indicating transfer to his custody without the accompanying exhibit, shall not accept a DEA Form 12 without releasing the exhibit, and shall not indicate disposal on the DEA Form 48a without actually having disposed of the exhibit.

G. At least annually (or whenever there is a change of Evidence Custodian or other person having access to the nondrug evidence storage facility), the SAC shall direct that an inventory be conducted of all nondrug property held by each office in his jurisdiction. The SAC will assign this task to an employee other than the Evidence Custodian(s). Unresolved discrepancies between nondrug property and supporting records will be reported immediately to Headquarters (PR), and, within 30 days of discovering the discrepancy, be the subject of a Board of Survey according to 41 CFR 128-50.103(a). See 6663.67E for special inventory requirements with regard to money and other high-value items.

6663.42 Storage of Nondrug Property

A. All evidentiary nondrug property and negotiable instruments must be processed (identified, marked, and sealed) prior to transfer to the Evidence Custodian or Seized and Recovered Monies Custodian. This transfer should be accomplished as soon as possible. Note: Property subject to forfeiture proceedings and not being held for evidence will be released to the U.S. Marshals Service within 10 days of seizure. This procedure does not apply

to a conveyance that is to be used solely in an undercover capacity upon forfeiture, and that the property requires unique storage facilities unavailable through the U.S. Marshals Service. Concurrence to retain non-evidentiary seized property in DEA custody must be obtained from Headquarters AA/AMP.

B. If transfer to one of these Custodians cannot take place on the same day of its acquisition, the processed exhibit should be stored in an evidence safe (segregated from any drug evidence), file safe, or secure locker to which access is positively limited. Where a DEA facility is not available, the evidence storage facility of another law enforcement agency may be used (receipted by a DEA Form 12). Where none of the foregoing facilities are available, the exhibit may be stored under secure lock and key in some other facility, provided that access is limited solely to the responsible agent. The use of unoccupied vehicles, hotel rooms, or locked desks is prohibited.

C. Where it appears that an exhibit will be outside the custody of a DEA Custodian or the court for a period of 20 days or more, it will be transferred back to the appropriate Custodian.

D. DEA Custodians shall store nondrug property acquired under this section in accordance with 8617 of the Planning and Inspection Manual. It shall be stored separately from DEA-owned or leased property and separated from drug evidence.

6663.43 Delivery and Production in Court. The procedures set forth in 6662.43 for the domestic delivery of drug evidence shall also apply to nondrug property acquired under this section.

The pertinent procedures set forth in 6662.45 for the production in court of drug evidence shall also apply to nondrug evidence.

6663.5 DISPOSITION

6663.51 General

A. This subsection applies to nondrug property fitting the following criteria:

1. Any property previously reported on a DEA Form 7a. Or,
2. Any property previously reported on a DEA Form 453. Or,
3. Any property previously submitted to a DEA laboratory using a DEA-7 for trace analysis, the result of which was negative.

(Note: If the result of the analysis was positive, then the property will be considered as a "container," and summarily forfeited to the government as contraband. It will be disposed of as drug evidence.)

B. The legal principle governing the disposal of nondrug property is that once it loses its status as evidence, it must be returned to the lawful owner unless it has been forfeited or abandoned. A fourth possibility, which ultimately falls within one of the others, is the transfer to another agency of property which is contraband or evidence under the statutes enforced by that agency (see 6663.62).

C. The need to continue the evidentiary status of a nondrug item will be determined by the prosecutor. This determination may stem from the prosecutor concluding that the item will not be needed as evidence in a pending proceeding, or that the case is not prosecutable, or that the time for filing an appeal in a completed proceeding has lapsed. Copies of judicial forfeiture concerning property, for which a DEA-453 has been entered into the CAP data base, will be forwarded to Headquarters, Office of Chief Counsel, Asset Forfeiture Section. The appropriate case number and SYSID number will be recorded on each piece of correspondence. The field office will modify the CAP data base to reflect the date of the judicial forfeiture.

To avoid unnecessary accumulation of nondrug property, the views of the prosecutor on this will be actively sought by the case agent. If an appeal has been filed, the case agent will check with the prosecutor at least every 60 days to determine if it has been decided by the appellate court. The fact that this inquiry was made, together with the prosecutor's response, will be the subject of a DEA Form 6 (copy to the Evidence Custodian).

D. Once a determination is made that the property is no longer needed as evidence, the case agent will initiate, within 5 working days, a DEA Form 48a indicating the means of disposition. All property seized pursuant to 21 USC 881 no longer needed for evidence will be released to the U.S. Marshals Service on a DEA-48a. The U.S. Marshals Service will take custodianship of conveyances with the DEA-453. Conveyances intended for official use must have the block, "Is Vehicle Suitable for Official Use," marked "Yes." A copy of the DEA-453 must be provided to the U.S. Marshals Service and a copy signed by the USMS retained in the DEA case file.

E. Nondrug evidence held by the Evidence Custodian or DEA laboratory will be retained pending disposition instructions via DEA Form 48a. Nondrug evidence taken back from the court will be submitted to the Evidence Custodian (receipted by DEA Form 12) pending disposition instructions via DEA Form 48a.

F. A case file may only be closed upon receipt of fully executed DEA Form 48a's for all nondrug exhibits (DEA Form 48's for all drug exhibits, see 6662.46) and DEA-294 for all non-evidentiary property seized pursuant to 21 USC 881. Prior to approving the closing of a case file, the immediate supervisor will review it to assure that all drug and nondrug exhibits are properly disposed of pursuant to either a DEA Form 48 or DEA Form 48a, or DEA-294.

6663.52 DEA Form 48a

A. The disposal of all property meeting the criteria in 6663.51A will be documented by a DEA Form 48a. The case agent will submit a DEA Form 48a with Part I completed to his immediate supervisor for approval. More than one exhibit may be placed on the same DEA Form 48a except for:

1. Items held by separate custodians.
2. Items which will have different means of disposition.

B. The DEA Form 48a is a seven-page manifold. Copies not needed in a particular situation may be discarded. However, the following routine distribution will be made:

1. Originating office case file.
2. Originating office CAP data input operator.
3. Division/District Office case file (if appropriate).
4. Originating office Evidence/Seized and Recovered Monies Custodian.
5. Headquarters (AMRI).
6. Distributor copy to the USMS when property held by a DEA custodian is turned over to the USMS for subsequent action. (See 6663.67.)
7. As needed.

Note: Do not send DEA-48a's to the Asset Forfeiture Section (CCF).

6663.53 Forfeitable Property. (See 6654.)

A. 21 USC 881(a) sets forth criteria for property subject to forfeiture under the CSA (see Appendix C). Any nondrug evidence item meeting one or more of these criteria will undergo forfeiture proceedings. These proceedings should be initiated at the point where it becomes known that the property is subject to forfeiture. Do not delay these proceedings until the property no longer has evidentiary value. The DEA-453 must be completed and entered into the CAP database within 5 days of seizure, or in case of adopted seizures within 5 days of the date that DEA takes custody of an asset.

B. Do not initiate a DEA-48a until the property has no further value as evidence. All currency however must be deposited to the Seized Asset Deposit Fund (SADF) unless the U.S. Attorney has applied for and received an exemption from the Department of Justice, Criminal Division, and provides a copy of this exemption to DEA, either within 60 days of the date of seizure or 10 days after indictment, whichever occurs first. If the amount of the seizure is less than $5000.00, the exemption may be granted at the supervisory level in the U.S. Attorney's office. When the property has no further evidentiary value, do one of the following:

1. Prepare a DEA-48a and release the property to the U.S. Marshals Service if seized pursuant to 21 USC 881.
2. If a forfeiture action was successfully contested, then handle the item as returnable property.

6663.54 Returnable Property. Unless an exhibit meets the criteria for one of the other categories, it must be returned to its rightful owner. The return of property to its rightful owner will be according to the following procedures:

A. Within 5 working days after the prosecutor's determination that an exhibit is no longer needed, the case agent will attempt to notify the rightful owner that it may be reclaimed by sending a letter, certified mail, to the last known address and to the

attorney of record, if applicable. If the rightful owner cannot be located, or defers claim, or does not claim the property within 20 days of informal notification, then abandonment procedures will be instituted. (See 6663.55.)

B. If the item can be returned to its rightful owner, the case agent will complete Part I of DEA Form 48a. Upon approval by the immediate supervisor, keep copy 7 as an interim record and forward the remaining copies to the Evidence Custodian. The Evidence Custodian will return the property and complete Part II of the form. The owner (or his authorized designe) must sign for the property on the DEA-48a and be given a copy of the form as a receipt.

C. An alternative to B is for the case agent to take custody from the Evidence Custodian (via DEA Form 12) and return the property via DEA Form 48a. In this instance, the case agent will sign the DEA Form 48a as the Custodian, and forward a copy of the executed DEA Form 48a to the Evidence Custodian.

D. If the property to be returned is being held by the DEA laboratory, it must first be transferred to the appropriate DEA field office and returned to the owner from that point.

6663.55 ABANDONMENT PROCEEDINGS. Where property cannot be returned as in 6663.54, *abandonment proceedings must be initiated.*

**A. Responsibilities for Processing. All property to undergo abandonment proceedings which came into DEA custody on or after January 1, 1986, are reported into the CAP database and processed by the Asset Forfeiture Section (CCF). Processing of abandoned property that came into DEA custody before January 1, 1986, is the responsibility of each DEA field Division. (Abandonment occurring before CAP implementation in the original six CAP divisions are the responsibility of those offices: Atlanta, before December 1, 1985; Boston, before November 1, 1985; Miami, before August 1, 1983; Newark, before April 1, 1984; Philadelphia, before October 1, 1985; and Washington, before January 1, 1983.)

B. Abandonment proceedings for which CCF has responsibility will be initiated as follows:

1. If the owner is known, the field office shall notify the owner by certified mail at the owner's address of record that the property may be claimed by the owner or his designee; and, that if the property is not claimed within 30 days from the date of the letter of notification is post-marked, the title of the property will vest with the United States. The field office will then complete the DEA-453 stating in the probable cause section that the owner has been notified and that abandonment proceedings should be instituted. The date of the notification shall be included.
2. If the address of the owner is unknown, or if the owner is unknown, the field office will complete the DEA-453 with the

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information that is available. The DEA-453 will be entered into the CAP database. If the owner of such property is not known and the estimated value of the property exceeds $100, CCF will post a notice of the finding of such property, which contains the following information:

a. A description of the property including model or serial numbers, if known.
b. A statement of the location where the property was found and the office that has custody of it.
c. A statement that any person desiring to claim property must file with DEA within 30 days from the date of first publication a claim for said property.
d. A complete mailing address, that provides a point of contact within DEA for any person to obtain additional information concerning the property or the procedures involved in filing a claim.

Notice will be published by CCF once a week for at least three successive weeks. Sound judgment and discretion must be used in selecting the publication medium. Advertisements should be placed in a publication of general circulation within the judicial district where the property was found.

The property must be held for a period of 30 days from the date of the first publication of notice. Upon the expiration of this 30-day period, title vests with the United States, and CCF will execute a DEA-294a, Declaration of Abandonment.**

C. Upon receiving a claim, CCF will direct the field office to investigate its merits. The Report of Investigation (DEA-6) will be completed within 21 days and forwarded to CCF for a decision.

D. The Forfeiture Counsel will make a determination on the claim and notify the claimant of its decision (copy of the notice to the originating field office). If the claim is granted, the conditions and procedures will be included in the notification. If denied, the claimant will be given the reason.

E. Upon notification by CCF of the completion of the abandonment proceedings, the case agent will complete Part I of DEA-48a indicating that the property has been abandoned. Keep copy 7 as an interim record and forward the remaining copies to the field office Property Custodian.

F. Upon receipt of the DEA-48a, the Property Custodian will complete Part II of DEA-48a, keep one copy and forward the remaining copies to the Evidence Custodian or DEA Laboratory for disposition. The Evidence Custodian or DEA Laboratory will make the necessary disposal, complete Part III of DEA-48a (keeping one copy), and forward the balance to the case agent for distribution. The case agent will provide one copy to the CAP database input operator to update the CAP database. *Send a copy of the DEA-48a to AMPP.*

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**G. If property is abandoned pursuant to paragraphs B.1 or B.2 above, the title reverts to the owner where a proper claim is filed within 3 years from the date of vesting with the United States. However, if the property has been in official use and a claim is approved, title shall not revert back to the former owner. Instead, the former owner shall obtain reimbursement in accordance with 41 CFR 101-48.102-4 or 101-48.305-1.

H. Those items that are to be abandoned that are field responsibility as outlined in paragraph A will follow the same abandonment procedure as outlined above. A DEA-453 will be completed and entered into the CAP database, coded Stats only.

I. Final disposition of abandoned property will be through destruction, sale by GSA, donation with Headquarters AA/AMPP concurrence, or placement into official use as outlined in Administrative Manual paragraph 0313.47.**

6663.6 PROPERTY REQUIRING SPECIAL HANDLING. All nondrug property will be handled under essentially the same custodial system. Certain types of property, however, require that accommodating modifications be made within this system. These types of property and their accommodating procedures are set forth below.

6663.61 Weapons. (Reference DEA Legal Comment No.36, Guns and Drugs, 18 USC 924(c).)

A. Definition

1. Weapon. The term "weapon" includes any object capable of inflicting bodily harm. If an object is used as such against an agent while in the performance of his official duties, or threatened to be used as such, it will be seized as evidence against the perpetrator.

If none of the foregoing conditions exist, then the weapon should not be taken into custody, but left as found in as secure a manner as possible.

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~~6663.61~~ Weapons No changes.

~~A.~~ Definition

~~1.~~ No changes.

~~2.~~ Weapons which are in the immediate reach or control of a subject in a search or arrest situation, whether or not he has demonstrated an intent to use it, will be secured (including unloading a loaded firearm). If there is reasonable belief that any of the following conditions exist, the weapon should be taken into custody: (a) the weapon is illegally possessed or was used in a criminal violation; (b) that a danger would be created by our not taking it into custody (either to the officers present or the general public), the likelihood exists that the weapon could be lost or stolen; or (c) that it is subject to forfeiture under 21 USC 881(a)(6) or *(a)(11)* as proceeds of an illicit drug transaction, *or which was used or intended to be used to facilitate an illicit drug transaction*, or that it is subject to forfeiture under 18 USC 924 or (ATF forfeiture).

Within *15* days of seizure, weapons seized for forfeiture under 21 USC 881(a)(6) or *(a)(11)* are to be reported on a DEA-153, entered into the CAF database within *15* days of seizure, and custody turned over to the U.S. Marshals Service on the DEA-153. Firearms and ammunition to be forfeited under 18 USC 924(d) are to be turned into the Evidence Custodian on a DEA-7a and released to ATF, using DEA-48a, within 10 days of seizure.

If none of the foregoing conditions exist, then the weapon should not be taken into custody, but left as found in as secure a manner as possible.

Paragraphs B through F1 remain unchanged.

F. If the weapon is to be used as evidence in a DEA-initiated proceeding (e.g., assault upon an agent), custody will be maintained by the Evidence Custodian pending trial. If the weapon is not to be used in a DEA initiated proceedings, or at the completion of a proceeding in which it was used, it will be disposed of by one of the following means (there shall be no other means):

1. If it is of evidentiary value to another agency (ATF, State, or local), or is illegally possessed under another agency's statutes, then it may be transferred to that agency via DEA Form 48a.

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1. Any seizure valued in excess of $10,000.00 will be stored in a commercial safety deposit box rented from a reputable, major bank.

2. Any field office whose cumulative holdings of seized money and other high-value items exceed $100,000.00 will store all such exhibits in a commercial safety deposit box rented from a reputable, major bank. Charge fees for safety deposit boxes against the DOJ Assets Forfeiture Fund Reimbursable Budget Area "F" account.

3. These safety deposit boxes will be rented in the name of the seized and recovered monies custodian, with a second disinterested employee shown as a "joint tenant". This will require both employees to be present to gain access to the safety deposit box.

4. Field office heads or designees shall personally conduct a quarterly inventory of exhibits consisting of seized and recovered money and other high-valued items. This audit will consist of comparing the DEA-433's, an inventory print-out from the CAP data base seized and recovered monies inventory, and the sealed exhibits against each other. Each such audit shall be documented by the field office head's verification, signature, and dates on the Seized and Recovered Monies Inventory.

5. Any exception to the above must be approved in writing by the Assistant Administrator for Planning and Inspection.

SUBCHAPTER 667 SPECIAL ENFORCEMENT PROGRAMS

6671 SPECIAL ENFORCEMENT OPERATIONS

6671.1 GENERAL. Field office management is expected to direct and apportion its assigned resources towards the highest priority targets. Within his resource capacity, the SAC has the discretion to shift personnel, funds, and equipment to meet particular situations as they develop.

However, where situations develop which call for resources exceeding Divisional capacity, the SAC may request a special resource enhancement.

6671.2 RESOURCE ENHANCEMENTS

A. A resource enhancement will be considered in those priority situations which are beyond the Division's planned budget and current resources.

B. Such enhancements will be requested of the appropriate Headquarters drug section. These requests will be made by the SAC via teletype, to include the following items:

1. File number, title, and G-DEP classification.
2. Amount and kind of enhancement required.
3. Justification for the expediture or action, in terms of the objective to be attained and the reason it cannot be attained with Divisional resources.

C. Headquarters approval at the DO level will be via return teletype, containing the appropriate allowance advice.

6671.3 *DEA PRIORITY TARGETING SYSTEM. DEA's Priority Targeting System is the mechanism within DEA that identifies and prioritizes those highest level drug trafficking problems or drug trafficking organizations having the greatest impact on drug abuse in the United States. The best available resources will be brought to bear in combatting these drug trafficking problems and organizations. The system provides for better measurement of field enforcement efforts as well as resulting successes in these highest priority enforcement initiatives. Headquarters direction and supplemental funding for these investigative priorities are necessary aspects which ensure proper coordination and efficient use of resources.

A. Special Enforcement Programs (SEP)

General. A Special Enforcement Program (SEP) is a high level, long term, enforcement project requiring significant expenditures of resources that will focus DEA investigative, intelligence and support resources on drug trafficking problems. These problems may be regional, hemispheric or international in scope and account for large proportions of illegal drugs distributed in the United States. These programs are initiated at either the field or Headquarters level, but are established and managed by the Drug Investigations Sections at Headquarters. The multinational, multidivisional, or multiagency aspects of these programs necessitate high level Headquarters coordination and liaison with

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all operational participants. Examples of programs of this magnitude include Operation Snowcap, Operation BAT, Operation Chemcon and Operation Pipeline.

B. Special Enforcement Operations (SEO)

General. A Special Enforcement Operation (SEO) is a high level, long term, enforcement project requiring significant resource expenditures that will focus DEA investigative, intelligence and support resources on a significant trafficking organization with international or national implications. Successful immobilization of this organization should cause an interruption of large scale, established trafficking activities under the control of the organization. These operations are initiated at either the field or Headquarters level, but are established and managed by the Drug Investigations Sections at Headquarters. The multinational, multidivisional, or multiagency aspects of these operations necessitate high level Headquarters coordination and liaison with all operational participants. Examples of operations of this magnitude include Operation Columbus and Operation Sea Horse.

6671.31 Establishment

An SEP/SEO will be established pursuant to a written proposal originating at a Headquarters Drug Investigations Section or at the SAC/Country Attache level. The SEP/SEO proposal will be reviewed by a Headquarters' committee comprised of the four Headquarters Drug Investigations Section Chiefs and the Chief of the Management Staff (OMG). The proposal will have the following format:

1. A full description of the program emphasis or targeted drug trafficking organization, to include the principal targets, target G-DEP classifications, drugs supplied or distributed, etc.
2. A summary of enforcement efforts, including other agencies to date.
3. The primary case number and G-DEP identifier under which the SEP/SEO will be reported.
4. All case numbers of other related investigations will be furnished. These cases represent an integral part of the programmatic or organizational targeting and resource management of a SEP/SEO.
5. The proposed plan of operation, to include specific objectives, exact enforcement strategies planned, all informants and their specific use, electronic surveillance, etc.
6. A timetable for execution of each phase of the operation and its anticipated completion.
7. An estimate of required resource, both intradivisional and interdivisional.
8. A list of key Special Agents and other personnel required.
9. The amount of PE/PI needed for each phase.
10. Any equipment and facility requirements.
11. A statement of support/coordination arrangements made to date.

B. The proposal will be reviewed for programmatic, operational and resource feasibility, significant scope of organizational

targets, objectives of the SEP/SEO and the impact that the SEP/SEO will have on the trafficking organization or identified drug problem. The SEP/SEO committee will designate the appropriate Drug Investigations Section Chief as manager of the SEP/SEO and also designate the appropriate SAC/Country Attache as the primary office of responsibility for the SEP/SEO. The committee will forward the proposal by cover memorandum to the Deputy Assistant Administrator for Operations (DO) for final approval. The cover memorandum will contain the appropriate Drug Investigations Section Chief's recommendation, as well as any adjustments made as a result of review and discussion with the SAC of the primary office.

C. Upon concurrence, DO will direct OMGB to assign an SEP/SEO fiscal control number and finalize the SEP/SEO Program Code. OMGB will coordinate the funding of the SEP/SEO based upon the projection of costs. DO will also direct other DEA elements to supply approved resources for the SEP/SEO, including analytical support by the Office of Intelligence (OI). The Operations Division will determine SEP/SEO support investigations and notify the appropriate SAC/Country Attache.

6671.32 Operations

A. Significant SEP/SEO operational functions will be carried out with the approval of the appropriate Headquarters Drug Investigations Section. Responsibility for fiscal control for all SEO's will be delegated to OMGB. Fiscal control includes bookkeeping, account reconciliation and allowance control. OMGB will manage this responsibility in coordination with the Drug Investigations Section.

B. Authorization for international or significant interdivisional travel, operational and PE/PI expenditures will be at the direction of the Drug Investigations Section Chief. Authorization for these expenses will be via teletype. Vouchers and DEA Form 103's will be processed at the field office, with copies submitted to OMGB for account reconciliation.

6671.33 Program Reporting

A. All investigative reports, for both primary and support investigations, will bear the assigned SEP/SEO two-character, alpha-numeric, program code (e.g., "F1") in the assigned block and a program title (e.g., "Operation Eagle"). A support investigation will be assigned a separate program code which will link it to the SEP/SEO (e.g., "F2"). Operational titles will be entered adjacent to the SEP/SEO number. Teletypes and memoranda will contain this SEP/SEO number in the Subject.

B. All Offices, whether primary or supporting, will utilize the Case Status System (CAST) for the maintenance of SEP/SEO related activities. Both primary and support offices must enter the assigned program codes in the appropriate CAST investigative record. This can be done at the time the SEP/SEO is approved by creating a new investigative record or by updating an existing CAST investigative record.

C. Entry into the CAST manpower subsystem is also essential to summarize the expenditure of manpower resources. Both primary and supporting offices can create a manpower record in CAST detailing the manpower expended in the SEP/SEO effort. The manhours should be taken from the BI-Weekly Activity Report (DEA Forms 351, 352, and 421) as completed by the Special Agents, Intelligence Analysts and Diversion Investigators assigned. The primary source office will report the manhours under the SEP/SEO case number. Supporting offices will also be able to create a manhour record under the same SEP/SEO case number or update an existing investigative record.

D. The utilization of CAST in conjunction with other M204 systems will enable DEA to analyze the SEP/SEO using several indictors. The CAST records will also make it possible to create a master defendant/suspect index file from all relate SEP/SEO files. Statistical arrest data will also be readily available from the Statistical Services Section (PES) utilizing CAST and the SEP/SEO Program Codes.*

**6671.34 Quarterly and Summary Reporting

A. The Drug Investigations Section Chief will prepare a quarterly progress memorandum to DO. This report is due no later than the fifth working day of the following quarter, and will include the following information:

1. A narrative summary of operational accomplishments toward SEP/SEO objectives.
2. Document strategic changes necessary to continue successful SEP/SEO operations for next quarter.
3. Document statistical accomplishments (from last quarter and to date) of SEP/SEO to include arrests (by G-DEP), drug seizures and asset seizures (by commodity and fair market value).
4. Administrative matters, to include:

   a. Funding (PE/PI and operational) expended in reporting period and to date.
   b. Number of all manhours expended in reporting period and to date.

5. Remarks as appropriate.

B. At the conclusion of the SEP/SEO, the Drug Investigations Section Chief will prepare a Summary Report. This report will follow the format of the quarterly report above, and will also include the following items:

1. An overall assessement of the success in terms of accomplishment of its original objectives, its impact on the traffic, media and/or public reaction, and reaction by other law enforcement agencies.
2. Description of any outstanding acts, achievements, techniques, etc., used in the course of the operation.
3. The overall cost effectiveness of the SEP/SEO as determined by the expenditure of resources (i.e., time and money) in relation to arrests.**

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6672 DEA AVIATION PROGRAM

6672.1 GENERAL. The DEA Aviation Program encompasses the use of official aircraft *in a safe and effective manner to support and further DEA operations to fulfill the primary, statutory functions as outlined in the statement of DEA mission and responsibilities in the DEA Agents Manual.*

Official aircraft will not be used purely as a means of transportation, in competition with commercial air carriers. Detailed guidelines on this program can be found in the DEA Aviation Operations Handbook. (The Handbook also covers aircraft maintenance, control, and storage, plus pilot training, safety and proficiency.) **Aircraft utilized by DEA are determined to be consistent with established mission standards as outlined in connection with OMB Circular A-126.**

6672.11 Program Management

A. Management responsibility for the Aviation Program rests with Headquarters OS. Within OS, the DEA Chief Pilot, Aviation Unit (OSA), exercises line responsibility over personnel assigned to this program, which include:

Deputy Chief Pilot	Addison Aviation Facility
Area Supervisors	Addison Aviation Facility (Southeastern Area- Opa Locka, FL)
Safety Officer	Addison Aviation Facility
Training Officer	Addison Aviation Facility
Administrative/Staff Personnel	Addison Aviation Facility
Maintenance Staff Personnel	Selected Domestic Field Offices
Special Agent Pilots	

B. The Deputy Chief Pilot is responsible for managing all day-to-day operations, and exercises line authority over all OSA personnel except the Chief Pilot and his staff.

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

DEA

NOTICE

CLASSIFICATION CODE
6672

Upon revision
of the Agents Manu

SUBJECT: DEA AVIATION PROGRAM

This issuance revises the geographic responsibilities of the area supervisors.

6672 DEA AVIATION PROGRAM

6672.11 Program Management

(Paragraphs A thru B remain the same).

C. *The geographic responsibilities of the Area Supervisors are as follows:

NORTHEASTERN AREA
Boston Division
Hartford Resident Office
Long Island Resident Office
Newark Division
New York Division
Philadelphia Division
Washington, DC Division

SOUTHEASTERN AREA
Atlanta Division
Miami Division
Tampa Resident Office
Nassau Country Office
Jacksonville Resident Office
San Juan Country Office

SOUTH CENTRAL AREA
Dallas Division
El Paso District Office
Ft. Worth Resident Office
Oklahoma City Resident Office
Houston Division
McAllen District Office
San Antonio District Office

SOUTHWESTERN AREA
Albuquerque District Office
Denver Division
Phoenix Division
San Diego Division
Tucson Resident Office

WESTERN AREA
Hilo, Hawaii
Honolulu Resident Office
Los Angeles Division
Sacramento Resident Office
San Francisco Division
Seattle Division

MIDWESTERN AREA
Chicago Division
Detroit Division
Little Rock Resident Office
New Orleans Division
St. Louis Division

* Revision

Distribution: H-1,2,3C,3D,4,5
F-1 through 7

Reviewed by: HQ ONC

DEA Form — 68
(Apr 1990)

Previous editions may be used.

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2. Should the weapon be subject to forfeiture under 21 USC 881(a)(6) or *(a)(1)* (e.g., a proceed or *facilitation*), then forfeiture proceedings will be initiated, and the weapon will be turned over to the U.S. Marshals Service for disposition. **The $1,000 exception stated in Section 6654.24 B1 does not apply to any firearm.

Firearms in the hands of drug addicts and traffickers represent a significant threat to law enforcement officers. A significant law enforcement purpose is served by the seizure and forfeiture of any firearm subject to forfeiture. Based on the foregoing, the minimum value equity limit of $1,000 is permanently waived for all firearms seized for forfeiture under 21 USC 881.**

3. No changes.

G. Fifteen working days after the end of each quarter each SAC is required to submit to the Office of Planning and Evaluation, Statistical Service Section (PAS), a Quarterly Firearms Seizure Report *(DEA Form 491).*

(Cross out temporary format printed in the manual.)

Note: *DEA Form 491* pertains to firearms seized as evidence or for safekeeping by DEA or State and Local Task Force personnel during the conduct of investigations. Firearms seized solely as assets and reported on a DEA-453 Asset Seizure Report are *not* to be included in the report.

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B. Where any weapon is taken into custody, a receipt will be issued. This may take the form of a notation on the copy of the search warrant (in a search situation), or a DEA Form 12. Where a weapon is taken into custody for safekeeping, the securing agent will advise the owner of this fact and that, subject to DEA processing, it is subject to return.

C. Upon taking a firearm into custody, it will be carefully unloaded by the agent most familiar with it.

D. Once taken into custody, as evidence or for safekeeping the weapon will be identified and entered into the DEA property control system using a DEA Form 7a, and a DEA-453 when subject to forfeiture.

Details of acquisition will be included in the DEA Form 6 reporting the activity in which it was acquired. Custody of the weapon will be transferred as soon as practical to the field office Evidence Custodian; along with appropriate copies of DEA Form 7a and the acquisition DEA Form 12 (if used).

E. If a firearm, the securing agent will conduct a thorough investigation to determine the legality of the owner's possession. This will include:

1. Confirming with ATF, State, and local authorities the legality of the owner's possession (including whether he is properly licensed).
2. Determining from State and local authorities whether this weapon could have a bearing on pending investigations within their jurisdiction, and whether they would like to perform a ballistics examination of it.
3. Checking against NCIC records to determine if it has been reported stolen.

The results of this investigation will be reported on either a separate DEA Form 6, or incorporated on the DEA Form 6 reporting the activity in which the firearm was acquired.

F. If the weapon is to be used as evidence in a DEA-initiated proceeding (e.g., assault upon an agent), custody will be maintained by the Evidence Custodian pending trial. If the weapon is not to be used in a DEA-initiated proceeding, or at the completion of a proceeding in which it was used, it will be disposed of by one of the following means (there shall be no other means):

1. If it is of evidentiary value to another agency (ATF, State, or local), or is illegally possessed under another agency's statutes, then it may be transferred to that agency via DEA Form 48a.

3. If the conditions above do not apply and the weapon is legally possessed by the owner, consider it returnable property (see 6663.54). Return it to the owner under controlled circumstances (e.g., in a DEA facility, witnessed). If a firearm, return it without ammunition. Document the return on a DEA-48a. If the weapon cannot be returned, then initiate abandonment

proceedings; when completed, the weapon must be destroyed as abandoned property (see 6654.5). Assistance in destruction of weapons may be obtained through the Office of Training, Firearms Unit.

Note: Placing forfeited or abandoned firearms into official DEA service is strictly prohibited.

**G. Fifteen working days after the end of each quarter each SAC is required to submit to the Office of Planning and Evaulation, Statistical Services Section (PES), a Quarterly Firearms Seizure Report ~~in the following format~~: (DEA 491)

Note: ~~This report~~ DEA-491 pertains to firearms seized as evidence or for safekeeping by DEA or State and Local Task Force personnel during the conduct of investigations. Firearms seized solely as assets and reported on a DEA-453 Asset Seizure Report are to be included in this report.**

6663.62 Articles of Interest to Other Agencies

A. In enforcement situations property may be encountered which is contraband or evidence under the statutes enforced by another agency. Within the following guidelines, such property will be transferred to that agency.

B. Where there is advance knowledge that such property will be encountered, it is preferable to have representatives from the interested agency participate in the activity. In this manner, DEA processing and custody can be avoided. Where this is done, the property will be listed on the search warrant inventory with an indication as to custody, and reported on the DEA Form 6.

C. Where direct seizure by the other agency is not feasible, then DEA will seize the property, listing it on the search warrant inventory (or DEA Form 12), and reporting it in the DEA Form 6. The property will also be reported on a DEA Form 7a, identified, sealed, and submitted to the Evidence Custodian.

** Addition

Transfer of custody to the other agency will be documented using a DEA Form 48a. To preserve its evidentiary value, the chain of custody within DEA will be kept to a minimum and carefully documented.

D. Where both a Federal agency and a State or local agency have a concurrent interest in the property, the Federal agency's interest will take precedence.

E. Any transfers to another agency are permanent. The other agency must agree to assume responsibility for custody and eventual disposition.

F. DEA is not authorized to transfer forfeited property seized pursuant to 21 USC 881 which has been designated as unsuitable for DEA official use, except as approved by CCF equitable share authorization when submitted in compliance with 6654.56. Requests from non-participating agencies must be referred to the U.S. Marshals Service, Washington, D.C.

G. Nondrug property initially seized by Customs and transferred to DEA in a referral investigation will be offered back to Customs at the completion of its evidentiary usefulness to DEA, without DEA forfeiture/abandonment proceedings. If accepted, the DEA Form 48a procedures set forth above will be followed. If declined, then DEA must dispose of it through forfeiture or returnable property procedures set forth in 6663.5.

6663.63 Articles Taken Into Custody for Safekeeping. (See 6663.67 for special procedures relating to money.)

A. In enforcement situations, property may be encountered on an arrestee or in a search location which is not subject to seizure, but which prudent judgment dictates should not be left unattended. Property left on the person or on the premises unattended and subsequently lost could conceivably result in claims against the government. Within the following guidelines, such property should be taken into custody for safekeeping.

B. To avoid excessive processing, alternative means of securing the property should be explored, i.e., small amounts of currency and personal jewelry on a detainee could be secured and receipted for by detention center officials. Where the property belongs to a person who has been placed under arrest, request that he designate someone to take possession. Do not release any property in this manner without the written consent of the subject.

C. To protect DEA against any subsequent claims regarding lost or missing property, all property taken into custody for safekeeping will be thoroughly inventoried, including opening locked containers to inventory their contents. All property will be itemized and receipted on a DEA Form 12 (or as a separate category on the search warrant inventory) with the notation "taken for safekeeping subject to return to the lawful owner." If the lawful owner is not present, a copy of DEA Form 12 (or the search warrant) will be left on the premises.

D. All such property will be reported on the DEA Form 6 reporting the activity in which the property was acquired. If the period of

DEA custody will exceed 2 working days, it will also be reported on DEA Form 7a, identified, sealed, and transferred to the Evidence Custodian.

E. The case agent will take appropriate measures to return the property to the lawful owner (or his designee) as soon as possible. The return will be receipted on DEA Form 12; or, if a DEA Form 7a was prepared, on DEA Form 48a. The return procedures set forth in 6663.54 shall be followed.

6663.64 Passports

A. Passports are the property of the government from which they were issued. All passports seized by DEA will be surrendered to either the U.S. State Department (U.S. Passports) or to the Immigration and Naturalization Service (Foreign Passports) when no longer needed as evidence.

B. A seized passport will be marked and identified as a nondrug exhibit, sealed, and submitted to the Evidence Custodian via DEA Form 7a.

C. United States Passports

1. After the defendant's initial appearance, a decision will be made by the prosecutor as to whether the passport is needed as evidence. If it is to be used as evidence, the SAC will send a letter to the Director of the Passport Office (use address in E below) containing the following information:

a. The fact that the passport is being held by DEA as evidence.
b. Complete identification of the defendant, including the passport number.
c. The charges against the defendant.
d. Any travel restrictions placed on the defendant by the court.
e. Any question on the legality of the passport (i.e., obtained under false pretenses, forged, etc.).

2. If it is not to be used as evidence, or if it is no longer needed as evidence, the case agent will submit a DEA Form 48a initiating transfer of the passport to the State Department.
3. Upon receipt of a DEA Form 48a, the Evidence Custodian will return the passport to the State Department via registered mail, return receipt, using the following address:

Director of the Passport Office
Department of State
McPherson Building
1425 K Street, N.W.
Washington, D.C. 20524
Attention: Passport Legal Division

The passport will be accompanied by a letter from the SAC, covering items 2 through 5 in C above. It is not necessary to have the State Department receipt the DEA Form 48a; the Evidence Custodian's certification of this disposition in Part III will suffice.

D. Foreign Passports

1. If it is not to be used as evidence, or it is not longer needed as evidence, the case agent will submit a DEA-48a, initiating transfer of the passport to the District Director of the Immigration and Naturalization Service.

2. Upon receipt of the DEA-48a, the Evidence Custodian will determine the appropriate INS District Director and will send the passport via registered mail, return receipt requested.

3. The passport will be accompanied by a letter from the SAC indicating:

a. Name, date of birth, place of birth of alien;
b. A-number, if any;
c. Date of indictment/conviction, location, and crime;
d. and, inasmuch as he appears to be an undocumented alien amenable to exclusion or deportation preceedings his/her travel documents are being forwarded for safekeeping until required to effect his/her removal from the United States upon completion of criminal sentence.

E. Other Identity Documents. Identity cards or other such documentation which offers evidence of nationality will be secured and processed in accordance with paragraph D above, as will foreign passports seized independant of a corresponding arrest.

6663.65 Documentary Evidence

A. Documentary evidence may originate directly from the subject (e.g., address books), from a neutral party (e.g., bank records), or from DEA activities (e.g., photographs). Regardless of the origin, once a document is determined to have potential evidentiary value, it will be processed within the following guidelines.

B. Any document obtained in official activities will be considered to be potential documentary evidence. Upon receipt, it will be identified with the file number, date of acquisition, and the initials of the collecting agent. If appropriate, the person supplying the document will be asked to initial it. Sufficient copies of the document will be made for investigative use. The original will be sealed in an envelope and placed in the case file or in an accordian folder behind the file if required due to bulk. Circumstances of its acquisition will be reported on DEA Form 6. Further processing (assigning it an exhibit designator and preparation of DEA Form 7a) need not be done unless and until it is determined that the document has actual evidentiary value.

C. Upon a determination that the document has evidentiary value, it will be assigned an exhibit designator (this may necessitate breaking an earlier seal, marking and resealing the document), and submitted to the Evidence Custodian via a DEA Form 7a. If resealing was necessary, this will be explained in the Remarks section of the DEA Form 7a.

D. Any document for which a DEA Form 7a was prepared, when no longer needed as evidence, must be disposed of via a DEA Form 48a. The physical disposition will consist of return to the case file or, if of peripheral importance, destroyed.

E. Where potential documentary evidence is being sought from a neutral party (e.g., a business or government institution), the agent will identify himself to a responsible official and explain the nature of his inquiry. If a lack of cooperativeness is encountered, the records may be subpoenaed. It may also be important to determine the identity of individual employees responsible for preparing and/or maintaining the document and to take statements regarding the document's authenticity and the circumstances of its existence. If the original of the document is not immediately available, determine its location and either obtain it or see that it is held in a secure manner. Acquisition of the document will be receipted via a DEA Form 12.

F. Where the document is a photograph, all identification should be done with a soft, felt-tipped pen on the reverse side. In addition to the standard identifying data, include a brief notation as to the significance of the photograph. To preserve the chain of custody, photographic processing (development and/or duplication) should be carried out by a DEA laboratory. If circumstances preclude this method, then a commercial processor may be used provided that all individuals handling and having access to the film can be identified and the number of individuals doing so is limited.

6663.66 Tape Recordings and Transcripts

A. Original tapes of a nonconsensual intercept will be immediately duplicated, identified, sealed, and submitted to the Evidence Custodian via a DEA Form 7a. The identification (made on the reel or cassette) will include the file number, the exhibit designator, the initials of the agent making the record (plus those of any witnessing agent), and the date and time the recording was begun and terminated.

B. In making a duplicate tape, the entire original recording will be duplicated, even if some of it was unintelligible. The duplicate will be identified in the same manner as the original, with the additional notation "DUPLICATE." Duplicate tapes will be stored under lock and key when not in actual use. They may be used to make transcripts or put to other appropriate uses.

C. The original copy of a transcript of a tape will be assigned a subexhibit designator (e.g., Subexhibit N-1a), sealed, and submitted to the Evidence Custodian via a DEA Form 7a.

D. Original recordings of nonconsensual intercepts, transcripts of such recordings, and pen register tapes obtained in connection with such intercepts must be retained as evidence for a period of 10 years from the date the recording was made. At the end of this retention period, these exhibits may only be disposed of pursuant to a court order.

At the point where these exhibits are no longer needed as evidence, the case agent will submit DEA Form 48a. The Evidence Custodian will complete Part III, indicating long-term storage, and make distribution of the form. The case file may be closed upon receipt of the completed DEA Form 48a. However, the Evidence Custodian will maintain suspense records documenting the fact that the actual disposal of these exhibits has not yet taken place.

At the conclusion of the 10-year retention period, the SAC (or his designee) will request the U.S. Attorney, via letter, to seek a court order for their disposal.

E. Original recordings of consensual intercepts need not routinely be duplicated or transcribed. However, they will be identified and sealed as above, and held until no longer needed.

Upon receipt of an approved DEA Form 48a, the Evidence Custodian will dispose of these exhibits.

F. *DEA will utilize the FBI's capability to enhance the quality of magnetic tape recordings. All magnetic tape evidence acquired in DEA investigations, including DEA task force investigations, will be submitted to Section Chief, FBI Audio/Video Processing Program [redacted] for enhancement. Magnetic tape evidence acquired by another agency in cooperative investigations with DEA may also be submitted, if deemed necessary, by field technical operations personnel. Exceptions to this procedure may be granted by Headquarters Technical Operations Unit (OST) where circumstances may warrant.

1. Tape Enhancement. Tape enhancement is the suppression* of interfering noise on audio recordings to improve the intelligibility or ease of listening to the desired audio information.

a. Best enhancement is obtained by processing the original recordings. *Originals should therefore be submitted.*

b. No alteration of the original recording occurs during the enhancement process. An enhanced copy of the original is produced and the original is returned intact.

c. Enhanced recordings may be used for courtroom presentation in conjunction with the original tapes, and/or for intelligence or lead purposes.

2. Submitting Recording for Enhancement. When submitting tapes for enhancement, the case agent should **submit it by memorandum under the appropriate DEA investigative file title and case number and** briefly describe the manner in which the recording was made; i.e., type of recorder or transmitter if known **and any problems with the recording.** Those portions of the recording which are of primary concern should be specified along with the locations of any pertinent conversations and their approximate duration. **The name and telephone number of the person to be contacted should be included should any question arise regarding the examination of the evidence. The number of enhanced copies needed and format (open reel or cassette), as well as any time constraints requiring expeditious handling (such as a trial date or life-threatening situation) should also be specified.

3. Use of Enhanced Tapes. Be aware of the following whenever playing enhanced tapes for transcription and/or courtroom presentation:

a. Play back all marginally intelligible recordings, original and enhanced versions, using high quality recorders and earphones.

* Revision
** Addition

b. Courtroom presentation of marginally intelligible recordings should be accomplished by using jury listening systems consisting of quality tape recorders, amplifiers and any earphone network which provides individual earphones to each of the jury members, the judge, witness box, defense, prosecution, etc.

4. Submitting Recordings

a. By Mail

(1) One or more "protection" copies of original tapes should be made prior to submitting original recordings. These copies should be retained by the submitting office.

(2) Tapes should be packed in a sturdy cardboard box with no less than three inches of paper, styrofoam or other lightweight packing material on all sides. This will prevent accidental erasure in the remote event the tape is exposed to a strong magnetic field while in the mail.

(3) *All mailed submissions must be by registered mail as outlined in paragraph 6662.43C of the Agents Manual, and the transfer documented on the DEA-12. If the shipment is sent by another carrier, ensure that a protective or security signature-type service is available and utilized similar to USPS registered mail. It is essential that proper chain of custody procedures are followed.*

(4) Package copies of communications should clearly identify the contents as evidence and should specify the items submitted.

b. Personal Delivery. Under no circumstances should evidence tape recordings be carried through airport metal detectors. Airport metal detectors will not erase tapes but they can possibly degrade the quality of the recording by adding tape noise.

6663.67 Money and High-Value Items

A. For the purpose of DEA's internal control procedures, the term "money" is defined as currency (U.S. or foreign), or anything readily convertible to currency (stocks, bonds, airline tickets, travelers' checks, etc.). The term "recovered money" is defined as currency previously expended for the purchase of evidence or lost through the theft of a flashroll, or some similar circumstance.

On occasion, items having a high value are seized or taken into custody for safekeeping. Examples of this include jewelry, gems, expensive artworks, collector's items, etc. Prudent judgment dictates that in some instances, such items should be handled with the same degree of security as money; yet the system established for money cannot be utilized in full due to the potential involvement of USMS in their disposal.

Except for items in custody for safekeeping, accurately appraise all high-value items as soon as possible. Consider establishing standing arrangements with reputable jewelers and dealers in other like commodities for this purpose. Charge the appraisal costs to the field office operating budget, and enter the charges on the DEA-453 to be included as a deductible expense in any ensuing civil or administrative settlement with a lienor or owner.

* Revision

Identify, seal, and submit high-value items to the Evidence Custodian utilizing a DEA-453. Do not assign fiscal control numbers to high-value items, as they are not defined above in DEA's definition of money.

Handle high-value items subject to forfeiture as seized assets, and report them on a DEA-453. Return all high-value items seized for safekeeping to the owner or authorized representative within 5 days of seizure. If the return cannot be completed, fill out a DEA-453 to initiate abandonment proceedings as outlined in 6663.55.

High-value items subject to forfeiture proceedings under 21 USC 881 (a)(6) must be released to the U.S. Marshals Service (USMS) for custody maintenance within 10 days of seizure , except those items retained for evidence. Transfer forfeitable property to the USMS on the DEA-48a.

B. Money and high-value items may be seized for evidentiary purposes and/or forfeiture, or taken into custody for safekeeping. However, any monies and/or high value items retained for safekeeping must be returned to the owner or his appointed representative within ~~48 hours~~ 5 DAYS of seizure. All monies seized under $1,000 will not be processed for forfeiture and should be returned to the rightful owner. If the monies or high value items cannot be returned, then abandonment proceedings must be pursued. Regardless of the basis of acquisition, for the purpose of DEA's internal control procedures, all monies and high-value items seized by DEA will be entered into the computerized asset program data base within 5 days of seizure.

All currency seized which is subject to civil forfeiture or criminal forfeiture must be delivered to the USMS utilizing a DEA-48a for deposit in the SADF within *10* days after seizure. Limited exceptions will be granted only when retention of the currency serves a significant independent, tangible, evidentiary purpose. Exemptions will be granted only by the express written permission of the Assistant Attorney General, Criminal Division, for those amounts of $5,000 or more. If the amount of the seizure is less than $5,000, the exemption may be granted at supervisory level in the U.S. Attorney's Office. (Currency must be aggregated if it was seized from the same individual, during the same chain of events, not to exceed 48 hours, at the same location (i.e., residence), and with the same probable cause.) DEA offices must file a copy of the written exemption, signed by the appropriate person, for all seized currency that has not been deposited with the USMS, SADF.

This policy does not include seized, recovered funds. The case agent must obtain a copy of the written exemption from the Office of the U.S. Attorney. Supervisory personnel will ensure this is done. The CAP data base will be modified by the field office to reflect this transfer.

While all monies are initially handled as evidence, some monies will subsequently be determined to be non-evidentiary in nature. Such monies will be turned over to the USMS for deposit into the Seized Assets Deposit Fund until forfeiture is completed.

* Revision

6653.57 Money and High-Value Items

A. For the purpose of DEA's internal control procedures, the term "money" is defined as currency (U.S. or foreign), or anything readily convertible to currency (stocks, bonds, airline tickets, travelers' checks, etc.). The term "recovered money" is defined as currency previously expended for the purchase of evidence or lost through the theft of a flashroll or some similar circumstance.

On occasion, items having a high value are seized or taken into custody for safekeeping. Examples of this include jewelry, gems, expensive art works, collector's items, etc. Prudent judgement dictates that in some instances such items should be handled with the same degree of security as money.

Except for items in custody for safekeeping, accurately appraise all high-value items as soon as possible. Consider establishing standing arrangements with reputable jewelers and dealers in other like commodities for this purpose. Charge the appraisal costs against the DOJ Assets Forfeiture Fund Reimbursable Budget Area "S" account, and enter the charges on the DEA-453 to be included as a deductable expense in any ensuing civil or administrative settlement with a lienor or owner. The appraisal should be in writing, and a copy of this written appraisal should be placed inside the evidence envelope with the item(s) as well as attached to the file copy of the DEA Form 453.**

Identify, seal, and submit high value items to the Evidence Custodian utilizing a "DEA-453". Do not assign fiscal control numbers to high-value items, as they are not defined above in DEA's definition of money.

Return all high-value items seized for safekeeping to the owner or authorized representative within 5 days of seizure. If the return cannot be completed, fill out a DEA-453 to initiate abandonment proceedings as outlined in 6653.55.

High-value items subject to forfeiture proceedings under 21 USC 881 (a) (6) must be released to the U. S. Marshals Service (USMS) for custody maintenance within 10 days of seizure, except for those items retained for evidence. Transfer forfeitable property to the USMS on the DEA-48a.

* Revision
** Addition

B. Money and high-value items may be seized for evidentiary purposes and/or forfeiture, or taken into custody for safekeeping. However, any monies and/or high-value items retained for safekeeping must be returned to the owner or his appointed representative within 75 days* of seizure. *Monies seized under $1,000 and high-value items worth less than $1,000* will not be processed for forfeiture and should be returned to the rightful owner. If monies or high-value items cannot be returned, then abandonment proceedings must be pursued. *If the value is over $1000, carefully evaluate for the possibility of forfeiture prior to pursuing abandonment.* Regardless of the basis of aquisition, for the purpose of DEA's internal control procedures, all monies and high-value items seized by DEA will be entered into the computerized asset program data base *(CAP)* within 5 days of seizure.

All currency seized which is subject to civil forfeiture or criminal forfeiture must be delivered to the USMS utilizing a DEA-48s for deposit into SADF *within 10 days of seizure.* Limited exceptions will be granted only when the retention of the currency serves a significant, indepandant, tangible evidentiary purpose. Exemptions will be granted only by the express written permission of the Assistant Attorney General, Criminal Division, for those amounts of $5,000 or more. If the amount of the seizure is less than $5,000, the exemption may be granted at the supervisory level in the United States Attorney's Office. (Currency must be aggregated if it was seized from the same individual, during the same chain of events, not to exceed 48 hours, at the same general location, i.e., residence, and with the same probable cause.) DEA offices must file a copy of the written exemption, signed by the appropriate person, for all seized currency that has not been deposited with the USMS, SADF. *The case agent will obtain a copy of the written exemption from the U. S. Attorney's Office for inclusion in the case file and in the custodian's file. Supervisory personnel will ensure this is done. The CAP data base will be modified by the field office to reflect this status. Note that this policy does not include seized, recovered funds.*

While all monies are initially handled as evidence, *most* monies will subsequently be determined to be non-evidentiary in nature. Such monies will be turned over to the USMS for deposit into the Seized Assets Deposit Fund until forfeiture is completed. Once the proceedings are completed, the USMS will transfer those funds from the holding account into the Assets Forfeiture Fund. Guidelines for handling seized and recovered monies are outlined below.

Once proceedings are completed, the USMS will transfer those funds from the holding account into the Asset Forfeiture Fund. Guidelines for handling seized and recovered monies are outlines below.

"C. Where official funds are known to have passed through the hands of a suspect to an innocent third party, and it would be desirable to recover them, caution should be exercised to ensure that the third party is in fact innocent, and recovery will not jeopardize the investigation." Such funds will be "purchased" from the third party by exchanging them for other official funds. This expenditure will be reported as a purchase of evidence on a DEA-103 and DEA-453 and processed as recovered money as outlined below.

D. Seizing and processing of monies. Extreme caution will be exercised in the seizure of money to avoid discrepancies or accusations of theft or misappropriation."

1. Upon finding money, either on the person of a suspect or in the search of a premises, a witnessing agent will be summoned immediately. If found in the search of a premises, the occupant or person claiming ownership will also be summoned. Do not allow this person to handle the money or reach into a drawer, closet, etc., to retrieve it.

2. If, in the opinion of the seizing agents, an immediate, accurate count of the seized money is practical, it will be counted immediately by the seizing agents in the presence of the person from whom the money was seized, and a receipt (DEA-12) will be issued to that person. The money should be carefully counted at least twice before issuing the receipt. If, however, an extraordinary amount of money is involved, and the circumstances are such that it is impractical for the seizing agents to make an immediate, accurate count at the time of seizure, a receipt (DEA-12) will be issued for an "undetermined amount of money" or "uncounted money claimed by (name of person from whom money was seized) to be ....." until an actual count can be conducted.

The receipt (DEA-12) shall be in addition to including the money on the search warrant inventory. The person should acknowledge the seizure by signing the DEA-12. If the person refuses, then this fact should be noted on the DEA-12. Both agents will sign this form. It is not necessary to record individual serial numbers of currency on the search warrant inventory or the DEA-12.

3. The money will be sealed forthwith by the seizing agents in an evidence bag or evidence container. If the money is

* Revision

voluminous and found in a container such as a suit case or briefcase, it will be kept in that container, and DEA evidence tape and stickers signed by the seizing agents will be placed across the openings of the container until the money can be packed by the seizing agents in evidence envelopes. The sealed money will remain in the continuous custody of the seizing agents until such time as the seizure is deposited into the overnight storage safe, turned over to the seized and recovered monies custodian or taken to a bank for conversion to a cashier's check payable to the U. S. Marshals Service. As with any exhibit, money seizures must be properly sealed prior to deposit in the designated overnight storage safe. Seizures must be removed from temporary storage within 24 hours, or the first regular work day, following deposit.

4. With rare exceptions, seized money will be considered to be non-evidentiary in nature (see paragraph 3 above). This determination must be made within 72 hours of seizure. Upon determination that the money will not be held as evidence, the seizing agents will take the money to a bank for counting and conversion to a cashier's check. Note that the USMS requires that currency seizures be converted to checks before delivery to them for deposit into SADF. Consider establishing standing arrangements with a cooperating banking institution for this purpose. In some cities, the USMS has designated a banking facility for this, and the bank bills the USMS for the process. Offices that do not have this arrangement will charge the fee for the counting and cashier's check against their DOJ Assets Forfeiture Fund Reimbursable Budget Area "T" account and enter these charges on the DEA-453 (item 42). Do not pay this fee from the seized money.

The agents will witness the bank's count, and this will be considered the "official count". This will be the figure entered on the cashier's check and in item 9 of the DEA-453. Enter "U.S. currency" rather than "cashier's check" in the Description block (item 11) of the 453. The case agent will deliver the cashier's check, the completed DEA-453, and a DEA-48a with Part I completed to the seized and recovered monies custodian. The seized and recovered monies custodian will obtain a fiscal control number from the Division Control Clerk, forward copy No.1 of the DEA-453 to the input operator for entry into the CAP, receipt the agent with copy No. 2 of the DEA-453, and retain copies 3 and 4. After entry into CAP, copy No. 1 will be forwarded to the Division Control Clerk. The seized and recovered monies custodian will then provide the USMS with the cashier's check, copy No. 4 of the DEA-453 and the DEA-48a.

The USMS will complete Part III of the DEA-48a, retain copy 6, and return the remaining copies to the seized and recovered monies custodian. Additionally, the USMS will provide DEA with a

copy of the USMS-102, Seized Property and Evidence Record. Once the transfer to the USMS is complete, the seized and recovered monies custodian will retain the 4th copy of the DEA-48a, along with a copy of the USMS-102 for his files. He will distribute the remaining copies of the DEA-48a as follows:

Original (1st copy) - Originating office case file.
2nd copy - CAP data input operator. Procedure for modification for disposition in CAP will be at the discretion of the SAC, but the Division Control Clerk must be provided with hard copies of all disposition documents.
3rd copy - Division/District Office case file.
5th copy - Headquarters case file (AMRI)
(Do not send copy to the Headquarters Asset Forfeiture Section)

Deposit of non-evidentiary seized cash into the SADF is treated as a final disposition as far as the field office is concerned.

The foregoing does not preclude checking serial numbers against FE listes, if appropriate, or photographing the currency for possible use in court.

To avoid embarrassing count discrepancies, adopted seizures from state and local agencies should be accepted by DEA only in the form of cashier's checks along with the completed forms DAG-71 (Application for Transfer of Federally Forfeited Property). This applies only to seizures where DEA had no participation or role.

5. Occasionally, and in strict accordance with paragraph B above, seized monies will be determined to have a significant independant evidentiary purpose and will be retained by DEA for court purposes. The following procedures apply to the handling of such monies:

Seizing agents, after counting the money and verifying the count by a second count, will deliver the seized money to the seized and recovered monies custodian via a DEA-453, who will complete item 50 of the DEA-453 and keep copies 3 and 4. Copy No. 1 (original) will be sent to the input operator for entry into the CAP and then to the Division Control Clerk. Copy No. 2 will be retained by the agent for the case file. Copy No. 4 will be affixed to the exhibit container. The money custodian will obtain a fiscal control number from the Division Control Clerk.

The seized and recovered monies custodian will only accept, store and deliver sealed evidence envelopes. Note that no other property (e.g., money clip, wallet, etc.) shall be placed in

evidence envelopes with money. After initial delivery by DEA-453, all subsequent transfers will be receipted by DEA-12 with the exception of the final disposition to the USMS (DEA-48a). If the sealed money exhibit must be opened, its contents will be counted immediately in the presence of the agents who sealed it. Should this not be possible, the agent's supervisor will witness the opening and counting. If the prosecutor or the court takes custody of the money as evidence (Agents should attempt to discourage this), the sealed money will be transferred via a DEA-12. The prosecutor or court custodian should be urged to keep the seal intact unless there is a compelling need to break it. If it must be broken, urge that it only be done by or in the presence of the agent who sealed it. It is the responsibility of the case agent to ensure that monies (evidence) are returned to DEA in a timely manner.

Upon completion of the money's evidentiary use in court, it will be converted to a cashier's check as per paragraph 4 above and turned over to the seized and recovered monies custodian via a DEA-12. The seized and recovered monies custodian will effect transfer to the USMS via a DEA-48a as described above for deposit into SADF or, if the money has already been forfeited, into the Assets Forfeiture Fund.

If, at any time after CAF entry, a miscount is discovered, report this immediately by telephone to the Headquarters Asset Forfeiture Section (CCF).

6. Recovered monies are handled quite differently since CAF furnished to a violator for an illegal product remains the property of the U. S. Government. It is unnecessary to institute forfeiture or abandonment proceedings. Note also that there are no provisions for sharing recovered CAF with state and local agencies, and requests for such cannot be honored.

Where an exhibit consists of recovered money, place the original of the money list inside the evidence envelope. Should the original be needed for more than one exhibit, make copies and indicate on each copy the location of the original.

Recovered money must be reported on a separate DEA-453 and will be listed by denomination and serial numbers on the DEA-453 in item 22. A fiscal control number will be obtained from the Division Control Clerk and entered on the DEA-453. The sealed money and a DEA-453 will be delivered to the seized and recovered monies custodian who will complete item 50 and return copy 2 for retention in the case file. A copy must be provided to the Division Control Clerk.

Upon determination that the recovered funds can be released, the case agent will obtain the sealed envelope from the seized and recovered monies custodian via a DEA-12, conduct a recount, and obtain a cashiers check or money order payable to DEA and return same to the seized and recovered monies custodian with part I of the DEA-48a completed. In lieu of obtaining a check or money order, the money can be wire transferred as per existing procedure set by the Office of the Controller. Once the funds have been returned to DEA Headquarters, the seized and recovered monies custodian will complete Part III of the DEA-48a and distribute as per paragraph 4 above.

7. Cash seized for safekeeping or consisting of less than $1000.00 should be returned to the owner in accordance with Section 6663.54. If this cannot be done, abandonment proceedings will be initiated. The field office will notify the owner and any other known interested parties by certified mail at the last known address to retrieve the property within 30 days. If the property is not claimed, prepare a DEA-453 for the CAP data base indicating that abandonment proceedings are being instituted. If a DEA-453 was submitted at the time of seizure, the seized and recovered monies custodian will be notified to modify the CAPS entry. Forward a copy of the certified return receipt with the seizure number entered thereupon to the Asset Forfeiture Section. Once the field office has been advised that the abandonment proceedings have been completed, a DEA-48a will be submitted to the seized and recovered monies custodian to initiate transfer of the money to the general U. S. Treasury account. The CAP data base will be updated to reflect the transfer. (Note that there are no provisions for sharing abandoned monies with state and local agencies, and requests for such cannot be honored.)

8. Neither the Internal Revenue Service nor a state tax agency will be used as a custodian of monies that are subject to be deposited with the USMS, SADF. Seized money will only be transferred to the IRS or a state tax authority pursuant to a formal levy and only then if the money is not subject to forfeiture. Forfeiture shall take precedence over any levy or assessment by another agency.

a. Do not accept service of a levy or tax lien on money or other property seized for forfeiture. Courteously advise the IRS (or state tax authorities) that they will be notified if DEA is unable to forfeit the property. If the forfeiture is judicial, notify the U. S. Attorney of the attempted service.

b. In transferring such monies to another agency, the agent and a properly authorized official of the receiving agency will present the DEA-48a, with the levy attached, to the seized and recovered monies custodian. The case agent will break the seal on the envelope, count the money, and transfer it to the

receiving agency official. This transaction will be documented in Part III of the DEA-48a, with the case agent signing as the witness. The DEA-48a will be distributed as above, plus a copy to the receiving agency official.

c. Recovered DAF will not be transferred to another agency for any purposes.

9. All field offices will update/modify the corresponding CAP data base record for each item that is released. Field offices must ensure that the correct CAP disposition code is entered, with the appropriate disposition date. The "Custodian Name/Address" and "Date" fields must be modified to reflect current information. As a double check to avoid error, the Division Control Clerk must be fully integrated into the seized/recovered monies loop and must be provided with copies of DEA-453's and DEA-48a's reflecting status changes.

E. The preparation of the DEA-453 for money seizures will be governed by the following guidelines:

1. A separate DEA-453 will be prepared for each money exhibit unless the following items are the same: probable cause, same chain of events not to exceed 48 hours, place of seizure, and party from whom seized. Should the above factors exist, the multiple currency seizures will be reported on a single DEA-453. The entire exhibit will be assigned a non-drug number, i.e., N1, N2, etc., while the subexhibits will be assigned subexhibit numbers, i.e., N1a, N1b, etc. Recovered funds, as explained previously, are governed by different procedures, and must be reported on a separate DEA-453.

2. Seizures determined to be retained by DEA for evidentiary purposes will be listd in item 22 on the DEA-453 by denomination (e.g., 10 x $20, 5 x $50, 23 x $100, etc.), and the total value will be entered in item 9.

3. For seizures determined to be non-evidentiary that are to be deposited forthwith into SADF, it is only necessary to enter the total value in item 9 of the DEA-453.

4. As explained above, recovered funds are to be listed by both denomination and serial numbers.

5. The Case Agent is responsible for the accurate input of the DEA-453 into CAP. A copy of the printout from CAP should be given to the Case Agent and, after confirming its accuracy, be included in the case file.

F. The storage of seized monies to be retained as evidence and other high-value items (e.g., gold, jewelry, etc.) will be governed by the following policies:

SOUTH CENTRAL AREA	SOUTHEAST AREA
Dallas Field Division	Miami Field Division
Houston Field Division	Atlanta Field Division
New Orleans Field Division	Panama Country Office
Denver Field Division	
FOREIGN AREA	All foreign offices (excluding the Caribbean office covered by the Miami Field Division).

6672.12 Official Aircraft. The function of the Aviation program is to furnish aircraft for use in DEA operations, and to ensure that all such aircraft meet DEA standards of safety and maintenance. Aircraft used by the DEA Aviation Unit must be authorized for use by the Chief Pilot. They may be owned, leased, rented, or borrowed by DEA. (Detailed policy and procedures for the above can be found in the Aviation Operations Handbook.) The use of any aircraft not so authorized excludes coverage under the Federal Tort Claims Act, and makes the pilot responsible for any liability which may result from such use. See also the Administrative Manual, Subsections 0532.6 and 0532.7.

6672.13 Special Agents/Pilots

A. DEA Special Agent/Pilots will be selected from the Special Agent work force and have both enforcement and aeronautical experience. Only agents certified by the Chief Pilot will be designated to fly as aircraft commander of DEA official aircraft. Once designated, they will continue in this capacity until released to other duties, either at their request or in the best interest of DEA.

B. DEA Special Agent/Pilots report administratively and operationally to the Aviation Unit Area Supervisors. While not engaged in duties connected with the Aviation Program, they will assist the field office to which they are attached for duty in its enforcement activities. However, their first priority is the Aviation Program.

6672.14 Interoffice Travel by DEA Pilots

A. To assure maximum flexibility with a minimum amount of administrative delay, DEA pilots will be provided with blanket authority for travel throughout the United States, Canada, the Caribbean Islands, Mexico, Central America, and South America. This authority will be issued from Headquarters and used only while engaged in Aviation Program duties. All expenses arising from these duties are chargeable to a central Aviation Program account.

B. Authority for foreign travel involving locales other than those listed in paragraph A above must be individually obtained by the field office requesting aviation support. Separate travel orders will be issued for each foreign travel assignment not covered by blanket orders.

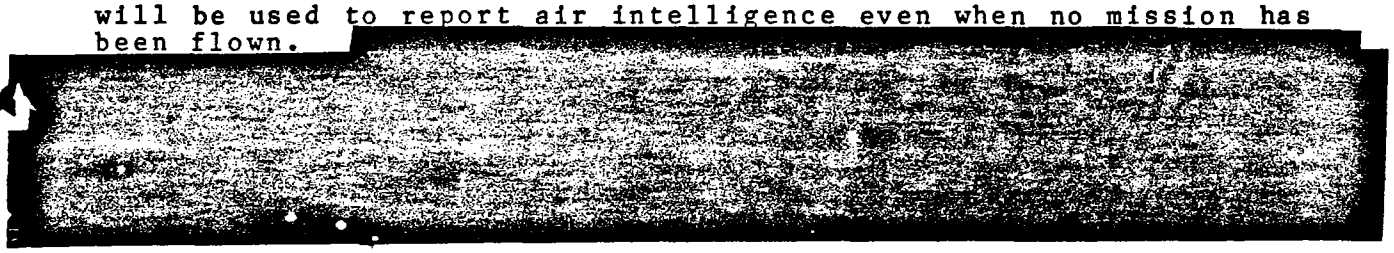
6672.15 Request for Aviation Support

A. All requests for aviation support will be coordinated with the appropriate Area Supervisor by telephone. Where simultaneous requests originating from the same Division are received and there is an insufficient number of Special Agent/Pilots and/or aircraft, Divisional management will determine the appropriate priority. If the requests originate in different Divisions and cannot be mutually resolved, then the matter will be referred to OS for resolution.

B. To properly assess program performance and project future needs, each use or requested use of aircraft in DEA operations (even aircraft of another agency) must be documented. This documentation will consist of the DEA Form 379, DEA Aircraft Mission Report, which will be prepared by the agent/pilot in triplicate, immediately following the flight. *Forward the original to the Area Supervisor for action. Maintain the pink copy for Special Agent/Pilot personal records. Maintain the yellow copy for use in submitting a supplemental mission report if necessary.* In those instances where an aircraft of another agency is used in a DEA activity, field office management will advise the Addison Aviation Facility, which will prepare the report.

6672.16 Air Intelligence and Liaison

A. Each Agent/Pilot assigned to the Aviation Unit is expected to gather and report viable and productive air intelligence information. In this regard, each Agent/Pilot will actively seek and recruit sources of information as a means of developing air intelligence. The Remarks Section of the DEA Aircraft Mission Report (DEA-379) will be used to report all air intelligence information which is not reported on a DEA-6. This is not intended to interfere with Agent/Pilots reporting time-sensitive information by telephone or teletype messages but is rather the means to be used to document intelligence not qualifying for reporting through other, more traditional methods. The DEA-379 will be used to report air intelligence even when no mission has been flown.



The types of information to be collected and reported include, but are not limited to, the following:

1. Air Smuggling Techniques

   a. Location of air activity
   b. Routes
   c. Favored time of day for offloading or transshipment
   d. Refueling areas
   e. Clandestine airstrips
   f. Air drop sites
   g. Border crossing sites

h. Use of controlled airports
i. Suspect or actual drug-related aircraft crashes, seizures or thefts
j. Assembling of ground crews prior to smuggling activity

2. Sightings in Foreign Countries

a. All U.S. registered private aircraft in a foreign country
b. Date of sighting
c. Tail number
d. Owner
e. Manufacturer, model and type
f. Color
g. Name of pilot
h. Any suspicious activity
i. Numbers of the FLINT unit(s) reporting the sighting

3. Sightings in the United States

a. All U.S. and foreign registered aircraft which fit the basic aircraft smuggling profile outlined in EPIC Reference Document RD-02-85.
b. Requirements as listed above in foreign countries.

4. Private Aircraft

a. Those which are sold or leased to individuals known/suspected of being involved in drug trafficking
b. Those which are modified for drug smuggling activities

B. Copies of these DEA-379's, along with appropriate DEA-6's will be provided to EPIC, which has agreed to monitor this program for the Aviation Unit. EPIC, based on input received, will provide

Headquarters, Investigative Support Section, with quarterly quantitative and qualitative evaluations that will reflect the overall effectiveness of the Air Intelligence Program.

C. Additionally, Special Agent/Pilots will make regular liaison visits with other Federal, state and local agencies to collect as well as exchange air intelligence information. In this regard, Agent/Pilots are encouraged to participate in periodic meetings of regional groups such as the Air Smuggling Investigation's Association (ASIA). These meetings provide an excellent forum for sharing air intelligence, and at the same time afford an opportunity to develop contacts with personnel from other law enforcement agencies.

6673 DEA MARINE PROGRAM

6673.1 GENERAL. The DEA Marine Program encompasses the use of official Government vessels to support and further DEA operations in any one or a combination of the following:

A. Undercover investigations.
B. Water surveillance and/or interception of traffickers, vessels.
C. Marine intelligence activities.
D. Transportation of official personnel and/or equipment.
E. Emergency evacuation of official DEA personnel.
F. Emergency search and rescue.
G. Assistance to other law enforcement agencies.
H. Cruises necessary to the efficient working of the program itself, i.e., shake-down cruises, testing of vessel operators, etc.

Official Government vessels include any vessel owned, leased, rented by or loaned to DEA. Use of DEA vessels for any purposes other than official business is strictly prohibited. Section 2735 of the DEA Personnel Manual, relative to the use of Government property, will apply to the use of DEA vessels.

Accountability for all DEA vessels, whether owned, leased, rented, or borrowed, rests with the Property Management Unit (AMPP). The Marine Program Staff Coordinator will inform AMPP of the acquisition, transfer, trade, and surplus of DEA vessels.

6673.2 PROGRAM MANAGEMENT AND COORDINATION. The DEA Marine Program will be managed by the Investigative Support Section (OS). Headquarters coordination will be provided by a Marine Program Staff Coordinator. Each field Division office or Resident office to which a DEA vessel is assigned will designate a Marine Program Coordinator who, under the direction of the Special Agent in Charge (SAC), will coordinate that office's Marine Program with OS.

Within OS, the designated Staff Coordinator exercises overall Program management to include the following responsibilities:

A. Maintains a list of certified Vessel Operators. (Only certified Vessel Operators will be authorized to operate Official Government Vessels.)

B. Coordinates training for Special Agents selected as Vessel Operators as authorized by their Special Agent in Charge.

C. Provides DEA identification numbers to DEA vessels.

D. Reviews/monitors mission/monthly reports (DEA Form 463) to ensure effective use of DEA vessels.

E. Coordinates temporary/permanent assignment of DEA vessels to various geographical areas as the needs of the agency dictate.

F. Maintains a current geographically-filed list of all DEA-certified Vessel Operators to assist the Divisions in locating a qualified Vessel Operator if the need arises.

G. Oversees the expenditures within the Marine Program budget.

On an annual basis, the field Marine Program Coordinators -- through their respective SAC's -- will submit to OS a previous year's review of their offices' vessel utilization and expenses. In addition they will submit a projected work plan to include related fiscal requirements for the coming year. This will be accomplished during the month of April.

6673.3 OFFICIAL VESSELS. The Marine Program Staff Coordinator will maintain the master list of all DEA vessels (including location, size, type, photo and range) to ensure the most effective use to accomplish DEA's mission. On an annual basis OS will designate a senior, experienced Vessel Operator to examine and certify that every vessel in DEA's fleet meets the DEA standards of safety and maintenance, as well as those safety standards established by the U.S. Coast Guard. HQ OS has the authority and responsibility for adding or deleting vessels within the DEA fleet inventory.

Transfer of vessels between Divisions or within a Division is by SAC authority with the coordination/concurrence of OS.

6673.4 SPECIAL AGENT/VESSEL OPERATORS. DEA-certified Vessel Operators are the only DEA employees authorized to operate official vessels for DEA.

A. All Vessel Operators will be certified by the Chief, Investigative Support Section (OS), upon successfully completing one of the following courses and submitting a copy of the applicant's license or certificate:

1. Marine Law Enforcement Training Course, Glynco, Georgia.
2. United States Coast Guard License.
3. Requests for certification based on equivalent training and/or experience will be considered by OS on a limited case-by-case basis.

The above are the only certificates/licenses that will be accepted. Annual recertification standards and procedures may also be established by OS. All training and related expenses will be funded by OS.

B. On vessels 34 feet and over, Vessel Operators will be DEA-certified; additionally, competency will be ascertained by on-site proficiency checks by an OS-designated Vessel Operator. Vessel Operator's competency will include satisfactory knowledge of structure, systems, operation, and emergency procedures. A Statement of Competency reflecting satisfactory accomplishment of qualification or proficiency will be filed with OS.

The designated captain of the vessel is directly responsible for, and is the final authority on, the safe and orderly conduct of the vessel from the time he boards the vessel until he concludes the trip and secures the vessel.

C. OS does not exercise any line authority over Special Agent/Vessel Operators or use of DEA vessels; that authority remains in the hands of the appropriate Special Agent in Charge.

D. Those Divisions requesting a full-time non-1811 Boat Technician shall submit a written justification to OS for consideration. Non-1811 Boat Technicians shall be used only in nonenforcement situations such as ferry trips, maintenance trips, etc.

6673.5 REQUEST FOR MARINE SUPPORT. OS has overall program management responsibility for the DEA Marine Program to assist the Divisions in their marine operations.

A. All movement of vessels from one Division to another or within a Division will be coordinated with OS. Such movement will be based upon Division needs and priorities as communicated to OS by the SAC.

B. Each use of a vessel (including rented vessels or vessels of another agency) must be documented on a DEA Form 463 (Vessel Mission Report). This will be prepared by the Special Agent/Vessel Operator in triplicate, immediately following each use. The original copy of the DEA-463 will be sent to Headquarters OS and filed in the Headquarters vessel file. One copy will be sent to the SAC, and one copy filed in the Division/Resident office vessel file.

C. When a vessel of another agency is used or a vessel is rented for use in a DEA activity, the first line supervisor responsible for overseeing this action will telephonically advise Headquarters OS within 2 working days of its use, and submit a DEA Form 463 to OS within 5 working days.

D. Each time a vessel is requested and for any reason (lack of vessel, no available Vessel Operators, vessel being used) the request cannot be accomplished, a negative DEA Form 463 will be filled out and sent to OS by the Vessel Operator.

E. A monthly expense DEA-463 will be completed for each vessel by the respective office Marine Coordinator by the 10th of the following month.

F. A fuel utilization teletype must be submitted to HQ OS for each vessel by the 12th day of each new quarter. Information will include the number of gallons of diesel/gasoline and quarts of oil purchased for the individual vessel during the previous quarter.

G. Requests by outside law enforcement agencies for the loan of a DEA vessel and Vessel Operator will be granted by the SAC only. In no case will a DEA vessel be turned over to another law enforcement agency without a DEA Vessel Operator unless HQ OS authority has been granted.

6673.6 VESSEL CODE NUMBER. Each DEA vessel will be assigned a code number by Headquarters OS. This code number will appear on all documents concerning that specific vessel.

A. The code number will have nine characters, each designated as follows:

Character	Description
1:	Will always be the letter "V."
2 & 3:	Will be the last two digits of the Fiscal Year in which the vessel was placed into service.
4 & 5:	Will indicate the length of the boat in feet.
6:	Will indicate the type of engine(s) in the boat (G-gas; or D-diesel).
7:	Will indicate the number of engines in the boat.
8 & 9:	Will be a sequential two-digit number within the Fiscal Year.

Example: V85-33-G-2-02 (Vessel put in service in Fiscal Year 1985, 33 feet in length, gas engines, two each, and was the second vessel placed into service that year.)

B. Once assigned this code number, it will remain with the vessel for the duration of its service in DEA. Enter the vessel code number in the block "DEA vessel number "on all DEA-463's.

6673.7 SEIZURE OF VESSELS

A. Seizure of vessels by DEA is governed by Section 6654 of the Agents Manual.

B. Headquarters OS must be notified within two working days by a copy of DEA Form 453 (Record/ Receipt of Seized Asset) of all vessels and/or related marine equipment seized and/or forfeited to the U.S. Government. All seized/forfeited marine equipment and vessels will be reviewed and evaluated by OS for possible official use.

C. OS will assign vessels and/or marine equipment to field divisions as a function of vessel availability and field requirements.

D. At the time of seizure, all vessels will be turned over to the U.S. Marshals on a DEA-12 for storage and maintenance-related activities.

6673.8 BUDGET. The Chief of OS is responsible for administering the Marine Program Budget. These funds will be used for all non-operational expenses relating to DEA-operated vessels (i.e., acquisition, outfitting, repairs and maintenance, permanent mooring, storage fees and Vessel Operator training). The administration of this fund by OS will relieve divisional

operating accounts from frequent inordinate expenses relating to vessels. In addition, because of OS total program overview, funding will be better balanced in terms of overall Marine Program priorities.

Direct operational expenses (i.e., fuel, transit slip rental and other investigative expenses) will be paid by the Division to which the vessel is assigned. Each office operating a DEA vessel will receive each quarter of the Fiscal Year a fund cite for the operation, maintenance and repair of the vessel. Additional funding for training, equipment, travel, etc., will be allocated as deemed necessary by OS.

The Chief OS will also be responsible for administering/overseeing the vessel retrofit and lien fund.

6673.9 VESSEL INCIDENTS. (Accidents will continue to be handled as per Agents Manual Subsection 6124.5 Accidents and Administrative Manual Subsection 0314.3, as well as Coast Guard/local Marine Police Procedures.)

Incidents involving DEA-operated vessels that result in vessel structural damage and/or mechanical failures in excess of $1,000 will be reported promptly through the chain-of-command and also to OS by telecon or TWX. Subsequently, the Vessel Operator will prepare and send to OS a DEA Form 463 and memorandum that outlines all relevant incident facts.

Generally, OS will designate an individual within the Marine Program to be a member of all incident and accident inquiry teams involving the Marine Program.

6674 INVESTIGATIONS OF DOMESTIC CLANDESTINE MANUFACTURING

6674.1 GENERAL

A. Theoretically, any drug controlled under the Controlled Substances Act (CSA) could be produced or refined by a domestic clandestine laboratory. Historically, the set of drugs produced in this manner has been limited in number to a distinct few; however, the specific drugs comprising this set vary over time with market demands, precursor availability, and drug availability through other sources.

B. A program to suppress domestic clandestine laboratories must therefore contain a means to:

1. Identify which drugs are being produced in this manner.
2. Identify how they are being produced, and with what essential precursor chemicals or production hardware.
3. Systematically process new information for follow-up investigative action.
4. Develop a criminal investigation.

The program that follows has these elements as its objectives.

**6674.11 Definitions

A. Clandestine Laboratory. An illicit operation consisting of a sufficient combination of apparatus and chemicals that either has been or could be used in the manufacturer or synthesis of controlled substances. This definition specifically excludes LSD blotter or other dosage unit production operations, heroin or cocaine "cutting mill"/dilution operations, and "crack"/cocaine freebase operations, each of which is a unique and significant enforcement problem, but not a clandestine laboratory for purposes of this definition.

B. Certification. Documented successful completion of requisite training and preparation for agents, authorized state and local task force officers and chemists prior to exposure to hazardous clandestine laboratory operations, to include the following:

1. An approved 40-hour Clandestine Laboratory Safety Certification School, contemporaneous with an initial medical clearance to include a spirometry test and base line blood work. Annual medical monitoring and certification of medical clearance shall be conducted for the balance of the individual's career regardless of assignment.

Note: The initial and annual medical monitoring and certification of medical clearance for authorized state and local task force officers during their assignment with DEA should be completed by DEA certified health and safety personnel. If the officer returns to his/her parent agency, all of his/her medical records should be transferred to the parent agency with a recommendation that annual medical monitoring of the officer be continued.

** Addition

2. Twenty-four hours of annual in-service training provided by the National Office of Training, put on by the Divisional Training Officer and Clandestine Laboratory Enforcement Team Safety Officer, and documented by the SAC or Laboratory Chief.
3. Strongly recommended. Completion of the 40-hour Clandestine Laboratory Investigative School.

C. HAZMAT Response Team (non-DEA). A recognized team of experts or specialists in the area of hazardous waste disposal and/or industrial hygiene to handle cleanup of the hazardous waste generated by or left behind in a clandestine laboratory.**

6674.2 PROGRAM RESPONSIBILITIES

6674.21 Headquarters

A. Operations Division (appropriate drug section):

1. Provides overall coordination and guidance among all other DEA Headquarters and field elements.
2. Serves as the Headquarters point of contact on all investigative matters.

B. Office of *Forensic Sciences (AF)*

1. Provides technical advice and assistance to the other DEA elements.
2. Coordinates matters related to this program among the DEA laboratories.

6674.22 Field Divisions. Each DEA field division will have a Clandestine Laboratory Enforcement Team (CLET) and CLET Safety Officer. See 6674.4.

6674.23 Field Offices. Each DEA field office will designate a supervisor or senior agent as the Clandestine Laboratory Coordinator. Within established investigative priorities, this may or may not be a full-time function. This individual will be responsible for assuring that the program objectives are met by that office, and be delegatd authority sufficient to carry out this responsibility. The functions of this cordinator are as follows:

A. Establish and carry out measures to assure that office personnel receive adequate training in the specialized knowledge and techniques used in investigating clandesitne laboratories.

B. Identify and conduct continuing liaison with business firms handling precursor chemicals or essential production hardware, including the processing of DEA Form 420's (see 6674.32).

C. Serve as the office focal point for clandestine laboratory intelligence and investigative information developed through office and area law enforcement activities.

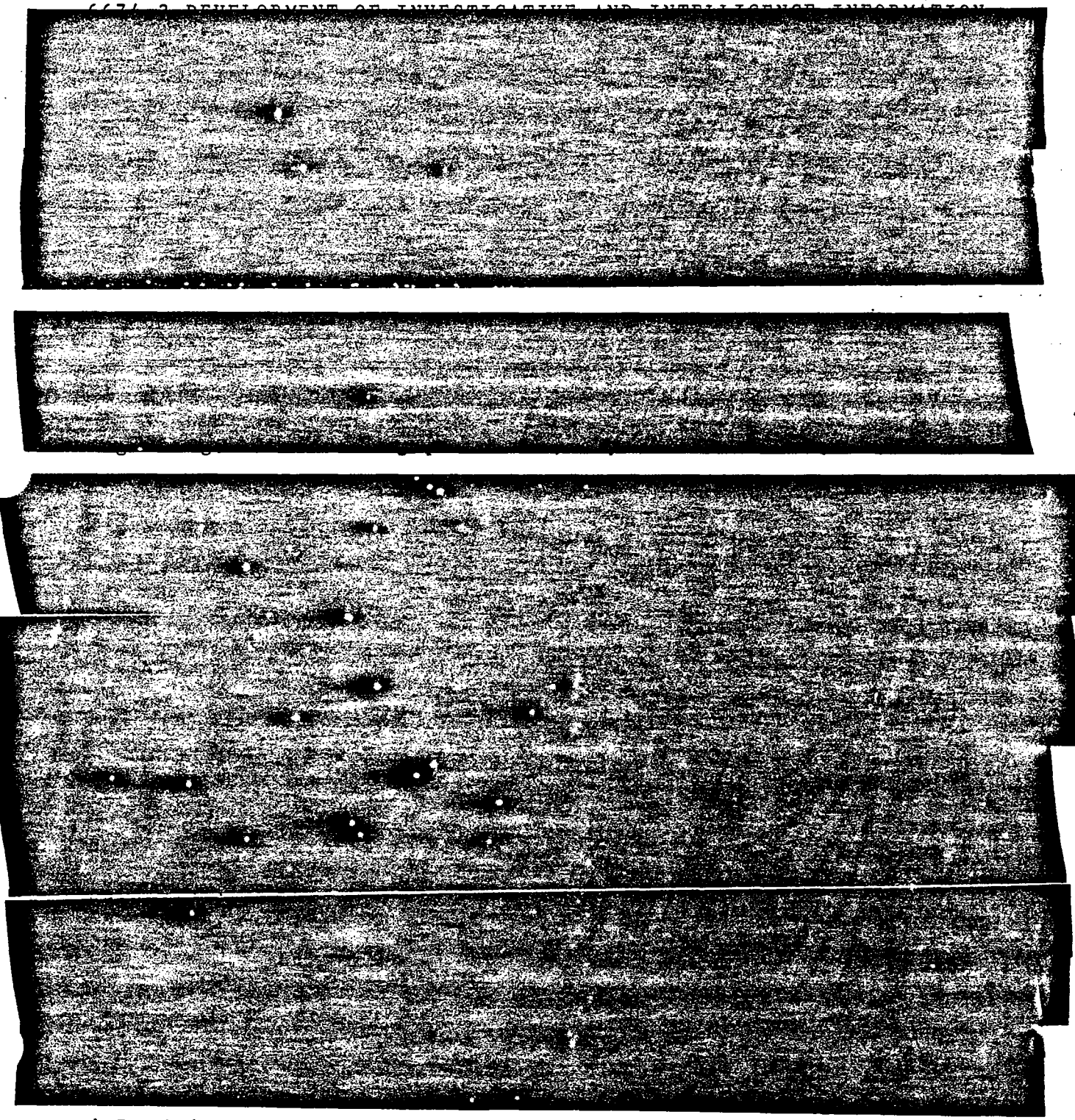
D. Serve as the point-of-contact with coordinators in other DEA offices and other DEA elements.

* Revision
** Addition

E. Monitor the office's accomplishments in this program, and be prepared to report on these accomplishments on short notice.

6674.24 Field Laboratories. Each field laboratory will have a staff of *certified* chemists who will respond to clandestine laboratory sites and assist the CLET *in processing and disposing* of the laboratory. See 6674.4F5.

6674.3 DEVELOPMENT OF INVESTIGATIVE AND INTELLIGENCE INFORMATION



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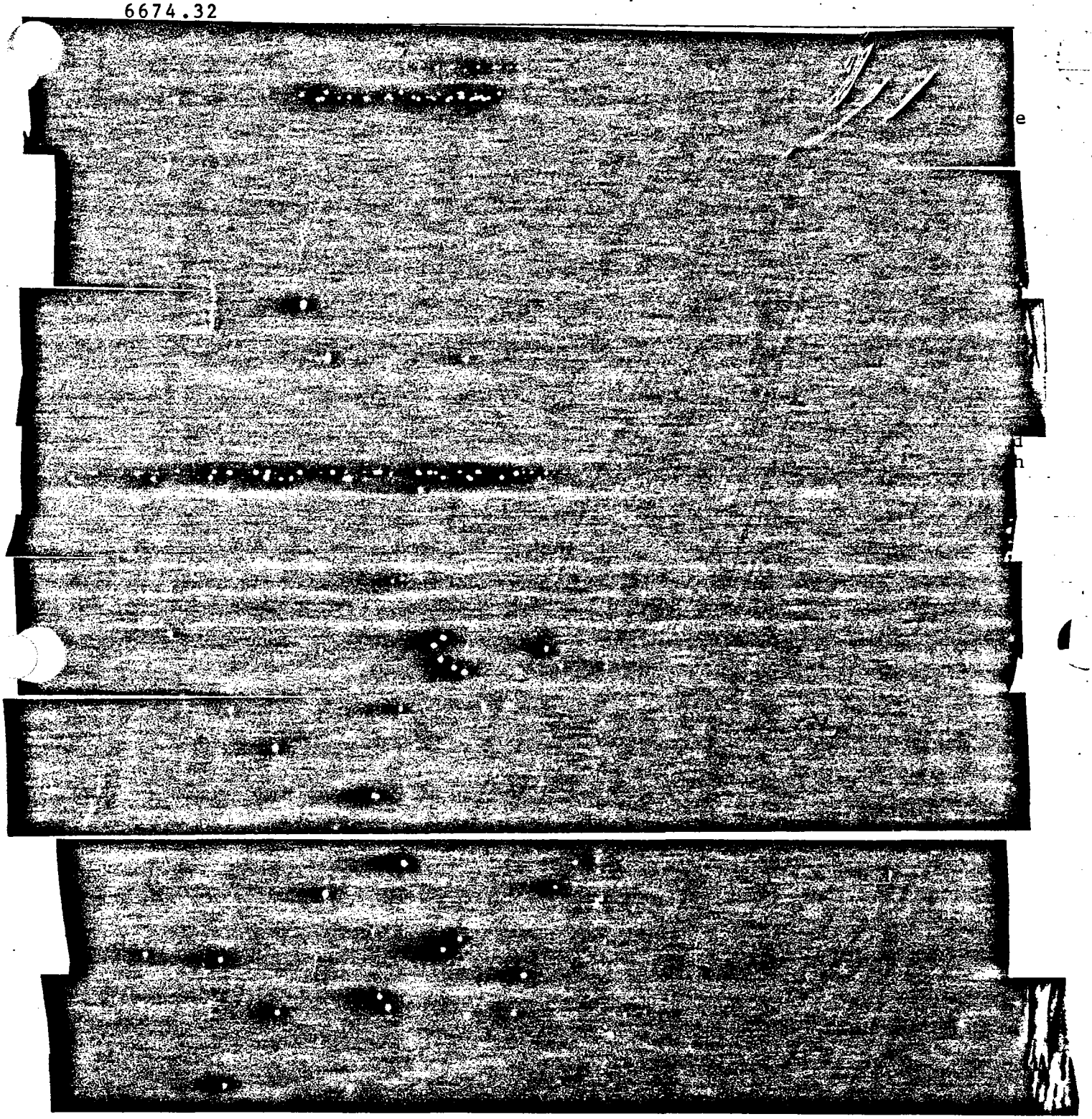


6674.4 CLANDESTINE LABORATORY SAFETY PROGRAM

A. The purpose of the Clandestine Laboratory Safety Program is to ensure the safety of DEA personnel while investigating clandestine laboratories. The program incorporates the mandated safety requirements of the Occupational Safety and Health Administration (OSHA) as contained in 29 CFR Part 1910, as well as the safety recommendations to DEA by the National Institute for Occupational Safety and Health (NIOSH).

B. The program includes the implementing safety procedures, using safety equipment and protective clothing, training and certifying employees, and medically monitoring employees.

C. Certain DEA Special Agents and chemists will receive clandestine laboratory safety training. These employees will be certified to conduct raids and be present at clandestine laboratory sites. Each certified employee will be provided with personal protective equipment.

D. Only DEA employees certified in this program will enter a clandestine laboratory site until it has been determined to be non-hazardous. When necessary, non-DEA officials certified in an equivalent program can enter a clandestine laboratory site. Exceptions to the above can be authorized by the SAC or Laboratory Chief. The SAC or Laboratory Chief will notify Headquarters OR, ATS, and AHMH of any instance where a non-certified official was authorized to enter a clandestine laboratory site. The notification will include the reason for the exception.

E. Clandestine Laboratory Enforcement Teams (CLET)

1. Each field division will have a CLET composed of at least 10 certified agents.
2. The teams will be responsible for the raiding, processing, and disposal of clandestine laboratories within the division.

F. Identification of Key Personnel and Their Responsibilities

1. Case Agent is responsible for:

a. Developing the criminal investigation.
b. Obtaining the search warrant, including destruction order.
c. Preparing the investigative reports.
d. Submitting the evidence to the laboratory.
e. Disposing of hazardous chemicals.
f. Coordinating with the prosecutor.
g. Coordinating with the DEA laboratory.
h. Coordinating with other agencies.
i. Developing a raid plan.
j. Preparing the initial sections of the Hazard Assessment and Recognition Plan (HARP) (DEA-482). (See the Clandestine Laboratory Guide for instructions on preparing this form.)
k. Assigning duties to CLET members.
l. Assisting the chemist with hazard assessment and evidence processing.

2. Raid Team Leader. When the case agent is not certified, a member of the team will be designated as the raid team leader and will handle responsibilities h through k above.
3. CLET Safety Officer. Each division will designate one member of CLET as the team safety officer. His/her responsibilities are to:

a. Ensure the maintenance of all personal protective equipment. Written maintenance records will be prepared.
b. Ensure adequate supplies of disposable personal protective equipment.
c. Perform monthly checks of all non-disposable personal protective eqipment for defects, i.e., rubber boots, respirators, nylon raid gear, etc.
d. Ensure that the HARP (DEA-482) and the Clandestine Laboratory Exposure form (DEA-484) are properly completed. The HARP (DEA-482) shall be retained in the case file. The DEA-484 shall be sent to the DEA Safety Manager (AHMH).

4. Site Safety Officer. For each clandestine laboratory site, a CLET member will be designated as the Site Safety Officer and, as much, is responsible for:

a. Updating the HARP (DEA-482) and briefing all personnel regarding known hazards associated with the clandestine laboratory.
b. Performing field inspections of all personal protective equipment prior to use.
c. Ensuring the proper use of all personal protective equipment.
d. Designating appropriate decontamination zones in accordance with the Clandestine Laboratory Safety Guide.
e. Ensuring safety procedures are adhered to when securing and processing the laboratory.
f. Ensuring proper decontamination of prisoners and, if necessary, disposal of clothing.
g. Ensuring proper decontamination or disposal of equipment and protective clothing.
h. Ensuring a Clandestine Laboratory Exposure form DEA-484 is completed and submitted by each member of the team.

5. Certified DEA Chemist. In the initial stages of the investigation, the case agent will arrange for a certified DEA chemist to join in the investigation. If a DEA certified chemist is not available, arrange to leave a non-DEA certified chemist join in the investigation. His/her duties are as follows:
a. During the planning stage, provide technical support, i.e., identify potential hazards.
b. Assess the health and safety hazards at the site, and recommend the level of protection needed and safety procedures to employ in processing and disposing of the laboratory.
c. Coordinate with the case agent (raid team leader) the sampling of controlled substances and chemicals in accordance with the Laboratory Operations and Agents Manuals.
d. Provide technical support to the case agent (raid team leader) and hazardous waste disposal company to insure proper disposal of hazardous materials.

6674.5 DEVELOPING THE INVESTIGATION. The development of a clandestine laboratory investigation is geared towards:

1. Identifying the violators and establishing their roles in the operation.

3. Identifying the method of operation, including the manufacturing process, obtaining raw materials and equipment, and distributing the finished product.
4. Building sufficient evidence of all the above, and probable cause for a search warrant(s).
5. Seizing, processing, and disposing of a clandestine laboratory in a manner that will assure maximum safety for the officers, defendants, and innocent parties, while assuring the maximum amount of evidence will be at hand.

6674.6 SEIZING AND PROCESSING CLANDESTINE LABORATORIES. Clandestine laboratories by their nature pose many and varied hazards for agents and chemists. In addition to the usual hazards faced by law enforcement officers, those involved in handling clandestine laboratories also face the possibility of exposure to hazardous materials. To minimize these risks, seizing and processing clandestine laboratories will be accomplished in stages, and in accordance with the safety procedures set out in this section and the Clandestine Laboratory Safety Guide.

6674.61 Planning Stage

A. The case agent (raid team leader), in conjunction with the chemist and site safety officer, will develop a raid safety plan and complete a HARP (DEA-482). Included in the plan are:

1. Notification and request for standby units from assisting agencies, including:

a. Fire Department.
b. HAZMAT Response Team.
c. Emergency Medical Evacuation Units.
d. Other Law Enforcement Agencies.
e. Hazardous Waste Disposal Company.

2. Identifying potential hazards.
3. Assigning duties to CLET members.

B. The case agent will brief all raid participants and, when appropriate, representatives of assisting agencies. **It should be noted that a HAZMAT team may be a part of larger fire departments.**

C. The site safety officer will inspect all personal protective equipment.

6674.62 Entry Stage

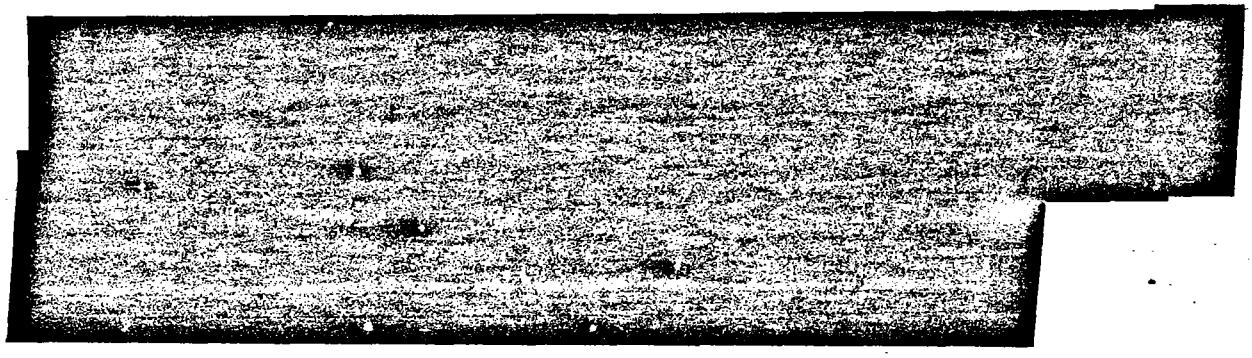
A. The entry team will consist of certified agents (members of CLET).

B. Responsibilities:

1. Secure the clandestine laboratory crime scene.
2. Arrest any suspects present.
3. Remove suspects to a non-contaminated location.

* Revision
** Addition

4. Advise the assessment team and on-site safety officer as to the conditions in the laboratory site. The HARP (DEA-482) will be updated by the Site Safety Officer.



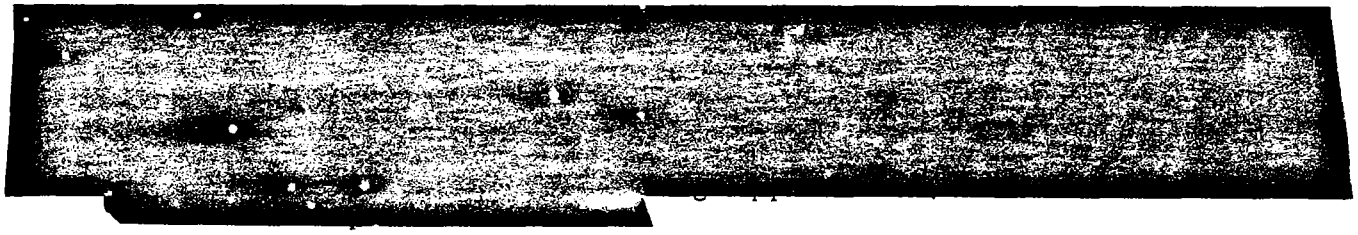
D. A team member with full protective clothing and self-contained breathing apparatus will be standing by in the event of an emergency.

6674.63 Assessment Stage

A. The assessment team will consist of one certified chemist and one certified agent, usually the case agent (raid team leader).

B. Responsibilities

1. Deactivate the clandestine laboratory.
2. Ventilate the clandestine laboratory site. (If ventilating is not possible, move the evidence to an open area for processing.)
3. Assess the hazards of the clandestine laboratory environment using visual inspection and available monitoring equipment.
4. Advise the site safety officer of all known chemicals and hazards associated with the clandestine laboratory scene at this time.
5. Recommend the level of protection needed and safety procedures to be used by the processing team.



D. A team member with full protective clothing and SCBA will be standing by in event of emergency.

6674.64 Processing Stage

A. The processing team will consist of a certified chemist and certified agents including the case agent (raid team leader). The members will use the buddy system during processing.

B. Responsibilities:

1. Collect and process all evidentiary material found at the laboratory site.

a. Safety practices and procedures set out in the Clandestine Laboratory Safety Guide will be employed in processing evidence.

b. The only evidence that should be collected at and removed from a laboratory site are:

(1) Samples of all substances as determined by the chemist and case agent (raid team leader).

(2) Video and/or still photographs of complete laboratory and site. Process in accordance with paragraph 6663.65.

(3) Documentary evidence, i.e., formulas, receipts, literature, notes, etc. Process in accordance with paragraph 6663.65.

(4) Laboratory glassware and equipment which has been determined by the site safety officer and chemist to be completely uncontaminated will be handled as non-drug evidence.

2. All items instrumental to the laboratory operation, but not needed as evidence will be seized for forfeiture under 21 USC 881 (as set/forth in Section 6654) and disposed of in accordance with Subsection 6674.7.

C. Level of Protection: Determined by assessment team and site safety officer and chemist.

6674.65 Exit Stage. Upon completing the processing stage, prepare to exit or depart the laboratory site. These preparations include decontamination, disposal, site decontamination, and post-raid notification.

6674.66 Decontamination. Upon exiting the immediate area of the laboratory ("Hot Zone"), each individual will undergo decontamination as outlined below:

A. Personal Decontamination. Each CLET member and chemist will be decontaminated in accordance with procedures contained in the Clandestine Laboratory Safety Guide.

B. Safety Equipment and Protective Clothing Decontamination. All safety equipment and protective clothing used at a laboratory site will be decontaminated or disposed of in accordance with procedures contained in the Clandestine Laboratory Safety Guide.

C. Prisoner Decontamination. All prisoners will be decontaminated before transporting them from the laboratory site in accordance with procedures contained in the Clandestine Laboratory Safety Guide. In addition, the following procedures should be adhered to:

1. Provide the following equipment to a suspect in the event his/her clothing is deemed to have been contaminated:

a. Paper coverall suits.
b. Paper booties.

2. Notify all transporting officers and the receiving correctional facility of any prisoners who are contaminated.

D. Laboratory Site Decontamination. If DEA seizes real estate based on its use as a clandestine laboratory site, immediate steps must be taken to determine if hazardous substances or waste products are present at the site. If a site is found to be contaminated, decontamination will be undertaken on a case-by-case basis in coordination with Headquarters (OR).

6674.7 DISPOSAL

A. The Division Administrative Officer (AO) will be advised immediately when a clandestine laboratory raid is contemplated. The AO will notify the appropriate waste disposal company, putting them on stand-by for an emergency response.

Usually, there should be sufficient lead time for a clandestine laboratory raid to allow for contact with the chemical disposal company through the Administrative Officer (AO). However, when a situation develops rapidly (after normal business hours, on a weekend, or a holiday), the supervising agent may contact the disposal company directly. In these cases, the Administrative Officer will be notified of the activity promptly at the beginning of the next working day.

B. Once the AO has made initial contact with the diposal company, the supervising or case agent will contact the company directly. The agent will furnish to the the disposal company whatever general information is available to allow for a quick, efficient response without compromising the investigation. This information should include: the general area or location of the expected activity; the type of laboratory; a list of chemicals which the disposal company may encounter at the site; and any unusual situations or extraordinary conditions which may exist which affect the disposal of waste at the scene.

C. Immediately after the raid has been completed and the laboratory site has been secured, the designated agent will contact the waste disposal company, and advise them of the exact location of the site, and provide any other pertinent information that would help to expedite the clean-up and disposal process.

D. While processing the laboratory, the designated site safety officer and the chemist will join with the disposal service in determining the hazard status of the chemicals encountered.

In the extreme event that a chemist is not available during the seizure and processing of the laboratory, the designated site safety officer will help the disposal service to determine the hazard status of chemicals encountered.

E. Chemicals of a hazardous nature will be sampled for analysis and evidentiary purposes; however, if--in the opinion of the

chemist--the sampling and retention of some hazardous material may pose imminent or future danger, the substances will not be sampled. The remaining quantities will be given to the disposal company for proper packing and preparation for transport. All liquids of a hazardous nature suspected of containing controlled substances will be neutralized with vermiculite, diatomaceous earth, or other materials, as directed by the on-site chemist prior to packing. This process will include the destruction and lab-packing of all contaminated laboratory apparatus and glassware.

F. The supervising or case agent will mark and seal all lab packs for security and safety purposes. All materials will be marked by the agent or disposal company as hazardous or non-hazardous.

G. Custody of all hazardous materials and chemical waste will be given to the disposal company for transport and destruction or storage. The disposal or destruction of hazardous waste will be done immediately.

H. In no instance will DEA personnel take possession of chemical waste or material determined to be hazardous for the purpose of transport or storage, other than the sample amount taken for analysis and evidentiary purpose.

I. Non-hazardous chemicals will be given to the waste disposal company to store. Non-hazardous chemicals will be considered bulk evidence and will be disposed of in accordance with Agents Manual paragraph 6662.46. Uncontaminated glassware and laboratory apparatus will be considered as non-drug evidence and will be maintained by the DEA non-drug evidence custodian.

J. No hazardous waste will be stored unless authorized by the SAC and necessitated by extraordinary circumstances. If the SAC authorizes the storage of hazardous waste, he will notify the Headquarters (OS and AFS) of the quantities stored, and the reasons for nondestruction.

K. The supervising agent or case agent must advise the Administrative Officer of the status of the materials collected by the waste disposal company. The AO will then contact the disposal firm and authorize destruction, disposal or proper disposition of the materials.

L. When the waste disposal company is not a DEA registrant, hazardous waste--which is or has been identified as containing a controlled substance--will be packaged and sealed by the disposal company as previously described, and transported by them for immediate disposal under supervision of at least one DEA Special Agent.

M. When immediate disposal is not possible, the waste--under supervision by a DEA Special Agent--will be mixed, diluted or otherwise treated to make it economically or chemically irretrievable.

6674.8 POST RAID NOTIFICATION. It is in the public interest that DEA notify concerned parties of the fact that a clandestine laboratory site may pose a health hazard after the laboratory equipment and chemicals have been removed. Therefore, a DEA Form 483 (Hazardous Material Warning) sign will be prominently affixed at the site. In addition, the owner of the property will be notified of the situation by certified letter (return receipt requested) (see Exhibit 1) with copies to local health officials and local law enforcement agencies. Copies of all correspondence will be retained in the case file.

6674.9 REPORTING REQUIREMENTS

A. **The seizure of a clandestine laboratory is a significant enforcement activity and as such must be reported to headquarters on a timely basis. Within 48 hours of seizing a clandestine laboratory, the reporting office will send a teletype consisting of two sections to Headquarters (OR) (and, where appropriate, other drug desks), both Operational and Strategic Intelligence (OIOD and IOSD), the Office of Forensic Sciences(AF), Health Service Unit (AHMH) and Statistical Services (PES). The teletype will be titled "Clandestine Laboratory Seizure" and cite the case file number and G-DEP. (This applies to foreign as well as domestic offices.) The teletype will include the following:

Section 1 - A concise narrative of Significant Enforcement Activity. This section will be used to prepare the daily Significant Activity Report for the Administrator.

Section 2 - Statistical Enumeration. This information will include all items listed below in the order given (similar to the Fugitive Declaration Report), and will be subtitled "Statistical Enumeration."

1. Field Division.
2. Field Division State.
3. Date of Seizure.
4. Type of Laboratory (Name of primary drug produced or intended to be produced. If the laboratory also produced a major chemical precursor, list both, e.g., "P2P/Methamphetamine").
5. File Number.
6. G-DEP Identifier.
7. File Title.
8. Laboratory location (street or rural address, plus nearest city and county. (When laboratory is in a remote area, describe fully, e.g., "Lassen Nat'l Forest, approximately 20 miles due east of Dairyville in Tehama County").
9. Laboratory Location - State.
10. Status (INP - In production, OPE - Operational, DIS - Dismantled and/or in storage, EXP - Destroyed By Explosion or File, ABN - Abandoned, N/A - Not Available).
11. Source of Information (Precursor Control Program, Confidential Informant, Fire Department, Other Law Enforcement, Concerned Citizen and/or Anonymous, other - (specify), unknown).
12. Facility in which the laboratory was located (House, Apartment, Trailer home, Warehouse, Barn, Mobile - i.e., Truck or Motorhome, other - (be specific), unknown).

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13. Laboratory Environment (Urban, Rural, Suburban, Industrial, other - (be specific, unknown).
14. Defendants (Name and NADDIS #). When NADDIS is unknown, report name, date of birth, sex, and race only.
15. Source of supply of precursor chemicals (chemical brand name and chemical company(s) from which precursor chemicals were purchased) including all identifiable information on the labels and/or markings on the containers (i.e., logos, markings, lot numbers, etc.).
16. Source of supply of laboratory equipment (chemical company(s) from which laboratory equipment/materials were purchased) including all identifiable information on the equipment and/or markings on the containers (i.e., logos markings, serial numbers, lct numbers, etc.).
17. Weapons at laboratory site (by number and type - revolvers, semi-auto pistols, rifles, shotguns, full auto or swithchable assault type weapons [give caliber of all above where possible], explosives, and booby traps where encountered.
18. Weapons off laboratory site (list as in #17 above).
19. Outlaw motorcycle gangs/organizations, (name/group/chapter, member, associate, no known association.)
20. Finished product seized. (Amount in grams or kilograms, - dosage units, or liters).
21. Intermediate product seized (report as in #20 above).
22. Laboratory capability per batch. (DEA or state chemist's estimate in grams or kilograms).
23. Production capability of finished product from precursors on hand (including those seized off-site at the time of laboratory seizure).
24. Production capability of intermediate product from chemicals on hand (report as in #23).
25. Synthetic route (be as specific as possible, e.g., "synthesis #9, ephedrine/red phosphorus/hyriodic acid method").
26. Other drug capabilities of this lab (when chemicals or documentary evidence indicate that this lab was used to make other drugs and/or explosives, list here).
27. Estimated value of laboratory and chemicals.
28. DEA chemist on site (Yes/No).
29. State of other chemist on site (Yes/No, specify agency name if yes).
30. Evaluation of Hazardous Waste Disposal Company, either satisfactory or unsatisfactory. (If unsatisfactory, give brief explanation, e.g., slow response time, careless, etc.).
31. Remarks ("Lab 2 of 2", "chemist and two others found dead on site", case seized, etc.).**

B. Within 30 days from the time of a laboratory seizure, a copy of the DEA-6 reporting the seizure, with a full set of attachments (i.e., inventory, photographs, copies of seized documents, etc.,) will be furnished to the DEA field laboratory that provided assistance in the seizure. If for any reason a DEA chemist did not assist in the seizures, then a copy of the DEA-6 (with all attachments) will still be forwarded to the appropriate DEA field laboratory.

** Addition

Exhibit 1

U.S. Department of Justice

Drug Enforcement Administration

Washington, D.C. 20537

Mr. John R. Dokes
123 Main Street
Anytown, USA 123456

Dear Sir:

This letter is to advise you, as a legal owner of the property known as _____ that on _____, as a result of the search of your property, a clandestine drug laboratory was seized and/or hazardous chemicals were found at said property. Known hazardous chemicals and substances were seized by the Government and have been disposed of pursuant to State and/or Federal laws.

This letter also serves as a warning that there may still be hazardous substances or waste products at or on you property.

Very truly yours,

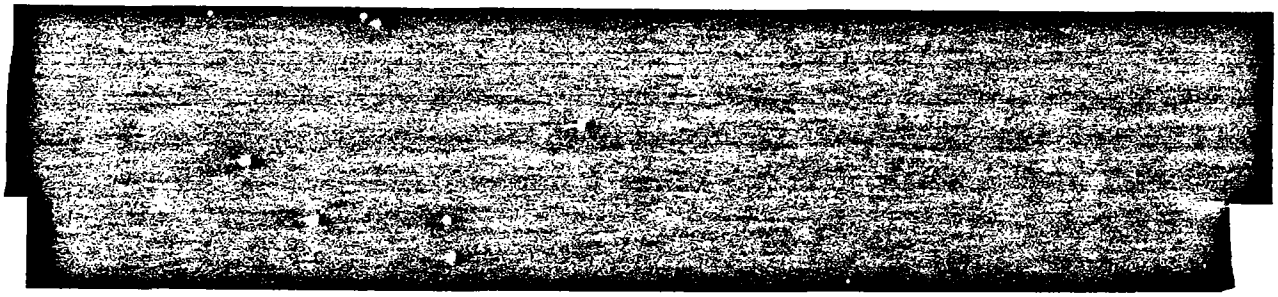
Special Agent in Charge
_____ Field Division

6675 TECHNICAL OPERATIONS PROGRAM

6675.1 GENERAL

A. The DEA Technical Operations Program provides specific technical support to assist agent personnel conduct drug investigations worldwide. This support includes technical investigative equipment, radio communications equipment, technical services, and polygraph examinations.

B. Technical investigative equipment is defined as equipment used to enhance an investigator's ability to see, hear, smell and talk. Technical investigative equipment includes photographic, optical, electro-optical, audio, radio frequency and surveillance equipment. Special technical investigative equipment includes that used solely for eavesdropping, for vehicle, vessel or aircraft tracking, or for polygraph instruments and related accessories. This list may be expanded by the Investigative Support Section (OS) to include any equipment requiring special installation or any equipment restricted by law or regulation. It does not include firearms, restraining equipment, bulletproof vests, or office equipment.



6675.2 PROGRAM MANAGEMENT

A. Management responsibility for the Technical Operations Program rests with the Headquarters Investigative Support Section (OS). Within OS, the Chief of the Technical Operations Unit (OST) exercises line responsibility over personnel assigned to this program in Headquarters. As the program manager, the Chief of OST:

1. Establishes policies and procedures for the program and conducts follow-up evaluations and/or inspections for compliance with prescribed guidelines;
2. Coordinates and prepares budget requirements and submissions for the program, as stated in the Technical Operations Handbook.
3. Provides technical training and career development guidelines for program personnel;
4. Coordinates resource requirements for operations beyond the capabilities of the divisional technical operations offices;
5. Is responsible for selecting and procuring all program equipment and systems;
6. Establishes, in coordination with other DEA elements, long-range planning for all aspects of the DEA radio system;

7. Documents the investigative equipment and communications requirements of DEA;

8. Recommends the selection or reassignment of all personnel in the Technical Operations Program, consistent with DEA promotional policies; and

9. Ensures adherence to DEA policy and procedures governing all aspects of the polygraph progam as detailed in the Technical Operations Handbook.

B. Field management of the technical operations program is the responsibility of each Special Agent in Charge (SAC) in the domestic Division Offices and each Country Attache in the foreign Country Offices. Each domestic Division has a Technical Operations Group or Unit which works directly for the SAC and provides direct management of the Division's Technical Operations Program's (TOP) resources. The Technical Operations Group or Unit is supervised by a Special Agent as specified in each domestic field office's Table of Organization and is staffed by specialists in the technical fields and support personnel. Each foreign Country Office is authorized one collateral duty Special Agent who works directly for the Country Attache and provides direct management of TOP resources within the jurisdiction of that office.

6675.3 TECHNICAL OPERATIONAL GROUPS. The Technical Operations Group in each Division provides technical operations support to all divisional elements. Specifically, the group:

A. Assists in investigative functions where specialized equipment and skills are used to enhance the development of an investigation during any phase of the investigation, from intelligence gathering to court proceedings;

B. Issues all technical equipment within the Division in accordance with DEA, Departmental and local Federal Judicial District regulations, as described in the Technical Operations Handbook.

C. Provides technical investigative services and communications as outlined in the Technical Operations Handbook and ensures that Division personnel are aware of the latest investigative and communications equipment;

D. Evaluates and acts upon requests from Division personnel to develop technical or scientific innovations to meet the needs of field enforcement operations;

E. Operates and ensures the maintenance of specially equipped vehicles [redacted]chnical equipment and radio communications;

F. Maintains exclusive liaison with the appropriate utility and telephone company officials in regard to pen register and Title III operations;

G. Installs and maintains all special aircraft transponders;

H. Assists in using the polygraph procedure as an investigative tool for enhancing investigations;

I. Prepares the Quarterly Pen Register Report, but is not responsible for case reporting of any Title III or eavesdropping installations;

J. Prepares the Quarterly Technical Activity Report and other required reports as outlined in the Technical Operations Handbook; and

K. Maintains a filing system as outlined in the Technical Operations Handbook.

L. Maintains records of equipment usage, using the Technical Operations Request Card (DEA Form 476) and Technical Operations Master Installation Record (DEA Form 477).

6675.4 SPECIAL AGENT/TECHNICAN

A. Special Agents assigned to the Technical Operations Group will be credited with experience comparable to that of Special Agents assigned to enforcement groups in the Division, in accordance with the career development plan outlined in Subsection 2250.4 of the Personnel Manual. The career plan for other occupations within the Technical Operations Group is covered in the Technical Operations Handbook. Consistent with Divison objectives and priorities, cross-training of Special Agents will be encouraged. Electronics and communications specialists should remain primarily in their respective fields to encourage constant updating and training in their areas of expertise.

B. All Special Agents and professional/technical personnel assigned to the Technical Operations Program will complete DEA Form 352, Bi-Weekly Activity Report - Special Agent, in accordance with Section 6141 of the Agents Manual. Time expended for repair and maintenance of equipment, as well as technical duties that cannot be accounted for under categories A-I, should be placed under category M, All Other Activities, and the remark "Technical Duties" should be added. Completed DEA Form 352's for professional/technical personnel will be compiled separately and will not be included in Monthly Manhour Report totals submitted for Agents.

C. In all cases where a Technical Operations Group position is being advertised, the Chief of OST will be designated as a non-voting member of the Career Development Board. The minimum tour of duty for Agents selected for technical operations positions is two years. Prior experience with DEA in the area of technical operations is not required but desirable for the position of Supervisor, Division Technical Operations Group.

6675.5 REQUEST FOR TECHNICAL SUPPORT

A. OST will control the distribution and assignment of equipment to each Division based upon the table of authorized equipment and governed by the Manpower Management Tables of Organization. Certain equipment [redacted] satellite tracking transmitters, etc.), because of cost, availability or sensitivity, must be centrally controlled to ensure maximum use and security. While OST will be the controlling office, every effort will be made to ensure that this equipment is distributed as needed to the field. Cost for shipping centrally controlled equipment from one office to another will be borne by the sending office.

B. A table of authorized equipment has been established for each field Division based upon the number of agents and state and local task force officers assigned. The authorized agents and officer allocation is taken from the Manpower Management Tables of Organization for DEA domestic, foreign and Headquarters offices. Official changes in manpower authorization will result in subsequent changes in technical equipment and radio equipment allocations. Each SAC and Country Attache will be provided with a list of equipment authorized for his area of responsibility. Requests for additional equipment should be specific and addressed to the Assistant Administrator for Operations.

C. Field requests for capital equipment should be submitted to OS through the Division SAC by the Technical Operations Supervisor. Requirements should only describe performance specifications and the conditions under which the item is to be used. OST will select the appropriate hardware. Requests by brand names, model numbers and other preference will be given consideration but cannot be guaranteed.

Equipment requirements for Headquarters elements (i.e., Office of Training, Airwing and the Office of Intelligence) will be provided by the Office Head directly to the Chief, OST. Funding for this equipment will be provided by OST if available. Technical equipment for SEO's and SFIP's will be funded by the sponsoring office. Funding procedures and guidelines regarding the issuances of technical equipment are covered in the Technical Operations Handbook.

6675.6 TECHNICAL OPERATIONS PROGRAM REPORTING. Each Technical Operations Group will submit a Quarterly Technical Activity Report, the format for which is provided in the Technical Operations Handbook. This report informs Headquarters and Division management of the kind of technical support provided, the results obtained through the use of specific equipment, affords the Technical Operations supervisor with a means to evaluate his operations and future resource requirements, and assists OST in setting priorities and identifying problems. Every effort should be made to ensure the proper security classification of the report. Each Technical Operations supervisor and Foreign Technical Officer should submit his Quarterly Technical Activity Report through the SAC to OST to arrive no later than the 21st day of January, April, July and October.

CHAPTER 68 INTELLIGENCE

Subchapter 681 General Reporting

6811 DEA FORM 421, BIWEEKLY ACTIVITY REPORT FOR INTELLIGENCE

6811.1 PURPOSE. This form will be completed by all non-SES Intelligence Research Specialist and Special Agent personnel assigned to Headquarters, Domestic, and Foreign Intelligence offices to record time expended in official activities on a Biweekly basis. Special Agents assigned to Intelligence offices are required to complete DEA Form 421 in lieu of DEA Form 352, BiWeekly Activity Report (Special Agent). The DEA Form 421: (FFS: 020-05)

A. Provides information from which DEA can determine utilization of Intelligence resources and evaluate consistency with mission, goals and Intelligence priority objectives.

B. Serves as the source document for preparing the *Personal Computer Time and Attendance Remote Entry Report (PC-TARE).*

6811.2 PREPARATION. (Exhibits 1 and 1A)

A. Entries on DEA Form 421 will be handwritten in ink. The reporting period will correspond to official pay periods in the *PC-TARE, Time and Attendance Reporting System.*

B. Time reported under the various categories will be rounded to the nearest half hour. Enter the appropriate dates directly under the preprinted day of the week. **Indicate Scheduled Tour of Duty and mark out ("X") your two nonscheduled work days for each week at line "Q" on the back of the original copy of the form.**

C. After making the final entry for the pay period, total each horizontal line and enter the sum in the total column.

D. *Availability Pay Hours* (Special Agents only), leave, scheduled overtime or scheduled night, holiday, or Sunday hours must be reported by actual clock hours on the back of the original copy of the form. (See Section Q).

E. If the number of "Investigations Supported" exceeds the allotted spaces on DEA Form 421, record these on additional DEA Form 421's as needed and attach them to the primary form. Mark these additional forms with the term "SUPPLEMENTARY" in the upper left corner and complete the name and biweekly dates.

* Revision
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Fill in the supplementary form with appropriate information as on the primary form. On the supplement, total biweekly activity on line "L" and carry over the totals to the primary form. On the primary form, indicate this carry-over material by the phrase "From Supplemental" as the last item under the section for investigations supported.

6811.21 Form Heading

A. Name: Enter last name, first name, and middle initial.
B. Social Security No.: Enter Social Security Number.
C. Reporting Period: See PREPARATION A., above.
D. Office Designator: Enter the office designator, of field office to which you are permanently assigned. (See Appendix 62A.)
E. Office: Enter the office name to which you are permanently assigned.
F. Place an "X" in the appropriate blocks to indicate nature of duties.

1. SA indicates Special Agents assigned to an Intelligence position.
2. IA indicates Intelligence Research Specialists and Aides.
3. Supr. (Supervisor) is for Headquarters, Division, and Foreign Intelligence Group Supervisors.
4. Non-Supr. (Non-Supervisor) is for nonsupervisory personnel assigned to Intelligence positions.

6811.22 Activities Instructions. The following definitions/descriptions of activities will be used to determine where to record time expended. Not all activities are applicable for each office. These definitions/descriptions encompass all activities which are performed by personnel assigned to Intelligence duties. Only address those activities which pertain to you.

A. Investigations Supported. Record the amount of time spent providing analytical support to investigations: travel, report writing, file checks or review, information collection, intelligence file reviews, trafficker profiles, biographical sheets, network analyses, briefings, graphics, trial support or other intelligence assistance. This includes operational support to Special Field Intelligence Programs (SFIP's), Special Enforcement Operations (SEO's) and diversion investigations. Provide the case or general file number, G-DEP identifier, and program code (if appropriate).

B. Information Responses. Record time spent on quick responses to queries from DEA or other agencies including EPIC watch transactions and responses which are normally completed in fewer than 4 hours to satisfy short-term requirements. These include names, businesses, vehicles or organizations which are checked in manual or computer systems, walk-ins or call-ins, and information collected by DEA and passed to the appropriate agency.

C. Intelligence Projects. Record time spent on scheduled reports on drug trends, special intelligence reports, studies, strategic briefings, and DEA management reports.

Record the name of each completed project under the Remarks Section for quick retrieval purposes and for easier, more accurate reporting on the Quarterly Intelligence Project Summary (DEA-445A).

Intelligence projects should be recorded by the appropriate code for time spent in the research, collection, analysis, writing, and dissemination of the following:

CODE	TYPE OF REPORT
DT	Scheduled Reports on Drug Trends
SR	Special Intelligence Reports and Studies
MR	DEA Management Reports

1. Scheduled Reports on Drug Trends (DT). Reports which are projected or scheduled in operating plans and which discuss developments and trends by drug or subject category. Include seizure reports, area studies and recurring publications.

Examples: Domestic Monitor Report
DEA Quarterly Intelligence Trends
EPIC BiWeekly Brief
Foreign Situation Report

2. Special Intelligence Reports and Studies (SR). Major reports and studies produced on an as needed or as requested basis concerning developments in drug trafficking or related situations. These reports are usually produced on a one-time basis and generally will be background, survey, or situation reporting on a particular aspect of narcotics trafficking.

Examples: Survey of Marijuana Cultivation, Production, and Trafficking Within Colombia
Assessment of Central New York State Drug Situation
Smuggling of Drugs by Ocean Vessel

3. DEA Management Reports (MR). Record time spent on the preparation of any DEA management report regardless of the requestor.

Examples: Field Management Report
Operating Plans

D. Monitoring Drug Trends. Enter time spent in intelligence efforts that are not specifically case or project oriented, and do not result in the production of a final product; include travel, research, collection, review of DEA cables and DEA-6's, general background reading, and analysis identified with the assessment of:

1. Drug availability.
2. Changes in laws which may affect narcotics enforcement programs.
3. Diversion of drugs.
4. Clandestine laboratory production.
5. Political changes, especially in foreign areas, which may affect narcotics enforcement.
6. Abuse patterns.
7. Identification of source areas through programs such as the Monitor and Signature Programs.
8. Trafficking modus operandi and trends.

E. Data and File Management. Enter time expended in providing assistance in enforcement statistical programs such as management of records on fugitives, informants, defendants, drug removals, etc.

F. Special Field Intelligence Programs (SFIP) Management. Enter time expended on SFIP Panel meetings, evaluation, financial and administrative reporting. Operational support should be recorded with the case number or general file number of the SFIP under Investigations Supported, Section A.

G. Liaison. Enter time spent communicating with Federal, state, local, and/or foreign agencies to further intelligence cooperation and support drug law enforcement. Include in this category all presentations of lectures or briefings, conferences, or orientation programs given to non-DEA organizations, agencies or visiting dignitaries. Time spent in extensive intelligence support to another agency directed toward a specific end or strategic product will be reported under C. - Intelligence Projects. Extensive support to joint enforcement operations will be reported under A. - Investigations Supported.

H. Training. Record the number of hours spent in preparing, traveling for, and presenting or evaluating training programs, and the number of hours of training received.

I. Administration. Headquarters and field supervisory personnel, or those persons in acting supervisory roles, will report in this category hours expended in supervising, managing and staff activities.

J. Leave. Record all leave taken except holiday leave. To identify the type of leave taken, preface the entry with 'A' to denote annual leave, 'S' for sick leave and 'O' for other leave. Explain in Remarks entries for other leave such as administrative, compensatory or military. Enter in *Item Q-3* (back of original only) clock hours of leave taken.

K. All Other Activities. Report time unaccounted for in Activities A through J in this category and explain in the Remarks Section. Also report holiday leave in this category and preface the entry with -H.

L. Total (By Day). Enter total hours worked for Activities A through K for each day of the pay period.

Note: Hours reported in Items M, N, and O will be reported also in Activities A through K.

M. *Availability Pay Hours.* Special Agent intelligence personnel or others eligible will enter the clock hours of *Availability Pay* worked for each day in Items Q-1 and/or Q-2.* Compute the daily number of hours and enter total for the appropriate day.

Example: On Monday of the first week, 2 hours were spent receiving training and entered in Activity H as 2. Ten hours were spent supporting the investigation with case number C1-95-0023 (IAH1-1) and entered in Activity A as 10. The daily total (Activity L) will be entered as 12 hours. Since 4 hours of this total constitutes *Availability Pay Hours (Special Agents) or overtime/compensatory time (non-agent personnel), the clock hours of Availability Pay will be reported in Activity M or N and Items Q-1 and/or Q-2.*

N. Scheduled Overtime

Enter in this category and in *Item Q-4* clock hours of overtime or compensatory time (non-Special Agent personnel

* Revision
** Addition

only). Compute the daily number of hours and enter the total for the appropriate date.

O. Scheduled Night, Holiday and Sunday Hours. Enter in this category and in *Item Q-5* schedule hours of work for which night, holiday, or Sunday hours are applicable. Compute the daily number of hours and enter the total for the appropriate day.

P. Temporary Duty (Check day 'X', enter total). Place an 'X' in this category to note days spent on TDY by Headquarters personnel to the field, by field personnel between Division, Country Office and/or Headquarters Offices and to other agencies. Record in categories A through I what type of work was performed while TDY.

Q. Clock Hours, Premium Pay (back of original only) *(Availability Pay* Eligible Personnel Only). The instructions for completing Item 'Q' appear on the back of the original DEA Form 421. See instructions for Activities M, N and O above.

R. Remarks. This section will be used to explain 'Other Leave' and 'All Other Activities' as described in Sections J and K. It also will be used to record intelligence products completed during the Reporting Period (see Section C, Intelligence Products).

6811.3 DISTRIBUTION. Upon completing the DEA Form 421 for the current period, the individual will sign and submit it to the first-line supervisor for review and signature. **Upon approval, copy 1 (Time Keeper) will be used to input work hours into the Personal Computer Time and Attendance Remote Entry System (PC-TARE), and maintained in the office Time and Attendance files. Copy 3 (Originator) will be returned to the individual who prepared it. Copy 2 (Intelligence Unit) will be retained by the supervisor for assembly with DEA Form 421s for other intelligence personnel in the unit and submission to Headquarters Statistical Services Section (NPT) via the DEA Form 503, Biweekly Activity Report Transmittal Form (see Subchapter 6141.25)**

Time and Attendance Files. Copy 2 will be used by each unit to prepare the Monthly Work Hour Summary (Intelligence). Copy 3 will be returned to the originator.

* Revision
** Addition

6812 DEA Form 445A, QUARTERLY INTELLIGENCE PROJECT SUMMARY

The Quarterly Intelligence Project Summary, DEA Form 445A (see Exhibit 2), will be completed from the BiWeekly Activity Report (Intelligence) DEA Form 421.

A. Division Intelligence Group Supervisors must compile District Office data in their Field Division into a Divisional submission of DEA Form 445A. This Divisional summary and a copy of each District Office submission will be forwarded to Headquarters Intelligence (AN) 15 working days after the end of each quarter.

B. Foreign Country Attaches with intelligence personnel assigned must complete and forward a DEA Form 445A to Headquarters Intelligence (AN) 15 working days after the end of each quarter.

C. Headquarters Units in the Office of Intelligence are responsible for submitting DEA Form 445A to their Section 5 working days after the end of each quarter.

D. Headquarters Sections are responsible for collating their Units' submissions. A copy of each Unit submission will be forwarded to AN Management Staff 10 working days after the end of each quarter.

E. The El Paso Intelligence Center (EPIC) Analysis Section is responsible for submitting DEA Form 445A to the SAC 5 working days after the end of each quarter. The EPIC SAC will forward the completed DEA Form 445A to the AN Management Staff 15 working days after the end of each quarter.

* Revision
** Addition

BI-WEEKLY ACTIVITY REPORT *(Intelligence)*

NAME: John Doe

SOCIAL SECURITY No.: 123-45-6789

REPORTING PERIOD: From: 9-14-86 To: 9-27-86

Office Designator: C1

OFFICE: New York, NY

Special Agents MUST Also Complete Reverse of Form.

SA [X] 1 IA [ ] 2 Supr. [ ] 3 Non Supr. [ ] 4

Enter Date for appropriate Day and total hours in each Activity.

ACTIVITIES	TOTAL	SUN 14	MON 15	TUE 16	WED 17	THU 18	FRI 19	SAT 20	SUN 21	MON 22	TUE 23	WED 24	THU 25	FRI 26	SAT 27
A. INVESTIGATIONS SUPPORTED															
Case File Number(s) / G-DEP Identifier(s)															
C1-86-0010	37		8	8		8	4						5	4	
C1-86-Z002	8.5				1	2.5				5					
X3-86-0021	4											4			
GFX2-86-8023	4						4								
G1-86-0113	1						1								
C5-86-0003	8							8							
CK-86-X012	10										5	5			
B. Information Responses															
C. Intelligence Projects: DT															
SR	6				5							1			
MR	5										3			2	
D. Monitoring Drug Trends	5		3							2					
E. Data and File Maintenance															
F. SFIP Management	3			2						1					
G. Liaison	4					1				2		1			
H. Training	2						2								
I. Administration	10		2		3						2			3	
J. Leave (S = Sick, A = Annual, O = Other)	3												A3		
K. All Other Activities (H = Holiday)															
L. TOTAL (By Day)	110.5		13	10	9	11.5	11	8		10	10	11	8	9	
M. Administrative Uncontrollable Overtime (AUO)	30.5		5	2	1	3.5	3	8		2	2	3		1	
N. Scheduled Overtime															
O. Scheduled Night, Holiday, Sunday Hours															
P. TDY (Check day "X", enter total)															

PRIVACY ACT INFORMATION

Authority: 31 U.S.C. Sections 66, 66a, and 200(a).

Purpose: To provide workhour & cost data for intelligence.

Routine Use: To report intelligence workhours for management and Time & Attendance purposes.

Effect: Failure to provide information may result in incomplete data for premium pay computation.

Social Security No.: Collection of this information is voluntary, but failure to provide this number may result in delay of wage payment.

R. REMARKS:

SUPERVISOR'S SIGNATURE / DATE

SA/IA SIGNATURE / DATE

Exhibit 1

DEA Form — 421

Previous edition dated 12/78 is OBSOLETE.

C.

CLOCK HOURS, PREMIUM PAY

	SUN	MON	TUE	WED	THU	FRI	SAT		SUN	MON	TUE	WED	THU	FRI	SAT
	14	15	16	17	18	19	20	Date of Day	21	22	23	24	25	26	27
1. ADMINISTRATIVE UNCONTROLLABLE OVERTIME (AUO)		8:00A		8:00A		7:00A	9:00A	FROM		7:00A		8:00A		8:00A	
		9:00A		9:00A		9:00A	5:00P	TO		9:00A		9:00A		9:00A	
		5:30P	5:30P		5:30P	5:30P		FROM			5:30P	5:30P			
		9:30P	7:30P		9:00P	6:30P		TO			7:30P	7:30P			
1a. TOTAL (By Day)		5	2	1	3.5	3	8	TOTAL HOURS		2	2	3		1	
2. LEAVE								FROM							
								TO							
								FROM					2:30P		
								TO					5:30P		
2a. TOTAL (By Day)								TOTAL HOURS					3		
3. SCHEDULED OVERTIME FOR PERIOD								FROM							
								TO							
								FROM							
								TO							
3a. TOTAL (By Day)								TOTAL HOURS							
4. SCHEDULED NIGHT, HOLIDAY, SUNDAY HOURS								FROM							
								TO							
								FROM							
								TO							
4a. TOTAL (By Day)								TOTAL HOURS							

INSTRUCTIONS

Items 1, 2, 3 and 4. Enter the actual clock hours of leave or overtime. Use "A" to designate AM and "P" to designate PM, e.g., 6:30 P to 11:30 P.

Items 1a, 2a, 3a and 4a. Compute daily the total hours and minutes of leave or overtime worked and enter total, e.g., 4:30 (4 hrs. 30 min.) in the appropriate item. Subsequently, round the daily total to the nearest one-half hour and enter the rounded daily total on the front of the form as follows: Item 1a on line M, Item 2a on line J, Item 3a on line N, and 4a on line O.

BI-WEEKLY ACTIVITY REPORT *(Intelligence)*

NAME: Jane Doe

SOCIAL SECURITY No: 123-45-6789

REPORTING PERIOD: From: 9-14-86 To: 9-27-86

Office Designator: 01

OFFICE: 0101

Special Agents MUST Also Complete Reverse of Form.

SA ☐1 IA ☒2 Supr. ☐3 Non Supr. ☐4

Enter Date for appropriate Day and total hours in each Activity.

ACTIVITIES	Case File Number(s)	G-DEP Identifier(s)	TOTAL	SUN 14	MON 15	TUE 16	WED 17	THU 18	FRI 19	SAT 20	SUN 21	MON 22	TUE 23	WED 24	THU 25	FRI 26	SAT 27
A. INVESTIGATIONS SUPPORTED	C1-86-0010	[redacted]	18		3								10	5			
	C1-86-2002		6					4	2								
	X3-86-0021		6									6					
	GFX2-86-8023		3											3			
	G1-86-0113		8												6	2	
B. Information Responses																	
C. Intelligence Projects: DT																	
SR			6					4	2								
MR																	
D. Monitoring Drug Trends			5		3				2			2					
E. Data and File Maintenance			6										2		2	2	
F. SFIP Management			1													1	
G. Liaison																	
H. Training			16			8	8										
I. Administration			5		2											3	
J. Leave (S = Sick, A = Annual, O = Other)			2						S2								
K. All Other Activities (H = Holiday)																	
L. TOTAL (By Day)			82		8	8	8	8	8			8	10	8	8	8	
M. Administrative Uncontrollable Overtime (AUO)																	
N. Scheduled Overtime			2										2				
O. Scheduled Night, Holiday, Sunday Hours																	
P. TDY (Check day "X", enter total)																	

PRIVACY ACT INFORMATION

Authority: 31 U.S.C. Sections 66, 66a, and 200(a).

Purpose: To provide workhour & cost data for intelligence.

Routine Use: To report intelligence work-hours for management and Time & Attendance purposes.

Effect: Failure to provide information may result in incomplete data for premium pay computation.

Social Security No.: Collection of this information is voluntary, but failure to provide this number may result in delay of wage payment.

R. REMARKS:

SUPERVISOR'S SIGNATURE / DATE

SA/IA SIGNATURE / DATE

Exhibit 1A

DEA Form (Nov 1988) — 421

Previous edition dated 12/78 is OBSOLETE.

O.

CLOCK HOURS, PREMIUM PAY

	SUN	MON	TUE	WED	THU	FRI	SAT		SUN	MON	TUE	WED	THU	FRI	SAT
								Date of Day							
1. ADMINISTRATIVE UNCONTROLLABLE OVERTIME (AUO)								FROM							
								TO							
								FROM							
								TO							
1a. TOTAL (By Day)								TOTAL HOURS							
2. LEAVE								FROM							
								TO							
								FROM							
								TO							
2a. TOTAL (By Day)								TOTAL HOURS							
3. SCHEDULED OVERTIME FOR PERIOD								FROM			5:30P				
								TO			7:30P				
								FROM							
								TO							
3a. TOTAL (By Day)								TOTAL HOURS			2				
4. SCHEDULED NIGHT, HOLIDAY, SUNDAY HOURS								FROM							
								TO							
								FROM							
								TO							
4a. TOTAL (By Day)								TOTAL HOURS							

INSTRUCTIONS

Items 1, 2, 3 and 4. Enter the actual clock hours of leave or overtime. Use "A" to designate AM and "P" to designate PM, e.g., 6:30 P to 11:30 P.

Items 1a, 2a, 3a and 4a. Compute daily the total hours and minutes of leave or overtime worked and enter total, e.g., 4:30 (4 hrs, 30 min.) in the appropriate item. Subsequently, round the daily total to the nearest one-half hour and enter the rounded daily total on the front of the form as follows: Item 1a on line M, Item 2a on line J, Item 3a on line N, and 4a on line O.

Exhibit 2

MONTHLY WORK-HOUR SUMMARY
(Intelligence)

OFFICE: OI
OFFICE DESIGNATOR: OIOD
PERIOD COVERED: From: 9-01-86 To: 9-30-86

To be completed by all Headquarters and Field Intelligence Offices (Domestic and Foreign) from DEA Form 421's prepared for the reporting period. PES submission MUST be typewritten.

A. Investigations Supported

SOURCE CODE	DRUG CODE	CLASS I	CLASS II	CLASS III	CLASS IV	GF	TOTAL
1C2	S	123					123
1A1	C	77				178	255
DG2	C	21					21
GN1	L	3					3
GD2	S	2					2
GA2	S	1					1
FN2	S	7					7
1K1	M			1			1
TOTAL		234		1		178	413

B. Information Responses		24	I. Administrative		155
C. Intelligence Reports	DT	45	J. Leave (Sick, Annual, and Other)		122
	SR	42	K. All Other Activities (Including Holdiay leave)		21
	MR	20	L. Total		1246
D. Monitoring Drug Trends		24	M. AUO		
E. Data and File Maintenance		72	N. Scheduled Overtime		30
F. SFIP Management		58	O. Scheduled Night, Holdiay, and Sunday		
G. Liaison		26	P. TDY (Number of days)		18
H. Training		224			

OFFICE HEAD APPROVAL (Signature) | DATE

DEA Form (Nov. 1986) — 445

Exhibit 3

QUARTERLY INTELLIGENCE PROJECT SUMMARY	OFFICE	SUMMARY PERIOD
	Strategic Intelligence Section	From: 7/01/86 To: 9/30/86

The Quarterly Intelligence Project Summary is to be typewriter completed by all Headquarters and Field Intelligence Offices (Domestic and Foreign) from titles reported in the 'REMARKS" area on the DEA-421's. This form will be submitted to Headquarters, Office of Intelligence.

A. TITLE of Scheduled Reports on Drug Trends (DT)	REQUESTOR (Agency / Individual Name)
DEA Monthly Digest of Narcotics Intelligence	Deputy Assistant Administrator/OI

B. TITLE of Special Intelligence Reports and Studies (SR)	REQUESTOR (Agency / Individual Name)
Bulgarian Update	U.S. Department of State
Country Profile—United Kingdom	Deputy Assistant Administrator/OI

C. TITLE of DEA Management Reports (MR)	REQUESTOR (Agency / Individual Name)
Strategic Plan—FY-88	DEA Office of Planning and Evaluation

OFFICE HEAD APPROVAL (Signature)	DATE

DEA Form (Nov. 1986) — 445a

Subchapter 682 Intelligence Case Support

6821 REQUESTS FOR SUPPORT

Enforcement Group Supervisors in field Division Offices and Resident Agents in Charge (RACs) of Resident Offices, who are managing complex investigations which require extensive intelligence support, will direct requests by memorandum or cable to the Special Agent in Charge of their respective field Division. The SAC will then task the field Division Intelligence Group to provide support. If the SAC determines that the investigation is interdivisional or international in scope and due to access to the central files, and support would be more appropriate from Headquarters, a request will be made by the SAC by memorandum or cable to the appropriate Drug Investigations Section. All requests will identify the investigation to be supported and contain a brief summary of the importance and scope of the investigation, and provide the name and telephone number of the supervisor managing the investigation. Field agents are encouraged to contact field Division Intelligence Groups or Headquarters intelligence units directly for assistance which requires limited research.

Requests for assistance from the U.S. Intelligence Community (IC) by foreign and domestic offices must be submitted to Headquarters OI for coordination and approval. (See 6615.7.)

6822 APPROVAL OF SUPPORT REQUESTS

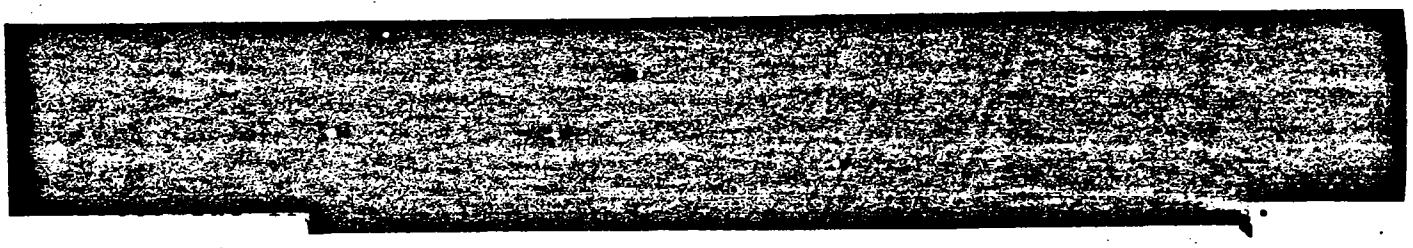
6822.1 FIELD DIVISION. Upon receipt at the field Division Intelligence Group of a Request for Intelligence Support, the Group Supervisor will establish the priority of the request. If the tasking cannot be undertaken due to other priorities or limitations of data bases, the ASAC or SAC will be notified as will the requesting RAC or Group Supervisor. If the request is accepted, the Intelligence Group Supervisor will notify the requestor and establish time-constraints, type of products, number of analysts assigned, etc.

6822.2 HEADQUARTERS. Upon receipt at the Office of Intelligence of a request for intelligence support, the Intelligence Unit Chief to whom the tasking has been assigned will coordinate with the appropriate Drug Investigations Section Chief to establish the priority of the request. If the tasking cannot be undertaken due to other priorities, the SAC will be notified via cable or memo by the Chief of the appropriate Drug Investigations Section. If the request is accepted, the Headquarters Intelligence Unit Chief assigned the project will notify the field supervisor managing the investigation and establish time-constraints, type of products, number of analysts assigned, etc.

6823 TYPE OF INTELLIGENCE SUPPORT

6823.1 INTELLIGENCE FILE REVIEW (IFR). IFR's are usually targeted against major violators. The Intelligence Analyst performs data base queries to retrieve information from case files related to a particular individual. The analyst will retrieve all related

files, copy all relevant documents (cables, ROI's and other agency reports). The extracted data will be rearranged in chronological order. The analyst will review the material to identify overt and substantive acts, associates, financial assets, aircraft and vessels. Each event in the chronology (by date and time) is documented with case file number and report number references. Copies of the actual reports will accompany the event chronology. The IFR may or may not contain additional analysis depending upon investigative needs, i.e., organizational charts, flow charts, etc.



6823.3 INFORMANT DEBRIEFING AND DEFENDANT QUESTIONING. Intelligence Analysts are available to assist agents in debriefing informants and questioning defendants. Analysts' participation in debriefing/questioning sessions often enhances the corroboration, correlation, and analysis of information which is utilized to support the instant investigation or to make strategic assessments. Analysts can assist case agents with foreign language skills, background knowledge of co-conspirators, strategic expertise of trafficking patterns, financial and other skills and knowledge.

6823.4 DOCUMENT ANALYSIS. Drug accounting ledgers, personal telephone directories and other seized documents can be analyzed to determine how the contents relate to the instant investigation and other investigations.

6823.5 LINK ANALYSIS CHARTS. Link analysis charts are used to display graphically associations among individuals and other entities involved in criminal activity. Movements of drugs and money and the involvement of financial assets (front companies, resident property, vessels, vehicles, aircraft, bank accounts) can also be charted.

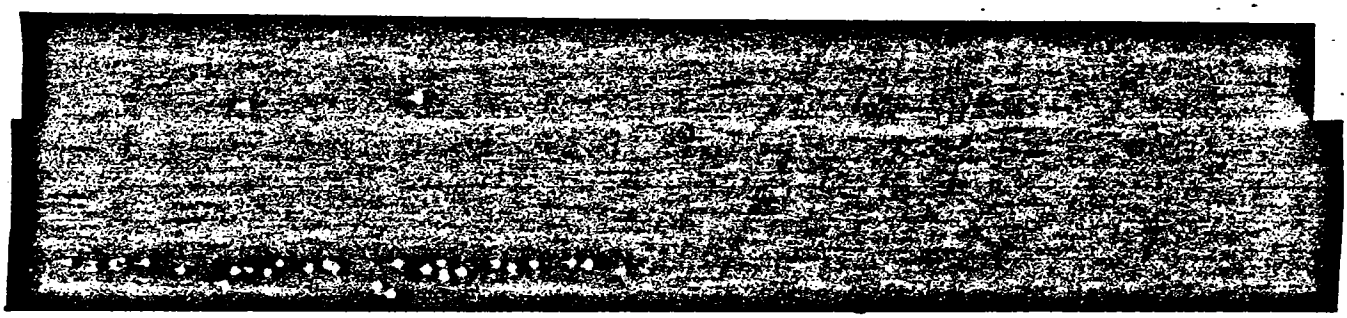
6823.6 CASE ANALYSIS. Case analysis involves a variety of efforts which assist the case agent to successfully culminate an investigation, i.e., identify co-conspirators, assets, etc. When an investigation involves a large trafficking organization which operates in several geographic areas, the Intelligence Analyst is often able to determine the interrelationships of the members of the organization, provide expertise in analyzing and charting these relationships, and integrate the individual overt acts into the total investigation.

6823.7 FINANCIAL INTELLIGENCE

A. Special Agents and analysts of the Financial and Special Intelligence Section (OIF) are available at Headquarters to provide guidance and analytical support to DEA's worldwide enforcement operations targeted against the assets of drug traffickers.

OIF monitors current and proposed banking and currency laws of the U.S. and safe haven countries, and will assist in planning, initiating and developing enforcement operations targeted at traffickers' assets. OIF will assist the field in coordinating financial investigations and intelligence with appropriate DEA offices and other Federal agencies.

The Financial and Special Intelligence Section will: promote the establishment and support of field asset removal teams; and coordinate with DOJ and host governments about enacting asset removal and anti-money laundering legislation.



6823.8 TRAVEL IN SUPPORT OF INVESTIGATIONS. Support to investigations may be enhanced by travel to foreign and domestic offices by Intelligence Analysts. Travel will occur when the most benefit will be gained from the presence of the Intelligence Analyst working on-site with the case agent, i.e., review seized evidence, debrief CI's, question defendants, review documents held by local authorities, etc. Intelligence Analysts provide the most efficient support when they have access to DEA computers, central files, and all available data pertaining to the investigation.

Subchapter 683 Strategic Intelligence

6831 STRATEGIC INTELLIGENCE SUPPORT

The basic function of the Strategic Intelligence Section (OIS) is to develop drug cultivation, production, availability, trafficking, and use trend analyses which serve the narcotics intelligence needs of policy makers, program planners and managers, as well as other key consumers to include SACs, Country Attaches and RACs. OIS produces several products which are distributed to consumers on a periodic basis, as well as ad hoc reports. Additionally, extensive data and information bases are available which are pertinent to the drug production, availability, and abuse situation at the international, national, and regional level. These include, but are not limited to:

- Foreign and domestic crop estimates,
- Foreign crop eradication (coca, opium, cannabis),
- Major trafficking routes, including airlines, ship routes, courier modus operandi,
- Wholesale, mid-level and retail level drug prices,
- Retail and wholesale average drug purities,
- Interpretation and analysis of foreign and domestic seizure and arrest statistics,
- Statistics relating to drug overdose deaths, hospital emergencies and drug treatment,

- Heroin Signature data, which determine the presumptive foreign sources of heroin,
- Laboratory seizures and domestic marijuana eradication statistics, and
- Country Narcotics Profiles.

As applicable, these data are available on a national, regional or local basis, and are reported in Office of Intelligence publications. The effectiveness of strategic intelligence depends upon close liaison and interaction between Headquarters intelligence units and field offices in identifying intelligence gaps, gathering, analyzing and disseminating information.

6832 STRATEGIC INTELLIGENCE PRODUCTS

The Strategic Intelligence Section produces several intelligence products such as the DEA Monthly Digest of Drug Intelligence, the DEA Quarterly Intelligence Trends, and the annual Narcotics Intelligence Estimate (NIE), which identify cultivation, trafficking, production, availability and use trends. In addition, the DEA Monitor Program Report, the Domestic Drug Situation Report, and the DEA Signature Program Report are produced quarterly or semi-annually. Special reports or assessments can be produced for field and Headquarters managers on specific areas of interest to assist in planning enforcement initiatives, providing country, city or area profiles, trend analysis, situation analysis, etc.

For a more detailed explanation of strategic publications and reports, see Appendix I.

6833 REQUESTS FOR STRATEGIC INTELLIGENCE SUPPORT

If SACs and Country Attaches determine they require strategic intelligence support in planning enforcement initiatives, they will first direct the tasking to their respective field Division or Country Office Intelligence Group. If the field Division or Country Office determines that the Office of Intelligence can better provide the support due to access to broader data bases, request will be made by cable or memorandum to the Deputy Assistant Administrator for Intelligence. The request will outline the parameters of the strategic assessment requested, to include time-frame, geographic area, etc. This tasking procedure does not preclude Special Agents from contacting the Strategic Intelligence Section directly for information that is already contained in data bases or that requires minimum research, i.e., drug prices, seizure information, airstrip locations or situation reports.

MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF THE TREASURY AND THE ATTORNEY GENERAL PURSUANT TO THE MONEY LAUNDERING CONTROL ACT OF 1986

This Memorandum of Understanding (MOU) constitutes an agreement between the Secretary of the Treasury ("the Secretary") and the Attorney General as to the investigatory authority and procedures of Treasury and Justice bureaus under 18 U.S.C. sections 1956 and 1957, the new criminal offenses enacted in the "Money Laundering Control Act of 1986," Subtitle H of the "Anti-Drug Abuse Act of 1986," Pub. L. 99-570 (Oct. 27, 1986) ("the Act").

Section I. Purpose

The Attorney General and the Secretary have entered into this MOU in order to encourage effective and harmonious cooperation by Treasury and Justice bureaus in the development of cases under Title 18, United States Code, sections 1956 and 1957, to make the most effective use of limited investigatory resources, to encourage the development of cases by bureaus with appropriate experience, to reduce the possibility of duplicative investigations, to minimize the potential for dangerous situations which might arise from uncoordinated multi-bureau efforts, and to enhance the potential for successful prosecution in cases presented to the various United States Attorneys.

As clearly stated in the legislative history of the Act, this MOU does not confer any rights on any third party, including a defendant or other party in litigation with the United States. The fact that a bureau investigates a violation of section 1956 or section 1957 that should have been investigated by another bureau under the terms of this MOU, or that an agency not a party to this MOU investigates a violation of section 1956 or section 1957, confers no rights and provides no defense to any party.

While this MOU allocates jurisdiction to investigating violations of sections 1956 and 1957, nothing in this MOU is intended to affect investigatory authority of any Justice or Treasury bureau under statutory authority, independent of the money laundering statute. This MOU governs all investigations involving 18 U.S.C. 1956 and 1957 and is intended to be used together with MOU's presently existing between the bureaus. This MOU does not supersede the provision of 26 U.S.C. 6103 (confidentiality and disclosure of returns and return information).

Section II. Definitions

1. "Treasury bureaus" means the Internal Revenue Service (IRS), the United States Customs Service, the Bureau of Alcohol,

Tobacco, and Firearms (ATF), and the United States Secret Service.

2. "Justice bureaus" means the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI).

3. "Violations of section 1956" refers to both civil and criminal violations.

4. "Specified unlawful activities" has the definition set forth in 18 U.S.C. section 1956(c)(7).

5. "Justice Department attorney" means the appropriate Assistant United States Attorney or designated Justice Department attorney assigned to the prosecution of the case.

Section III. Investigatory Jurisdiction

A bureau's investigatory actions in pursuit of a section 1956 or 1957 violation shall be conducted only in those areas in which the investigating bureau has existing jurisdiction, independent of the money laundering statute, as set forth in this Section.

A. Treasury Bureaus

1. Internal Revenue Service

a. The Internal Revenue Service will have investigatory jurisdiction over violations of section 1956(a)(1)(B)(i), conducting a financial transaction involving the proceeds of specified unlawful activity designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity, discovered in the course of an ongoing Title 26 or Bank Secrecy Act investigation. The Internal Revenue Service may conduct an investigation into such matters only in coordination with the bureau(s) having jurisdiction over the specified unlawful activity, in accordance with Sections VII, VIII, and IX, infra.

b. The Internal Revenue Service will have investigatory jurisdiction over violations of section 1956(a)(1)(B)(ii), conducting a financial transaction involving the proceeds of specified unlawful activity designed in whole or in part to avoid a transaction reporting requirement under State or Federal law, discovered in the course of an ongoing Title 26 or Bank Secrecy Act investigation. The Internal Revenue Service may conduct an investigation into such matters only in coordination with the bureau(s) having jurisdiction over the specified unlawful activity, in accordance with Sections VII, VIII, and IX, infra.

The transaction reporting requirements under section 1956(a)(1)(B)(ii) for the Internal Revenue Service are as follows:

> Title 31, U.S.C., Section 5313 (Reports of domestic coins and currency transactions);
>
> Title 31, U.S.C., Section 5314 (Records and reports on foreign financial agency transactions);
>
> Title 31, U.S.C., Section 5315 (Reports on foreign currency transactions);
>
> Title 26, U.S.C., Section 6045(a) (Returns of brokers);
>
> Title 26, U.S.C., Section 6050I (Returns relating to cash received in trade or business); or
>
> State currency transaction reporting requirements.

c. The Internal Revenue Service will have investigatory jurisdiction over violations of section 1957, engaging or attempting to engage in a monetary transaction in criminally derived property of a value greater than $10,000 which is derived from specified unlawful activity, discovered in the course of an ongoing Title 26 or Bank Secrecy Act investigation. The Internal Revenue Service may conduct an investigation into such matters only in coordination with the bureau(s) having jurisdiction over the specified unlawful activity, in accordance with Sections VII, VIII, and IX, infra.

2. United States Customs Service

a. The United States Customs Service will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the following specified unlawful activities: criminal offenses under 18 U.S.C. section 545 (relating to the smuggling of goods into the United States); criminal offenses under section 2 of the Export Administration Act of 1979 (50 U.S.C. App. section 2401); criminal offenses under section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702); criminal offenses under section 3 of the Trading with the Enemy Act (50 U.S.C. App. 3); and criminal offenses under section 38 of the Arms Export Control Act (22 U.S.C. section 2778) (relating to exportation, intransit, temporary import, or temporary export transactions).

b. The United States Customs Service will have investigatory jurisdiction over violations of section 1956(a)(2)(B)(ii), involving the international transportation of monetary instruments or funds which are proceeds of some form of unlawful activity and where the defendant knew that the transportation was designed in whole or in part to avoid a transaction reporting requirement under 31 U.S.C. 5316 (Reports on exporting and importing monetary instruments).

3. United States Secret Service

The United States Secret Service will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the specified unlawful activity of an offense under 18 U.S.C. sections 471-473 (counterfeiting of obligations or securities of the United States) or 18 U.S.C. sections 500-503 (counterfeiting of blank or postal money orders, postage stamps, foreign governments postage and revenue stamps, and postmarking stamps).

4. Bureau of Alcohol, Tobacco, and Firearms

The Bureau of Alcchol, Tobacco, and Firearms will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the specified unlawful activity of an offense under 18 U.S.C. sections 2341-2346 (trafficking in contraband cigarettes); Section 38 of the Arms Export Control Act, 22 U.S.C. section 2778 (relating to the importation of items on the U.S. Munitions Import List, except those relating to exportation; intransit, temporary import, or temporary export transactions); and 18 U.S.C. 1952 (relating to travelling in interstate commerce, with respect to liquor on which Federal excise tax has not been paid and arson); or any act or activity constituting an offense listed in 18 U.S.C. 1961(1), with respect to any act or threat involving arson, which is chargeable under State law and punishable for more than one year.

B. Justice Bureaus

1. Federal Bureau of Investigation

The Federal Bureau of Investigation will have investigatory jurisdiction over violations of section 1956 or section 1957 involving the specified unlawful activities of an offense under 18 U.S.C. section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 511 (relating to securities of States and private entities), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate

communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft); or, with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act); or any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or any act or activity constituting an offense listed in 18 U.S.C. 1961(1), with respect to any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or in dealing in narcotics or other dangerous drugs which is chargeable under State law and punishable for more than one year; 18 U.S.C. 201 (bribery); 18 U.S.C. 224 (sports bribery); 18 U.S.C. 659 (theft from interstate shipment); 18 U.S.C. 664 (embezzlement from pension and welfare funds); 18 U.S.C. 891-894 (extortionate credit transactions); 18 U.S.C. 1084 (the transmission of gambling information); 18 U.S.C. 1341 (mail fraud); 18 U.S.C. 1343 (wire fraud); 18 U.S.C. 1461-1465 (obscene matter); 18 U.S.C. 1503 (obstruction of justice); 18 U.S.C. 1510 (obstruction of criminal investigation); 18 U.S.C. 1511 (the obstruction of State or local law enforcement); 18 U.S.C. 1951 (interference with commerce, robbery or extortion); 18 U.S.C. 1952 (racketeering, except with respect to untaxed paid liquor and arson); 18 U.S.C. 1953 (interstate transportation of wagering paraphernalia); 18 U.S.C. 1954 (unlawful welfare fund payments); 18 U.S.C. 1955 (the prohibition of illegal gambling businesses); 18 U.S.C. 2320 (trafficking in certain motor vehicles or motor vehicle parts); 18 U.S.C. 2312 and 2313 (interstate transportation of stolen motor vehicles); 18 U.S.C. 2314 and 2315 (interstate transportation of stolen property); 18 U.S.C. 2421-24 (white slave traffic); any act which is indictable under 29 U.S.C. 186 (restrictions on payments and loans to labor organizations) or 29 U.S.C. 501(c) (embezzlement from union funds); any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States.

2. Drug Enforcement Administration

The Drug Enforcement Administration shall have investigatory jurisdiction over violations of sections 1956 or 1957 involving the specified unlawful activities of, with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled

Substances Act); or any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or any of the 18 U.S.C. 1961(1) offenses dealing in narcotics or other dangerous drugs which are chargeable under State law and punishable for more than one year, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States.

Section IV. Undercover Operations

This MOU will govern the conduct of all money laundering investigations under sections 1956 and 1957 in that all parties hereto agree that all undercover operations will be reviewed using each bureau's internal guidelines, the objectives of which are consistent with existing Attorney General Guidelines on undercover operations.

Section V. Seizure and Forfeiture

Any property involved in a violation of section 1956 or 1957 that a Treasury or Justice bureau has authority to investigate under Section III of this MOU may be seized by that bureau, if that property is subject to forfeiture to the United States under 18 U.S.C. 981(a)(1)(A) or 981(a)(1)(B).

When a Treasury or Justice bureau that would have authority to seize property under the authority stated in the preceding paragraph is not present to make the seizure, any Treasury or Justice bureau that is present may seize the property and shall immediately turn over that property to the bureau having Section III investigatory jurisdiction, where the forfeiture processing shall occur.

Any property seized under this Section shall, upon forfeiture under 18 U.S.C. 981 or 982, be apportioned among the appropriate Treasury or Justice bureaus in accordance with each bureau's contribution to the investigation, seizure, or forfeiture.

Pursuant to 18 U.S.C. 981(e) and, where appropriate, the Justice Department or the Treasury Department forfeiture guidelines, apportionment may include equitable transfers to any other Federal agency or State or local authorities, which participated directly in any of the acts which led to the seizure or forfeiture.

Any dispute regarding the seizure, forfeiture, apportionment, or disposition of property under this section shall be governed by the disputes resolution procedure in Section IX of this MOU.

This MOU does not affect Treasury or Justice bureaus' authority to seize property or the disposition of such property under statutory seizure and forfeiture provisions not based on section 1956 and 1957 violations.

A. Seizure of Attorney Fees: Treasury and Justice bureaus will follow DOJ guidelines in reference to the seizure and forfeiture of any money or property that is held by an attorney for payment for the defense of a client. See United States Attorneys Manual 9-111.000, et seq.

Section VI. Prosecution

A bureau that conducts an investigation under the authority of this MOU shall coordinate with Justice Department attorneys.

Section VII. Notice, Coordination, and Lead Bureau

A. Notice

If, during the investigation of a section 1956 or 1957 violation, a bureau discovers a specified unlawful activity or a transaction reporting violation over which another bureau has investigatory jurisdiction, that bureau shall immediately give notice to the bureau(s) which have investigatory jurisdiction over the specified unlawful activity or the transaction reporting violation.

Notice under this section will ordinarily be made at the supervisory field level and will, at a minimum, require a complete summary of the facts and circumstances of the investigation. However, in those instances where a bureau undertakes an investigation in which it determines that field level disclosure would be detrimental to the investigation, the required notice will be made at the headquarters level and dissemination restricted to selected individuals consistent with the need to maintain security of the investigations.

B. Coordination and Determination of Lead Bureau

Investigatory actions which involve areas outside the investigating bureau's existing jurisdiction, independent of the money laundering statute, shall be conducted only in coordination with the bureau(s) which do have existing jurisdiction independent of the money laundering statute. Coordination requires, at a minimum, a determination of the degree of cooperation necessary between the coordinating bureau(s) and includes continuing dialogue as the case develops. At the request of any coordinating bureau, at any time as the case develops, there shall be a determination of the lead bureau for the Section 1956 or 1957 investigation. The determination of lead bureau does not preclude a subsequent request by a coordinating bureau for

redetermination of the lead as compelling facts and circumstances warrant.

The determination of the lead bureau will be made at the supervisory field level by the bureaus involved and will be governed by which bureau has the paramount investigatory interest. In determining which bureau has the paramount investigatory interest, the factors to be considered shall include, but not be limited to:

- Likely impact on major criminal enterprises;
- Likelihood of successful prosecution;
- Existence of a specified unlawful activity, as defined in section 1956(c)(7);
- Jeopardy to informants, undercover agents, or third parties;
- Commitment of investigatory resources; and
- Any other matter of substantive investigative interest.

Section VIII. Jointly Conducted Investigations

Treasury and Justice bureaus are encouraged to enter into joint investigatory endeavors in circumstances that may necessitate or justify the use of skills and resources of more than one bureau. The specific details of each joint investigation, including the role of each bureau in the endeavor, will be formulated at the onset of the investigation and will be provided to each bureau's headquarters by each bureau's established procedures. While differing circumstances will result in varied arrangements from project to project, certain conditions will always apply:

- Participating personnel will be supervised by their respective bureaus. This does not alter any other MOU concerning supervision of investigatory personnel.
- Only one evidentiary document, such as a record of interview, will be prepared, and a copy will be furnished to the other bureau at the time the document is prepared.
- Resources and investigatory expertise will be provided to the requesting bureau when the investigatory matter meets the criteria of the requested bureau and when available resources allow.

Subchapter 684 Special Field Intelligence Programs (SFIP's)

6841 SFIP'S AND THEIR OPERATIONAL PLANS

6841.1 GENERAL. As the lead enforcement agency in illicit drug suppression, DEA has an extensive need for current intelligence. This intelligence need requires DEA to maintain a current data base of all those factors and indicators essential for DEA to perform its mission.

The Office of Intelligence (OI) establishes Special Field Intelligence Programs to respond to intelligence collection requirements. SFIP's will comply with DEA domestic and foreign operational guidelines. Examples of SFIP's include the following:

-- Locate and monitor sources of supply, growing areas, and laboratory and production sites,
-- Identify major trafficking organizations,
-- Identify significant trafficking routes and methods of shipment,
-- Develop foreign office informant teams to supplement on a continuing basis the ability of the foreign office to collect information, conduct surveillance, etc.

When an objective has been identified that requires a systematic intelligence collection effort to fulfill DEA requirements, an operational plan will be developed by the field or Headquarters office proposing the SFIP.

6841.2 FORMULATING AN OPERATIONAL PLAN. The operational plan will contain the following:

1. Assignment of Code Name and File Number

A. An appropriate operational name will be assigned by the office submitting the proposal. If the Office of Intelligence determines that the operational name has previously been used in another operation, the submitting office will be advised and another operational name will be selected.

B. File numbers will not be assigned until the SFIP has been approved and funded. Once the field has been notified by cable that the SFIP has been approved and funded, the field will assign a general file number 8000 series. The field will notify the involved offices and the Office of Intelligence unit monitoring the SFIP.

2. Mission Objective. Explain what will be accomplished with the operation.

3. Mission Targets. Provide as much specific information as possible about the target, i.e., composition of the organization, identification of the violators, etc.

4. Background. Provide a general overview of the history and current activities of the target. Note references to earlier investigative reporting that explain in detail appropriate background information on the suspects and the suspect area.

5. Description of Operation and Time Frame. Describe how the operation will be conducted to meet the mission objective. Estimate the time frame and number of personnel required to complete the operation.

6. Coordination. Appropriate coordination will be accomplished and so stated in the submission of the operational plan.

7. Geographic Scope. Describe the geographic scope of the operation.

8. Informants to be Used. Provide informant number(s), and information on reliability, past performance and access to target.

9. Equipment. Provide details regarding any special equipment necessary for this operation.

10. Operational Expenses and Funding. Identify all expenses that will be incurred, such as informant salaries, agent TDYs, vehicle rental, purchase of supplies, hotel room rental, etc. Indicate complete funding requirements, PE/PI and Operations, for each quarter, broken down by month.

11. Significant Risk Factors. Describe any political or operational sensitivities, such as potential compromise or possible relocation of CI's.

6842 REVIEW AND APPROVAL OF OPERATIONAL PLAN

6842.1 INITIAL PROCESSING. SFIP proposals will be submitted by the SAC or Country Attache to the Office of Intelligence, Attention: Associate Deputy Assistant Administrator (OID).

6842.2 JOINT REVIEW PROCESS. The Intelligence Unit Chief handling the SFIP proposal will evaluate the proposal and make a recommendation for funding approval or disapproval. The recommendation will be forwarded to the Associate Deputy Assistant Administrator for Intelligence. The memorandum, with the SFIP proposal, will be the decision documents upon which final action will be taken by the SFIP Review Committee.

6842.5 DRUG DESKS RESPONSIBILITIES FOR SFIPs. The Headquarters Office of Intelligence Unit responsible for handling the approved SFIP will ensure timely notification and report distribution to the relevant Headquarters Drug Desk(s). The Headquarters Drug Desk(s) will in turn assign a staff coordinator responsible for monitoring the SFIP activity.

** Addition

6842.3 SFIP REVIEW COMMITTEE. The SFIP Review Committee consists of the Associate Deputy Assistant Administrator for Intelligence (Chairman); the Chiefs of the Operational, Strategic and Financial and Special Intelligence Sections; **and a member of the Undercover and Sensitive Operations Unit (OUS). If it is determined that there is a reasonable expectation that the SFIP will involve sensitive circumstances as defined by subsection 6621.22, then the operation must be reviewed by the Undercover Operations Review Committee (UORC) and will be subject to the oversight and reporting requirements as set forth in section 6621.**

6844.4 *STATUS REPORTING*. A quarterly status report setting forth the major accomplishments and requesting funding for the next quarter will be sent by cable or DEA-6 to OI two weeks before the end of each quarter. This report will reflect the quarterly obligation of funds and the total obligation year to date, both PE/PI and operations. This report will be used to determine funding levels for the next quarter.

SFIPs are often continued through more than one fiscal year. If an office plans the continuation of an SFIP into the next fiscal year, an updated operational plan must be submitted with the fourth quarter report.

A monthly report as per subsection 6621.7E will be required for all SFIPs that involve sensitive circumstances as defined by subsection 6621.22.

* Revision
** Addition

6843 RECORDKEEPING RESPONSIBILITIES--HEADQUARTERS INTELLIGENCE

The Office of Intelligence is responsible for managing the SFIP Financial Plan. OI will maintain a record of all funding allowances for SFIP's. OI will monitor all financial transactions including the transfer of funds between the PE/PI (C) and OPS (D) accounts within an SFIP, and the transfer of funds between SFIPs. All SFIP cables dealing with financial matters will be coordinated within OI prior to final approval by the Associate Deputy Assistant Administrator.

Headquarters Office of Intelligence units managing SFIPs will maintain an SFIP file on each SFIP which will contain the field operations plan, all incoming/outgoing cables and DEA-6s regarding the SFIP, and a funding log itemizing all monies allocated to and withdrawn from the field office, and funds transferred between PE/PI and operations accounts.

6844 FIELD RECORDKEEPING AND REPORTING REQUIREMENTS

6844.1 GENERAL. Upon receipt of the cable authorizing funding of an SFIP, the field office will initiate recordkeeping and reporting procedures outlined in the following sections.

6844.2 FINANCIAL RECORDKEEPING. Financial recordkeeping will be initiated for each SFIP. Records of financial transactions will be maintained for monthly obligations. Operational and PE/PI monies will be recorded separately.

6844.3 DEAAS. All field Divisions and Country Offices enter obligations into DEAAS promptly, since DEA management utilizes DEAAS information for financial decisions. If DEAAS is not up-to-date, the SFIP program could be funded at reduced levels or decreased during budgetary constraints. Keeping DEAAS obligations current is critical to successful management of the SFIP Program.

6844.4 QUARTERLY STATUS REPORT. A quarterly status report setting forth the major accomplishments and requesting funding for the next quarter will be sent by cable or DEA-6 to OI 2 weeks before the end of each quarter. This report will reflect the quarterly obligation of funds and total obligations year to date, both PE/PI and operations. This report will be used to determine funding levels for the next quarter.

SFIPs are often continued through more than one fiscal year. If an office plans the continuation of an SFIP into the next fiscal year, an updated operational plan must be submitted with the fourth quarter report.

6844.5 TERMINATION REPORT. A termination report (DEA-6) will be prepared by the field office and submitted to OI within ten working days of the termination of the SFIP. The report will include an evaluation of the SFIP accomplishments compared with the objectives stated in the operational plan; status of all funds allocated and obligated by category, i.e., operations and PE/PI to include funds returned to Headquarters; and the reason for the SFIP termination.

Subchapter 685 El Paso Intelligence Center (EPIC)

6851 GENERAL

The El Paso Intelligence Center is a full service tactical intelligence operation. EPIC's primary mission is to support the field offices of the member agencies in areas which relate to trafficking in drugs, weapons and illegal aliens. In addition to DEA, nine Federal agencies are members of EPIC: U.S. Customs Service, U.S. Coast Guard, Federal Aviation Administration, Immigration and Naturalization Service, Federal Bureau of Investigation, Internal Revenue Service, U.S. Marshals Service, Bureau of Alcohol, Tobacco and Firearms, and the U.S. Secret Service. All 50 states and Puerto Rico have also signed bilateral intelligence exchange agreements with EPIC.

6852 FIELD REPORTING REQUIREMENTS

To ensure timely and adequate distribution of information to EPIC, field offices will send EPIC copies of DEA-6's and list EPIC as an addressee on cables containing information on the following subject areas:

A. The international and national movement of drugs, illegal aliens and weapons to include:

1. Trafficking methods, techniques and routes
2. Commercial and private vessel names
3. Private aircraft tail numbers
4. Commercial airline companies and flight numbers
5. Names of commercial air-passenger couriers
6. Commercial vessel shipping companies
7. Vessel and aircraft crewmembers
8. Private and commercial motor vehicles
9. Air and vessel commercial cargo.

B. Smuggling drugs and weapons by mail.

C. Radio communications, call signs, frequencies, and descriptions of radio and electronic equipment used by drug, alien, and weapons traffickers.

D. Outlaw motorcycle gangs.

E. Sales, thefts, exports and seizures of firearms and explosives.

6853 LOOKOUTS AND INQUIRIES

6853.1 GENERAL. Lookouts and inquiries are two major functions at EPIC which provide support to the field for active investigations. For lookouts, inquiries and the EPIC data base to be effective, a full exchange of information between the field and EPIC is necessary. In addition to the minimum information required to place a lookout or make an inquiry, the agent placing a lookout or making an inquiry will provide EPIC with details about the investigation, i.e., specific involvement, area of operations,

smuggling method, etc. This information will be included in the EPIC data base to better serve the field on future inquiries.

6853.2 SUSPECT LOOKOUTS

A. Lookouts may be placed on people, motor vehicles, vessels and private aircraft when they are suspected of smuggling drugs, weapons or illegal aliens. Lookouts may be places with the EPIC Watch [redacted] Special Agent by telephone or cable. The EPIC Watch functions 24 hours a day, 7 days a week.

B. When an agent requests a lookout through EPIC, he or she will furnish his/her office and home telephone numbers as well as the name and telephone numbers of an alternate agent.

C. In the event of a "hit" on a lookout, EPIC will make every reasonable effort to contact the requesting agent, his or her alternate, or a member of his or her office immediately by telephone for instructions and additional information to be passed to the searching agency.

D. EPIC is a support entity and cannot direct the arrest or detention of a subject beyond the normal procedure of the agency encountering the subject of the lookout. If an agent places a lookout, he or she will ensure that the alternate agent is apprised of the reason for the lookout and the action to be taken if and when the subject is encountered.

E. Listed in the following sections are the types of lookouts and the minimum amount of information required to place the lookout. Agents should always report the maximum amount of information for the lookout to be more effective.

6853.21 INS Lookouts

A. INS Lookouts are targeted for people only. The minimum information required to place an INS Lookout is first and last name of the person and DOB [redacted]

INS Lookouts are placed in the Treasury Enforcement Computer System (TECS) for 90 or 365 days.

B. The INS Lookout is an effective lookout for individuals entering the U.S. from foreign countries on commercial carriers, private aircraft and vessels, and is of limited effectiveness for persons crossing afoot or in vehicles over land borders.

6853.22 USCG Lookouts

A. U.S. Coast Guard Lookouts are only for vessels and are placed for 90 or 365 days. The minimum information required to establish a USCG Lookout is the vessel name, type, length and at least one other correlating factor (official number, color, nationality, or home port). The fullest description possible is desired due to extensive vessel commonalities. The vessel must be known or suspected to be involved in smuggling contraband into the U.S., or be a U.S. flag vessel smuggling between non-U.S. locations. Intelligence must indicate the movement of the vessel within 10 days of the date the lookout is placed.

B. USCG Lookouts are placed with appropriate Coast Guard districts for actual interception at sea.

C. USCG Lookouts are also automatically placed in TECS. There are three categories of USCG Lookouts:

Category 1: Report position, course, and speed.

Category 2: Report position, course, speed, and maintain discreet surveillance.

Category 3: Board and search.

6853.23 FAA Lookouts

A. FAA Lookouts are for private aircraft only, and are established for [redacted] A 90-day TECS lookout is also automatically placed. The minimum information required to establish an FAA Lookout is aircraft tail number, description, suspected illegal activity, the location of the aircraft at the time the lookout is placed, and the geographic area where the aircraft is expected to fly.

B. An FAA Lookout is based on belief that the aircraft is involved in illegal smuggling of narcotics, weapons or aliens, and not merely to monitor aircraft movement or speculation that an aircraft is involved in illegal activity.

[redacted] Lookouts placed on aircraft which have been [redacted] as a result of a Court Order are valid for the duration of the Court Order.

D. An FAA Lookout is for tracking suspect aircraft generally within the boundaries of the U.S. and south through the Caribbean, northern Mexico and Panama.

6853.24 Customs Lookouts. Customs Lookouts may be placed on people, motor vehicles, vessels and private aircraft. Customs Lookouts are placed in TECS for 90 or 365 days. The minimum information required to establish a lookout is as follows:

Person: Although only a first and last name are required for a 90-day lookout, the effectiveness is minimal unless the name is unusual. For lookouts longer than 90 days, a DOB is required.

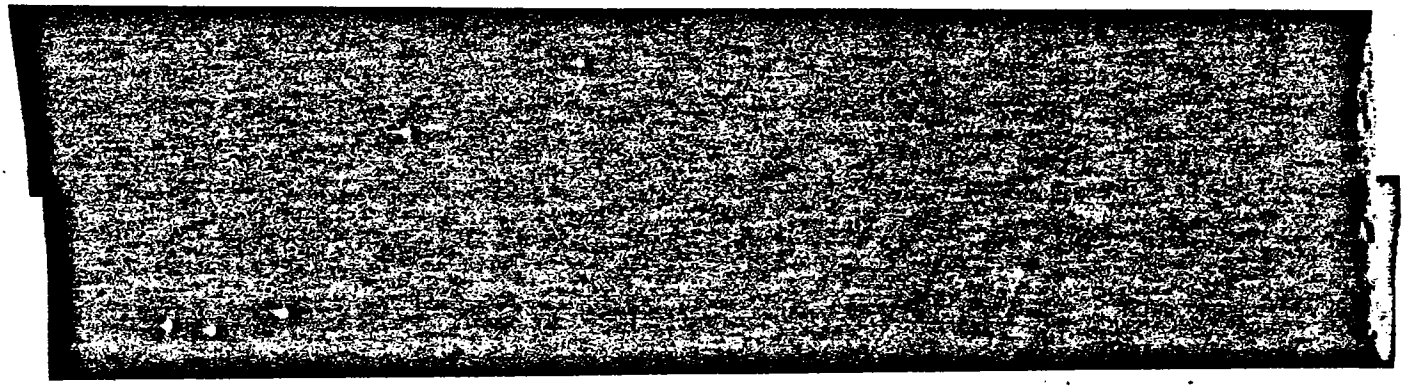
Vessel: Requirements same as those for USCG Lookouts.

Aircraft: Requirements same as those for FAA Lookouts.

Motor Vehicle: License plate number and state of registration.

NLETS: National Law Enforcement Teletype System (NLETS) Lookouts are placed with all state, local and Federal agencies having access to the NLETS system along the projected route of travel of the suspect private aircraft or motor vehicle. The NLETS Lookout is limited to tactical situations where the vehicle/aircraft is actually transporting drugs, weapons or illegal aliens. The NLETS Lookout is not used to merely monitor movement. The minimum information required to establish an NLETS Lookout is as follows:

1. Vehicle make and license number. Aircraft type and tail number.
2. Routes vehicle/aircraft are expected to take.
3. Point of departure, destination and timeframe of trip.



6853.26 DEA Fugitive Apprehension Notification. Upon notification of fugitive apprehension, EPIC will confirm fugitive status through NCIC via TECS computer and NADDIS checks.

EPIC will identify the originating office of the fugitive declaration and put it in contact with the apprehending agency.

EPIC will transmit a notification of apprehension teletype to all interested parties.

6853.3 EPIC INQUIRIES

6853.31 Inquiry Subjects. Inquiries may be made at EPIC about:

A. Drug trafficking
B. Immigration violation suspects

1. Alien smuggling
2. Suspect fraudulent documents
3. Criminal aliens
4. False U.S. citizenship claims with or without documents.

C. FAA information re: pilots, aircraft owners
D. Weapons or explosives trafficking
E. Suspect fugitives (all agencies)
F. Stolen weapons, vehicles, aircraft and vessels
G. Private aircraft arrivals from foreign countries
H. Prior criminal records
I. DMV information re: Driver's license or vehicle registration
J. Entry and departure of aliens.

6853.32 Requesting an Inquiry. Inquiries may be placed with EPIC by telephone [redacted] or cable 24 hours a day, 7 days a week. Inquiries requesting a standard EPIC check on people, aircraft or vessels will be queried in the following systems:

NADDIS
TECS
IT (EPIC vessel, aircraft and activity files)

* Revision

6853.33 Other EPIC Information Systems. The following other information systems are available at EPIC, and will be queried if specifically requested:

CIS: Contains information relating to aliens who have entered the U.S. legally, or have been found illegally in this country.

NIIS: Contains information regarding the entry and departure of aliens temporarily in the U.S.

ASIS: Contains information regarding individuals who have been involved in the smuggling of illegal aliens into the U.S.

INS: Fraudulent documentation relating to actual cases of false claims to U.S. citizenship.

INS Student/School System (STSC): Contains information regarding the entry and departure of foreign students in the U.S.

INS Operational Activities Special Information System (OASIS): Contains information about known or suspected violators of immigration law (e.g., fraud, smuggling).

NCIC: NCIC information is available through TECS. DOB required for query.

CUSTOMS ARCHIVES: Contains information on individuals who were checked by U.S. Customs at port of entries: Reflects date, time and place of entry.

FAA: FAA Aircraft Registration and Pilot Data is available through EPIC's APOLLO System.

SENTRY: Contains information from the Bureau of Prison's Prisoner Population Data Base.

OTHER: The EPIC watch also maintains a reference library of books, i.e., USCG Registry, Lloyd's Register, Merchant Vessels of the U.S., Aircraft Registry (U.S., Canadian, Mexican), etc.

6853.4 RESTRICTIONS

6853.41 Communication. Though EPIC has link-ups with the various communications systems of the member agencies, EPIC is not a communications center. If an agent needs to contact another office of his or her or another agency, he or she should do so personally through normal channels.

6853.42 Privacy Act. EPIC is bound by and observes all provisions of the Federal Privacy Act. Positive responses to non-affiliated state and local agencies must be passed through the nearest appropriate office of jurisdiction. At that point, if requested to do so by that office, EPIC will pass the information to the requesting state or local agency.

6853.43 Inquiries

A. Department of Motor Vehicles Checks. EPIC will not conduct routine vehicle registration and stolen vehicle checks for the state where the requesting agent is assigned. Agents will use normal channels to obtain routine vehicle registration information for their respective states.

B. When at all possible, agents having assess to the same data bases as EPIC (i.e., NADDIS, TECS, NCIC, etc.) will run their own checks in those bases and advise EPIC at the time a query is made, to prevent duplication of effort.

C. Inquiries to EPIC should be restricted to subjects of current criminal investigation.

6854 TACTICAL ANALYTIC SUPPORT (EPIC)

6854.1 REQUESTS. Enforcement Group Supervisors in field Division Offices and RACs whose investigations require tactical analytical support will direct requests to the SAC of the appropriate field Division. The SAC will then ask the field Division Intelligence Group to provide support. If the SAC determines that the investigation is international or interagency in scope and, due to the access to interagency resources, support from EPIC would be more appropriate, the SAC will make a request by telephone to SAC EPIC. In cases of tactical urgency, telephone requests followed up by a teletype or memorandum are authorized. All requests will identify the nature of the investigation and clearly reflect the type and purpose of assistance requested.

6854.2 TYPES OF PRODUCTS. EPIC Analysis Section will provide basically five types of analytical support to field offices. A description of the product available to field offices is outlined This review is distinguishable from routine inquiries to the EPIC Watch in that it generally seeks information on incompletely identified persons, aircrafts, vessels, etc., or it seeks to determine the relationship among several subjects. The results of such an inquiry will generally be a brief synopsis of the findings accompanied by data base printouts showing all available raw data.

6854.21 Data Base Review. This involves a review of all available data systems for information relating to the subject of interest. This review is distinguishable from routine inquiries to the EPIC Watch in that it generally seeks information on incompletely identified persons, aircrafts, vessels, etc., or it seeks to determine the relationship among several subjects. The results of such an inquiry will generally be a brief synopsis of the findings accompanied by data base printouts showing all available raw data.

6854.22 Assessments. EPIC can draw from multi-agency sources to provide assessments of smuggling in a specific area (e.g. maritime smuggling in the North Atlantic or private aircaft in the southwestern U.S.). These assessments draw on seizure, lookout and sighting data and will be provided to the requester in the form of a brief analysis with supporting data print-out.

6854.23 Organizational Profiles. EPIC can produce full scale organizational profiles derived from indepth research of multiagency data bases. These are generally produced and disseminated in the form of the EPIC Special Report. These reports will only be produced on organizations of substantial interagency interest, where a substantial amount of available information is contained in the indices of agencies other than DEA, and which involve movement of drug contraband internationally. For extensive analysis involving identifying overt acts, etc., refer to Subsection 6823.1 regarding Headquarters Intelligence File Reviews (IFR's).

6854.24 Threat Assessments. EPIC can produce assessments of the threat posed to Federal law enforcement operations by a variety of violator initiatives (e.g., use of electronic gear to detect/neutralize law enforcement surveillance or monitoring equipment). These assessments involve evaluating incidents reported to EPIC as well as an appraisal of electronic equipment seized from violators during the course of law enforcement operations.

6854.25 Special Operations Planning. EPIC can assist in planning and executing special interdiction operations. This includes pre-operational research on the types of targets which may be encountered, preparing an operations plan, supporting interdictive units during the operation, and post-op evaluation.

AGENTS MANUAL APPENDICES

2735 EMPLOYEE RESPONSIBILITIES AND CONDUCT

2735.1 STANDARDS OF CONDUCT

2735.11 Authority. In conformance with 28 CFR 45.735, Executive Order 11222 of May 8, 1965; 5 CFR 735, and 18 USC 201-209, the following standards of conduct are established for the Drug Enforcement Administration.

2735.12 Purpose and Scope

A. Purpose

1. To inform personnel of the standards of conduct expected of them as employees of DEA.
2. To inform personnel of the penalties imposed for breach of standards of conduct and/or rules while employees of DEA.
3. To ensure that embarrassment is not brought upon DEA or its employees because of lack of understanding of DEA's standards of conduct, **and to ensure that employees always use care and good judgment in the exercise of their duties.**

B. Scope

1. This section covers both regular employees and special Government employees, except where specifically excluded.
2. The absence of a specific regulation of conduct covering an act which tends to discredit DEA or the employee does not mean that such an act is condoned, permissible, or would not result in disciplinary/adverse action.
3. Violation of any provision of this issuance may subject the employee involved to appropriate disciplinary/adverse action including removal in addition to any penalty prescribed by statute or regulation.

2735.13 Definitions

A. Employee means any officer or employee of DEA and includes a special Government employee unless specifically excluded.

B. Special Government employee is defined as an officer or employee of DEA who is retained, designated, appointed, or employed to perform temporary duties on either a full-time or an intermittent basis, with or without compensation, for not more than 130 days during any period of 365 consecutive days.

C. Person is defined as an individual, a corporation, a company, an association, a firm, a joint stock company, or any other organization or institution.

D. Scope of employment means that an employee or employees are acting in their official capacity and performing duties consistent with the requirements of their position. With respect to claims against DEA employees, the Department of Justice (DOJ) makes the final determination as to whether an employee is acting within the scope of his/her employment. In the case of a negative determination, the employee will not be entitled to representation by the DOJ and may be personally liable for any and all claims arising from acts performed outside the scope of employment.

** Addition

2735.14 Responsibilities

14-1 Supervisors. It is the responsibility of DEA's supervisors, officers, or officials to:

A. Set and maintain high standards of personal conduct as an example to employees.

B. Be aware of and apply fairly and impartially DEA's standards of conduct.

C. Ensure that all present and potential employees in their area of responsibility are informed of DEA's standards of conduct.

1. New employees will be required to read the complete text of this section within 1 week after entrance on duty. (A copy of this section is to be included in the orientation handout packet which is to be given to all new employees.) New employees will certify that they have received a copy of, have read, and are familiar with this section. This will be accomplished by completion of the employee certification statement on DEA Form 439, Supervisor's Checklist for Job Induction.

2. All employees will be required to certify annually that they have read and understand the contents of this section. These certifications will be made by employees on DEA Form 460, Performance Rating, at the time the annual performance ratings are issued by the supervisors.

D. Initiate or request initiation of appropriate investigative and/or corrective action when an employee violates DEA's standards of conduct.

14-2 Employees. It is the responsibility of each employee to:

A. Know and observe DEA's standards of conduct.

B. Secure proper approval for outside activities as required by DEA's standards of conduct.

C. File any and all statements and reports required by DEA's standards of conduct.

D. Consult his/her supervisor, Chief Counsel, or the Office of Personnel when in doubt about any provision of DEA's standards of conduct.

E. Maintain the highest standard of honesty, integrity, and impartiality in his/her conduct, and encourage others to do so.

2735.15 Interpretation and Advisory Service. The Chief Counsel is designated as DEA counsel in accordance with 5 CFR 735.105. The Chief Counsel and, subject to his/her supervision, such other counselors as may be designated to assist him/her shall provide legal advice, guidance and assistance with respect to the interpretation of matters relating to ethical conduct, particularly matters subject to conflicts of interest.

2735.16 Employee Conduct. An employee of DEA is prohibited from engaging in any criminal, infamous, dishonest, or notoriously disgraceful conduct or other conduct prejudicial to DEA, to the Department of Justice, or to the Government of the United States. The following standards of conduct are the prescribed minimum acceptable behavior for employees of DEA. They are not to be considered all-inclusive and may be supplemented by DEA as necessary.

A. Financial Interest

1. An employee, his/her spouse, minor child, or member of his/her immediate household related by blood is prohibited from having a direct or indirect financial interest that conflicts substantially or appears to conflict substantially with his/her DEA duties and responsibilities.

2. An employee shall not engage in, directly or indirectly, a financial transaction as a result of or primarily relying on information obtained through his/her DEA employment or with anyone who is a party to an official matter of DEA interest.

a. A conflict of interest may exist even though there is no reason to suppose that the employee will, in fact, resolve the conflicting situation to his/her personal advantage.

b. An employee is permitted to have a financial interest or engage in a financial transaction to the same extent as a private citizen not employed by DEA so long as it is not prohibited by Executive Order 11222, 28 CFR 45.735, Section 2734, or this section.

c. For additional guidance regarding statements of employment and financial interest see Section 2734.

B. Gifts, Gratuities, Entertainment, and Favors

1. An employee may not accept or solicit any gift or gratuity which could possibly indicate a conflict of interest. To avoid the appearance of a conflict of interest, employees may not solicit or accept for themselves or another person any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from any person who may be connected with or associated with any of DEA's activities.

2. This does not preclude an employee from:

a. Negotiating a loan from a reputable bank or other financial institution on customary terms of finance.

b. Accepting food and refreshments of nominal value in the ordinary course of a luncheon, dinner, or other meeting held on a personal basis.

c. Accepting unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, or other items of nominal value in quantities in which such items are normally distributed.

d. Accepting bona fide reimbursement for actual expenses for travel and other necessary subsistence for which no Government payment or reimbursement is made, if compatible with the restrictions set forth in 28 CFR 45.735, and not otherwise prohibited by law. This does not allow reimbursement for excessive personal living expenses, gifts, entertainment, or other personal

benefits, nor does it allow an employee to be reimbursed for travel on official business under DEA orders when reimbursement is prohibited by Comptroller General's Decision B128527 (46 Comp. Gen. 689). In accordance with this Comptroller General decision (21 USC 871) and authority delegated by the Attorney General, the DEA Administrator has the authority to accept, on behalf of DEA, any form of device, bequest, gift or donation where the donor intents to donate property for the purpose of preventing or controlling the abuse of controlled substances.

e. Participating in the activities of or accepting an award given by a charitable, fraternal, nonprofit, educational, public service, recreational, or civic organization.

f. Engaging in outside employment permitted and approved in advance by DEA (see paragraph 2735.16D).

3. Employees are required to report all gifts, decorations or gratuities (including travel expenses) received from foreign officials or governments which have an estimated value of $50 or more. This reporting requirement extends to gifts received by an employee's family members. Exhibit 1 outlines procedures and provides the format for reporting gifts received from foreign officials or governments.

A gift or decoration from a foreign official or government with an estimated value of less than $165 may be retained by the employee or his/her family member. Gifts valued at $165 or more are considered Government property and the Office of Administration (AM) will determine the disposition of such gifts. Upon receipt of the information required in Exhibit 1, AM will provide instructions to the affected employee concerning any necessary disposition action.

4. An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or receive a gift from an employee who receives less pay than himself/herself. Excluded from this regulation are voluntary gifts of nominal value or donations on a special occasion, such as marriage, illness, retirement, or death.

C. Speeches, Lectures and Publications

1. An employee of DEA cannot accept a fee or remuneration from an outside source for a public appearance, a speech, a lecture, or a publication when its content came from official data or ideas which are not public information.

2. An employee shall not engage in teaching, writing or lecturing (with or without compensation) that is dependent on information obtained as a result of his/her Government employment except when either (1) that information has been made available to the general public or (2) the Deputy Attorney General gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

3. The Copyright Act of 1976 provides that any article, manuscript or other writing prepared by an officer or employee of the United States Government as part of that person's official duties is a "work of the United States Government." The act further provides that such "Government works" cannot be granted a

copyright. Accordingly, once a DEA employee receives approval from the Associate Attorney General for publication, the material may be submitted to a publisher without any written consent from the employee. Exhibit 2 is a sample letter for use by employees to correspond with potential publishers concerning this matter.

D. Employment Outside of DEA

1. The term outside employment means any type of employment exclusive of DEA employment, including self-employment, employment by a third party, or participation in any business venture, whether or not there is any profit to the employee. Self-employment includes any participation interest in a business, corporation or franchised operation. It includes any promotion or sale of articles of clothing, cosmetics, household wares, jewelry, or other commodities on behalf of a company, franchise, corporation, business, spouse, relative or friend. Outside employment does not include the ownership of stocks and bonds and an employee's personal management of investments of this kind; nor does outside employment include the ownership of income producing real estate, as long as the employee does not in any manner utilize official time or facilities to manage such property. The management of real estate owned by third parties, however, is considered outside employment. This includes any employment as a "Resident Manager" of an apartment building or complex, even though the only pay received is in the form of reduced personal rent of the employee.

Excluded from this definition are charity drives, fund raising for youth activities, PTA and the like. Additionally, participation in the Military Reserves or National Guard is not considered outside employment; however, when conflicts between DEA duties and Reserve/Guard duty arise, it is expected that employees will make every effort to resolve conflicts in DEA's favor. In all cases, the provisions of paragraph 2 below apply.

2. General Restriction on Outside Employment. No employee shall engage in any outside employment which will create or appear to create a conflict of interest, reflect adversely upon the Department of Justice, or in any manner interfere with availability or the proper and effective performance of the duties of his/her position. See 28 CFR, Section 45.735-9(f).

3. Use of Appropriated Funds. Employees who have secured approval to engage in outside employment are not authorized to use appropriated funds or items purchased or leased through expenditure of appropriated funds in furtherance of their outside employment. While not all inclusive, use of the following is prohibited:

a. Government office space.
b. Government vehicles or Government-furnished transportation.
c. Other Government employees, including courier or messenger services.
d. Franked envelopes or franked mail stickers.
e. Typewriters, word processors, reproduction equipment, bulletin boards, telephone service.
f. Any other item or service purchased by appropriated funds.

4. Advisory Service. There are some requests for outside employment that present clear conflicts of interest and should not be approved, e.g., a Diversion Investigator working part time for a pharmaceutical company or a Contract Specialist working for a company that bids for Government business. Other requests may present an appearance of conflict of interest and should not be approved, e.g., a Diversion Investigator working part-time for a security or investigative service. Some cases are not so obvious. Officials should consult with the Chief Counsel prior to recommending approval or disapproval of a request when there is any question or concern as to its propriety.

5. Professional Employees and Employees in Grades GS-16 through GS-18 (Supergrade). A professional employee is a Chemist, Engineer, Attorney, Physician, Nurse, Certified Public Accountant, Auditor, Accountant, Psychologist, Pharmacist or Social Worker. With the exception of providing public interest professional services as permitted by 28 CFR 45.735-9(c), professional employees may not engage in outside employment which would involve the practice of their profession without the prior approval of the Deputy Attorney General. Professional employees who wish to engage in outside employment in other than a professional capacity need only obtain the approval of the Deputy Assistant Administrator for Personnel.

a. Employees in grades GS-16 through 18 require the approval of the Deputy Attorney General before they may engage in outside employment.

b. Requests must be submitted in writing, in triplicate, through the employee's immediate supervisor and the Headquarters Office Head, Special Agent in Charge, or Laboratory Chief, as applicable, to the Deputy Assistant Administrator for Personnel. The Administrator will express his concurrence/nonconcurrence on those requests requiring the approval of the Deputy Attorney General.

6. Special Agents - 1811 Series. Special Agents occupy positions which place a high premium on their time and attention. Outside employment in most instances will conflict with one or more of the restrictions listed in subparagraph 2 (above), and accordingly (in those instances) is prohibited by law and the Code of Federal Regulations (CFR).

Several factors have been relied on to support a general prohibition against outside employment by Special Agents. These factors include: (a) the desire to assure availability and response of Agents 24 hours a day; (b) an expectation on behalf of the public that Special Agents are fully devoted to the pursuit of their profession and not outside interest or employment; (c) the prevention of a possible diminution of professionalism of the Agent position in the eyes of the public; (d) avoiding a tendency of supervisors and other Agents not to call on individuals so employed; (e) preventing the development of a "nine-to-five" attitude, or impairment of emphasis in recruiting and indoctrination on availability at all times for any assignment to any location; and (f) the fact that Special Agents are eligible for Administratively Uncontrollable Overtime (AUO).

7. Other Core Personnel - GS-1810, 132 and 1320 Series. These personnel have duties and responsibilities which place a

premium on their time and attention. For the most part, they are also in a higher salary bracket. Immediate supervisors are required to carefully scrutinize requests from core employees, paying particular attention to the restrictions listed in subparagraph 2 (above). Requests will be presented to immediate supervisors and then forwarded through the chain of command to the Deputy Assistant Administrator for Personnel.

8. Noncore Employees. Employees occupying positions other than those shown in paragraph 6 above are equally important to the success of DEA's mission. However, it must be recognized that not all of these employees occupy positions in the higher salary bracket due to the classification of the positions occupied. Accordingly, immediate supervisors, at their discretion, may favorably recommend requests for outside employment that do not conflict with the restrictions of subparagraph 2 (above), or exceed twenty hours per week for employees at grades GS-09 and below and a lesser number of hours for those at GS-11 and above. Requests will be presented to immediate supervisors and then forwarded channels to the Deputy Assistant Administrator for Personnel.

9. Request and Authorization for Outside Employment. All DEA employees must have approval prior to engaging in outside employment. To obtain prior approval an employee must present DEA Form 478 (in four copies) to his/her immediate supervisor (file in FFS 550-03). The supervisor will concur or noncur on the form and forward it through channels to the Deputy Assistant Administrator for Personnel for final approval/disapproval. Employees in foreign posts of duty must also have the approval of the Ambassador before engaging in outside employment in the host country.

10. Final Approval Authority. Except for the provisions of subparagraph 5, above, all requests require the final approval of the Deputy Assistant Administrator for Personnel.

11. Annual Requirement, Changes in Employment. Employees who maintain outside employment with the same outside employer, in the same or similar capacity as previously approved, must submit a new request on DEA Form 478 (file in FFS 550-03) once annually between January 1 and January 31. Changes in outside employment must be approved prior to beginning the new employment. Disapproved requests will be returned promptly to the requestor.

12. Distribution of Approved Requests. Copies of requests that are approved will be distributed as follows:

1. Original retained by Personnel Office for information/statistical purposes (FFS 550-03).
2. Copy for inclusion in the Official Personnel Folder (FFS 550-01).
3. Copy returned to the requestor.
4. Copy returned to originating official (FFS 550-03).

E. Gambling, Betting, and Lotteries. No employee of DEA is to participate in gambling, betting, or management of lotteries while on Government-owned or leased property or while on official duty, except in the maintenance of an undercover identity or in approved fund-raising activities. This provision includes operating gambling devices, conducting an organized lottery or pool, running games for money or property, or selling or purchasing numbered tickets. The Chief Counsel will determine what constitutes approved fund-raising activities.

F. Use of Government Property

1. All employees are required to properly use and protect all equipment and supplies issued to or used by them.

2. Government property will only be used for officially approved purposes and will not be used for personal use or benefit.

a. Government mail privileges will not be used for personal purposes.

b. Official Government vehicles (OGV's) will be used only for official purposes. The term official purposes will be interpreted strictly and will not be construed to encompass the mingling of official business with personal business. Use of an OGV for transportation of employees between their domiciles and places of employment can only be justified when affirmatively authorized by statute, as in 31 USC 1344. (See also Subchapter 032 of the Administrative Manual and Section 6124 of the Agents Manual.)

3. No employee of DEA may knowingly purchase, or have another person purchase on his/her behalf, property from the Federal government that was seized by DEA or another Federal agency during an investigation in which employees of DEA participated. Further, no employee may disclose to another person any information concerning such property (i.e., appraised value, etc.) which would give that person an advantage over other prospective bidders at auction.

4. Using OGV's is strictly prohibited under the following circumstances: While under the influence of alcohol or drugs; solely for the purpose of travel to and from residences; for attending to personal business; or for the transportation of any person not engaged in the conduct of official business or not otherwise being transported in the interest of the Government.

5. An employee who willfully uses or authorizes the use of an official Government-owned or leased vehicle for other than official purposes is subject to disciplinary/adverse action. Title 31 USC 1349(b) provides a minimum 30-day suspension for an employee who willfully uses or authorizes the use of any official Government-owned or leased motor vehicle or aircraft for other than official purposes. For the purpose of this section, willful use is defined as unauthorized use with or without illegal intent or intentional disregard, or plain indifference to statutory or regulatory requirements. (The term official Government vehicle OGV) applies to a purchased, leased, seized, or rented vehicle, boat, or aircraft.) It is to be noted that use of a U.S. Government-owned motor vehicle, aircraft, or boat for other than U.S. Government business (including commingling of personal and official business) is unauthorized use and is *not* considered misuse of Government property or misuse of an official Government vehicle.

6. It is DEA policy that in certain instances, employees may transport dependents in official Government Vehicles as follows:

a. DEA personnel otherwise authorized the use of a Government automobile may in certain circumstances be allowed to have dependents accompany them to quasi-social functions to which they have been invited in their official capacity.

b. The functions to which this policy apply are limited to structured events planned in advance and attended by representatives of other agencies in their official capacities.

c. The transportation of dependents in these limited circumstances is deemed to be "official business."

d. Permission in all cases involving the use of an official automobile to transport dependents shall be obtained in writing, in advance, from the Special Agent in Charge, Country Attache, or Headquarters Senior Official (i.e., Deputy Assistant Administrators and above).

These same officials, as described herein, may self-authorize the use of an official automobile, so long as such authorization is in writing in advance of the need, and a copy of the document is promptly forwarded to the next higher-level supervisor.

e. If there is any predictable possibility that an employee or the Government vehicle will be needed for active enforcement work during the period when the vehicle will be used to transport dependents, permission should not be sought and will not be granted.

f. While authority may be given for transporting dependents on out-of-town trips, no per diem or other compensation will be paid to dependents for their travel. The vehicle may be used for intercity travel and in the destination city only to transport dependents to official functions. When out-of-town travel to approved events is by common carrier, permission may be granted for dependents to travel to and from airports in official vehicles. (Costs of dependent travel by common carrier will be paid by the employee, except in those instances when the dependent is covered by official travel orders, as in the case of a permanent change-of-station move.)

g. The decision to use an official vehicle rather than a common carrier for such out-of-town travel must be made without regard to the desirability of having dependents travel with the employee.

h. No dependent is at any time to be the driver of an official vehicle. Employees, while always expected to exercise care and good judgment in their duties, are reminded that even greater care and judgment are expected when they are accompanied in official vehicles by dependents. In this regard, employees will make certain that they are at all times competent to operate the vehicle safely and legally.

7. While not all encompassing, listed below are some examples of instances wherein the use of the OGV is not considered proper and could result in appropriate disciplinary adverse action.

a. Operating an OGV without possessing a valid state driver's license from the state, territory or possession where currently assigned. (State driver's license includes those issued by the District of Columbia, Puerto Rico, or a territory or possesion of the United States.) The license must be in the operator's possession at all times while driving an OGV.

b. Using an OGV to visit relatives, friends, acquaintances, etc., when such visits are not conducted for official business purposes.

c. Using an OGV to transport any individual when such individual is not in an official business capacity.

d. Transporting children to and from school or a spouse or friend to and from work even though the school or place of work is on the regular route to the operator's official duty station.

e. Using the OGV for the express purpose of transporting or towing of personal property when not related to official business; i.e., transporting furniture, gardening equipment and the like or towing boats and/or trailers.

f. Permitting an unauthorized person to operate an OGV.

g. Using an OGV solely for commuting purposes. Storage of an OGV at an employee's residence is permissible only when authority is obtained in accordance with the Agents Manual, Section 6124, and the Administrative Manual, Subsection 0325.5.

h. Traveling to and stopping at a drinking establishment when not in the interest of official business. General discussions of official business relating to enforcement activities conducted in a bar or cocktail lounge do not constitute official business.

i. Using an OGV for personal business such as leaving the duty station or residence to cash paychecks, to pay bills, pick up dry cleaning, grocery shopping, etc.

j. Using an OGV for transportation to social functions; i.e., Christmas parties, office parties, weddings, retirement parties, etc., except when officially representing DEA.

k. Operating an OGV following suspension or revocation of the operator's state driver's license.

l. Leaving the scene of an accident without making the operator's identity known (hit and run).

Use of OGV's in foreign areas is governed by embassy/DEA policy. (See Agents Manual, paragraph 6124.35.)

G. DEA Records and Official Information. Employees will comply with Subsection 0755.1 of the Administrative Manual and DOJ Order 2710.8 regarding removal of documents by a departing employee, maintenance of personal papers, and security and integrity of official records. No employee shall:

1. Intentionally destroy, mutilate, remove, falsify, conceal, alter, or make an unauthorized copy of any Government record for his/her own purposes.

2. Make false or fraudulent statement or create any false document.

3. Use information which comes to that employee by reason of his/her employment with DEA for financial gain for himself/herself or for another person or make any other improper use of such information.

4. Knowingly and willfully communicate, furnish, transmit, or otherwise divulge privileged, administratively controlled or classified information to an unauthorized person which reasonably could be expected to cause damage to the national security of the United States, would adversely affect the accomplishment of DEA's operation and mission, or would be contrary to law, regulation or public policy, including, but not limited to:

a. Unauthorized disclosure of classified information.
b. Unauthorized disclosure of administratively controlled information such as:
(1) Identifying informants.
(2) Identifying enforcement targets and operations.
(3) Identifying undercover agents.
(4) Disclosing the contents of confidential interviews.

H. Employee Indebtedness. No employee is to fail, without good reason, to honor in a proper and timely manner all debts acknowledged by him/her to be valid, reduced to judgment by a court, or imposed by law, and to provide satisfactory settlement thereof.

I. Employee Testimony. An employee, when directed to do so by DEA authority, must testify or respond to questions under oath as required which concern matters of official business.

J. Employee Political Activity

1. Activities Permitted
a. Employees are urged to be informed, to register and vote, and to express political opinions.
b. Employees may attend political rallies or join political clubs.
c. An employee may be a candidate in a nonpartisan local election.
d. An employee who lives in certain areas of Maryland, Virginia, or other privileged areas (as listed in 5 CFR 733.124) is permitted to:

(1) Run for local office as an independent (or nonpartisan) candidate, but not as the candidate of a national or State political party, such as the Democratic or Republican Parties.

(2) Take an active part in the campaign of an independent candidate for local office even though the candidate is opposed by a candidate of a national party and even though the independent candidate receives the endorsement of partisan political groups.

2. Activities Generally Not Permitted (except as provided in paragraph J.1.d of this section). An employee may not:
a. Take an active part in the operation or management of a political party or in the campaign of its candidates.
b. Run for public office in any national, state, county, or municipal office as a candidate of a partisan political party.
c. Make campaign speeches or engage in other activity to elect a partisan candidate.
d. Circulate nominating petitions.
e. Distribute campaign literature in a partisan campaign.
f. Organize or manage partisan political rallies or meetings.

3. Activities Prohibited Without Exception. An employee may not:
a. Use his/her position to influence votes or solicit funds from fellow employees.
b. Work to register voters for one party only.
c. Hold office in a political party or club.

K. Required Reports. Any employee required to submit specific, periodic reports must submit such reports on a timely basis and in conformance with the stated requirements.

L. Employee Participation in a Riot or Civil Disorder. Any employee convicted of a felony (any offense for which imprisonment is authorized for a term exceeding 1 year) by any Federal, State or local court of competent jurisdiction in connection with a riot or civil disorder will, on the date of their conviction becoming final, be removed from their position with DEA. This penalty covers conviction of felony for:

1. Inciting a riot or civil disorder.
2. Organizing, promoting, encouraging, or participating in a riot or civil disorder.
3. Aiding or abetting any person in inciting, organizing, promoting, or encouraging a riot or civil disorder.

M. Misuse of Office and Coercion. No employee will:

1. Use his/her official position for private gain.
2. Coerce or give the appearance of coercing any person to provide financial benefit to himself/herself or to another person.
3. Use his/her official position to give preferential treatment to another employee.
4. Attempt to bribe public officials and/or witnesses.
5. Conduct unauthorized or illegal searches of premises, automobiles, or persons.
6. Embezzle, steal, purloin, sell, convey, or dispose of in an unauthorized manner any record, voucher, money, substance, or thing of value to the United States.
7. Use his/her position to sell, collect for personal use, or otherwise dispose of controlled substances in an unauthorized manner.
8. Use his/her position to tamper with or remove any evidence purchased, seized, or otherwise in possession of DEA or one of its employees.
9. Solicit or otherwise engage in personal business transactions which involve or give the appearance of involving the use of official time or facilities.
10. Associate with individuals known or suspected to be involved in illegal drug trafficking or other criminal activity in other than a strictly professional capacity. This prohibition also applies to informant contacts. Extrinsic social, financial or business contacts are expressly prohibited.

N. Use of Intoxicating Beverages

1. No employee will consume intoxicating beverages in DEA offices or on Government property designated for the conduct of official business.
2. No employee will be under the influence of intoxicants at the start of or at any time during working hours.

O. Use of Drugs. No employee of DEA will use a controlled substance except an over-the-counter preparation containing a controlled substance prescribed by a licensed physician for treatment of illness or condition.

** Addition

1. Public Laws 91-616 and 92-225 and implementing Controlled Substances Act regulations provide for the establishment of appropriate prevention, treatment, and rehabilitation programs for Federal employees suffering from alcoholism or drug abuse. Section 201 of Public Law 91-616 and Section 413 of Public Law 92-225 allow exclusion from their provisions of any position which is determined by regulation to be a sensitive position. Department of Justice Order 1732.2 designates all positions within DEA as sensitive. DEA is excluded from the provisions of Public Law 91-616 and 92-225 and all regulations implementing these laws. Although DOJ Order 1732.2 precludes persons with alcohol or drug problems from DEA employment, DOJ Order 1792.1 allows employees with alcohol or drug problems to seek assistance under the Employee Assistance Program.

2. Employees in a duty status are prohibited from being under the influence of alcoholic beverages or drugs. Under the influence means not only all the well known and easily recognized conditions and degrees of being under the influence (such as unsteady gait, slurred speech, fixed stare, loss of muscular control, strong odor of alcohol), but also means that an employee has consumed alcoholic beverages or drugs to an extent that would deprive the employee of normal clearness of intellect and personal control which the employee would otherwise possess.

P. Unauthorized Recording of Employee Conversations. No employee is to record conversations of another employee without the mutual consent of all parties, except in the conduct of bona fide official investigations under the auspices of the Office of Professional Responsibility or other appropriate organization.

Q. Occurences an Employee Must Report to His/Her Supervisor

1. An employee must inform his/her supervisor whenever he/she discharges a firearm, in other than a sporting or recreational situation or practice on a firing range, regardless of whether the employee is on or off duty (see Agents Manual, Section 6122).

2. An employee of DEA must immediately report to his/her supervisor any arrest and any instance whereby he/she has been taken into custody, held for investigation, or detained for questioning, regardless of whether the employee is in a duty or nonduty status at the time of the occurrence. Minor traffic violations while operating a non-Government vehicle, such as parking violations or other traffic violations involving a fine or collateral of $50 or less, need not be reported; however, any infraction with an official Government vehicle must be reported immediately to the employee's supervisor.

3. Any other illegal activity or misconduct must be reported and is not limited to the above instances.

R. Reporting Situations Which Reflect on the Integrity of an Employee or on DEA. Allegations or complaints regarding infractions of these standards of conduct must be reported to proper DEA authorities.

1. Any employee who receives or comes into possession of any information which indicates or alleges that another employee of DEA is engaged in improper or illegal activities in violation of these standards of conduct will immediately report such information to his/her supervisor or directly to the Office of

Professional Responsibility. (See the Planning and Inspection Manual Sections 8111, 8112, 8113 and 8121.) The employee must determine that he/she is reporting information in good faith and is not simply reporting a grievance or personal complaint concerning another DEA employee. No employee may make a malicious report against another DEA employee.

2. If the supervisor receives such a report, he/she must make a determination whether the matter is of lesser significance which can be handled at the local level or represents a serious matter which warrants a written report to the Office of Professional Responsibility. (See the Planning and Inspection Manual, Section 8121.) When in doubt, the supervisor should contact the Personnel Officer or the Office of Professional Responsibility for guidance.

3. If the matter is reported either orally or in writing directly to the Office of Professional Responsibility, such office, if requested by the employee making the report, will keep his/her identity in absolute confidence unless it is subsequently determined that the reporting of such information was intended to be malicious, or unless the reporting employee is required to appear as a witness in either administrative or criminal proceedings.

S. Employee Dress. All DEA employees on official duty will present a business-like appearance at all times. Except when authorized by their supervisor to use another mode of dress because of the nature of their regular job duties or as a result of the need to perform a special task or for other circumstance (e.g., range or undercover surveillance), employees will adhere to the dress standards described herein. Male employees will wear dress shirts, ties and slacks. Suit or sport jackets will be worn when dealing with the public. Female employees will wear conservative dresses, dress slacks or skirts and sweaters or blouses. All employees will be neat and well-groomed at all time.

2735.17 Limited Duty

17-1 General

A. Any employee may be placed on limited duty (integrity/misconduct) or medical restriction, which will continue for an appropriate period of time depending on the circumstances. Placing an employee on limited duty or medical restriction is not to be construed as a disciplinary action. The management official placing an employee on limited duty or medical restriction will define what duties may or may not be performed by the employee while in such status.

B. In emergency situations, all supervisors, regardless of grade, have authority to immediately place an employee on limited duty or medical restriction for a period not to exceed 48 hours.

C. Special Agents in Charge, Laboratory Chiefs, Headquarters Senior Officials, and Country Attaches are delegated the authority to place employees in a limited duty status or medical restriction for periods of 30 days or less. The Deputy Assistant Administrator for Personnel (AH) is delegated the authority to place an employee in a limited duty or medical restriction status for periods in excess of 30 days and to approve Leave Without Pay, or

sick leave in excess of 30 days (see Note). The Chairman, Board of Professional Conduct, is delegated the authority to place employees in a limited duty status during all or part of an advance notice period for a proposed adverse action.

Note: Employees on sick leave in excess of 30 days (excluding pregnancy) must be medically cleared by AHMH before they are allowed to return to work. The clearance process, in most cases, will simply be a letter from the employee's attending physician indicating the diagnosis, whether or not the employee can return to work, as well as any limitations.

D. Any official who initially places an employee on limited duty or medical restriction status will, within 48 hours, notify AH of this action. Notification shall include the name, grade, and series of the employee placed on limited duty; the reason for this action; and the estimated duration of the limited duty or medical restriction status, if known. All such notifications will be in writing, and include notification to the affected employee(s). Exhibit 3 is a sample memorandum which may be used to notify an Agent concerning his/her placement on limited duty. An example of a notification for placement on medical restriction is not appropriate because each case differs based on the individual circumstances. Termination of limited duty/medical restriction status will be in writing. AH will provide written notification concerning employee(s) on limited duty/medical restrictions each month to the Executive Secretary, Career Board. A copy will be forwarded to the Deputy Administrator (AD), the Assistant Administrator for Operations (AO), and the Assistant Administrator for Operational Support (AA).

17-2 Limited Duty - Integrity/Misconduct

A. DEA Agents who are involved in specified incidents, such as shooting a person, will be placed on limited duty. Such duty will consist of: not participating in surveillance, arrests, searches, and not developing new enforcement matters. The Agent may maintain a presence within the DEA office, and perform those duties deemed appropriate by management.

B. An employee may be placed on limited duty when the employee is under investigation by the Office of Professional Responsibility or at anytime when the employee's official superior(s) determines that the employee's conduct warrants such action.

C. Employees who are placed on limited duty will not be: permitted to work overtime (e.g., scheduled overtime or AUO); authorized to operate an OGV or to carry a firearm; to carry DEA credentials or badges.

D. The management official placing an Agent on limited duty for a period of up to 30 days will immediately initiate a Standard Form 52 (SF-52), Request for Personnel Action, to discontinue the Agent's AUO premium pay. Termination of AUO pay will be effective at the beginning of the pay period which follows the date on which the Agent was placed in a limited duty status. Disallowance of AUO pay will continue until the Agent is permitted to return to full duty, at which time the appropriate management official will

initiate an SF-52 to resume the Agent's AUO pay. Resumption of AUO pay will be effective the pay period following the date on which limited duty status was terminated.

17-3 Medical Restriction

A. An employee may also be placed on medical restriction due to medical reasons. In most cases, Headquarters will be apprised of the medical condition through: (1) medical examinations provided under the Health Protection Program; (2) the Special Agent, following diagnosis by his family physician; (3) the Special Agent's supervisor, when performance is affected by disease or injury sustained in the interval between agency periodic examinations; or (4) through the Employee Assistance Program.

B. It is the employee's responsibility to inform his/her supervisor of any conditions which interfere with the performance of the full range of his/her assigned duties. The supervisor will insure that AH is promptly notified in every instance in which an employee is placed on medical restriction. The Employee Relations Unit (AHME) will maintain a record of all employees on medical restriction and will coordinate with the Health Services Unit (AHMH) in developing recommendations for necessary action.

C. Each incapacitating or potentially incapacitating medical condition will be evaluated by AHMH on a case-by-case basis. This evaluation will include specific consideration of such factors as prognosis, the extent to which the condition may pose a threat to the safety of the employee or others, the degree to which the condition may be medically controlled, the impact of the condition upon the employee's ability to perform his/her current assignment, the advisability of a geographical change, and other factors which tend to individualize each problem.

D. If the Chief, AHMH, believes that the medical condition of the employee justifies temporary restriction of activities, AHMH will recommend to AH that the employee be placed on medical restriction. AHMH will continue to monitor each case and will recommend termination of medical restriction status as appropriate.

E. An Agent who is placed on medical restriction and remains in an active duty status will continue to receive AUO premium pay for 90 days following the date he/she was placed in such status. During the 90-day period the Agent's duties will be appropriately limited, but the Agent will be expected to perform irregular and occasional overtime duties typically associated with the 1811 position. As indicated above, the Agent's case will be continuously monitored to determine whether the Agent is able to resume the performance of full duties, or whether the Agent should remain on medical restriction.

If warranted by the medical evidence in the case, an Agent will be returned to full duty and/or removed from medical restriction status during the 90-day period. If Agent continues to be on medical restriction at the end of the 90-day period, his/her case will be reviewed by AH.

If, after revewing the case and consulting with AHMH, AH determines the Agent is able to perform the full range of criminal

investigative duties associated with his/her geographical assignment, including overtime duties, continuation of AUO premium pay will be authorized by AH. However, if AH determines at the end of the 90-day period that the Agent is not medically able to perform the full range of his/her assigned duties at the Agent's geographical location, and there is no indication that the Agent will be able to perform the full range of duties in the near future, AH will initiate the appropriate personnel action to discontinue the Agent's AUO pay. Termination of AUO pay will be effective the pay period immediately following the 90-day period. Disallowance of AUO pay will continue until such time as the medical evidence in the case demonstrates to the satisfaction of AH that the Agent is able to perform the full range of criminal investigative duties associated with his/her geographical assignment. The resumption of overtime work and AUO pay will be effective at the beginning of the pay period which follows the date on which AH made the determination. The Agent will be advised in writing of all actions taken in his/her case by AH.

F. After an employee has been in a medical restriction status for 6 months, AH will present the facts to the Career Board, who will consider directing a reassignment to a position for which the employee is medically and professionally qualified. The Career Board will take into account such factors as length of service, present assignment, grade, position vacancies within the organization, the seriousness of the disability, the public safety, and any other factors deemed appropriate. The Deputy Administrator, as Chairman of the Board, will make the final decision in each such case. AH will advise the employee of his/her right to file for disability retirement, if appropriate.

G. Decisions affecting the career of an employee who has suffered medical impairment will be made with maximum compassion for the employee. Recognizing the need to retain the experience and expertise of these employees, there will be open-minded consideration of position reassignment to accommodate the restrictions imposed upon an employee because of medical conditions.

2735.18 DEA Smoking Guidelines

18-1 General

A. It is DEA policy to protect the rights of nonsmokers (both Federal employees and visitors) by restricting smoking in certain areas of DEA-occupied buildings and facilities. DEA also recognizes the rights of individuals to smoke provided that such action does not endanger life or property, cause discomfort or unreasonable annoyance to nonsmokers or infringe upon their rights.

B. Recognizing the fact that smoking is dangerous to the health of smokers; that tobacco smoke in a confined area creates a health hazard to people suffering from heart disease, respiratory diseases or allergies related to tobacco smoke; and that smoke in a confined area may be irritating to nonsmokers and violates their privilege of breathing air relatively free from tobacco smoke contamination, every effort will be made to provide an environment reasonably free of such contaminants.

C. DEA will establish a "nonsmoking" program to assist smokers who wish to stop smoking.

18-2 Guidelines

A. Smoking will not be permitted in conference rooms, libraries, medical units, ADP areas, mail rooms, elevators or classrooms. Conference rooms and classrooms are defined as rooms designated for meetings and training sessions, or for instructional purposes, and are not used as an office or part of an individual's usual working area. Included in this definition are multi-purpose rooms which are used as conference rooms, classrooms, or auditoriums. The person responsible for holding the conference, meeting, or training session is also responsible for enforcing the no smoking rule. Ashtrays and other receptacles will not be placed in non-smoking areas.

B. Smoking will normally not be permitted in corridors, lobbies, or restrooms. (Note: When it is not feasible to designate smoking areas within the existing assigned space, then corridors, restrooms, and lobbies may be designated as smoking areas with the cooperation of the building manager.)

C. Smoking will be permitted in the following designated areas, assuming the building manager concurs and there are proper ash-trays and receptacles available:

1. Cafeterias and automatic vending areas.
2. Office lunch areas.
3. Other areas not specifically prohibited in "A" above.

D. Office space may be designated as a smoking area provided that the space is configured to limit the involuntary exposure of non-smokers to secondhand smoke; e.g., the office space involved must be large enough and sufficiently ventilated to provide separate smoking and nonsmoking sections which protect the nonsmoker from involuntary exposure to smoke. DEA is not required to make any expenditures for structural or nonstructural changes to accommodate the preferences of nonsmoking DEA employees. Additionally, efficiency of work units or administrative effectiveness shall not be impaired and additional space will not be required. The resolution of employee problems pertianing to smoke-free work areas will be handled by employee supervisors.

E. In a common work area, in which two or more employees are assigned, supervisors will prohibit smoking if any one employee objects to tobaco smoke in the immediate work environment on the basis that it is having an adverse effect upon his or her health.

F. Smoking will be allowed in private offices unless a nonsmoking visitor to the office objects to the smoke.

G. Smoking will be prohibited in those work environments in which the combination of smoking and special occupational factors present a fire hazard or particular hazard to the health and safety of employees.

1. Laboratories. Smoking is not permitted in laboratories (including desks). Space may be designated in administrative or lounge areas, and must be posted with appropriate signs.

2. Warehouse and Storage Facilities. Smoking is not permitted in these environments.

3. If, for any reason, DEA or respective management determines a need to evacuate any DEA-occupied building, all smokers in designated areas will immediately extinguish all smoking material and evacuate the premises according to established emergency procedures.

H. Appropriate signs designating smoking/nonsmoking areas should be available by contacting the local building manager. The Headquarters point-of-contact for this program is AHMH at (202) 633-1244 or (FTS) 633-1244.

I. Each employee is responsible for observing the designated "No Smoking" signs in all DEA, DOJ, and GSA controlled space. Failure to do so may result in disciplinary action.

2735.19 Penalty Guidelines. Appendix 2735A is a partial listing of offenses and the corresponding possible penalties that may be imposed for certain types of offenses. These penalties are in addition to any applicable penalty prescribed by law. For additional guidance see Chapter 735, Federal Personnel Manual.

Exhibit 1

REPORTING GIFT OR DECORATION VALUED AT $50 OR MORE[1] RECEIVED FROM FOREIGN OFFICIAL AND/OR GOVERNMENT

I. Responsibilities

A. Employees. The recipient of a gift from a foreign official or government, which has an estimated value of $50 or more, will file a statement using the format shown below. Forward the completed statement through channels to the Deputy Assistant Administrator for Administration within twenty-one (21) days of receipt of the gift.

B. Deputy Assistant Administrator for Administration (AM). This official will submit a consolidated annual report, consisting of all statements from employees reporting gifts during the preceding year, to the Department of Justice, Office of Management and Finance, by January 15 of each year.

II. Format of Statement

The statement must contain the following information:

Name of Recipient: _____

Current Duty Station: _____

Series/Grade: _____

Description of Gift/Decoration: _____

_____

_____

_____

_____

_____

Estimated or Known Value: _____

Date and Place of Acceptance: _____

Disposition/Location: _____

_____

_____

Identification of Foreign Donor and Donor's Government: _____

_____

_____

_____

_____

_____

_____

_____

[1] See paragraph 2735.16B.

U.S. Department of Justice

Drug Enforcement Administration

Dear :

As an employee of the U.S. Government, I do not have a right to assign a copyright for the enclosed article. Therefore, it is not necessary for me to provide you with my written consent for its publication.

The article in a "work of the United States Government" as defined in the U.S. Copyright Act of 1976. It was written as part of my official duties as an employee of the U.S. Government and thus cannot be granted a copyright.

I affirm that this manuscript is original, has not previously been published, and is not being submitted for publication elsewhere. It is freely available to you for publication without a copyright notice and there are no restrictions on its use, now or in the future.

I trust that this letter is sufficient assurance that I retain no rights to the article.

Sincerely,

(See paragraph 2735.16C.)

Memorandum

Subject	Date
Placement on Limited Duty (FFS: 570-06)	

To (Name)
(Title)
(Location)

From Special Agent in Charge

Effective immediately, I am placing you in limited duty status in accordance with paragrah 2735.17 of the Personnel Manual. This action is being taken as a result of an ongoing (integrity) (misconduct) investigation.

Limited duty will be for an initial period not to exceed 30 days. The Deputy Assistant Administrator for Personnel (AH) may extend your limited duty status beyond the 30 day period if it is subsequently determined that such action is warranted.

During the term of your limited duty status you will not be permitted to work scheduled overtime or Administratively Uncontrollable Overtime (AUO). Since you will not be performing AUO duties, you will not receive AUO premium pay while you are on limited duty. In addition, you will not be authorized to operate an OGV or to carry a firearm and you will not be permitted to carry your DEA credentials or badge. Accordingly, you are directed to deliver your firearm, credentials, and badge to (identify official) immediately.

This action is not a disciplinary measure, but is a precautionary measure intended to protect both your interests and the interests of DEA while the above mentioned investigation is being conducted.

STANDARD SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES

1. This schedule is intended as a guide to be used in determining appropriate discipline to impose by type of offense committed. The offenses listed are not inclusive of all offenses. Also, the table does not cover discipline required by law. Chapter 735, Federal Personnel Manual, contains additional statutory and nonstatutory provisions relating to conduct of Federal Government Employees. The Standards of Conduct (28 C.F.R. 45) of the Department of Justice and Section 2735 contain further prohibitions.

2. Normally, penalties imposed should be within the range of penalties provided for an offense. In aggravated cases, a penalty outside the range of penalties may be imposed. As one example, supervisors and managers, because of their responsibility to demonstrate exemplary behavior, may be subject to a greater penalty than is provided in the range of penalties. When a more severe penalty than that provided for in the range of penalties is proposed, the adverse action file should document the reason for imposing a penalty beyond the range of penalties for an offense.

3. Many of the items listed in this schedule combine several offenses in one statement. When constructing a reason, use only that portion of the listed offense that specifically applies. Also, in constructing a reason, it is better to use the SPECIFIC CONDUCT, and then relate that specific conduct to a particular offense in the Schedule.

4. Removal proceedings may be instituted against an employee for any four, not necessarily related, reprimands and/or adverse actions in any 24-month period.

5. Where appropriate, consideration may be given to reduction in grade in lieu of removal.

6. Suspension penalties on this schedule refer to calendar days.

7. Reckoning periods start with the date management becomes aware of the offense.

8. Section 2752 provides specific procedures for taking disciplinary and adverse actions.

9. Copies of this schedule must be made available to all employees. This can be accomplished by any one or a combination of the following: (a) advise all employees where the Schedule may be reviewed; (b) provide copies of the Schedule to all covered employees; and/or (c) post copies of the Schedule on bulletin boards and/or other appropriate areas.

10. The offenses considered most serious in the Schedule provide for a penalty from reprimand to removal on a first offense because the Schedule is (a) intended to provide supervisors and managers maximum flexibility, and (b) covers many positions of differing sensitivities in the Department. For instance, commission of such a serious offense by an attorney, law enforcement employee, supervisor, manager, etc., might always warrant removal on a first offense whereas a forklift operator in a warehouse might not necessarily be removed on a first offense for such a matter.

NATURE OF OFFENSE	EXPLANATION	DISCIPLINE			RECKONING PERIOD
		FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	
1. Unexcused or unauthorized absence of 8 hours or less.	Unauthorized absence of 8 hours or less, tardiness, leaving the job without permission.	Official reprimand to 1-day suspension	Official reprimand to 5-day suspension	Official reprimand to removal	6 months
2. Unexcused or unauthorized absence of between 1 and 5 consecutive workdays.	Unauthorized absence of 8 to 40 hours.	1-day to 5-day suspension	5-day suspension to 15-day suspension	15-day suspension to removal	1 year
3. Excessive unauthorized absence.	Unauthorized absence of more than 5 consecutive workdays.	5-day suspension to removal	15-day suspension to removal	Removal	2 years
4. Careless workmanship or negligence resulting in spoilage or waste of materials or delay in work production.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
5. Failure or delay in carrying out orders, work assignments, or instructions of superiors.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
6. Failure to honor just debts without good cause.	A just financial obligation is one acknowledged by the employee, reduced to judgment by a court or imposed by law.	Official reprimand	Official reprimand	Reprimand to removal	2 years
7. Loafing, wasting time, sleeping on the job, or inattention to duty.	Potential danger to safety of persons and/or actual damage to property is a consideration in determining severity of the penalty, as is potential or actual adverse impact on Government operations.	Official reprimand to removal	15-day suspension to removal	Removal	2 years

NATURE OF OFFENSE	EXPLANATION	DISCIPLINE			RECKONING PERIOD
		FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	
8. Disobedience to constituted authorities, or refusal to carry out a proper order from any supervisor or other official having responsibility for the work of the employee: insubordination.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
9. Failure to observe: (1) precautions for personal safety; (2) posted rules; (3) signs; (4) written or oral safety instructions, or failure to use protective clothing and equipment.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
10. Unauthorized possession of, use of, loss of, or damage to Government property or the property of others, including a U.S. Government owned motor vehicle, aircraft or boat.	Use of U.S. Gov't-owned motor vehicle, aircraft or boat for other than official U.S. Gov't business (including commingling personal or official business) is UNAUTHORIZED USE and is NOT considered misuse. (Note: 31 USC 1349 (b) provides a minimum 30-day suspension for willful use or authorized for use for other than official purposes. Willful use is (a) intentional unauthorized use with or without illegal intent; or (b) careless or intentional disregard or plain indifference to statutory or regulatory requirements.	Official reprimand to removal	15-day suspension to removal	Removal	2 years
11. Gambling or unlawful betting on Government owned or leased premises.		Official reprimand to 10-day suspension	10-day suspension to removal	15-day suspension to removal	2 years
12. Promotion of gambling on Government owned or leased premises.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
13. Malicious damage to Government property or the property of others.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
14. Endangering the safety of or causing injury to personnel through carelessness or failure to follow instructions.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
15. Theft or attempted theft or misappropriation of Government property or the property of others.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
16. Conversion of Government funds to personal use.	Includes, but is not limited to, travel advances, imprest funds, or amounts received as collections.	Official reprimand to removal	15-day suspension to removal	Removal	2 years

NATURE OF OFFENSE	EXPLANATION	DISCIPLINE			RECKONING PERIOD
		FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	
17. Disorderly conduct, fighting, threatening or attempting to inflict bodily injury to another, engaging in dangerous horseplay.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
18. Disrespectful conduct: use of insulting, abusive or obscene language to or about others.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
19. Refusal to cooperate in an official U.S. Government inquiry or investigation, including a refusal to answer work-related questions or attempting to influence others involved in the inquiry.	Includes administrative or criminal investigation, grievance inquiry, EEO investigation, and any other administrative inquiry.	Official reprimand to removal	15-day suspension to removal	Removal	2 years
20. Reporting for duty or being on duty under the influence of intoxicants or other drugs: unauthorized possession of intoxicants or drugs on Government owned or leased premises.		Official reprimand to removal	15-day suspension to removal	30-day suspension to removal	2 years
21. Criminal, dishonest, infamous, or notoriously disgraceful conduct.	On or off duty.	Official reprimand to removal	15-day suspension to removal	Removal	2 years
22. Falsification, misstatement, exaggeration or concealment of material fact in connection with employment, promotion, travel voucher, any records, investigation or other proper proceedings.	Includes but is not limited to the destruction of records to conceal facts, and a concealed conflict of interest in the performance of official duties.	Official reprimand to removal	15-day suspension to removal	Removal	2 years
23. Discrimination in official action against an employee or applicant because of race, age, religion, sex, national origin, physical handicap, or any reprisal action taken against an employee for filing a discrimination complaint, grievance, or complaint with the Special Counsel, MSPB.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
24. Use of Department of Justice identification for other than official U.S. Government business.	Example: Use to coerce, intimidate, or deceive (includes DOJ credentials, ID cards, badges, various bureau credentials and badges).	Official reprimand to removal	15-day suspension to removal	Removal	2 years
25. Receiving or soliciting gifts, favors or bribes in connection with official duties.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
26. Intentional violations of rules governing searches and seizures.	Example: False statements in obtaining warrants, disregard of warrant requirements.	Official reprimand to removal	15-day suspension to removal	Removal	2 years
27. Reckless disregard of rules governing searches and seizures.	Example: Gross errors in obtaining warrants when standard procedure is to check further and there is time to check further.	Official reprimand to removal	15-day suspension to removal	Removal	1 year

NATURE OF OFFENSE	EXPLANATION	DISCIPLINE			RECKONING PERIOD
		FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	
28. Negligent violations of rules governing searches and seizures.	Example: Executing a warrant at wrong address, failing to check names of suspects.	Official reprimand to 1-day suspension.	Official reprimand to 5-day suspension.	Official reprimand to removal	1 year
29. Employment outside DEA without permission.	(See Personnel Manual Section 2735, Standards of Conduct.)	Reprimand to removal	3-day suspension to removal	10-day suspension to removal	2 years
30. Improper operation of an official government vehicle.	This includes violating traffic regulations, reckless driving, etc.	Reprimand to 5-day suspension	3-day to 10-day suspension	10-day suspension to removal	2 years
31. Having a financial interest which is in conflict with employee's duties or responsibilities.	Holding proprietorship, job or other direct or indirect interest which could be enhanced by your DEA position.	Reprimand to removal	15-day suspension to removal	Removal	2 years
		NOTE: Consideration may be given to change in assigned duties or divestment of conflicting interest.			
32. Acceptance of gifts, gratuities, entertainment, favors, reimbursement or loans from any person associated with any DEA activity.		Reprimand to removal	15-day suspension to removal	Removal	2 years
33. Acceptance of fee for speeches, lectures, or publications given or written as part of official duties, or *unauthorized disclosure of administratively controlled or classified information*.		Reprimand to removal	15-day suspension to removal	Removal	2 years
34. Conviction of participation in a riot or civil disorder.		Removal			2 years
*35. Unauthorized use or possession of narcotics, dangerous drugs, or marijuana.		Official Reprimand to Removal	Removal		2 years*
36. Misuse of Government property or the property of others.	This does not apply to unauthorized use. See explanation #10.	Official reprimand to removal	5-day suspension to removal	15-day suspension to removal	2 years
37. Unprovoked assault, resisting constituted authority.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
38. Failure to provide required testimony.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
39. Operating an official government vehicle while under the influence of intoxicants.		Official reprimand to removal	15-day suspension to removal	15-day suspension to removal	2 years
40. Deliberate mutilation, removal or falsification of any DEA record.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
41. Conduct prejudical to the government.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
42. Misuse of office.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
43. Improper use of a firearm, unauthorized or illegal possession of a firearm.		Official reprimand to removal	10-day suspension to removal	Removal	2 years
44. Unauthorized recording of employee conversations.		Official reprimand to removal	15-day suspension to removal	Removal	2 years
**45. Tampering/ Adulteration/ Substitution of Drug Testing Sample.		Official Reprimand to Removal	15-day suspension to removal	Removal	2 years**

* Revision
** Addition

DRUG ENFORCEMENT ADMINISTRATION
DOMESTIC OPERATIONS GUIDELINES*

The following guidelines are intended to promote efficiency in the operations of the Drug Enforcement Administration (DEA) and to improve coordination between DEA and other branches of the Department of Justice. The imposition of any sanction for failure to comply with these guidelines remains exclusively within the jurisdiction of the Attorney General and the Administrator of DEA, and such other persons as they may designate.

These guidelines provide only 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.

I. ENFORCEMENT ACTIVITIES

A. Objective

1. Enforcement activities are those procedures employed by DEA Special Agents intended to result in (1) the arrest, prosecution and incarceration of drug traffickers, (2) the disruption of illicit traffic, (3) the reduction of drug availability through seizure of drugs and equipment necessary for operation of drug networks, and (4) deterrent effects on other traffickers by discouraging continued or potential trafficking.

2. Enforcement activities shall be undertaken with the primary objectives of prosecuting individuals, or individuals acting in concert, who finance, control, or direct drug trafficking organizations, or of interdicting the flow of drugs from significant drug trafficking operations.

3. Enforcement activities of DEA include what are traditionally considered investigation activities and intelligence activities. For the purposes of these guidelines, investigation is defined as the process of gathering evidence primarily for the immediate purpose of initiating a criminal prosecution, or for the seizure of specific unlawful shipments of controlled substances. The term "investigation" as used in these guidelines is not intended to include investigations of "leads" originated by or furnished to DEA offices. For the purposes of these guidelines, intelligence is defined as information gathered in support of the mission of DEA which is not collected primarily for the immediate purpose of initiating a specific prosecution, but which may ultimately lead to prosecution of one or more individuals or the seizure of unlawful shipments of controlled substances.

4. DEA investigations often produce ancillary intelligence, and DEA intelligence activities often produce evidence useful in criminal prosecutions. Internal review mechanisms provided for by these guidelines are not intended to apply to sporadic intelligence activities; nor are such activities to be reported to the United States Attorneys as investigations under Section I.D.

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* As amended, December 20, 1979.

of these guidelines. On the other hand, the systematic gathering of information targeted on an individual or individuals, or on a drug trafficking operation, which continues for a period--and in a manner--typically associated with an investigation, shall be considered as an investigation within the meaning of Sections I.B., C., and I.D. (relating to consultation with United States Attorneys).

B. Initiating Enforcement Activities

1. Investigation may be initiated based on facts or information indicating possible violation of the Controlled Substances Act, or other laws within the investigative jurisdiction of the Drug Enforcement Administration.

2. Supervisory approval of anticipated enforcement activity, including undercover operations as defined in these guidelines, is required prior to any Special Agent, informant, or defendantinformant, undertaking action. In each investigation an initiation report will be prepared by the Special Agent setting out the initial basis, targets, and objectives for the investigation.

C. Review and Continuation of Enforcement Activities

1. All review and approval for continuation of enforcement activities as provided below shall be reflected in writing.

2. An Agent's immediate supervisor shall review each investigation at regular intervals designed to ensure timely oversight of the conduct of the investigation, including undercover operations, and progress toward meeting the objectives of enforcement activities. The supervisor should consider such developments in the investigation as changes in the targets or objectives, assignment of additional agent resources, approval of significant amounts for purchase of information or evidence, and review requirements provided elsewhere in these guidelines in setting the review schedule.

3. Investigations reviewed under I.C.(2) may continue:

(a) where there is a clear indication of a violation of law within DEA's investigative jurisdiction and additional investigation of the alleged violators is required; or

(b) in the absence of a clear indication of a violation of law, the Agent's immediate supervisor shall authorize continued investigation only if there is substantial reason to believe that the investigation may:

(1) In DEA-initiated cases, lead to the prosecution of one or more individuals who finance, control, or direct a drug trafficking organization, or to interdiction of the flow of drugs from a significant drug trafficking operation (e.g., seizing a major shipment or processing laboratory);

(2) In non-DEA-initiated cases, meet the objectives set by the Drug Enforcement Administration for such cases (e.g., State or local prosecution of locally significant drug law violators).

All decisions to continue investigations shall meet the objectives of enforcement activities, and investigations shall continue in accordance with other provisions of these guidelines.

4. If enforcement activity is discontinued pursuant to paragraph I.C.3 above, enforcement activity may be reinstituted at any time new information consistent with the standards of paragraph I.C.3 is received or developed.

5. SAC's shall ensure that each investigation is reviewed at the second supervisory level or above on a regular basis, no more than 6 months after its initiation, and regular intervals (not to exceed 6 months) for as long as the investigation continues, and may authorize its continuation if the standards set forth in paragraph I.C.3.(a) or (b) are met.

6. Upon completion of a review under paragraph I.C.5, SAC's shall report to DEA Headquarters each investigation authorized to continue under I.C.3 above, and shall set forth their reasons for continuing investigation.

7. SAC's will be responsible for reporting to DEA Headquarters on all important intra- and interdivisional investigations which indicate potential multiple prosecutions of important violators. DEA may impose additional review and reporting requirements consistent with these guidelines.

D. Coordination with United States Attorneys

The purpose of this section of the guidelines is to insure that United States Attorneys are advised of all major investigations for which they will have responsibility for prosecution. Consistent with the requirements provided in these guidelines, DEA shall insure that the United States Attorneys are fully advised of investigations on a timely basis, and each United States Attorney shall insure that these reporting requirements are implemented within his district.

1. The Drug Enforcement Administration shall insure, unless authorized to the contrary by the United States Attorney, that the appropriate United States Attorney is advised of all investigations as soon as it appears to the first-line supervisory DEA agent that there is probable cause to make an arrest, even though no arrest is in fact contemplated. In investigations where the subjects are believed to be part of a major drug trafficking organization, but probable cause to make an arrest has not yet been established, the notification of a pending investigation to the United States Attorney shall be made by DEA at such time as it is determined that subjects are part of a major drug trafficking organization. Schedules for other reporting of "investigations," as defined in paragraphs I.A.3. and 4., shall be determined by the SAC and the United States Attorney in each district, so that the United States Attorney is assured of timely knowledge of investigative activities. The United States Attorney shall be consulted, shall assign an Assistant United States Attorney if appropriate, and shall be furnished progress reports of the investigation at regular intervals to assure appropriate participation by prosecuting officials.

2. Investigations required to be reported to a United States Attorney under paragraph I.D.1., which involve possible offenses prosecutable in more than one Federal judicial district shall be reported to the Department of Justice, and to the appropriate United States Attorneys. The Department shall be consulted and furnished progress reports on such investigations at regular intervals.

3. The United States Attorney in each Federal judicial district shall, consistent with Department of Justice guidance, determine policy regarding declinations and also the referral of prosecutions to State and local authorities.

4. The United States Attorney shall, except in exigent circumstances, be consulted prior to the arrest of a defendant and again immediately after the arrest. The United States Attorney shall be furnished a written report of the arrest no later than five (5) working days after the arrest. The provisions of this subparagraph shall not apply to arrest of defendants who will be prosecuted in State or local courts, provided that such referrals for State and local prosecution are within the policy determinations and procedures of the United States Attorney provided for in subparagraph 3. above.

5. In all cases of seizures without a search warrant, unless reported incident to an arrest, a report in writing shall be submitted to the United States Attorney not later than ten (10) working days after seizure.

6. DEA shall, with due regard for the time necessary to prepare for trial, advise the procecuting United States Attorney of any compensation paid to, or other consideration furnished to, an informant or defendant-informant, as well as of any electronic surveillance relating to the case.

7. All relevant DEA case files and manuals will be available for review by U.S. Attorneys on request. The U.S. Attorney shall be responsible for insuring the security and confidentiality of materials furnished by DEA.

8. Department of Justice instructions to United States Attorneys relating to these guidelines will be provided to DEA.

II. SOURCES, INFORMANTS AND DEFENDANT INFORMANTS

A. General

1. A "source of information" is a person or organization furnishing information without compensation on an occasional basis (e.g., an observer of an event, or a company employee who obtains relevant information in the normal course of his employment), or a person or organization in the business of furnishing information for a fee and receiving only its regular compensation for doing so (e.g., a credit bureau).

2. An "informant" is a person who, under the specific direction of a DEA Agent, with or without the expectation of payment or other valuable consideration, furnishes information regarding drug trafficking or performs other lawful services.

3. A "defendant-informant" is a person subject to arrest and prosecution for a Federal offense, or a defendant in a pending Federal or State case who, under the specific direction of a DEA

Agent, with an expectation of payment or other valuable consideration, provides information regarding drug trafficking or performs other lawful services.

4. Any individual or organization may by a source of information. Restrictions placed on the use of informants and defendant-informants are not applicable to sources of information.

5. Informants, and defendant-informants are assets of DEA, and are not to be considered personal resources of individual Agents. At least two (2) DEA Agents should be a position to contact an informant or defendant-informant, and whenever practicable two (2) DEA Agents shall be present at all contacts and interviews with informants and defendant-informants. Regular contacts shall be maintained with informants and defendant-informants. The first-level supervisor will be responsible for ensuring that contacts, and the information gained from them under this guideline are documented on a regular and timely basis.

6. Informants and defendant-informants shall be advised that they are cooperating with DEA, but are not agents or employees of DEA or the Federal government. They shall be advised that information they provide may be used in a criminal proceeding. They may be told that DEA will use all lawful means available to maintain the confidentiality of their identity. Except in extraordinary circumstances they should not be assured that they will <u>never</u> be required to testify or otherwise have their identity disclosed in a criminal proceeding. In extraordinary circumstances they may be given this assurance after approval of the SAC, provided the United States Attorney shall be notified of any such assurance given to any individual having information relevant to a pending investigation in advance of prosecution proceedings, including grand jury proceedings.

B. <u>Informants</u>

1. Only individuals who are believed able to furnish reliable enforcement information or other lawful services, and who are believed able to maintain the confidentiality of DEA interests and activities, may be utiltized as informants.

2. Except as provided in paragraph II.B.3, an Agent must obtain the approval of his immediate supervisor prior to utilizing any informant. The approving supervisor should review the relevant data, including the criminal record, of any potential informant and ascertain whether he is the subject of a pending DEA investigation before deciding whether to approve him as an informant. Before an individual is asked to render services, in addition to supplying information, a more extensive investigation and evaluation of the individual shall be conducted. However, DEA may use an informant temporarily without extensive investigation where a secondline supervisor determines that lack of sufficient time precludes such investigation.

3. Individuals in the following categories represent particular risks as informants, and their use for an initial ninety (90) days may be utilized only as authorized below:

(a) individuals who are less than eighteen (18) years of age, with the written consent of a parent or a legal guardian, when authorized by the SAC;
(b) individuals on Federal or State probation or parole, with the consent of the agency supervising them, and complete documentation by DEA, when authorized by the SAC;
(c) former drug-dependent persons, or drug-dependent persons participating in an established drug treatment program, when authorized by the SAC;
(d) individuals with two (2) or more felony convictions, when authorized by the SAC;
(e) individuals who have had a prior Federal or State conviction for a drug felony offense, when authorized by the SAC;
(f) individuals who have previously been declared unreliable by DEA, or any of its predecessors, when authorized by the Assistant Administrator for Operations.

4. The use of an informant shall be reviewed at least every ninety (90) days by the appropriate secondline supervisor, or the higher official indicated in paragraph II.B.3, above. Use of the informant may be continued if it is determined, upon review of his background and performance, that he is qualified to serve in this capacity as provided in paragraph II.B.1., above, and that he has the potential for furnishing information or services which it is believed will lead to the prosecution of one or more individuals who finance, control, or direct a drug trafficking organization or the interdiction of significant drug traffic. The SAC shall be responsible for review of the utilization of each informant at least every 6 months, and continued use of an informant shall be authorized if it is determined that he meets these standards. The SAC shall be responsible for reporting all such decisions to DEA Headquarters.
5. Informants may be paid money or afforded other lawful consideration. All funds paid to informants shall be accounted for, and specific records shall be maintained for any non-monetary consideration furnished informants.

C. Defendant-Informants

The purpose of this section of the guidelines is to insure that defendant-informants provide information or render services in a manner that recognizes their status as individuals subject to legal sanctions for criminal violations. In addition to the requirements provided in paragraph II.B, use of defendant-informants is governed by the following guidelines.

1. Only individuals who are believed to be able to furnish reliable enforcement information or lawful services, and who are believed able to maintain the confidentiality of DEA interests and activities, may be used as defendant-informants.
2. In addition to the steps necessary to utilize an informant which are set forth in paragraph II.B, the approval of the appropriate United States Attorney or other prosecutor shall be obtained prior to seeking the cooperation of or utilizing a defendant-informant. The United States Attorney or other prosecutor shall be informed on a continuing basis of such cooperation or use of a defendant-informant.

3. An individual approved as a defendant-informant may be advised that his cooperation will be brought to the attention of the appropriate United States Attorney, or other prosecutor, and the substance and circumstance of giving such advice shall be documented in writing. The United States Attorney has the sole authority to determine whether a defendant-informant will be prosecuted, and DEA Agents shall make no representations concerning such prosecution. DEA Agents shall make no other representations or recommendations without the express written approval of the SAC.

4. The SAC shall obtain the written approval of the Assistant Administrator for Operations prior to recommending dismissal of any criminal matter. The SAC shall inform DEA Headquarters of any other information concerning a defendant-informant's cooperation, or advice offered regarding disposition of a case, or imposition of a penalty.

5. Use of defendant-informants shall be reviewed in the manner prescribed for other informants in paragraph II.B above, and their use may be continued only if they are found to meet the standards set forth therein.

D. Knowledge of Criminal Activity by Informants and Defendant-Informants

1. DEA shall instruct all informants and defendant-informants that they shall not violate criminal law in furtherance of gathering information or providing other services for DEA, and that any evidence of such violation will be reported to the concerned law enforcement authority.

2. Whenever DEA has reason to believe that a serious criminal offense outside its investigative jurisdiction is being or will be committed, it shall immediately disseminate all relevant information to the appropriate law enforcement agency.

3. Whenever DEA has reason to believe that an informant or defendant-informant has committed a serious criminal offense the appropriate law enforcement agency shall be advised by DEA, and the appropriate United States Attorney shall be notified.

4. In disseminating information in accordance with paragraphs D.2 and 3 above, all available information shall be promptly furnished to the appropriate law enforcement agency unless such action would jeopardize an ongoing major investigation or endanger the life of a DEA Agent, informant or defendant-informant. If full disclosure is not made for the reasons indicated, then limited disclosure shall be made by DEA to the appropriate authorities, to an extent sufficient to apprise them of the specific crime or crimes that are believed to have been committed. Full disclosure shall be made as soon as the need for the restrictions on dissemination are no longer present. Where complete dissemination cannot immediately be made to the appropriate law enforcement agency, DEA shall preserve all evidence of the violation for possible future use by the appropriate prosecuting authority. Nothing herein shall prevent full and immediate disclosure to the appropriate law enforcement agency if in DEA's judgment such action is necessary even though an investigation might thereby be jeopardized.

5. If DEA desires to continue making use of an informant or defendant-informant after it has reason to believe that he has committed a serious criminal offense, DEA shall advise the appropriate United States Attorney and a determination shall be made by him after consultation with the Chief of the Narcotic and Dangerous Drug Section, of the Criminal Division of the Department of Justice, whether continued use should be made of the individual by DEA.

III. UNDERCOVER OPERATIONS

A. Undercover operations involve DEA Agents who assume a fictitious identity or role on a temporary basis (often posing as individuals involved in drug trafficking), and/or the use of informants or defendant-informants under the direction of DEA, to obtain evidence or other information relating to violations of the Controlled Substances Act or other drug laws.

B. Undercover operations conducted by DEA may include employment of a ruse or deception, the provision of a facility or an opportunity for commission of an offense, or the failure to foreclose such an opportunity, or mere solicitation that would not induce an ordinary, law-abiding person to commit an offense.

C. Undercover operations may be authorized where there is reason to believe use of this technique may result in evidence or information concerning significant drug trafficking activities. Undercover operations must be authorized by a group supervisor or Resident Agent-in-Charge. Such authorization must be written; however, in exigent circumstances documentation may be prepared after the undercover operation has been initiated provided oral authorization has first been obtained. Authorizations for undercover operations shall set forth a description of the undercover operation, and enforcement objectives to be met by the undercover operation, and the provisions made for the protection of undercover Agents or informants.

D. DEA may furnish an item necessary to the commission of an offense other than a controlled substance (i.e., a legal chemical essential to drug production), or may furnish services in furtherance of illegal drug trafficking which are difficult to obtain (i.e., sophisticated chemical expertise), upon the authorization of the SAC, after consultation with the appropriate United States Attorney and with DEA Headquarters. Activity such as furnishing a non-controlled substance, or other services, may be authorized when there is strong reason to believe such activity will lead to the prosecution of one or more individuals who finance, control, or direct a drug trafficking organization, or to the interdiction of the flow of drugs from a significant drug trafficking operation.

E. Undercover operations shall not include the furnishing of a controlled substance except in extraordinary cases after consultation with the appropriate United States Attorney, when the Administrator of DEA determines that there is reason to believe such activity will lead to the prosecution of one or more individuals who finance, control, or direct a drug trafficking

organization, or to the interdiction of the flow of drugs from a significant drug trafficking operation. In making such determinations the Administrator of DEA shall take into account the type and amount of drug involved; its likelihood of reaching consumers; the number and position in the drug trafficking organization of subjects who have, and who have not, been sufficiently identified to be arrested; the type and amount of evidence necessary to complete the investigation; the time required to attempt to do so; and the likelihood of obtaining such evidence.

F. SAC's shall advise DEA Headquarters immediately if specific information is developed, in the course of an undercover operation or otherwise, regarding the shipment, delivery, or location of substantial amounts of controlled substances. In certain cases it may be appropriate not to seize such drugs in order to enhance the effectiveness of an investigation. DEA may continue an investigation without seizing substantial amounts of illicit drugs only when:

1. Authorized by the Assistant Administrator for Operations of DEA or his Headquarters designee. The Assistant Administrator for Operations shall consider the factors set forth in paragraph IIIE above, and may authorize the investigation to continue without seizure of the drugs in question if he makes the determination set forth therein. His decision shall be reflected in writing.

2. Where immediate seizure of substantial amounts of controlled substances might result in compromise of an investigation of greater significance than seizure would warrant, or in the death or serious injury to a DEA Agent, informant, or defendant-informant, an immediate decision may be made by the field Agent or his supervisor, consistent with the safety of the Agent, informant or defendant-informant. In such instances the Assistant Administrator for Operations shall be promptly notified.

G. While it is recognized that there is an inherent risk of violence in drug trafficking, undercover operations shall not include originating, encouraging, or planning to participate in violent activity. If in the course of an undercover operation there is a prospect of previously unanticipated violence, the Agent, informant, or defendant-informant involved shall make every effort consistent with his personal safety to prevent such violent activity and, to the extent he is not completely successful, to minimize the degree of violence and to avoid participation in it.

H. Conducting undercover operations DEA Special Agents, informants, and defendant-informants shall not attend meetings between defendants and their counsel if attendance can be avoided. If attendance cannot be avoided they shall not report anything they may overhear while present at meetings with counsel, unless they observe the commission of a crime.

I. Informants and defendant-informants used in undercover operations, shall be advised of the standards established by these

guidelines relevant to the activities they are asked to undertake on behalf of DEA, and the substance and circumstances of giving such advice shall be documented in writing.

IV. ELECTRONIC SURVEILLANCE AND RELATED TECHNIQUE

Electronic surveillance and related techniques may be employed as follows:

A. Interception of wire or oral communications through the use of any electronic, mechanical or other device ("wiretaps" or "bugs") in accordance with Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the related Department of Justice instructions.

B. Recording telephone numbers and related information (but not conversations) by the use of "pen registers," "touch tone decoders," and other devices pursuant to a Federal court order in the nature of a warrant issued under Rule 41 of the Federal Rules of Criminal Procedure.

C. Electronic tracking devices ("beepers") and transponders when authorized by a Group Supervisor or higher authority, and pursuant to a Federal court order in the nature of a warrant of the type issued under Rule 41 of the Rules of Criminal Procedure if installation involves a trespass or if otherwise required by the Federal case law in the judicial district or districts involved.

D. Telephone and transmitters to monitors private conversations with the consent of a party to the conversation pursuant to the provisions of the Attorney General's "Memorandum to the Heads of Executive Departments and Agencies," dated October 16, 1972.

E. Photographic, optical (e.g, binoculars), electro-optical (e.g., night vision equipment), and television equipment as surveillance aids or for recording evidence, pursuant to the provisions of the DEA Agents Manual.

F. Electronic, magnetic, vibration sensors, and radar equipment to detect the movement of persons, vehicles, vessels, and aircraft pursuant to the provisions of the DEA Agents Manual.

G. No other form of electronic surveillance or related technique may be utilized.

APPENDIX C

CONTROLLED SUBSTANCES ACT

AS AMENDED TO FEBRUARY 1, 1989

TITLE 21

FOOD AND DRUGS

CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL

NOTE: REFER TO 21 CFR FOR THE LATEST DRUG SCHEDULES; THESE ARE REVISED AND REPUBLISHED ANNUALLY.

TITLE 21

FOOD AND DRUGS

CHAPTER 13—DRUG ABUSE PREVENTION AND CONTROL

As amended to February 1, 1989

SUBCHAPTER I—CONTROL AND ENFORCEMENT

PART A—INTRODUCTORY PROVISIONS

PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

PART C—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

[1] So in original.

UNIFORM CONTROLLED SUBSTANCES ACT

Table of Jurisdictions Where the Uniform Controlled Substances Act has been Adopted.

The Code of the State of Maine contains provisions of both the Uniform Controlled Substances Act and the Uniform Narcotic Drug Act.

For text of Uniform Controlled Substances Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 9.

Jurisdiction	Statutory Citation
Alabama	Code 1975, §§ 20-2-1 to 20-2-93.
Alaska	AS 11.71.010 to 11.71.900, 17.30.010 to 17.30.900.
Arizona	A.R.S. §§ 36-2501 to 36-2553.
Arkansas	Code 1987, §§ 5-64-101 to 5-64-108.
California	West's Ann.Cal.Health & Safety Code, §§ 11000 to 11651.
Colorado	C.R.S. 12-22-301 to 12-22-322.
Connecticut	C.G.S.A. §§ 21a-240 to 21a-308.
Delaware	16 Del.C. §§ 4701 to 4796.
District of Columbia	D.C.Code 1981, §§ 33-501 to 33-567.
Florida	West's F.S.A. §§ 893.01 to 893.165.

Jurisdiction	Statutory Citation
Georgia	O.C.G.A. §§ 16-13-20 to 16-13-56.
Guam	9 G.C.A. §§ 67.10 to 67.98.
Hawaii	HRS §§ 329-1 to 329-58.
Idaho	I.C. §§ 37-2701 to 37-2751.
Illinois	S.H.A. ch. 56½, ¶¶ 1100 to 1603.
Indiana	West's A.I.C. 35-48-1-1 to 35-48-4-14.
Iowa	I.C.A. §§ 204.101 to 204.602.
Kansas	K.S.A. 65-4101 to 65-4140.
Kentucky	KRS 218A.010 to 218A.991.
Louisiana	LSA-R.S. 40:961 to 40:995.
Maine	17-A M.R.S.A. §§ 1101 to 1116; 22 M.R.S.A. §§ 2383, 2383-A.
Maryland	Code 1957, art. 27, §§ 276 to 302.
Massachusetts	M.G.L.A. c. 94C, §§ 1 to 48.
Michigan	M.C.L.A. §§ 333.7101 to 333.7545.
Minnesota	M.S.A. §§ 152.01 to 152.20.
Mississippi	Code 1972, §§ 41-29-101 to 41-29-185.
Missouri	V.A.M.S. §§ 195.010 to 195.320.
Montana	MCA 50-32-101 to 50-32-405.
Nebraska	R.R.S. 1943, § 28-401 et seq.
Nevada	N.R.S. 453.011 to 453.361.
New Jersey	N.J.S.A. 24:21-1 to 24:21-53.
New Mexico	NMSA 1978, §§ 30-31-1 to 30-31-41.
New York	McKinney's Public Health Law §§ 3300 to 3396.
North Carolina	G.S. §§ 90-86 to 90-113.8.
North Dakota	NDCC 19-03.1-01 to 19-03.1-43.
Ohio	R.C. §§ 3719.01 to 3719.99.
Oklahoma	63 Okl.St.Ann. §§ 2-101 to 2-610.
Oregon	ORS 475.005 to 475.285, 475.992 to 475.995.
Pennsylvania	35 P.S. §§ 780-101 to 780-144.
Puerto Rico	24 L.P.R.A. §§ 2101 to 2607.
Rhode Island	Gen.Laws 1956, §§ 21-28-1.01 to 21-28-6.02.
South Carolina	Code 1976, §§ 44-53-110 to 44-53-590.
South Dakota	SDCL 34-20B-1 to 34-20B-114.
Tennessee	T.C.A. §§ 39-6-401 to 39-6-419, 53-11-301 to 53-11-414.
Texas	Vernon's Ann.Civ.St. art. 4476-15.
Utah	U.C.A. 1953, §§ 58-37-1 to 58-37-19.
Virgin Islands	19 V.I.C. §§ 591 to 630a.
Virginia	Code 1950, § 54-54.1-3400 et seq.
Washington	West's RCWA §§ 69.50.101 to 69.50.607.
West Virginia	Code 60A-1-101 to 60A-6-605.
Wisconsin	W.S.A. 161.001 to 161.62.
Wyoming	W.S. 1977, §§ 35-7-1001 to 35-7-1057.

EDITORIAL NOTES

Savings Provisions of Pub.L. 98-473, Title II, c. II. See section 235 of Pub.L. 98-473, Title II, c. II, Oct. 12, 1984, 98 Stat. 2031, as amended, set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

SUBCHAPTER I—CONTROL AND ENFORCEMENT

PART A—INTRODUCTORY PROVISIONS

§ 801. Congressional findings and declarations: controlled substances

The Congress makes the following findings and declarations:

(1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

(2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.

(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because—

(A) after manufacture, many controlled substances are transported in interstate commerce,

(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and

(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.

(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.

(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

(7) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish ef-

fective control over international and domestic traffic in controlled substances.

(Pub.L. 91-513, Title II, § 101, Oct. 27, 1970, 84 Stat. 1242.)

EDITORIAL NOTES

References in Text. This subchapter, wherever referred to in this subchapter, was in the original "this title" which is Title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act".

Joint Federal Task Force on Illegal Drug Laboratories. Pub.L. 100-690, Title II, § 2405, Nov. 18, 1988, 102 Stat. 4231, provided that:

"(a) **Establishment of Task Force.** There is established the Joint Federal Task Force on Illegal Drug Laboratories (hereafter in this section referred to as the 'Task Force').

"(b) **Appointment and Membership of Task Force.** The members of the Task Force shall be appointed by the Administrators of the Environmental Protection Agency and the Drug Enforcement Administration (hereafter in this section referred to as the 'Administrators'). The Task Force shall consist of at least 6 and not more than 20 members. Each Administrator shall appoint one-half of the members as follows: (1) the Administrator of the Environmental Protection Agency shall appoint members from among Emergency Response Technicians and other appropriate employees of the Agency; and (2) the Administrator of the Drug Enforcement Administration shall appoint members from among Special Agents assigned to field divisions and other appropriate employees of the Administration.

"(c) **Duties of Task Force.** The Task Force shall formulate, establish, and implement a program for the cleanup and disposal of hazardous waste produced by illegal drug laboratories. In formulating such program, the Task Force shall consider the following factors:

"(1) The volume of hazardous waste produced by illegal drug laboratories.

"(2) The cost of cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

"(3) The effectiveness of the various methods of cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

"(4) The coordination of the efforts of the Environmental Protection Agency and the Drug Enforcement Administration in cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

"(5) The dissemination of information to law enforcement agencies that have responsibility for enforcement of drug laws.

"(d) **Guidelines.** The Task Force shall recommend to the Administrators guidelines for cleanup of illegal drug laboratories to protect the public health and environment. Not later than 180 days after the date of the enactment of this subtitle [Nov. 18, 1988], the Administrators shall formulate and publish such guidelines.

"(e) **Demonstration projects.**—

"(1) The Attorney General shall make grants to, and enter into contracts with, State and local governments for demonstration projects to clean up and safely dispose of substances associated with illegal drug laboratories which may present a danger to public health or the environment.

"(2) The Attorney General may not under this subsection make a grant or enter into a contract unless the applicant for such assistance agrees to comply with the guidelines issued pursuant to subsection (d).

"(3) The Attorney General shall, through grant or contract, provide for independent evaluations of the activities carried out pursuant to this subsection and shall recommend appropriate legislation to the Congress.

"(f) **Funding.** Of the amounts made available to carry out the Controlled Substances Act [21 U.S.C.A. § 801 et seq.] for fiscal year 1989, not less than $5,000,000 shall be made available to carry out subsections (d) and (e).

"(g) **Reports.** After consultation with the Task Force, the Administrators shall—

"(1) transmit to the President and to each House of Congress not later than 270 days after the date of the enactment of this subtitle [Nov. 18, 1988] a report describing the program established by the Task Force under subsection (c) (including an analysis of the factors specified in paragraphs (1) through (5) of that subsection);

"(2) periodically transmit to the President and to each House of Congress reports describing the implementation of the program established by the Task Force under subsection (c) (including an analysis of the factors specified in paragraphs (1) through (5) of that subsection) and the progress made in the cleanup and disposal of hazardous waste produced by illegal drug laboratories; and

"(3) transmit to each House of Congress a report describing the findings made as a result of the evaluations referred to in subsection (e)(3)."

Great Lakes Drug Interdiction. Pub.L. 100-690, Title VII, § 7404, Nov. 18, 1988, 102 Stat. 4484, provided that:

"(a) **Interagency agreement.** The Secretary of Transportation and the Secretary of the Treasury shall enter into an agreement for the purpose of increasing the effectiveness of maritime drug interdiction activities of the Coast Guard and the Customs Service in the Great Lakes area.

"(b) **Negotiations with Canada on drug enforcement cooperation.** The Secretary of State is encouraged to enter into negotiations with appropriate officials of the Government of Canada for the purpose of establishing an agreement between the United States and Canada which provides for increased cooperation and sharing of information between United States and Canadian law enforcement officials with respect to law enforcement efforts conducted on the Great Lakes between the United States and Canada."

GAO Study of Capabilities of United States to Control Drug Smuggling into United States. Section 1241 of Pub.L. 100-180, Div. A, Title XII, Dec. 4, 1987, 101 Stat. 1162, provided that:

"(a) **Study requirement.**—The Comptroller General of the United States shall conduct a comprehensive study regarding smuggling of illegal drugs into the United States and the current capabilities of the United States to

deter such smuggling. In carrying out such study, the Comptroller General shall—

"(1) assess the national security implications of the smuggling of illegal drugs into the United States;

"(2) assess the magnitude, nature, and operational impact that current resource limitations have on the drug smuggling interdiction efforts of Federal law enforcement agencies and the capability of the Department of Defense to respond to requests for assistance from those law enforcement agencies;

"(3) assess the effect on military readiness, the costs that would be incurred, the operational effects on military and civilian agencies, the potential for improving drug interdiction operations, and the methods for implementing increased drug law enforcement assistance by the Department of Defense under section 825 of H.R. 1748 as passed the House of Representatives on May 20, 1987, as if such section were enacted into law and were to become effective on January 1, 1988;

"(4) assess results of a cooperative drug enforcement operation between the United States Customs Service and National Guard units from the States of Arizona, Utah, Missouri, and Wisconsin conducted along the United States-Mexico border beginning on August 29, 1987, and include in the assessment information relating to the cost of conducting the operation, the personnel and equipment used in such operation, the command and control relationships in such operation, and the legal issues involved in such operation;

"(5) determine whether giving the Armed Forces a more direct, active role in drug interdiction activities would enhance the morale and readiness of the Armed Forces;

"(6) determine what assets are currently available to and under consideration for the Department of Defense, the Department of Transportation, the Department of Justice, and the Department of the Treasury for the detection of airborne drug smugglers;

"(7) assess the current plan of the Customs Service for the coordinated use of such assets;

"(8) determine the cost effectiveness and the capability of the Customs Service to use effectively the information generated by the systems employed by or planned for the Department of Defense, the Coast Guard, and the Customs Service, respectively, to detect airborne drug smugglers;

"(9) determine the availability of current and anticipated tracking, pursuit, and apprehension resources to use the capabilities of such systems; and

"(10) at a minimum, assess the detection capabilities of the Over-the-Horizon Backscatter radar (OTH-B), ROTHR, aerostats, airships, and the E-3A, E-2C, P-3, and P-3 Airborne Early Warning aircraft (including any variant of the P-3 Airborne Early Warning aircraft).

"(b) **Reports.**—(1) Not later than April 30, 1988, the Comptroller General shall, as provided in paragraph (3), submit a report on the results of the study required by subsection (a) with respect to the elements of the study specified in paragraphs (1) through (5) of that subsection.

"(2) As soon as practicable after the report under paragraph (1) is submitted, and not later than March 31, 1989, the Comptroller General shall, as provided in paragraph (3), submit a report on the results of the study required by subsection (a) with respect to the elements of the study specified in paragraphs (6) through (10) of that subsection.

"(3) The reports under paragraphs (1) and (2) shall be submitted to—

"(A) the Committees on Armed Services, the Judiciary, Foreign Relations, and Appropriations of the Senate;

"(B) the Committees on Armed Services, the Judiciary, Foreign Affairs, and Appropriations of the House of Representatives;

"(C) the members of the Senate Caucus on International Narcotics Control; and

"(D) the Select Committee on Narcotics Abuse and Control of the House of Representatives.

"(4) The reports under this subsection shall be submitted in both classified and unclassified forms and shall include such comments and recommendations as the Comptroller General considers appropriate."

Compliance With Budget Act. Pub.L. 99-570, § 3, Oct. 27, 1986, 100 Stat. 3207-1, provided that: "Notwithstanding any other provision of this Act [see Tables volume], any spending authority and any credit authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. For purposes of this Act, the term 'spending authority' has the meaning provided in section 401(c)(2) of the Congressional Budget Act of 1974 [2 U.S.C.A. § 651(c)(2)] and the term 'credit authority' has the meaning provided in section 3(10) of the Congressional Budget Act of 1974 [2 U.S.C.A. § 622(10)]."

Drug Interdiction. Pub.L. 99-570, Title III, §§ 3001 to 3003, 3301, Oct. 27, 1986, 100 Stat. 3207-73, 3207-74, provided that:

"Sec. 3001. Short title

This title [enacting section 379 of Title 10, Armed Forces, sections 1590, 1628, 1629, and 2081 of Title 19, Customs Duties, and section 312a of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending section 959 of this title, sections 374 and 911 of Title 10, sections 507, 1401, 1433, 1436, 1454, 1459, 1497, 1509, 1584, 1585, 1586, 1594, 1595, 1595a, 1613, 1613b, 1619, and 1622 of Title 19, section 5316 of Title 31, Money and Finance, sections 1901, 1902, 1903, 1904, and 12109 of Title 46, Shipping, and sections 1401, 1472, 1474, and 1509 of Title 49, Transportation, repealing section 1460 of Title 19, enacting provisions set out as notes under this section, sections 371, 374, 525, and 9441 of Title 10, sections 1613b and 1654 of Title 19, section 403 of Title 23, Highways, section 1901 of Title 46, and sections 1509 and 11344 of Title 49, and repealing a provision set out as a note under section 89 of Title 14, Coast Guard] may be cited as the 'National Drug Interdiction Improvement Act of 1986'."

"Sec. 3002. Findings

"The Congress hereby finds that—

"(1) a balanced, coordinated, multifaceted strategy for combating the growing drug abuse and drug trafficking problem in the United States is essential in order to stop the flow and abuse of drugs within our borders;

"(2) a balanced, coordinated, multifaceted strategy for combating the narcotics drug abuse and trafficking in the United States should include—

"(A) increased investigations of large networks of drug smuggler organizations;

"(B) source country drug eradication;

"(C) increased emphasis on stopping narcotics traffickers in countries through which drugs are transshipped;

"(D) increased emphasis on drug education programs in the schools and workplace;

"(E) increased Federal Government assistance to State and local agencies, civic groups, school systems, and officials in their efforts to combat the drug abuse and trafficking problem at the local level; and

"(F) increased emphasis on the interdiction of drugs and drug smugglers at the borders of the United States, in the air, at sea, and on the land;

"(3) funds to support the interdiction of narcotics smugglers who threaten the transport of drugs through the air, on the sea, and across the land borders of the United States should be emphasized in the Federal Government budget process to the same extent as the other elements of a comprehensive antidrug effort are emphasized;

"(4) the Department of Defense and the use of its resources should be an integral part of a comprehensive, natonal [sic] drug interdiction program;

"(5) the Federal Government civilian agencies engaged in drug interdiction, particularly the United States Customs Service and the Coast Guard, currently lack the aircraft, ships, radar, command, control, communications, and intelligence (C3I) system, and manpower resources necessary to mount a comprehensive attack on the narcotics traffickers who threaten the United States;

"(6) the civilian drug interdiction agencies of the United States are currently interdicting only a small percentage of the illegal, drug smuggler penetrations in the United States every year;

"(7) the budgets for our civilian drug interdiction agencies, primarily the United States Customs Service and the Coast Guard, have not kept pace with those of the traditional investigative law enforcement agencies of the Department of Justice; and

"(8) since the amendment of the Posse Comitatus Act (18 U.S.C. 1385) [section 1385 of Title 18, Crimes and Criminal Procedure] in 1981, the Department of Defense has assisted in the effort to interdict drugs, but they can do more.

"Sec. 3003. Purposes

"It is the purpose of this title—

"(1) to increase the level of funding and resources available to civilian drug interdiction agencies of the Federal Government;

"(2) to increase the level of support from the Department of Defense as consistent with the Posse Comitatus Act [section 1385 of Title 18, Crimes and Criminal Procedure], for interdiction of the narcotics traffickers before such traffickers penetrate the borders of the United States; and

"(3) to improve other drug interdiction programs of the Federal Government."

"Sec. 3301. Establishment of United States-Bahamas Drug Interdiction Task Force

"(a) Authorization of Appropriations.—

"(1) Establishment of United States-Bahamas Drug Interdiction Task Force.—(A) There is authorized to be established a United States-Bahamas Drug Interdiction Task Force to be operated jointly by the United States Government and the Government of the Bahamas.

"(B) The Secretary of State, the Commandant of the Coast Guard, the Commissioner of Customs, the Attorney General, and the head of the National Narcotics Border Interdiction System (NNBIS), shall upon enactment of this Act [Oct. 27, 1986], immediately commence negotiations with the Government of the Bahamas to enter into a detailed agreement for the establishment and operation of a new drug interdiction task force, including plans for (i) the joint operation and maintenance of any drug interdiction assets authorized for the task force in this section and section 3141 [not classified to the Code], and (ii) any training and personnel enhancements authorized in this section and section 3141 [not classified to the Code].

"(C) The Attorney General shall report to the appropriate committees of Congress on a quarterly basis regarding the progress of the United States-Bahamas Drug Interdiction Task Force.

"(2) Amounts authorized.—There are authorized to be appropriated, in addition to any other amounts authorized to be appropriated in this title, $10,000,000 for the following:

"(A) $9,000,000 for 3 drug interdiction pursuit helicopters for use primarily for operations of the United States-Bahamas Drug Interdiction Task Force established under this section; and

"(B) $1,000,000 to enhance communications capabilities for the operation of a United States-Bahamas Drug Interdiction Task Force established under this section.

"(3) Coast Guard-Bahamas drug interdiction docking facility.—(A) There is authorized to be appropriated for acquisition, construction, and improvements for the Coast Guard for fiscal year 1987, $5,000,000, to be used for initial design engineering, and other activities for construction of a drug interdiction docking facility in the Bahamas to facilitate Coast Guard and Bahamian drug interdiction operations in and through the Bahama Islands. Of the amounts authorized to be appropriated in this subsection, such sums as may be necessary shall be available for necessary communication and air support.

"(B) The Commandant of the Coast Guard shall use such amounts appropriated pursuant to the authorization in this paragraph as may be necessary to establish a repair, maintenance, and boat lift facility to provide repair and maintenance services for both Coast Guard and Bahamian marine drug interdiction equipment, vessels, and related assets.

"(b) Concurrence by Secretary of State.—Programs authorized by this section may be carried out only with the concurrence of the Secretary of State."

Health Insurance Coverage for Drug and Alcohol Treatment. Pub.L. 99–570, Title VI, § 6006, Oct. 27, 1986, 100 Stat. 3207–160, provided:

"(a) Findings.—The Congress finds that—

"(1) drug and alcohol abuse are problems of grave concern and consequence in American society;

"(2) over 500,000 individuals are known heroin addicts; 5 million individuals use cocaine; and at least 7 million individuals regularly use prescription drugs, mostly addictive ones, without medical supervision;

"(3) 10 million adults and 3 million children and adolescents abuse alcohol, and an additional 30 to 40 million people are adversely affected because of close family ties to alcoholics;

"(4) the total cost of drug abuse to the Nation in 1983 was over $60,000,000,000; and

"(5) the vast majority of health benefits plans provide only limited coverage for treatment of drug and alcohol addiction, which is a fact that can discourage the abuser from seeking treatment or, if the abuser does seek treatment, can cause the abuser to face significant out of pocket expenses for the treatment.

"(b) Sense of Congress.—It is the sense of Congress that—

"(1) all employers providing health insurance policies should ensure that the policies provide adequate coverage for treatment of drug and alcohol addiction in recognition that the health consequences and costs for individuals and society can be as formidable as those resulting from other diseases and illnesses for which insurance coverage is much more adequate; and

"(2) State insurance commissioners should encourage employers providing health benefits plans to ensure that the policies provide more adequate coverage for treatment of drug and alcohol addiction."

Information on Drug Abuse at the Workplace. Pub. L. 99–570, Title IV, § 4303, Oct. 27, 1986, 100 Stat. 3207–154, provided that:

"(a) The Secretary of Labor shall collect such information as is available on the incidence of drug abuse in the workplace and efforts to assist workers, including counseling, rehabilitation and employee assistance programs. The Secretary shall conduct such additional research as is necessary to assess the impact and extent of drug abuse and remediation efforts. The Secretary shall submit the findings of such collection and research to the House Committee on Education and Labor and the Senate Committee on Labor and Human Services no later than two years from the date of enactment of this Act [Oct. 27, 1986].

"(b) There is authorized to be appropriated the aggregate sum of $3,000,000 for fiscal years 1987 and 1988, to remain available until expended, to enable the Secretary of Labor to carry out the purposes of this section."

Coordination of Interagency Drug Abuse Prevention Activities. Pub.L. 99–570, Title IV, § 4304, Oct. 27, 1986, 100 Stat. 3207–154, provided that:

"(a) The Secretary of Education, the Secretary of Health and Human Services, and the Secretary of Labor shall each designate an officer or employee of the Departments of Education, Health and Human Services, and Labor, respectively, to coordinate interagency drug abuse prevention activities to prevent duplication of effort.

"(b) Within one year after enactment of this Act [Oct. 27, 1986], a report shall be jointly submitted to the Congress by such Secretaries concerning the extent to which States and localities have been able to implement non-duplicative drug abuse prevention activities."

Substance Abuse Insurance Coverage Study. Pub.L. 99–570, Title VI, § 6005, Oct. 27, 1986, 100 Stat. 3207–160, as amended Pub.L. 100–690, Title II, § 2058(c), Nov. 18, 1988, 102 Stat. 4213, provided:

"(a) Study.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct a study of (1) the extent to which the cost of drug abuse treatment is covered by private insurance, public programs, and other sources of payment, and (2) the adequacy of such coverage for the rehabilitation of drug abusers.

"(b) Report.—Not later than 18 months after the execution of the contract referred to in subsection (a), the Secretary of Health and Human Services shall transmit to the Congress a report of the results of the study conducted under subsection (a). The report shall include recommendations of means to meet the needs identified in such study."

EXECUTIVE ORDER NO. 11727

July 6, 1973, 38 F.R. 18357

DRUG LAW ENFORCEMENT

Reorganization Plan No. 2 of 1973 [set out in the Appendix to Title 5, Government Organization and Employees], which becomes effective on July 1, 1973, among other things establishes a Drug Enforcement Administration in the Department of Justice. In my message to the Congress transmitting that plan, I stated that all functions of the Office for Drug Abuse Law Enforcement (established pursuant to Executive Order No. 11641 of January 28, 1972) and the Office of National Narcotics Intelligence (established pursuant to Executive Order No. 11676 of July 27, 1972) would, together with other related functions, be merged in the new Drug Enforcement Administration.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and laws of the United States, including section 5317 of title 5 of the United States Code, as amended [section 5317 of Title 5, Government Organization and Employees], it is hereby ordered as follows:

Section 1. The Attorney General, to the extent permitted by law, is authorized to coordinate all activities of executive branch departments and agencies which are directly related to the enforcement of laws respecting narcotics and dangerous drugs. Each department and agency of the Federal Government shall, upon request and to the extent permitted by law, assist the Attorney General in the performance of functions assigned to him pursuant to this order, and the Attorney General may, in carrying out those functions, utilize the services of any other agencies, Federal and State, as may be available and appropriate.

Sec. 2. Executive Order No. 11641 of January 28, 1972, is revoked and the Attorney General shall provide for the reassignment of the functions of the Office for

Drug Abuse Law Enforcement and for the abolishment of that Office.

Sec. 3. Executive Order No. 11676 of July 27, 1972, is hereby revoked and the Attorney General shall provide for the reassignment of the functions of the Office of National Narcotics Intelligence and for the abolishment of that Office.

Sec. 4. Section 1 of Executive Order No. 11708 of March 23, 1973, as amended, placing certain positions in level IV of the Executive Schedule is hereby further amended by deleting—

(1) "(6) Director, Office for Drug Abuse Law Enforcement, Department of Justice."; and

(2) "(7) Director, Office of National Narcotics Intelligence, Department of Justice."

Sec. 5. The Attorney General shall provide for the winding up of the affairs of the two offices and for the reassignment of their functions.

Sec. 6. This order shall be effective as of July 1, 1973.

RICHARD NIXON

§ 801a. Congressional findings and declarations: psychotropic substances

The Congress makes the following findings and declarations:

(1) The Congress has long recognized the danger involved in the manufacture, distribution, and use of certain psychotropic substances for nonscientific and nonmedical purposes, and has provided strong and effective legislation to control illicit trafficking and to regulate legitimate uses of psychotropic substances in this country. Abuse of psychotropic substances has become a phenomenon common to many countries, however, and is not confined to national borders. It is, therefore, essential that the United States cooperate with other nations in establishing effective controls over international traffic in such substances.

(2) The United States has joined with other countries in executing an international treaty, entitled the Convention on Psychotropic Substances and signed at Vienna, Austria, on February 21, 1971, which is designed to establish suitable controls over the manufacture, distribution, transfer, and use of certain psychotropic substances. The Convention is not self-executing, and the obligations of the United States thereunder may only be performed pursuant to appropriate legislation. It is the intent of the Congress that the amendments made by this Act, together with existing law, will enable the United States to meet all of its obligations under the Convention and that no further legislation will be necessary for that purpose.

(3) In implementing the Convention on Psychotropic Substances, the Congress intends that, consistent with the obligations of the United States under the Convention, control of psychotropic substances in the United States should be accomplished within the framework of the procedures and criteria for classification of substances provided in the Comprehensive Drug Abuse Prevention and Control Act of 1970. This will insure that (A) the availability of psychotropic substances to manufacturers, distributors, dispensers, and researchers for useful and legitimate medical and scientific purposes will not be unduly restricted; (B) nothing in the Convention will interfere with bona fide research activities; and (C) nothing in the Convention will interfere with ethical medical practice in this country as determined by the Secretary of Health and Human Services on the basis of a consensus of the views of the American medical and scientific community.

(Pub.L. 95–633, Title I, § 101, Nov. 10, 1978, 92 Stat. 3768; Pub.L. 96–88, Title V, § 509, Oct. 17, 1979, 93 Stat. 695.)

EDITORIAL NOTES

References in Text. This Act, referred to in par. (2), is Pub.L. 95–633, Nov. 10, 1978, 92 Stat. 2768, known as the Psychotropic Substances Act of 1978, which enacted this section and sections 830, and 852 of this title, amended sections 352, 802, 811, 812, 823, 827, 841 to 843, 872, 881, 952, 953, and 965 of Title 21, U.S.C.A., Food and Drugs, and section 242 of Title 42, U.S.C.A., The Public Health and Welfare, and enacted provisions set out as notes under this section and sections 801, 812, and 830 of Title 21.

The Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in par. (3), is Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1236, as amended, which is classified principally to this chapter.

Change of Name. "Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" on authority of Pub.L. 96–88, Title V, § 509, Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508 of Title 20, U.S.C.A., Education.

§ 802. Definitions

As used in this subchapter:

(1) The term "addict" means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term "administer" refers to the direct application of a controlled substance to the body of a patient or research subject by—

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of the practitioner, whether such application be by injection, inhalation, ingestion, or any other means.

(3) The term "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's or warehouseman's business.

(4) The term "Drug Enforcement Administration" means the Drug Enforcement Administration in the Department of Justice.

(5) The term "control" means to add a drug or other substance, or immediate precursor, to a schedule under part B of this subchapter, whether by transfer from another schedule or otherwise.

(6) The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

(7) The term "counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(8) The terms "deliver" or "delivery" mean the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there exists an agency relationship.

(9) The term "depressant or stimulant substance" means—

(A) a drug which contains any quantity of (i) barbituric acid or any of the salts of barbituric acid; or (ii) any derivative of barbituric acid which has been designated by the Secretary as habit forming under section 352(d) of this title; or

(B) a drug which contains any quantity of (i) amphetamine or any of its optical isomers; (ii) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(C) lysergic acid diethylamide; or

(D) any drug which contains any quantity of a substance which the Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(10) The term "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. The term "dispenser" means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

(11) The term "distribute" means to deliver (other than by administering or dispensing) a controlled substance or a listed chemical. The term "distributor" means a person who so delivers a controlled substance or a listed chemical.

(12) The term "drug" has the meaning given that term by section 321(g)(1) of this title.

(13) The term "felony" means any Federal or State offense classified by applicable Federal or State law as a felony.

(14) The term "isomer" means the optical isomer, except as used in schedule I(c) and schedule II(a)(4). As used in schedule I(c), the term "isomer" means any optical, positional, or geometric isomer. As used in schedule II(a)(4), the term "isomer" means any optical or geometric isomer.

(15) The term "manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term "manufacturer" means a person who manufactures a drug or other substance.

(16) The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or

not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17) The term "narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(B) Poppy straw and concentrate of poppy straw.

(C) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(D) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(E) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(F) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraphs (A) through (E).

(18) The term "opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

(19) The term "opium poppy" means the plant of the species Papaver somniferum L., except the seed thereof.

(20) The term "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(21) The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(22) The term "production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(23) The term "immediate precursor" means a substance—

(A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(24) The term "Secretary", unless the context otherwise indicates, means the Secretary of Health and Human Services.

(25) The term "serious bodily injury" means bodily injury which involves—

(A) a substantial risk of death;

(B) protracted and obvious disfigurement; or

(C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(26) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Canal Zone.

(27) The term "ultimate user" means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

(28) The term "United States", when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States.

(29) The term "maintenance treatment" means the dispensing, for a period in excess of twenty-one days, of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(30) The term "detoxification treatment" means the dispensing, for a period not in excess of one hundred and eighty days, of a narcotic drug in decreasing doses to an individual in order to allevi-

ate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period.

(31) The term "Convention on Psychotropic Substances" means the Convention on Psychotropic Substances signed at Vienna, Austria, on February 21, 1971; and the term "Single Convention on Narcotic Drugs" means the Single Convention on Narcotic Drugs signed at New York, New York, on March 30, 1961.

(32)(A) Except as provided in subparagraph (B), the term "controlled substance analogue" means a substance—

(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulent[1], depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) with respect to a particular person, which such person represents or intends to have a stimulent[1], depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

(B) Such term does not include—

(i) a controlled substance;

(ii) any substance for which there is an approved new drug application;

(iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) [21 U.S.C.A. § 355] to the extent conduct with respect to such substance is pursuant to such exemption; or

(iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

(33) The term "listed chemical" means any listed precursor chemical or listed essential chemical.

(34) The term "listed precursor chemical" means a chemical specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title and is critical to the creation of the controlled substances, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following:

(A) Anthranilic acid and its salts.

(B) Benzyl cyanide.

(C) Ephedrine, its salts, optical isomers, and salts of optical isomers.

(D) Ergonovine and its salts.

(E) Ergotamine and its salts.

(F) N-Acetylanthranilic acid and its salts.

(G) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(H) Phenylacetic acid and its salts.

(I) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.

(J) Piperidine and its salts.

(K) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(L) 3, 4-Methylenedioxyphenyl-2-propanone.

(35) The term "listed essential chemical" means a chemical specified by regulation of the Attorney General as a chemical that is used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of this subchapter, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following chemicals:

(A) Acetic anhydride.

(B) Acetone.

(C) Benzyl chloride.

(D) Ethyl ether.

(E) Hydriodic acid.

(F) Potassium permanganate.

(G) 2-Butanone.

(H) Toluene.

(36) The term "regular customer" means, with respect to a regulated person, a customer with whom the regulated person has an established business relationship that is reported to the Attorney General.

(37) The term "regular supplier" means, with respect to a regulated person, a supplier with whom the regulated person has an established business relationship that is reported to the Attorney General.

(38) The term "regulated person" means a person who manufactures, distributes, imports, or ex-

ports a listed chemical, a tableting machine, or an encapsulating machine.

(39) The term "regulated transaction" means—

(A) a distribution, receipt, sale, importation or exportation of a threshold amount, including a cumulative threshold amount for multiple transactions (as determined by the Attorney General, in consultation with the chemical industry and taking into consideration the quantities normally used for lawful purposes), of a listed chemical, except that such term does not include—

(i) a domestic lawful distribution in the usual course of business between agents or employees of a single regulated person;

(ii) a delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this clause does not relieve a distributor, importer, or exporter from compliance with section 310;

(iii) any category of transaction specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this subchapter or subchapter II of this chapter;

(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act; or

(v) any transaction in a chemical mixture; and

(B) a distribution, importation, or exportation of a tableting machine or encapsulating machine.

(40) The term "chemical mixture" means a combination of two or more chemical substances, at least one of which is not a listed precursor chemical or a listed essential chemical, except that such term does not include any combination of a listed precursor chemical or a listed essential chemical with another chemical that is present solely as an impurity.

(Pub.L. 91–513, Title II, § 102, Oct. 27, 1970, 84 Stat. 1242; Pub.L. 93–281, § 2, May 14, 1974, 88 Stat. 124; Pub.L. 95–633, Title I, § 102(b), Nov. 10, 1978, 92 Stat. 3772; Pub.L. 96–88, Title V, § 509, Oct. 17, 1979, 93 Stat. 695; Pub.L. 96–132, § 16(a), Nov. 30, 1979, 93 Stat. 1049; Pub.L. 98–473, Title II, § 507(a), (b), Oct. 12, 1984, 98 Stat. 2071; Pub.L. 98–509, Title III, § 301(a), Oct. 19, 1984, 98 Stat. 2364; Pub.L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 99–570, Title I, §§ 1003(b), 1203, 1870, Oct. 27, 1986, 100 Stat. 3207–6, 3207–13, 3207–56; Pub.L. 99–646, § 83, Nov. 10, 1986, 100 Stat. 3619; Pub.L. 100–690, Title VI, § 6054, Nov. 18, 1988, 102 Stat. 4316.)

[1] So in original. Probably should be "stimulant".

Editorial Notes

References in Text. "This subchapter", referred to in text, was in the original "this title" which is Title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

"Subchapter II of this chapter", referred to in text, was in the original "title III", meaning Title III of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see Tables volume.

The Federal Food, Drug, and Cosmetic Act, referred to in par. (39), is Act June 25, 1938, c. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 301 of this title and Tables volume.

Subtitle E of the Internal Revenue Code of 1986, referred to in par. (6), is classified to section 5001 et seq. of Title 26, U.S.C.A., Internal Revenue Code.

Schedule I or II, referred to in par. (32)(A), are set out in section 812(c) of this title.

Codifications. Amendment by section 83 of Pub.L. 99–646 to par. (14) was not executed in view of prior amendment to such par. by Pub.L. 99–570 making identical amendment.

Internal Revenue Code of 1954 in any law, etc., to include reference to Internal Revenue Code of 1986, except when inappropriate, see Pub.L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 1095.

Amendment by section 301(a) of Pub.L. 98–509, Oct. 19, 1984, 98 Stat. 2364, to par. (28) which substituted "one hundred and eighty" for "twenty-one" was executed to par. (29), which had been par. (28) prior to its redesignation by Pub.L. 98–473, Title II, § 507(a), Oct. 12, 1984, 98 Stat. 2071, as the probable intent of Congress.

Effective Date of 1988 Amendment. Section 6061 of Pub.L. 100–690 provided that: "Except as otherwise provided in this subtitle, this subtitle [enacting section 972 of this title, amending sections 802, 830, 841, 842, 843, 872, 876, 881, 960 and 961 of this title] shall take effect 120 days after the enactment of this Act [Nov. 18, 1988]."

Change of Name. "Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" on authority of Pub.L. 96–88, Title V, § 509, Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508 of Title 20, U.S.C.A., Education.

Promulgation of Regulations for Administration of Amendment by Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984; Inclusion of Findings in Report. Section 301(b) of Pub.L. 98–509, Oct. 19, 1984, 98 Stat. 2364, provided that: "The Secretary of Health and Human Services shall, within ninety days of the date of the enactment of this Act [Oct. 19, 1984], promulgate regulations for the administration of section 102(28) of

the Controlled Substances Act as amended by subsection (a) [probably par. 29 of this section] and shall include in the first report submitted under section 505(b) of the Public Health Service Act [section 290aa–4 of Title 42, The Public Health and Welfare] after the expiration of such ninety days the findings of the Secretary with respect to the effect of the amendment made by subsection (a) [amending par. (29) of this section]."

§ 803. Repealed. Pub.L. 95–137, § 1(b), Oct. 18, 1977, 91 Stat. 1169.

PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

§ 811. Authority and criteria for classification of substances

Rules and regulations of Attorney General; hearing

(a) The Attorney General shall apply the provisions of this subchapter to the controlled substances listed in the schedules established by section 812 of this title and to any other drug or other substance added to such schedules under this subchapter. Except as provided in subsections (d) and (e) of this section, the Attorney General may by rule—

(1) add to such a schedule or transfer between such schedules any drug or other substance if he—

(A) finds that such drug or other substance has a potential for abuse, and

(B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed; or

(2) remove any drug or other substance from the schedules if he finds that the drug or other substance does not meet the requirements for inclusion in any schedule.

Rules of the Attorney General under this subsection shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by subchapter II of chapter 5 of Title 5. Proceedings for the issuance, amendment, or repeal of such rules may be initiated by the Attorney General (1) on his own motion, (2) at the request of the Secretary, or (3) on the petition of any interested party.

Evaluation of drugs and other substances

(b) The Attorney General shall, before initiating proceedings under subsection (a) of this section to control a drug or other substance or to remove a drug or other substance entirely from the schedules, and after gathering the necessary data, request from the Secretary a scientific and medical evaluation, and his recommendations, as to whether such drug or other substance should be so controlled or removed as a controlled substance. In making such evaluation and recommendations, the Secretary shall consider the factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) of this section and any scientific or medical considerations involved in paragraphs (1), (4), and (5) of such subsection. The recommendations of the Secretary shall include recommendations with respect to the appropriate schedule, if any, under which such drug or other substance should be listed. The evaluation and the recommendations of the Secretary shall be made in writing and submitted to the Attorney General within a reasonable time. The recommendations of the Secretary to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or other substance. If the Attorney General determines that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control or substantial evidence that the drug or other substance should be removed entirely from the schedules, he shall initiate proceedings for control or removal, as the case may be, under subsection (a) of this section.

Factors determinative of control or removal from schedules

(c) In making any finding under subsection (a) of this section or under subsection (b) of section 812 of this title, the Attorney General shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:

(1) Its actual or relative potential for abuse.

(2) Scientific evidence of its pharmacological effect, if known.

(3) The state of current scientific knowledge regarding the drug or other substance.

(4) Its history and current pattern of abuse.

(5) The scope, duration, and significance of abuse.

(6) What, if any, risk there is to the public health.

(7) Its psychic or physiological dependence liability.

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

International treaties, conventions, and protocols requiring control; procedures respecting changes in drug schedules of Convention on Psychotropic Substances

(d)(1) If control is required by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970, the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by subsection (a) of this section or section 812(b) of this title and without regard to the procedures prescribed by subsections (a) and (b) of this section.

(2)(A) Whenever the Secretary of State receives notification from the Secretary-General of the United Nations that information has been transmitted by or to the World Health Organization, pursuant to article 2 of the Convention on Psychotropic Substances, which may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State shall immediately transmit the notice to the Secretary of Health and Human Services who shall publish it in the Federal Register and provide opportunity to interested persons to submit to him comments respecting the scientific and medical evaluations which he is to prepare respecting such drug or substance. The Secretary of Health and Human Services shall prepare for transmission through the Secretary of State to the World Health Organization such medical and scientific evaluations as may be appropriate regarding the possible action that could be proposed by the World Health Organization respecting the drug or substance with respect to which a notice was transmitted under this subparagraph.

(B) Whenever the Secretary of State receives information that the Commission on Narcotic Drugs of the United Nations proposes to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State shall transmit timely notice to the Secretary of Health and Human Services of such information who shall publish a summary of such information in the Federal Register and provide opportunity to interested persons to submit to him comments respecting the recommendation which he is to furnish, pursuant to this subparagraph, respecting such proposal. The Secretary of Health and Human Services shall evaluate the proposal and furnish a recommendation to the Secretary of State which shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

(3) When the United States receives notification of a scheduling decision pursuant to article 2 of the Convention on Psychotropic Substances that a drug or other substance has been added or transferred to a schedule specified in the notification or receives notification (referred to in this subsection as a "schedule notice") that existing legal controls applicable under this subchapter to a drug or substance and the controls required by the Federal Food, Drug, and Cosmetic Act do not meet the requirements of the schedule of the Convention in which such drug or substance has been placed, the Secretary of Health and Human Services, after consultation with the Attorney General, shall first determine whether existing legal controls under this subchapter applicable to the drug or substance and the controls required by the Federal Food, Drug, and Cosmetic Act, meet the requirements of the schedule specified in the notification or schedule notice and shall take the following action:

(A) If such requirements are met by such existing controls but the Secretary of Health and Human Services nonetheless believes that more stringent controls should be applied to the drug or substance, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance, pursuant to subsections (a) and (b) of this section, to apply to such controls.

(B) If such requirements are not met by such existing controls and the Secretary of Health and Human Services concurs in the scheduling decision or schedule notice transmitted by the notification, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance under the appropriate schedule pursuant to subsections (a) and (b) of this section.

(C) If such requirements are not met by such existing controls and the Secretary of Health and Human Services does not concur in the scheduling decision or schedule notice transmitted by the notification, the Secretary shall—

(i) if he deems that additional controls are necessary to protect the public health and safety, recommended to the Attorney General that he initiate proceedings for scheduling the drug or substance pursuant to subsections (a) and (b) of this section, to apply such additional controls;

(ii) request the Secretary of State to transmit a notice of qualified acceptance, within the period specified in the Convention, pursuant to

paragraph 7 of article 2 of the Convention, to the Secretary-General of the United Nations;

(iii) request the Secretary of State to transmit a notice of qualified acceptance as prescribed in clause (ii) and request the Secretary of State to ask for a review by the Economic and Social Council of the United Nations, in accordance with paragraph 8 of article 2 of the Convention, of the scheduling decision; or

(iv) in the case of a schedule notice, request the Secretary of State to take appropriate action under the Convention to initiate proceedings to remove the drug or substance from the schedules under the Convention or to transfer the drug or substance to a schedule under the Convention different from the one specified in the schedule notice.

(4)(A) If the Attorney General determines, after consultation with the Secretary of Health and Human Services, that proceedings initiated under recommendations made under paragraph (B) or (C)(i) of paragraph (3) will not be completed within the time period required by paragraph 7 of article 2 of the Convention, the Attorney General, after consultation with the Secretary and after providing interested persons opportunity to submit comments respecting the requirements of the temporary order to be issued under this sentence, shall issue a temporary order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention. As a part of such order, the Attorney General shall, after consultation with the Secretary, except such drug or substance from the application of any provision of part C of this subchapter which he finds is not required to carry out the United States obligations under paragraph 7 of article 2 of the Convention. In the case of proceedings initiated under subparagraph (B) of paragraph (3), the Attorney General, concurrently with the issuance of such order, shall request the Secretary of State to transmit a notice of qualified acceptance to the Secretary-General of the United Nations pursuant to paragraph 7 of article 2 of the Convention. A temporary order issued under this subparagraph controlling a drug or other substance subject to proceedings initiated under subsections (a) and (b) of this section shall expire upon the effective date of the application to the drug or substance of the controls resulting from such proceedings.

(B) After a notice of qualified acceptance of a scheduling decision with respect to a drug or other substance is transmitted to the Secretary-General of the United Nations in accordance with clause (ii) or (iii) of paragraph (3)(C) or after a request has been made under clause (iv) of such paragraph with respect to a drug or substance described in a schedule notice, the Attorney General, after consultation with the Secretary of Health and Human Services and after providing interested persons opportunity to submit comments respecting the requirements of the order to be issued under this sentence, shall issue an order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention in the case of a drug or substance for which a notice of qualified acceptance was transmitted or whichever the Attorney General determines is appropriate in the case of a drug or substance described in a schedule notice. As a part of such order, the Attorney General shall, after consultation with the Secretary, except such drug or substance from the application of any provision of part C of this subchapter which he finds is not required to carry out the United States obligations under paragraph 7 of article 2 of the Convention. If, as a result of a review under paragraph 8 of article 2 of the Convention of the scheduling decision with respect to which a notice of qualified acceptance was transmitted in accordance with clause (ii) or (iii) of paragraph (3)(C)—

(i) the decision is reversed, and

(ii) the drug or substance subject to such decision is not required to be controlled under schedule IV or V to carry out the minimum United States obligations under paragraph 7 of article 2 of the Convention,

the order issued under this subparagraph with respect to such drug or substance shall expire upon receipt by the United States of the review decision. If, as a result of action taken pursuant to action initiated under a request transmitted under clause (iv) of paragraph (3)(C), the drug or substance with respect to which such action was taken is not required to be controlled under schedule IV or V, the order issued under this paragraph with respect to such drug or substance shall expire upon receipt by the United States of a notice of the action taken with respect to such drug or substance under the Convention.

(C) An order issued under subparagraph (A) or (B) may be issued without regard to the findings required by subsection (a) of this section or by section 812(b) of this title and without regard to the procedures prescribed by subsection (a) or (b) of this section.

(5) Nothing in the amendments made by the Psychotropic Substances Act of 1978 or the regulations or orders promulgated thereunder shall be con-

strued to preclude requests by the Secretary of Health and Human Services or the Attorney General through the Secretary of State, pursuant to article 2 or other applicable provisions of the Convention, for review of scheduling decisions under such Convention, based on new or additional information.

Immediate precursors

(e) The Attorney General may, without regard to the findings required by subsection (a) of this section or section 812(b) of this title and without regard to the procedures prescribed by subsections (a) and (b) of this section, place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule with a higher numerical designation. If the Attorney General designates a substance as an immediate precursor and places it in a schedule, other substances shall not be placed in a schedule solely because they are its precursors.

Abuse potential

(f) If, at the time a new-drug application is submitted to the Secretary for any drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, it appears that such drug has an abuse potential, such information shall be forwarded by the Secretary to the Attorney General.

Non-narcotic substances sold over the counter without prescription; dextromethorphan

(g)(1) The Attorney General shall by regulation exclude any non-narcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

(2) Dextromethorphan shall not be deemed to be included in any schedule by reason of enactment of this subchapter unless controlled after October 27, 1970 pursuant to the foregoing provisions of this section.

(3) The Attorney General may, by regulation, exempt any compound, mixture, or preparation containing a controlled substance from the application of all or any part of this subchapter if he finds such compound, mixture, or preparation meets the requirements of one of the following categories:

(A) A mixture, or preparation containing a nonnarcotic controlled substance, which mixture or preparation is approved for prescription use, and which contains one or more other active ingredients which are not listed in any schedule and which are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse.

(B) A compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

Temporary scheduling to avoid imminent hazards to public safety

(h)(1) If the Attorney General finds that the scheduling of a substance in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety, he may, by order and without regard to the requirements of subsection (b) of this section relating to the Secretary of Health and Human Services, schedule such substance in schedule I if the substance is not listed in any other schedule in section 812 of this title or if no exemption or approval is in effect for the substance under section 355 of this title. Such an order may not be issued before the expiration of thirty days from—

(A) the date of the publication by the Attorney General of a notice in the Federal Register of the intention to issue such order and the grounds upon which such order is to be issued, and

(B) the date the Attorney General has transmitted the notice required by paragraph (4).

(2) The scheduling of a substance under this subsection shall expire at the end of one year from the date of the issuance of the order scheduling such substance, except that the Attorney General may, during the pendency of proceedings under subsection (a)(1) of this section with respect to the substance, extend the temporary scheduling for up to six months.

(3) When issuing an order under paragraph (1), the Attorney General shall be required to consider, with respect to the finding of an imminent hazard to the public safety, only those factors set forth in paragraphs (4), (5), and (6) of subsection (c) of this section, including actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.

(4) The Attorney General shall transmit notice of an order proposed to be issued under paragraph (1) to the Secretary of Health and Human Services. In issuing an order under paragraph (1), the Attorney General shall take into consideration any comments submitted by the Secretary in response to a notice transmitted pursuant to this paragraph.

(5) An order issued under paragraph (1) with respect to a substance shall be vacated upon the conclusion of a subsequent rulemaking proceeding initiated under subsection (a) of this section with respect to such substance.

(6) An order issued under paragraph (1) is not subject to judicial review.

(Pub.L. 91–513, Title II, § 201, Oct. 27, 1970, 84 Stat. 1245; Pub.L. 95–633, Title I, § 102(a), Nov. 10, 1978, 92 Stat. 3769; Pub.L. 96–88, Title V, § 509, Oct. 17, 1979, 93 Stat. 695; Pub.L. 98–473, Title II, §§ 508, 509(a), Oct. 12, 1984, 98 Stat. 2071, 2072.)

EDITORIAL NOTES

References in Text. The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (d)(3) and (g)(1), is Act June 25, 1938, c. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (section 301 et seq.) of Title 21, U.S.C.A., Food and Drugs.

Schedules IV and V, referred to in subsec. (d)(4)(A), (B), are set out in section 812(c) of this title.

The Psychotropic Substances Act of 1978, referred to in subsec. (d)(5), is Pub.L. 95–633, Nov. 11, 1978, 92 Stat. 3768, which enacted sections 801a, 830, and 852 of Title 21, U.S.C.A., Food and Drugs, amended this section and sections 352, 802, 812, 823, 827, 841 to 843, 872, 881, 952, 953, and 965 of Title 21 and section 242a of Title 42, U.S.C.A., The Public Health and Welfare, and enacted provisions set out as notes under sections 801, 801a, 812, and 830 of Title 21.

Change of Name. "Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" on authority of Pub.L. 96–88, Title V, § 509, Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508 of Title 20, U.S.C.A., Education.

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

Schedules, see 21 CFR 1308.01 et seq. and Table.

§ 812. Schedules of controlled substances

Establishment

(a) There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970 and shall be updated and republished on an annual basis thereafter.

Placement on schedules; findings required

(b) Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on October 27, 1970, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) Schedule I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) Schedule II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) Schedule III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) Schedule IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) Schedule V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

Initial schedules of controlled substances

(c) Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

Schedule I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmathadol.
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine.
(7) Betacetylmethadol.
(8) Betameprodine.
(9) Betamethadol.
(10) Betaprodine.
(11) Clonitazene.
(12) Dextromoramide.
(13) Dextrorphan.
(14) Diampromide.
(15) Diethylthiambutene.
(16) Dimenoxadol.
(17) Dimepheptanol.
(18) Dimethylthiambutene.
(19) Dioxaphetyl butyrate.
(20) Dipipanone.
(21) Ethylmethylthiambutene.
(22) Etonitazene.
(23) Etoxeridine.
(24) Furethidine.
(25) Hydroxypethidine.
(26) Ketobemidone.
(27) Levomoramide.
(28) Levophenacylmorphan.
(29) Morpheridine.
(30) Noracymethadol.
(31) Norlevorphanol.
(32) Normethadone.
(33) Norpipanone.
(34) Phenadoxone.
(35) Phenampromide.
(36) Phenomorphan.
(37) Phenoperidine.
(38) Piritramide.
(39) Proheptazine.
(40) Properidine.
(41) Racemoramide.
(42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.
(4) Codeine methylbromide.
(5) Codeine-N-Oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Etorphine.
(10) Heroin.
(11) Hydromorphinol.
(12) Methyldesorphine.
(13) Methylhydromorphine.
(14) Morphine methylbromide.
(15) Morphine methylsulfonate.
(16) Morphine-N-Oxide.
(17) Myrophine.
(18) Nicocodeine.
(19) Nicomorphine.
(20) Normorphine.
(21) Pholcodine.
(22) Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts

of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3, 4-methylenedioxy amphetamine.

(2) 5-methoxy-3, 4-methylenedioxy amphetamine.

(3) 3, 4, 5-trimethoxy amphetamine.

(4) Bufotenine.

(5) Diethyltryptamine.

(6) Dimethyltryptamine.

(7) 4-methyl-2, 5-dimethoxyamphetamine.

(8) Ibogaine.

(9) Lysergic acid diethylamide.

(10) Marihuana.

(11) Mescaline.

(12) Peyote.

(13) N-ethyl-3-piperidyl benzilate.

(14) N-methyl-3-piperidyl benzilate.

(15) Psilocybin.

(16) Psilocyn.

(17) Tetrahydrocannabinols.

Schedule II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine.

(2) Anileridine.

(3) Bezitramide.

(4) Dihydrocodeine.

(5) Diphenoxylate.

(6) Fentanyl.

(7) Isomethadone.

(8) Levomethorphan.

(9) Levorphanol.

(10) Metazocine.

(11) Methadone.

(12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.

(13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.

(14) Pethidine.

(15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.

(16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.

(17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

(18) Phenazocine.

(19) Piminodine.

(20) Racemethorphan.

(21) Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

Schedule III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Phenmetrazine and its salts.

(3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(4) Methylphenidate.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.

(2) Chorhexadol.

(3) Glutethimide.

(4) Lysergic acid.

(5) Lysergic acid amide.

(6) Methyprylon.

(7) Phencyclidine.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

(c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

Schedule IV

(1) Barbital.

(2) Chloral betaine.

(3) Chloral hydrate.

(4) Ethchlorvynol.

(5) Ethinamate.

(6) Methohexital.

(7) Meprobamate.

(8) Methylphenobarbital.

(9) Paraldehyde.

(10) Petrichloral.

(11) Phenobarbital.

Schedule V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(Pub.L. 91-513, Title II, § 202, Oct. 27, 1970, 84 Stat. 1247; Pub.L. 95-633, Title I, § 103, Nov. 10, 1978, 92 Stat. 3772; Pub.L. 98-473, Title II, §§ 507(c), 509(b), Oct. 12, 1984, 98 Stat. 2071, 2072; Pub.L. 99-570, Title I, § 1867, Oct. 27, 1986, 100 Stat. 3207-55; Pub.L. 99-646, § 84, Nov. 10, 1986, 100 Stat. 3619.)

Amendment of Schedules

Subsection (c) of this section provides that Schedules I through V are subject to amendment pursuant to section 811 of

Title 21, Food and Drugs. See 21 CFR part 1308 for revised schedules.

EDITORIAL NOTES

Placement of Pipradrol and SPA in Schedule IV to Carry Out Obligation Under Convention on Psychotropic Substances. Section 102(c) of Pub.L. 95–633 provided that: "For the purpose of carrying out the minimum United States obligations under paragraph 7 of article 2 of the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, with respect to pipradrol and SPA (also known as (-)-1-dimethylamino-1,2-diphenylethane), the Attorney General shall by order, made without regard to sections 201 and 202 of the Controlled Substances Act [this section and section 811 of this title], place such drugs in schedule IV of such Act [see subsec. (c) of this section]."

Provision of section 102(c) of Pub.L. 95–633, set out above, effective July 15, 1980, the date the Convention on Psychotrophic Substances entered into force in the United States.

§ 813. Treatment of controlled substance analogues

A controlled substance analogue shall, to the extent intended for human consumption, be treated, for the purposes of any Federal law as a controlled substance in schedule I.

(Pub.L. 91–513, Title II, § 203, as added Pub.L. 99–570, Title I, § 1202, Oct. 27, 1986, 100 Stat. 3207–13; and amended Pub.L. 100–690, Title VI, § 6470(c), Nov. 18, 1988, 102 Stat. 4378.)

EDITORIAL NOTES

References in Text. Schedule I, referred to in text, is set out in section 812(c) of this title.

PART C—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

§ 821. Rules and regulations

The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances.

(Pub.L. 91–513, Title II, § 301, Oct. 27, 1970, 84 Stat. 1253.)

Code of Federal Regulations

Administrative practices and procedures, see 21 CFR 10.1 et seq.

Personnel practices, see 21 CFR 19.1 et seq.

Public hearings, see 21 CFR 12.1 et seq. to 16.1 et seq.

§ 822. Persons required to register

Annual registration

(a)(1) Every person who manufactures or distributes any controlled substance, or who proposes to engage in the manufacture or distribution of any controlled substance, shall obtain annually a registration issued by the Attorney General in accordance with the rules and regulations promulgated by him.

(2) Every person who dispenses, or who proposes to dispense, any controlled substance, shall obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him. The Attorney General shall, by regulation, determine the period of such registrations. In no event, however, shall such registrations be issued for less than one year nor for more than three years.

Authorized activities

(b) Persons registered by the Attorney General under this subchapter to manufacture, distribute, or dispense controlled substances are authorized to possess, manufacture, distribute, or dispense such substances (including any such activity in the conduct of research) to the extent authorized by their registration and in conformity with the other provisions of this subchapter.

Exceptions

(c) The following persons shall not be required to register and may lawfully possess any controlled substance under this subchapter:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if such agent or employee is acting in the usual course of his business or employment.

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of the controlled substance is in the usual course of his business or employment.

(3) An ultimate user who possesses such substance for a purpose specified in section 802(25) of this title.

Waiver

(d) The Attorney General may, by regulation, waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.

Separate registration

(e) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

Inspection

(f) The Attorney General is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by him.

(Pub.L. 91-513, Title II, § 302, Oct. 27, 1970, 84 Stat. 1253; Pub.L. 98-473, Title II, § 510, Oct. 12, 1984, 98 Stat. 2072.)

EDITORIAL NOTES

References in Text. "Section 802(25) of this title", referred to in subsec. (c)(3), probably should be a reference to "section 802(27) of this title" which defines the term "ultimate user".

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

General applicability, exceptions, etc., see 21 CFR 1307.01 et seq.

Registration requirements, see 21 CFR 1301.01 et seq.

§ 823. Registration requirements

Manufacturers of controlled substances in schedule I and II

(a) The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

(2) compliance with applicable State and local law;

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

Distributors of controlled substances in schedule I and II

(b) The Attorney General shall register an applicant to distribute a controlled substance in schedule I or II unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective control against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

Limits of authorized activities

(c) Registration granted under subsections (a) and (b) of this section shall not entitle a registrant to (1) manufacture or distribute controlled substances in schedule I or II other than those specified in the registration, or (2) manufacture any quantity of those controlled substances in excess of the quota assigned pursuant to section 826 of this title.

Manufacturers of controlled substances in schedule III, IV, and V

(d) The Attorney General shall register an applicant to manufacture controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule III, IV, or V compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable State and local law;

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

Distributors of controlled substances in schedule III, IV, and V

(e) The Attorney General shall register an applicant to distribute controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

Research; pharmacies; research applications; construction of Article 7 of Convention on Psychotropic Substances

(f) The Attorney General shall register practitioners (including pharmacies, as distinguished from pharmacists) to dispense, or conduct research with, controlled substances in schedule II, III, IV, or V, if the applicant is authorized to dispense, or conduct research with respect to, controlled substances under the laws of the State in which he practices. The Attorney General may deny an application for such registration if he determines that the issuance of such registration would be inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Separate registration under this part for practitioners engaging in research with controlled substances in schedule II, III, IV, or V, who are already registered under this part in another capacity, shall not be required. Registration applications by practitioners wishing to conduct research with controlled substances in schedule I shall be referred to the Secretary, who shall determine the qualifications and competency of each practitioner requesting registration, as well as the merits of the research protocol. The Secretary, in determining the merits of each research protocol, shall consult with the Attorney General as to effective procedures to adequately safeguard against diversion of such controlled substances from legitimate medical or scientific use. Registration for the purpose of bona fide research with controlled substances in schedule I by a practitioner deemed qualified by the Secretary may be denied by the Attorney General only on a ground specified in section 824(a) of this title. Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substanees scheduled under the convention which is conducted in conformity with this subsection and other applicable provisions of this subchapter.

Practitioners dispensing narcotic drugs for narcotic treatment; annual registration; separate registration; qualifications

(g) Practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment shall obtain annually a separate registration for that purpose. The Attorney General shall register an applicant to dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment (or both)

(1) if the applicant is a practitioner who is determined by the Secretary to be qualified (under standards established by the Secretary) to

engage in the treatment with respect to which registration is sought;

(2) if the Attorney General determines that the applicant will comply with standards established by the Attorney General respecting (A) security of stocks of narcotic drugs for such treatment, and (B) the maintenance of records (in accordance with section 827 of this title) on such drugs; and

(3) if the Secretary determines that the applicant will comply with standards established by the Secretary (after consultation with the Attorney General) respecting the quantities of narcotic drugs which may be provided for unsupervised use by individuals in such treatment.

(Pub.L. 91-513, Title II, § 303, Oct. 27, 1970, 84 Stat. 1253; Pub.L. 93-281, § 3, May 14, 1974, 88 Stat. 124; Pub.L. 95-633, Title I, § 109, Nov. 10, 1978, 92 Stat. 3778; Pub.L. 98-473, Title II, § 511, Oct. 12, 1984, 98 Stat. 2073.)

EDITORIAL NOTES

References in Text. Schedules I, II, III, IV, and V, referred to in text are set out in section 812(c) of this title.

Code of Federal Regulations

Registration requirements, see 21 CFR 1301.01 et seq.

Treatment of narcotic addicts, see 21 CFR 291.501 et seq.

§ 824. Denial, revocation, or suspension of registration

Grounds

(a) A registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant—

(1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance;

(3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;

(4) has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a-7(a) of Title 42.

A registration pursuant to section 823(g) of this title to dispense a narcotic drug for maintenance treatment or detoxification treatment may be suspended or revoked by the Attorney General upon a finding that the registrant has failed to comply with any standard referred to in section 823(g) of this title.

Limits of revocation or suspension

(b) The Attorney General may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

Service of show cause order; proceedings

(c) Before taking action pursuant to this section, or pursuant to a denial of registration under section 823 of this title, the Attorney General shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended. The order to show cause shall contain a statement of the basis thereof and shall call upon the applicant or registrant to appear before the Attorney General at a time and place stated in the order, but in no event less than thirty days after the date of receipt of the order. Proceedings to deny, revoke, or suspend shall be conducted pursuant to this section in accordance with subchapter II of chapter 5 of Title 5. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this subchapter or any other law of the United States.

Suspension of registration in cases of imminent danger

(d) The Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety. A failure to comply with a standard referred to in section 823(g) of this title may be treated under this subsection as grounds for immediate suspension of a registration granted under such section. A suspension under this subsection shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the Attorney General or dissolved by a court of competent jurisdiction.

Suspension and revocation of quotas

(e) The suspension or revocation of a registration under this section shall operate to suspend or revoke any quota applicable under section 826 of this title.

Disposition of controlled substances

(f) In the event the Attorney General suspends or revokes a registration granted under section 823 of this title, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may, in the discretion of the Attorney General, be placed under seal. No disposition may be made of any controlled substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded except that a court, upon application therefor, may at any time order the sale of perishable controlled substances. Any such order shall require the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances (or proceeds of sale deposited in court) shall be forfeited to the United States; and the Attorney General shall dispose of such controlled substances in accordance with section 881(e) of this title. All right, title, and interest in such controlled substances shall vest in the United States upon a revocation order becoming final.

Seizure or placement under seal of controlled substances

(g) The Attorney General may, in his discretion, seize or place under seal any controlled substances owned or possessed by a registrant whose registration has expired or who has ceased to practice or do business in the manner contemplated by his registration. Such controlled substances shall be held for the benefit of the registrant, or his successor in interest. The Attorney General shall notify a registrant, or his successor in interest, who has any controlled substance seized or placed under seal of the procedures to be followed to secure the return of the controlled substance and the conditions under which it will be returned. The Attorney General may not dispose of any controlled substance seized or placed under seal under this subsection until the expiration of one hundred and eighty days from the date such substance was seized or placed under seal.

(Pub.L. 91–513, Title II, § 304, Oct. 27, 1970, 84 Stat. 1255; Pub.L. 93–281, § 4, May 14, 1974, 88 Stat. 125; Pub.L. 98–473, Title II, §§ 304, 512, 513, Oct. 12, 1984, 98 Stat. 2050, 2073; Pub.L. 100–93, § 8(j), Aug. 18, 1987, 101 Stat. 695.)

EDITORIAL NOTES

References in Text. Subchapter II of this chapter, referred to in subsec. (a)(1), (2), was in the original "title III", meaning Title III of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

Effective Date of 1987 Amendment. Amendment by Pub.L. 100–93 effective at the end of the fourteen-day period beginning on Aug. 18, 1987, and inapplicable to administrative proceedings commenced before the end of such period, see section 15(a) of Pub.L. 100–93, set out as a note under section 1320a–7 of Title 42, The Public Health and Welfare.

Code of Federal Regulations

Registration requirements, see 21 CFR 1301.01 et seq.

§ 825. Labeling and packaging

Symbol

(a) It shall be unlawful to distribute a controlled substance in a commercial container unless such container, when and as required by regulations of the Attorney General, bears a label (as defined in section 321(k) of this title) containing an identifying symbol for such substance in accordance with such regulations. A different symbol shall be required for each schedule of controlled substances.

Unlawful distribution without identifying symbol

(b) It shall be unlawful for the manufacturer of any controlled substance to distribute such substance unless the labeling (as defined in section 321(m) of this title) of such substance contains, when and as required by regulations of the Attorney General, the identifying symbol required under subsection (a) of this section.

Warning on label

(c) The Secretary shall prescribe regulations under section 353(b) of this title which shall provide that the label of a drug listed in schedule II, III, or IV shall, when dispensed to or for a patient, contain a clear, concise warning that it is a crime to transfer the drug to any person other than the patient.

Containers to be securely sealed

(d) It shall be unlawful to distribute controlled substances in schedule I or II, and narcotic drugs in schedule III or IV, unless the bottle or other container, stopper, covering, or wrapper thereof is securely sealed as required by regulations of the Attorney General.

(Pub.L. 91–513, Title II, § 305, Oct. 27, 1970, 84 Stat. 1256.)

EDITORIAL NOTES

References in Text. Schedules I, II, III, and IV, referred to in subsecs. (c) and (d), are set out in section 812(c) of this title.

Code of Federal Regulations

Labeling and packaging requirements, see 21 CFR 1302.01 et seq.

§ 826. Production quotas for controlled substances

Establishment of total annual needs

(a) The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. Production quotas shall be established in terms of quantities of each basic class of controlled substance and not in terms of individual pharmaceutical dosage forms prepared from or containing such a controlled substance.

Individual production quotas; revised quotas

(b) The Attorney General shall limit or reduce individual production quotas to the extent necessary to prevent the aggregate of individual quotas from exceeding the amount determined necessary each year by the Attorney General under subsection (a) of this section. The quota of each registered manufacturer for each basic class of controlled substance in schedule I or II shall be revised in the same proportion as the limitation or reduction of the aggregate of the quotas. However, if any registrant, before the issuance of a limitation or reduction in quota, has manufactured in excess of his revised quota, the amount of the excess shall be subtracted from his quota for the following year.

Manufacturing quotas for registered manufacturers

(c) On or before October 1 of each year, upon application therefor by a registered manufacturer, the Attorney General shall fix a manufacturing quota for the basic classes of controlled substances in schedules I and II that the manufacturer seeks to produce. The quota shall be subject to the provisions of subsections (a) and (b) of this section. In fixing such quotas, the Attorney General shall determine the manufacturer's estimated disposal, inventory, and other requirements for the calendar year; and, in making his determination, the Attorney General shall consider the manufacturer's current rate of disposal, the trend of the national disposal rate during the preceding calendar year, the manufacturer's production cycle and inventory position, the economic availability of raw materials, yield and stability problems, emergencies such as strikes and fires, and other factors.

Quotas for registrants who have not manufactured controlled substance during one or more preceding years

(d) The Attorney General shall, upon application and subject to the provisions of subsections (a) and (b) of this section, fix a quota for a basic class of controlled substance in schedule I or II for any registrant who has not manufactured that basic class of controlled substance during one or more preceding calendar years. In fixing such quota, the Attorney General shall take into account the registrant's reasonably anticipated requirements for the current year; and, in making his determination of such requirements, he shall consider such factors specified in subsection (c) of this section as may be relevant.

Quota increases

(e) At any time during the year any registrant who has applied for or received a manufacturing quota for a basic class of controlled substance in schedule I or II may apply for an increase in that quota to meet his estimated disposal, inventory, and other requirements during the remainder of that year. In passing upon the application the Attorney General shall take into consideration any occurrences since the filing of the registrant's initial quota application that may require an increased manufacturing rate by the registrant during the balance of the year. In passing upon the application the Attorney General may also take into account the amount, if any, by which the determination of the Attorney General under subsection (a) of this section exceeds the aggregate of the quotas of all registrants under this section.

Incidental production exception

(f) Notwithstanding any other provisions of this subchapter, no registration or quota may be required for the manufacture of such quantities of controlled substances in schedules I and II as incidentally and necessarily result from the manufacturing process used for the manufacture of a controlled substance with respect to which its manufacturer is duly registered under this subchapter. The Attorney General may, by regulation, prescribe restrictions on the retention and disposal of such incidentally produced substances.

(Pub.L. 91-513, Title II, § 306, Oct. 27, 1970, 84 Stat. 1257; Pub.L. 94-273, § 3(16), Apr. 21, 1976, 90 Stat. 377.)

EDITORIAL NOTES

References in Text. Schedules I and II, referred to in text, are set out in section 812(c) of this title.

Code of Federal Regulations

Quotas, see 21 CFR 1303.01 et seq.

§ 827. Records and reports of registrants

Inventory

(a) Except as provided in subsection (c) of this section—

(1) every registrant under this subchapter shall, on May 1, 1971, or as soon thereafter as such registrant first engages in the manufacture, distribution, or dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand, except that the regulations prescribed under this section shall permit each such biennial inventory (following the initial inventory required by this paragraph) to be prepared on such registrant's regular general physical inventory date (if any) which is nearest to and does not vary by more than six months from the biennial date that would otherwise apply;

(2) on the effective date of each regulation of the Attorney General controlling a substance that immediately prior to such date was not a controlled substance, each registrant under this subchapter manufacturing, distributing, or dispensing such substance shall make a complete and accurate record of all stocks thereof on hand; and

(3) on and after May 1, 1971, every registrant under this subchapter manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him, except that this paragraph shall not require the maintenance of a perpetual inventory.

Availability of records

(b) Every inventory or other record required under this section (1) shall be in accordance with, and contain such relevant information as may be required by, regulations of the Attorney General, (2) shall (A) be maintained separately from all other records of the registrant, or (B) alternatively, in the case of nonnarcotic controlled substances, be in such form that information required by the Attorney General is readily retrievable from the ordinary business records of the registrant, and (3) shall be kept and be available, for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General.

Nonapplicability

(c) The foregoing provisions of this section shall not apply—

(1)(A) to the prescribing of controlled substances in schedule II, III, IV, or V by practitioners acting in the lawful course of their professional practice unless such substance is prescribed in the course of maintenance or detoxification treatment of an individual; or

(B) to the administering of a controlled substance in schedule II, III, IV, or V unless the practitioner regularly engages in the dispensing or administering of controlled substances and charges his patients, either separately or together with charges for other professional services, for substances so dispensed or administered or unless such substance is administered in the course of maintenance treatment or detoxification treatment of an individual;

(2)(A) to the use of controlled substances, at establishments registered under this subchapter which keep records with respect to such substances, in research conducted in conformity with an exemption granted under section 355(i) or 360b(j) of this title;

(B) to the use of controlled substances, at establishments registered under this subchapter which keep records with respect to such substances, in preclinical research or in teaching; or

(3) to the extent of any exemption granted to any person, with respect to all or part of such provisions, by the Attorney General by or pursuant to regulation on the basis of a finding that the application of such provisions (or part thereof) to such person is not necessary for carrying out the purposes of this subchapter.

Nothing in the Convention on Psychotropic Substances shall be construed as superseding or otherwise affecting the provisions of paragraph (1)(B), (2), or (3) of this subsection.

Periodic reports to Attorney General

(d) Every manufacturer registered under section 823 of this title shall, at such time or times and in such form as the Attorney General may require, make periodic reports to the Attorney General of every sale, delivery, or other disposal by him of any controlled substance, and each distributor shall make such reports with respect to narcotic controlled substances, identifying by the registration number assigned under this subchapter the person or establishment (unless exempt from registration

under section 822(d) of this title) to whom such sale, delivery, or other disposal was made.

Reporting and recordkeeping requirements of drug conventions

(e) In addition to the reporting and recordkeeping requirements under any other provision of this subchapter, each manufacturer registered under section 823 of this title shall, with respect to narcotic and nonnarcotic controlled substances manufactured by it, make such reports to the Attorney General, and maintain such records, as the Attorney General may require to enable the United States to meet its obligations under articles 19 and 20 of the Single Convention on Narcotic Drugs and article 16 of the Convention on Psychotropic Substances. The Attorney General shall administer the requirements of this subsection in such a manner as to avoid the unnecessary imposition of duplicative requirements under this subchapter on manufacturers subject to the requirements of this subsection.

Investigational uses of drugs; procedures

(f) Regulations under sections 355(i) and 360b(j) of this title, relating to investigational use of drugs, shall include such procedures as the Secretary, after consultation with the Attorney General, determines are necessary to insure the security and accountability of controlled substances used in research to which such regulations apply.

Change of address

(g) Every registrant under this subchapter shall be required to report any change of professional or business address in such manner as the Attorney General shall by regulation require.

(Pub.L. 91-513, Title II, § 307, Oct. 27, 1970, 84 Stat. 1258; Pub.L. 93-281, § 5, May 14, 1974, 88 Stat. 125; Pub.L. 95-633, Title I, §§ 104, 110, Nov. 10, 1978, 92 Stat. 3772, 3773; Pub.L. 98-473, Title II, §§ 514, 515, Oct. 12, 1984, 98 Stat. 2074.)

EDITORIAL NOTES

References in Text. Schedules II, III, IV, and V, referred to in subsec. (c)(1), are set out in section 812(c) of this title.

Code of Federal Regulations

Recordkeeping and reporting requirements, see 21 CFR 1304.01 et seq.

§ 828. Order forms

Unlawful distribution of controlled substances

(a) It shall be unlawful for any person to distribute a controlled substance in schedule I or II to another except in pursuance of a written order of the person to whom such substance is distributed, made on a form to be issued by the Attorney General in blank in accordance with subsection (d) of this section and regulations prescribed by him pursuant to this section.

Nonapplicability of provisions

(b) Nothing in subsection (a) of this section shall apply to—

(1) the exportation of such substances from the United States in conformity with subchapter II of this chapter;

(2) the delivery of such a substance to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business; but where such carriage or storage is in connection with the distribution by the owner of the substance to a third person, this paragraph shall not relieve the distributor from compliance with subsection (a) of this section.

Preservation and availability

(c)(1) Every person who in pursuance of an order required under subsection (a) of this section distributes a controlled substance shall preserve such order for a period of two years, and shall make such order available for inspection and copying by officers and employees of the United States duly authorized for that purpose by the Attorney General, and by officers or employees of States or their political subdivisions who are charged with the enforcement of State or local laws regulating the production, or regulating the distribution or dispensing, of controlled substances and who are authorized under such laws to inspect such orders.

(2) Every person who gives an order required under subsection (a) of this section shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued by the Attorney General in blank in accordance with subsection (d) of this section and regulations prescribed by him pursuant to this section, and shall, if such order is accepted, preserve such duplicate for a period of two years and make it available for inspection and copying by the officers and employees mentioned in paragraph (1) of this subsection.

Issuance

(d)(1) The Attorney General shall issue forms pursuant to subsections (a) and (c)(2) of this section only to persons validly registered under section 823 of this title (or exempted from registration under section 822(d) of this title). Whenever any such form is issued to a person, the Attorney General

shall, before delivery thereof, insert therein the name of such person, and it shall be unlawful for any other person (A) to use such form for the purpose of obtaining controlled substances or (B) to furnish such form to any person with intent thereby to procure the distribution of such substances.

(2) The Attorney General may charge reasonable fees for the issuance of such forms in such amounts as he may prescribe for the purpose of covering the cost to the United States of issuing such forms, and other necessary activities in connection therewith.

Unlawful acts

(e) It shall be unlawful for any person to obtain by means of order forms issued under this section controlled substances for any purpose other than their use, distribution, dispensing, or administration in the conduct of a lawful business in such substances or in the course of his professional practice or research.

(Pub.L. 91-513, Title II, § 308, Oct. 27, 1970, 84 Stat. 1259.)

EDITORIAL NOTES

References in Text. Schedules I and II, referred to in subsec. (a), are set out in section 812(c) of this title.

Subchapter II of this chapter, referred to in subsec. (b)(1), was in the original "title III", meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

Code of Federal Regulations

Forms requirements, see 21 CFR 1305.01 et seq.

§ 829. Prescriptions

Schedule II substances

(a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed without the written prescription of a practitioner, except that in emergency situations, as prescribed by the Secretary by regulation after consultation with the Attorney General, such drug may be dispensed upon oral prescription in accordance with section 503(b) of that Act. Prescriptions shall be retained in conformity with the requirements of section 827 of this title. No prescription for a controlled substance in schedule II may be refilled.

Schedule III and IV substances

(b) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed without a written or oral prescription in conformity with section 503(b) of that Act. Such prescriptions may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

Schedule V substances

(c) No controlled substance in schedule V which is a drug may be distributed or dispensed other than for a medical purpose.

Non-prescription drugs with abuse potential

(d) Whenever it appears to the Attorney General that a drug not considered to be a prescription drug under the Federal Food, Drug, and Cosmetic Act should be so considered because of its abuse potential, he shall so advise the Secretary and furnish to him all available data relevant thereto.

(Pub.L. 91-513, Title II, § 309, Oct. 27, 1970, 84 Stat. 1260.)

EDITORIAL NOTES

References in Text. Schedules II, III, IV, and V, referred to in text, are set out in section 812(c) of this title.

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (a), (b), and (d), is Act June 25, 1938, c. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (section 301 et seq.) of Title 21 U.S.C.A., Food and Drugs. Section 503(b) of that Act is classified to section 353(b) of Title 21.

Code of Federal Regulations

Prescription requirements, see 21 CFR 1306.01 et seq.

§ 830. "Regulation of listed chemicals and certain machines

Record of regulated transactions

(a)(1) Each regulated person who engages in a regulated transaction involving a listed chemical, a tableting machine, or an encapsulating machine shall keep a record of the transaction—

(A) for 4 years after the date of the transaction, if the listed chemical is a precursor chemical or if the transaction involves a tableting machine or an encapsulating machine; and

(B) for 2 years after the date of the transaction, if the listed chemical is an essential chemical.

(2) A record under this subsection shall be retrievable and shall include the date of the regulated transaction, the identity of each party to the regu-

lated transaction, a statement of the quantity and form of the listed chemical, a description of the tableting machine or encapsulating machine, and a description of the method of transfer. Such record shall be available for inspection and copying by the Attorney General.

(3) It is the duty of each regulated person who engages in a regulated transaction to identify each other party to the transaction. It is the duty of such other party to present proof of identity to the regulated person. The Attorney General shall specify by regulation the types of documents and other evidence that constitute proof of identity for purposes of this paragraph.

Reports to Attorney General

(b) Each regulated person shall report to the Attorney General, in such form and manner as the Attorney General shall prescribe by regulation—

(1) any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this subchapter;

(2) any proposed regulated transaction with a person whose description or other identifying characteristic the Attorney General furnishes in advance to the regulated person;

(3) any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person; and

(4) any regulated transaction in a tableting machine or an encapsulating machine.

Each report under paragraph (1) shall be made at the earliest practicable opportunity after the regulated person becomes aware of the circumstance involved. A regulated person may not complete a transaction with a person whose description or identifying characteristic is furnished to the regulated person under paragraph (2) unless the transaction is approved by the Attorney General. The Attorney General shall make available to regulated persons guidance documents describing transactions and circumstances for which reports are required under paragraph (1) and paragraph (3).

Confidentiality of information obtained by Attorney General; non-disclosure; exceptions

(c)(1) Except as provided in paragraph (2), any information obtained by the Attorney General under this section which is exempt from disclosure under section 552(a) of Title 5, by reason of section 552(b)(4) of Title 5, is confidential and may not be disclosed to any person.

(2) Information referred to in paragraph (1) may be disclosed only—

(A) to an officer or employee of the United States engaged in carrying out this subchapter, subchapter II of this chapter, or the customs laws;

(B) when relevant in any investigation or proceeding for the enforcement of this subchapter, subchapter II of this chapter, or the customs laws;

(C) when necessary to comply with an obligation of the United States under a treaty or other international agreement; or

(D) to a State or local official or employee in conjunction with the enforcement of controlled substances laws or precursor chemical laws.

(3) The Attorney General shall—

(A) take such action as may be necessary to prevent unauthorized disclosure of information by any person to whom such information is disclosed under paragraph (2); and

(B) issue guidelines that limit, to the maximum extent feasible, the disclosure of proprietary business information, including the names or identities of United States exporters of listed chemicals, to any person to whom such information is disclosed under paragraph (2).

(4) Any person who is aggrieved by a disclosure of information in violation of this section may bring a civil action against the violator for appropriate relief.

(5) Notwithstanding paragraph (4), a civil action may not be brought under such paragraph against investigative or law enforcement personnel of the Drug Enforcement Administration."

(Pub.L. 91-513, Title II, § 310, as added Pub.L. 95-633, Title II, § 202(a), Nov. 10, 1978, 92 Stat. 3774; and amended Pub.L. 100-690, Title VI, § 6052(a), Nov. 18, 1988, 102 Stat. 4313.)

EDITORIAL NOTES

Effective Date of 1988 Amendment. Amendment by section 6052 of Pub.L. 100-690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub.L. 100-690, set out as a note under section 802 of this title.

Effective Date; Time to Submit Piperidine Report; Required Information. Section 203(a) of Pub.L. 95-633 provided that:

"(1) Except as provided under paragraph (2), the amendments may by this title [enacting this section and amending sections 841 to 843 of this title] shall take effect on the date of the enactment of this Act [Nov. 10, 1978].

"(2) Any person required to submit a report under section 310(a)(1) of the Controlled Substances Act [subsec. (a)(1) of this section] respecting a distribution, sale, or

importation of piperidine during the 90 days after the date of the enactment of this Act [Nov. 10, 1978] may submit such report any time up to 97 days after such date of enactment.

"(3) Until otherwise provided by the Attorney General by regulation, the information required to be reported by a person under section 310(a)(1) of the Controlled Substances Act (as added by section 202(a)(2) of this title) [subsec. (a)(1) of this section] with respect to the person's distribution, sale, or importation of piperidine shall—

"(A) be the information described in subparagraphs (A) and (B) of such section, and

"(B) except as provided in paragraph (2) of this subsection, be reported not later than seven days after the date of such distribution, sale, or importation."

Regulations for Piperidine Reporting. Section 203(b) of Pub.L. 95–633 provided that:

"The Attorney General shall—

"(1) first publish proposed interim regulations to carry out the requirements of section 310(a) of the Controlled Substances Act (as added by section 202(a)(2) of this title) [subsec. (a) of this section] not later than 30 days after the date of the enactment of this Act [Nov. 10, 1978], and

"(2) first promulgate final interim regulations to carry out such requirements not later than 75 days after the date of the enactment of this Act [Nov. 10, 1978], such final interim regulations to be effective with respect to distributions, sales, and importations of piperidine on and after the ninety-first day after the date of the enactment of this Act."

Report to President and Congress on Effectiveness of Title II of Pub.L. 95–633. Section 203(c) of Pub.L. 95–633 required the Attorney General, after consultation with the Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services], to analyze and evaluate the impact and effectiveness of the amendments made by Title II of Pub.L. 95–633 [enacting this section and amending sections 841 to 843 of this title], including the impact on the illicit manufacture and use of phencyclidine and the impact of the requirements imposed by such amendments on legitimate distributions and uses of piperidine, and, not later than Mar. 1, 1980, to report to the President and the Congress on such analysis and evaluation and to include in such report such recommendations as he deemed appropriate.

Code of Federal Regulations

Identification requirements, see 21 CFR 1310.01 et seq.

PART D—OFFENSES AND PENALTIES

§ 841. Prohibited acts A

Unlawful acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Penalties

(b) Except as otherwise provided in section 845, 845a, or 845b of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substance[1] referred to in subclauses (I) through (III);

(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 100 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or

more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 845, 845a, or 845b of this title after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. For purposes of this subparagraph, the term "felony drug offense" means an offense that is a felony under any provision of this subchapter or any other Federal law that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances or a felony under any law of a State or a foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substance[1] referred to in subclauses (I) through (III);

(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 10 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious

bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine not to exceed the greater of twice that authorized in accordance with the

rovisions of Title 18, or $500,000 if the defendant an individual or $2,000,000 if the defendant is ther than an individual, or both. Any sentence nposing a term of imprisonment under this paraaph shall, in the absence of such a prior convicon, impose a term of supervised release of at least ne year in addition to such term of imprisonment nd shall, if there was such a prior conviction, npose a term of supervised release of at least 2 ears in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedle V, such person shall be sentenced to a term of nprisonment of not more than one year, a fine not) exceed the greater of that authorized in accordnce with the provisions of Title 18, or $100,000 if ie defendant is an individual or $250,000 if the efendant is other than an individual, or both. If ny person commits such a violation after one or iore convictions of him for an offense punishable nder this paragraph, or for a crime under any ther provision of this subchapter or subchapter II f this chapter or other law of a State, the United tates, or a foreign country relating to narcotic rugs, marihuana, or depressant or stimulant subtances, have become final, such person shall be entenced to a term of imprisonment of not more han 2 years, a fine not to exceed the greater of wice that authorized in accordance with the provisions of Title 18, or $200,000 if the defendant is an ndividual or $500,000 if the defendant is other than n individual, or both.

(4) Notwithstanding paragraph (1)(D) of this subection, any person who violates subsection (a) of his section by distributing a small amount of mariuana for no remuneration shall be treated as rovided in section 844 of this title and section 3607 f Title 18.

(5) Any person who violates subsection (a) of this ection by cultivating a controlled substance on 'ederal property shall be imprisoned as provided in his subsection and shall be fined any amount not o exceed—

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of Title 18;

(C) $500,000 if the defendant is an individual; or

(D) $1,000,000 if the defendant is other than an individual;

or both.

(6) Any person who violates subsection (a) of this section, or attempts to do so, and knowingly or ntentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use—

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with Title 18, or imprisoned not more than five years, or both.

(c) Repealed. Pub.L. 98–473, Title II, § 224(a)(2), Oct. 12, 1984, 98 Stat. 2030

Offenses involving listed chemicals

(d) Any person who knowingly or intentionally—

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this title; or

(3) with the intent of causing the evasion of the record-keeping or reporting requirements of section 830 of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with Title 18, or imprisoned not more than 10 years, or both.

Boobytraps on Federal property; penalties; definitions

(e)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years and shall be fined not more than $10,000.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

(3) For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term in-

cludes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

Ten-year injunction as additional penalty

(f) In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, or importation of a listed chemical may be enjoined from engaging in any regulated transaction involving a listed chemical for not more than ten years.

Wrongful distribution or possession of listed chemicals

(g)(1) Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of a recordkeeping or reporting requirement of section 830 of this title) shall be fined under Title 18, or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 830 of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under Title 18, or imprisoned not more than one year, or both.

(Pub.L. 91–513, Title II, § 401, Oct. 27, 1970, 84 Stat. 1260; Pub.L. 95–633, Title II, § 201, Nov. 10, 1978, 92 Stat. 3774; Pub.L. 96–359, § 8(c), Sept. 26, 1980, 94 Stat. 1194; Pub.L. 98–473, Title II, §§ 224(a), 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2030, 2068, 2070; Pub.L. 98–473, § 224(a), as amended Pub.L. 99–570, Title I, § 1005(a), Oct. 27, 1986, 100 Stat. 3207–6; Pub.L. 99–570, Title I, §§ 1002, 1003(a), 1004(a), 1103, Title XV, § 15005, Oct. 27, 1986, 100 Stat. 3207–2, 3207–5, 3207–6, 3207–11, 3207–192; Pub.L. 100–690, Title VI, §§ 6055, 6254(h), 6452(a), 6470(g), (h), 6479, Nov. 18, 1988, 102 Stat. 4318, 4367, 4371, 4378, 4382.)

[1] So in original. Probably should be "substances".

Subsecs. (b)(4) and (c) of this Section Applicable to Offenses Committed Prior to Nov. 1, 1987

Subsecs. (b)(4) and (c) of this section as in effect prior to amendment by Pub.L. 98–473, § 224(a), read as follows:

(b) Penalties

Except as otherwise provided in section 845, 845a, or 845b of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

* * *

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of section 844 of this title.

* * *

(c) Special parole term

A special parole term imposed under this section or section 845, 845a or 845b of this title may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 845, 845a or 845b of this title shall be in addition to, and not in lieu of, any other parole provided for by law.

[See Codification note below.]

For applicability of sentencing provisions to offenses, see Effective Date and Savings Provisions, etc., note, section 235 of Pub.L. 98–473, as amended, set out under section 3551 of Title 18, Crimes and Criminal Procedure.

EDITORIAL NOTES

References in Text. "This subchapter", referred to in subsecs. (a), (b)(1), (2), (3), (5), (6), (d) and (g), was in the original "this title" which is Title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

Subchapter II of this chapter, referred to in text, was in the original "title III", meaning of Title III of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

Schedules I, II, III, IV, and V, referred to in subsec. (b)(1), (2), and (3), are set out in section 812(c) of this title.

Codification. Amendment by section 224(a)(5) of Pub. L. 98–473 prior to repeal by Pub.L. 99–570, § 1005(a)(2), deleting the last sentence of subsec. (b)(5), which read "Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment", did not take into account repeal of such subsec. (b)(5) by section 502(5) of Pub.L. 98–473 and addition of a new subsec. (b)(5) by section 502(6) of Pub.L. 98–473, thereby resulting in the deletion of a provision of subsec. (b)(5) which had been previously repealed.

The amendment to subsec. (c) by Pub.L. 99–570, § 1004(a), directing the substitution of "term of supervised release" for "special parole term" wherever appearing has not been executed to such subsec. (c) in view of repeal by Pub.L. 98–473, § 224(a)(2), eff. Nov. 1, 1987.

Repeals. Section 224(a)(1), (2), (3), and (5) of Pub.L. 98–473, cited to credit, was repealed by section 1005(a)(2) of Pub.L. 99–570. Such provisions of section 224(a) of

Pub.L. 98–473, which were to take effect Nov. 1, 1987, as a result of repeal were never executed to text of section.

Effective Date of 1988 Amendment. Amendment by section 6055 of Pub.L. 100–690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub.L. 100–690, set out as a note under section 802 of this title.

Effective Date of 1986 Amendment. Section 1004(b) of Pub.L. 99–570 provided that: "(b) The amendments made by this section [amending this section and sections 845, 845a, 960 and 962 of this title] shall take effect on the date of the taking effect of section 3583 of title 18, United States Code. [Nov. 1, 1987]."

Effective Date and Savings Provisions of 1984 Amendment. Amendment by Pub.L. 98–473 effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98–473, and except as otherwise provided for therein, see section 235 of Pub.L. 98–473, as amended, set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 842. Prohibited acts B

Unlawful acts

(a) It shall be unlawful for any person—

(1) who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 829 of this title;

(2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;

(3) who is a registrant to distribute a controlled substance in violation of section 825 of this title;

(4) to remove, alter, or obliterate a symbol or label required by section 825 of this title;

(5) to refuse or fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this subchapter or subchapter II of this chapter;

(6) to refuse any entry into any premises or inspection authorized by this subchapter or subchapter II of this chapter;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 824(f) or 881 of this title or to remove or dispose of substances so placed under seal;

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this subchapter or subchapter II of this chapter, any information acquired in the course of an inspection authorized by this subchapter concerning any method or process which as a trade secret is entitled to protection, or to use to his own advantage or reveal (other than as authorized by section 830 of this title) any information that is confidential under such section;

(9) who is a regulated person to engage in a regulated transaction without obtaining the identification required by 830(a)(3) of this title; or

(10) to fail to keep a record or make a report under section 830 of this title.

Manufacture

(b) It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II which is—

(1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 826 of this title; or

(2) in excess of a quota assigned to him pursuant to section 826 of this title.

Penalties

(c)(1) Except as provided in paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than $25,000. The district courts of the United States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of Title 28 to enforce this paragraph.

(2)(A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) of this paragraph, be sentenced to imprisonment of not more than one year or a fine of not more than $25,000, or both.

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of $50,000, or both.

(c) Repealed. Pub.L. 100-690, Title VI, § 6056(c), Nov. 18, 1988, 102 Stat. 4318

(3) Except under the conditions specified in paragraph (2) of this subsection, a violation of this section does not constitute a crime, and a judgment for the United States and imposition of a civil penalty pursuant to paragraph (1) shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

(Pub.L. 91-513, Title II, § 402, Oct. 27, 1970, 84 Stat. 1262; Pub.L. 95-633, Title II, § 202(b)(1), (2), Nov. 10, 1978, 92 Stat. 3776; Pub.L. 100-690, Title VI, § 6056, Nov. 18, 1988, 102 Stat. 4318, 4319.)

EDITORIAL NOTES

References in Text. Subchapter II of this chapter, referred to in subsecs. (a)(5), (6), (8), and (c)(2)(B), was in the original "title III", meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A Tables volume.

Schedules I and II, referred to in subsec. (b), are set out in section 812(c), of this title.

Effective Date of 1988 Amendment. Amendment by section 6056 of Pub.L. 100-690, effective 120 days after Nov. 18, 1988, see section 6061 of Pub.L. 100-690, set out as a note under section 802 of this title.

§ 843. Prohibited acts C

Unlawful acts

(a) It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 828 of this title;

(2) to use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, expired, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4)(A) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this subchapter or subchapter II of this chapter, or (B) to present false or fraudulent identification where the person is receiving or purchasing a listed chemical and the person is required to present identification under section 830(a) of this title;

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance;

(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, gelatin capsule, or equipment specially designed or modified to manufacture a controlled substance, with intent to manufacture a controlled substance except as authorized by this subchapter;

(7) to manufacture, distribute, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, gelatin capsule, or equipment specially designed or modified to manufacture a controlled substance, knowing that it will be used to manufacture a controlled substance except as authorized by this subchapter; or

(8) to create a chemical mixture for the purpose of evading a requirement of section 830 of this title or to receive a chemical mixture created for that purpose.

Communication facility

(b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II of this chapter. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

Penalties

(c) Any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than $30,000, or both; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become

final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than $60,000, or both.

Additional penalties

(d) In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, or importation of a listed chemical may be enjoined from engaging in any regulated transaction involving a listed chemical for not more than ten years.

(Pub.L. 91-513, Title II, § 403, Oct. 27, 1970, 84 Stat. 1263; Pub.L. 95-633, Title II, § 202(b)(3), Nov. 10, 1978, 92 Stat. 3776; Pub.L. 98-473, Title II, § 516, Oct. 12, 1984, 98 Stat. 2074; Pub.L. 99-570, Title I, § 1866(a), Oct. 27, 1986, 100 Stat. 3207-54; Pub.L. 100-690, Title VI, § 6057, Nov. 18, 1988, 102 Stat. 4319.)

EDITORIAL NOTES

References in Text. Schedules I and II, referred to in subsec. (a)(1), are set out in section 812(c) of this title.

Subchapter II of this chapter, referred to in subsecs. (a)(4)(A), (b), and (c), was in the original "title III", meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

"This subchapter", referred to in subsecs. (a)(4)(A), (6), (7), (b), and (c), was in the original "this title" which is Title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

Effective Date of 1988 Amendment. Amendment by section 6057 of Pub.L. 100-690, effective 120 days after Nov. 18, 1988, see section 6061 of Pub.L. 100-690, set out as a note under section 802 of this title.

§ 844. Penalty for simple possession

Simple possession

(a)[1] It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000, or both, except that if he commits such offense after a prior conviction under this subchapter or subchapter II of this chapter, or a prior conviction for any drug or narcotic offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of $2,500, except, further, that if he commits such offense after two or more prior convictions under this subchapter or subchapter II of this chapter, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of $5,000. Notwithstanding the preceding sentence, a person convicted under this subsection for the possession of a mixture or substance which contains cocaine base shall be fined under Title 18, or imprisoned not less than 5 years and not more than 20 years, or both, if the conviction is a first conviction under this subsection and the amount of the mixture or substance exceeds 5 grams, if the conviction is after a prior conviction for the possession of such a mixture or substance under this subsection becomes final and the amount of the mixture or substance exceeds 3 grams, or if the conviction is after 2 or more prior convictions for the possession of such a mixture or substance under this subsection become final and the amount of the mixture or substance exceeds 1 gram. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of Title 28, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of Title 18 that the defendant lacks the ability to pay.

(b) Repealed Pub.L. 98-473, Title II, § 219(a), Oct. 12, 1984, 98 Stat. 2027.

Definition

(c) As used in this section, the term "drug or narcotic offense" means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this subchapter.

(Pub.L. 91-513, Title II, § 404, Oct. 27, 1970, 84 Stat. 1264; Pub.L. 98-473, Title II, § 219, Oct. 12, 1984, 98 Stat. 2027; Pub.L. 99-570, Title I, § 1052, Oct. 27, 1986, 100 Stat. 3207-8; Pub.L. 100-690, Title VI, §§ 6371, 6480, Nov. 18, 1988, 102 Stat. 4370, 4382.)

1. So in original. Subsec. (a) designation, repealed by Pub.L. 98-473, has been editorially supplied.

Section Applicable to Offenses Committed Prior to Nov. 1. 1987

This section as in effect prior to amendment by Pub.L. 98–473 read as follows:

§ 844. Penalties

Simple possession

(a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000 but not more than $5,000, or both, except that if he commits such offense after a prior conviction under this subchapter or subchapter II of this chapter, or a prior conviction for any drug or narcotic offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of $2,500 but not more than $10,000, except, further, that if he commits such offense after two or more prior convictions under this subchapter or subchapter II of this chapter, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any State, or a combination of two or more such offenses have become final. he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of $5,000 but not more than $25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of Title 28, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of Title 18 that the defendant lacks the ability to pay.

Probation; expungement of records relating to arrest, etc.

(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this subchapter or subchapter II of this chapter, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the discharge of such person and dismissal of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

Definition

(c) As used in this section, the term "drug or narcotic offense" means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this subchapter.

For applicability of sentencing provisions to offenses, see Effective Date and Savings Provisions, etc., note, section 235 of Pub.L. 98–473, as amended, set out under section 3551 of Title 18, Crimes and Criminal Procedure.

EDITORIAL NOTES

References in Text. "This subchapter", referred to in subsec. (a), was in the original "this title" which is Title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

"Subchapter II of this chapter", referred to in subsec. (a), was in the original "title III", meaning Title III of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For

classification of Part B, consisting of sections 1101 to 1105 of Title III, see Tables volume.

Effective Date and Savings Provisions of 1984 Amendment. Amendment by Pub.L. 98–473 effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98–473, and except as otherwise provided for therein, see section 235 of Pub.L. 98–473, as amended, set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 844a. Civil penalty for possession of small amounts of certain controlled substances

In general

(a) Any individual who knowingly possesses a controlled substance that is listed in section 841(b)(1)(A) of this title in violation of section 844(b)(1)(A) of this title in an amount that, as specified by regulation of the Attorney General, is a personal use amount shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

Income and net assets

(b) The income and net assets of an individual shall not be relevant to the determination whether to assess a civil penalty under this section or to prosecute the individual criminally. However, in determining the amount of a penalty under this section, the income and net assets of an individual shall be considered.

Prior conviction

(c) A civil penalty may not be assessed under this section if the individual previously was convicted of a Federal or State offense relating to a controlled substance as defined in section 802 of this title.

Limitation on number of assessments

(d) A civil penalty may not be assessed on an individual under this section on more than two separate occasions.

Assessment

(e) A civil penalty under this section may be assessed by the Attorney General only by an order made on the record after opportunity for a hearing in accordance with section 554 of Title 5. The Attorney General shall provide written notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the 30–day period beginning on the date such notice is issued.

Compromise

(f) The Attorney General may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

Judicial review

(g) If the Attorney General issues an order pursuant to subsection (e) of this section after a hearing described in such subsection, the individual who is the subject of the order may, before the expiration of the 30–day period beginning on the date the order is issued, bring a civil action in the appropriate district court of the United States. In such action, the law and the facts of the violation and the assessment of the civil penalty shall be determined de novo, and shall include the right of a trial by jury, the right to counsel, and the right to confront witnesses. The facts of the violation shall be proved beyond a reasonable doubt.

Civil action

(h) If an individual does not request a hearing pursuant to subsection (e) of this section and the Attorney General issues an order pursuant to such subsection, or if an individual does not under subsection (g) of this section seek judicial review of such an order, the Attorney General may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with section 1961 of Title 28. Such interest shall accrue from the expiration of the 30–day period described in subsection (g) of this section. In such an action, the decision of the Attorney General to issue the order, and the amount of the penalty assessed by the Attorney General, shall not be subject to review.

Limitation

(i) The Attorney General may not under this subsection commence proceeding against an individual after the expiration of the 5–year period beginning on the date on which the individual allegedly violated subsection (a) of this section.

Expungement procedures

(j) The Attorney General shall dismiss the proceedings under this section against an individual upon application of such individual at any time after the expiration of 3 years if—

(1) the individual has not previously been assessed a civil penalty under this section;

(2) the individual has paid the assessment;

(3) the individual has complied with any conditions imposed by the Attorney General;

(4) the individual has not been convicted of a Federal or State offense relating to a controlled substance as defined in section 802 of this title; and

(5) the individual agrees to submit to a drug test, and such test shows the individual to be drug free.

A nonpublic record of a disposition under this subsection shall be retained by the Department of Justice solely for the purpose of determining in any subsequent proceeding whether the person qualified for a civil penalty or expungement under this section. If a record is expunged under this subsection, an individual concerning whom such an expungement has been made shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this section or the results thereof in response to an inquiry made of him for any purpose.

(Pub.L. 100–690, Title VI, § 6486, Nov. 18, 1988, 102 Stat. 4384.)

EDITORIAL NOTES

Codification. Section was not enacted as part of the Controlled Substances Act, which comprises this subchapter.

Reference in the original of subsec. (a) to section 404 of that Act (21 U.S.C. 841(b)(1)(A)) has been translated as "section 844 of this title" as the probable intent of Congress.

§ 845. Distribution to persons under age twenty-one

First offense

(a) Except as provided in section 845a of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b) of this section) punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by section 841(b) of this title, and (2) at least twice any term of supervised release authorized by section 841(b) of this title, for a first offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.

Second offense

(b) Except as provided in section 845a of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age after a prior conviction under subsection (a) of this section (or under section 333(b) of this title as in effect prior to May 1, 1971) have become final, is punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 841(b) of this title, and (2) at least three times any term of supervised release authorized by section 841(b) of this title, for a second or subsequent offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall not be less than one year. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

(Pub.L. 91–513, Title II, § 405, Oct. 27, 1970, 84 Stat. 1265; Pub.L. 98–473, Title II, §§ 224(b), 503(b)(3), Oct. 12, 1984, 98 Stat. 2030, 2070; Pub.L. 98–473, § 224(b), as amended Pub.L. 99–570, Title I, § 1005(b)(1), Oct. 27, 1986, 100 Stat. 3207–6; Pub.L. 99–570, Title I, §§ 1004(a), 1105(a), (b), Oct. 27, 1986, 100 Stat. 3207–6, 3207–11; Pub.L. 100–690, Title VI, §§ 6452(b), 6455, 6456, Nov. 18, 1988, 102 Stat. 4371, 4372.)

EDITORIAL NOTES

Repeals. Section 224(b) of Pub.L. 98–473, cited to credit, was repealed by section 1005(b)(1) of Pub.L. 99–570. Such provisions of section 224(b) of Pub.L. 98–473, which were to take effect Nov. 1, 1987, as a result of repeal were never executed to text of section.

Effective Date of 1986 Amendment. Amendment by section 1004(a) of Pub.L. 99–570 to take effect on the date of the taking of effect of section 3583 of Title 18, Crimes and Criminal Procedure, Nov. 1, 1987, see section 1004(b) of Pub.L. 99–570, set out as a note under section 841 of this title.

Effective Date and Savings Provisions of 1984 Amendment. Amendment by Pub.L. 98–473, § 224(b), effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98–473, and except as otherwise provided for therein, see section 235 of Pub.L. 98–473, as amended, set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 845a. Distribution or manufacturing in or near schools and colleges

Penalty

(a) Any person who violates section 841(a)(1) or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a con-

trolled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or within 100 feet of a playground, public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b) of this section) punishable (1) by a term of imprisonment, or fine, or both up to twice that authorized by section 841(b) of this title; and (2) at least twice any term of supervised release authorized by section 841(b) of this title for a first offense. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

Second offenders

(b) Any person who violates section 841(a)(1) or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or within 100 feet of a playground, public or private youth center, public swimming pool, or video arcade facility, after a prior conviction under subsection (a) of this section have become final is punishable (1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 841(b) of this title for a first offense, or a fine up to three times that authorized by section 841(b) of this title for a first offense, or both, and (2) at least three times any term of supervised release authorized by section 841(b) of this title for a first offense. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

Suspension of sentence; probation; parole

(c) In the case of any sentence imposed under subsection (b) of this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under subsection (b) of this section shall not be eligible for parole under chapter 311 of Title 18 until the individual has served the minimum sentence required by such subsection.

Definitions

(d) For the purposes of this section—

(1) The term "playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.

(2) The term "youth center" means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

(3) The term "video arcade facility" means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.

(4) The term "swimming pool" includes any parking lot appurtenant thereto.

(Pub.L. 91–513, Title II, § 405A, as added Pub.L. 98–473, Title II, § 503(a), Oct. 12, 1984, 98 Stat. 2069, and amended Pub.L. 99–570, Title I, §§ 1004(a), 1104, 1105(c), 1841(b), 1866(b), (c), Oct. 27, 1986, 100 Stat. 3207–6, 3207–11, 3207–52, 3207–55; Pub.L. 99–646, § 28, Nov. 10, 1986, 100 Stat. 3598; Pub.L. 100–690, Title VI, §§ 6452(b)(1), 6457, 6458, Nov. 18, 1988, 102 Stat. 4371, 4373.)

EDITORIAL NOTES

Codification. Amendments to subsec. (b) of this section by Pub.L. 99–570, § 1866(b), which struck out "special term" and inserted in lieu thereof "term of supervised release", and by Pub.L. 99–646, § 28, which inserted "parole" after "(2) at least three times any special" were incapable of execution to the text. Amendment by Pub.L. 99–570, § 1004, is also incapable of execution to the text.

Effective Date of 1986 Amendment. Amendment by section 1004(a) of Pub.L. 99–570 to take effect on the date of the taking of effect of section 3583 of Title 18, Crimes and Criminal Procedure, Nov. 1, 1987, see section 1004(b) of Pub.L. 99–570, set out as a note under section 841 of this title.

§ 845b. Employment of persons under 18 years of age

Unlawfulness

(a) It shall be unlawful for any person at least eighteen years of age to knowingly and intentionally—

(1) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to violate any provision of this subchapter or subchapter II of this chapter;

(2) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age

to assist in avoiding detection or apprehension for any offense of this subchapter or subchapter II of this chapter by any Federal, State, or local law enforcement official; or

(3) receive a controlled substance from a person under 18 years of age, other than an immediate family member, in violation of this title or title III.

Penalties

(b) Any person who violates subsection (a) of this section is punishable by a term of imprisonment up to twice that otherwise authorized, or up to twice the fine otherwise authorized, or both, and at least twice any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

Penalty for second offense

(c) Any person who violates subsection (a) of this section after a prior conviction under subsection (a) of this section have become final, is punishable by a term of imprisonment up to three times that otherwise authorized, or up to three times the fine otherwise authorized, or both, and at least three times any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

Penalty for providing or distributing controlled substance to underage person

(d) Any person who violates subsection (a)(1) or (2) of this section

(1) by knowingly providing or distributing a controlled substance or a controlled substance analogue to any person under eighteen years of age; or

(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than $50,000, or both, in addition to any other punishment authorized by this section.

Suspension of sentence; probation; parole

(e) In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of Title 18 until the individual has served the mandatory term of imprisonment as enhanced by this section.

Distribution of controlled substance to pregnant individual

(f) Except as authorized by this subchapter, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this subchapter. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e) of this section.

(Pub.L. 91–513, Title II, § 405B, as added Pub.L. 99–570, Title I, § 1102, Oct. 27, 1986, 100 Stat. 3207–10, and amended Pub.L. 100–690, Title VI, §§ 6452(b)(1), 6459, 6470(d), Nov. 18, 1988, 102 Stat. 4371, 4373, 4378.)

EDITORIAL NOTES

References in Text. "This subchapter", referred to in subsecs. (a) and (f), was in the original "this title" which is Title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

"Subchapter II of this chapter", referred to in subsec. (a), was in the original "title III", meaning Title III of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see Tables volume.

§ 846. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub.L. 91–513, Title II, § 406, Oct. 27, 1970, 84 Stat. 1265, amended Pub.L. 100–690, Title VI, § 6470(a), Nov. 18, 1988, 102 Stat. 4377.)

§ 847. Additional penalties

Any penalty imposed for violation of this subchapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(Pub.L. 91–513, Title II, § 407, Oct. 27, 1970, 84 Stat. 1265.)

§ 848. Continuing criminal enterprise

Penalties; forfeitures

(a) Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 20 years

and which may be up to life imprisonment, to a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 853 of this title; except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 30 years and which may be up to life imprisonment, to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 853 of this title.

Conditions for life imprisonment for engaging in continuing criminal enterprise

(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a) of this section, if—

(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

(2)(A) the violation referred to in subsection (d)(1) of this section involved at least 300 times the quantity of a substance described in subsection 841(b)(1)(B) of this title, or

(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received $10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 841(b)(1)(B) of this title.

Continuing criminal enterprise defined

(c) For purposes of subsection (a) of this section, a person is engaged in a continuing criminal enterprise if—

(1) he violates any provision of this subchapter or subchapter II of this chapter the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations of this subchapter or subchapter II of this chapter—

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources.

Suspension of sentence and probation prohibited

(d) In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and the Act of July 15, 1932 (D.C.Code, secs. 24–203 to 24–207), shall not apply.

Death penalty

(e)(1)[1] In addition to the other penalties set forth in this section—

(A) any person engaging in or working in furtherance of a continuing criminal enterprise, or any person engaging in an offense punishable under section 841(b)(1)(A) of this title or section 960(b)(1) who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death; and

(B) any person, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of this subchapter or subchapter II of this chapter who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, State, or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death.

(2) As used in paragraph (1)(b), the term "law enforcement officer" means a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, prosecution or adjudication of an offense, and includes those engaged in corrections, probation, or parole functions.

Hearing required with respect to the death penalty

(g) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held in accordance with this section.

Notice by the Government in death penalty cases

(h)(1) Whenever the Government intends to seek the death penalty for an offense under this section

for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

(A) that the Government in the event of conviction will seek the sentence of death; and

(B) setting forth the aggravating factors enumerated in subsection (n) of this section and any other aggravating factors which the Government will seek to prove as the basis for the death penalty.

(2) The court may permit the attorney for the Government to amend this notice for good cause shown.

Hearing before court or jury

(i)(1) When the attorney for the Government has filed a notice as required under subsection (h) of this section and the defendant is found guilty of or pleads guilty to an offense under subsection (e) of this section, the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

(A) before the jury which determined the defendant's guilt;

(B) before a jury impaneled for the purpose of the hearing if—

(i) the defendant was convicted upon a plea of guilty;

(ii) the defendant was convicted after a trial before the court sitting without a jury;

(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

(2) A jury impaneled under paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

Proof of aggravating and mitigating factors

(j) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (e) of this section, no presentence report shall be prepared. In the sentencing hearing, information may be presented as to matters relating to any of the aggravating or mitigating factors set forth in subsections (m) and (n) of this section, or any other mitigating factor or any other aggravating factor for which notice has been provided under subsection (h)(1)(B) of this section. Where information is presented relating to any of the aggravating factors set forth in subsection (n) of this section, information may be presented relating to any other aggravating factor for which notice has been provided under subsection (h)(1)(B) of this section. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial, or at the trial judge's discretion. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the evidence.

Return of findings

(k) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factors set forth in subsection (n) of this section, found to exist. If one of the aggravating factors set forth in subsection (n)(1) of this section and another of the aggravating factors set forth in paragraphs (2) through (12) of subsection (n) of this section is found to exist, a special finding identifying any other aggravating factor for which notice has been provided under subsection (h)(1)(B) of this section, may be returned. A finding with respect to a mitigating factor may be made by one or more of the members of the jury,

and any member of the jury who finds the existence of a mitigating factor may consider such a factor established for purposes of this subsection, regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If an aggravating factor set forth in subsection (n)(1) of this section is not found to exist or an aggravating factor set forth in subsection (n)(1) of this section is found to exist but no other aggravating factor set forth in subsection (n) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subsection (n)(1) of this section and one or more of the other aggravating factors set forth in subsection (n) of this section are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall recommend that a sentence of death shall be imposed rather than a sentence of life imprisonment without possibility of release or some other lesser sentence. The jury or the court, regardless of its findings with respect to aggravating and mitigating factors, is never required to impose a death sentence and the jury shall be so instructed.

Imposition of sentence

(*l*) Upon the recommendation that the sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. A sentence of death shall not be carried out upon a person who is under 18 years of age at the time the crime was committed. A sentence of death shall not be carried out upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability—

(1) cannot understand the nature of the pending proceedings, what such person was tried for, the reason for the punishment, or the nature of the punishment; or

(2) lacks the capacity to recognize or understand facts which would make the punishment unjust or unlawful, or lacks the ability to convey such information to counsel or to the court.

Mitigating factors

(m) In determining whether a sentence of death is to be imposed on a defendant, the finder of fact shall consider mitigating factors, including the following:

(1) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

(2) The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

(3) The defendant is punishable as a principal (as defined in section 2 of Title 18) in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

(4) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of murder, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

(5) The defendant was youthful, although not under the age of 18.

(6) The defendant did not have a significant prior criminal record.

(7) The defendant committed the offense under severe mental or emotional disturbance.

(8) Another defendant or defendants, equally culpable in the crime, will not be punished by death.

(9) The victim consented to the criminal conduct that resulted in the victim's death.

(10) That other factors in the defendant's background or character mitigate against imposition of the death sentence.

Aggravating factors for homicide

(n) If the defendant is found guilty of or pleads guilty to an offense under subsection (e) of this section, the following aggravating factors are the only aggravating factors that shall be considered, unless notice of additional aggravating factors is provided under subsection (h)(1)(B) of this section:

(1) The defendant—

(A) intentionally killed the victim;

(B) intentionally inflicted serious bodily injury which resulted in the death of the victim;

(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim;

(D) intentionally engaged in conduct which—

(i) the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense; and

(ii) resulted in the death of the victim.

(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

(3) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

(4) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

(5) In the commission of the offense or in escaping apprehension for a violation of subsection (e) of this section, the defendant knowingly created a grave risk of death to one or more persons in addition to the victims of the offense.

(6) The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

(7) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

(8) The defendant committed the offense after substantial planning and premeditation.

(9) The victim was particularly vulnerable due to old age, youth, or infirmity.

(10) The defendant had previously been convicted of violating this subchapter or subchapter II of this chapter for which a sentence of five or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise.

(11) The violation of this subchapter in relation to which the conduct described in subsection (e) of this section occurred was a violation of section 845 of this title.

(12) The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

Right of the defendant to justice without discrimination

(*o*)(1) In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or the victim, and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant, or the victim, may be. The jury shall return to the court a certificate signed by each juror that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or the victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant, or the victim, may be.

(2) Not later than one year from November 18, 1988, the Comptroller General shall conduct a study of the various procedures used by the several States for determining whether or not to impose the death penalty in particular cases, and shall report to the Congress on whether or not any or all of the various procedures create a significant risk that the race of a defendant, or the race of a victim against whom a crime was committed, influence the likelihood that defendants in those States will be sentenced to death. In conducting the study required by this paragraph, the General Accounting Office shall—

(A) use ordinary methods of statistical analysis, including methods comparable to those ruled admissible by the courts in race discrimination cases under title VII of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000e et seq.];

(B) study only crimes occurring after January 1, 1976; and

(C) determine what, if any, other factors, including any relation between any aggravating or mitigating factors and the race of the victim or the defendant, may account for any evidence that the race of the defendant, or the race of the victim, influences the likelihood that defendants will be sentenced to death. In addition, the General Accounting Office shall examine separately and include in the report, death penalty cases involving crimes similar to those covered under this section.

Sentencing in capital cases in which death penalty is not sought or imposed

(p) If a person is convicted for an offense under subsection (e) of this section and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole.

Appeal in capital cases; counsel for financially unable defendants

(q)(1) In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of Title 28. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

(2) On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

(3) The court shall affirm the sentence if it determines that—

(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

(B) the information supports the special finding of the existence of every aggravating factor upon which the sentence was based, together with, or the failure to find, any mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.

(4)(A) Notwithstanding any other provision of law to the contrary, in every criminal action in which a defendant is charged with a crime which may be punishable by death, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time either—

(i) before judgment; or

(ii) after the entry of a judgment imposing a sentence of death but before the execution of that judgment;

shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with paragraphs (5), (6), (7), (8), and (9).

(B) In any post conviction proceeding under section 2254 or 2255 of Title 28, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with paragraphs (5), (6), (7), (8), and (9).

(5) If the appointment is made before judgment, at least one attorney so appointed must have been admitted to practice in the court in which the prosecution is to be tried for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court.

(6) If the appointment is made after judgment, at least one attorney so appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in that court in felony cases.

(7) With respect to paragraphs (5) and (6), the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

(8) Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications,[2] for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

(9) Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorneys to obtain such services on behalf of the defendant and shall order the payment of fees and expenses therefore, under paragraph (10). Upon a finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the

provision of and payment for such services nunc pro tunc.

(10) Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to attorneys appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under paragraph (9), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of paragraphs (4) through (9).

Refusal to participate by State and Federal correctional employees

(r) No employee of any State department of corrections or the Federal Bureau of Prisons and no employee providing services to that department or bureau under contract shall be required, as a condition of that employment, or contractual obligation to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term "participation in executions" includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

(Pub.L. 91–513, Title II, § 408, Oct. 27, 1970, 84 Stat. 1265; Pub.L. 98–473, Title II, §§ 224(b), 305, Oct. 12, 1984, 98 Stat. 2030, 2050; Pub.L. 98–473, § 224(b), formerly § 224(c), as amended Pub.L. 99–570, Title I, 1005(b)(2), Oct. 27, 1987, 100 Stat. 3207–6; Pub.L. 99–570, Title I, §§ 1252, 1253, Oct. 27, 1986, 100 Stat. 3207–14, 3207–15; Pub.L. 100–690, Title VI, §§ 6481, Title VII, § 7001, Nov. 18, 1988, 102 Stat. 4382, 4387, 4388.)

[1] See Codification note.

[2] The phrase "applications, for writ of certiorari" so in original subsec. (q)(8).

Subsec. (d) of this Section Applicable to Offenses Committed Prior to Nov. 1, 1987

Subsec. (d) of this section as in effect prior to amendment by Pub.L. 98–473, § 224(b), read as follows:

Suspension of sentence and probation prohibited

(e) In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and section 4202 of Title 18 and the Act of July 15, 1932 (D.C.Code, secs. 24–203 to 24–207), shall not apply.

For applicability of sentencing provisions to offenses, see Effective Date and Savings Provisions, etc., note, section 235 of Pub.L. 98–473, as amended, set out under section 3551 of Title 18, Crimes and Criminal Procedure.

EDITORIAL NOTES

References in Text. "This subchapter", referred to in text, was in the original "this title" which is Title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

"Subchapter II of this chapter", referred to in text, was in the original "title III", meaning Title III of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see Tables volume.

The Civil Rights Act of 1964, referred to in subsec. (o)(2)(A), is Pub.L. 88–352, July 2, 1964, 78 Stat. 252, as amended. Title VII of the Civil Rights Act of 1964 is classified to subchapter VI (section 2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables volume.

The Act of July 15, 1932 (D.C.Code, secs. 24–203 to 24–207), referred to in subsec. (d), is not classified to the U.S.C.A.

Codification. The language of section 7001(a)(1) of Pub.L. 100–690 directing the redesignation of subsec. (e) as (f), was incapable of execution in view of a prior redesignation of subsec. (e) as (d) by section 6481(b) of Pub.L. 100–690, leaving this section without a subsec. (f).

Effective Date and Savings Provisions of 1984 Amendment. Amendment by Pub.L. 98–473, § 224(b), effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98–473, and except as otherwise provided for therein, see section 235 of Pub.L. 98–473, as amended, set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

GAO Study of the Cost of Executions. Section 7002 of Pub.L. 100–690 provided that:

"(a) Study.—No later than three years after the date of the enactment of this Act [Nov. 18, 1988], the Comptroller General shall carry out a study to review the cost of implementing the procedures for imposing and carrying out a death sentence prescribed by this title [Title VII, subtitles A–O, of Pub.L. 100–690. See Tables volume for classifications to the Code].

"(b) Specific Requirement.—Such study shall consider, but not be limited to, information concerning impact on workload of the Federal prosecutors and judiciary and law enforcement necessary to obtain capital sentences and executions under this Act [see Short Title of 1988 Amendment note under section 1501 of this title].

"(c) Submission of Report.—Not later than four years after date of the enactment of this Act [Nov. 18, 1988], the Comptroller General shall submit to Congress a report describing the results of the study."

Code of Federal Regulations

Classification of inmates, see 28 CFR 524.10 et seq.

§ 849. Repealed. Pub.L. 98–473, Title II, § 219(a), Oct. 12, 1984, 98 Stat. 2027.

Section Applicable to Offenses Committed Prior to Nov. 1, 1987

This section as in effect prior to repeal by Pub.L. 98–473 read as follows:

§ 849. Dangerous special drug offender sentencing

Notice to court by United States attorney

(a) Whenever a United States attorney charged with the prosecution of a defendant in a court of the United States for an alleged felonious violation of any provision of this subchapter or subchapter II of this chapter committed when the defendant was over the age of twenty-one years has reasons to believe that the defendant is a dangerous special drug offender such United States attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may sign and file with the court, and may amend, a notice (1) specifying that the defendant is a dangerous special drug offender who upon conviction for such felonious violation is subject to the imposition of a sentence under subsection (b) of this section, and (2) setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special drug offender. In no case shall the fact that the defendant is alleged to be a dangerous special drug offender be an issue upon the trial of such felonious violation, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special drug offender and his counsel.

Hearing; inspection of presentence report; counsel; process; examination of witnesses; penalty; sentence

(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felonious violation, a hearing shall be held, before sentence is imposed, by the court sitting without a jury. The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felonious violation and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special drug offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felonious violation. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felonious violation. The court shall place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

Sentences for life or for term exceeding twenty-five years

(c) This section shall not prevent the imposition and execution of a sentence of imprisonment for life or for a term exceeding twenty-five years upon any person convicted of an offense so punishable.

Mandatory minimum penalties

(d) Notwithstanding any other provision of this section, the court shall not sentence a dangerous special drug offender to less than any mandatory minimum penalty prescribed by law for such felonious violation. This section shall not be construed as creating any mandatory minimum penalty.

Special drug offender defined

(e) A defendant is a special drug offender for purposes of this section if—

(1) the defendant has previously been convicted in courts of the United States or a State or any political subdivision thereof for two or more offenses involving dealing in controlled substances, committed on occasions different from one another and different from such felonious violation, and punishable in such courts by death or imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the commission of such felonious violation, and less than five years have elapsed between the commission of such felonious violation and either the defendant's release, or parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous offense or another offense involving dealing in controlled substances and punishable by death or imprisonment in excess of one year under applicable laws of the United States or a State or any political subdivision thereof; or

(2) the defendant committed such felonious violation as part of a pattern of dealing in controlled substances which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

(3) such felonious violation was, or the defendant committed such felonious violation in furtherance of, a conspiracy with three or more other persons to engage

in a pattern of dealing in controlled substances which was criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or dealing, or give or receive a bribe or use force in connection with such dealing. A conviction shown on direct or collateral review or at the hearing to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection. In support of findings under paragraph (2) of this subsection, it may be shown that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such dealing. For purposes of paragraph (2) of this subsection, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and fifty-week year, without reference to exceptions, under section 206(a)(1) of Title 29 for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of Title 26. For purposes of paragraph (2) of this subsection, special skill or expertise in such dealing includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of such dealing, the enlistment of accomplices in such dealing, the escape from detection or apprehension for such dealing, or the disposition of the fruits or proceeds of such dealing. For purposes of paragraphs (2) and (3) of this subsection, such dealing forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

Dangerous defendants

(f) A defendant is dangerous for purposes of this section if a period of confinement longer than that provided for such felonious violation is required for the protection of the public from further criminal conduct by the defendant.

Appeal

(g) The time for taking an appeal from a conviction for which sentence is imposed after proceedings under this section shall be measured from imposition of the original sentence.

Review of sentence

(h) With respect to the imposition, correction, or reduction of a sentence after proceedings under this section, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review of the sentence for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review of the sentence by the United States after the time has expired. A court extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire presentence report, information submitted during the trial of such felonious violation and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be made more severe only on review of the sentence taken by the United States and after hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of the sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence taken by the United States may be dismissed on a showing of the abuse of the right of the United States to take such review.

(Pub.L. 91–513, Title II, § 409, Oct. 27, 1970, 84 Stat. 1266.)

For applicability of sentencing provisions to offenses, see Effective Date and Savings Provisions, etc., note, section 235 of Pub.L. 98–473, as amended, set out under section 3551 of Title 18, Crimes and Criminal Procedure.

EDITORIAL NOTES

Effective Date of Repeal; Savings Provisions. Repeal by Pub.L. 98–473 effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98–473, and except as otherwise provided for therein, see section 235 of Pub.L. 98–473, as amended, set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 850. Information for sentencing

Except as otherwise provided in this subchapter or section 242a(a) of Title 42, no limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of impos-

ing an appropriate sentence under this subchapter or subchapter II of this chapter.

(Pub. L. 91-513, Title II, § 410, Oct. 27, 1970, 84 Stat. 1269.)

EDITORIAL NOTES

References in Text. Subchapter II of this chapter, referred to in text, was in the original "title III", meaning Title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

§ 851. Proceedings to establish prior convictions

Information filed by United States attorney

(a)(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

Affirmation or denial of previous conviction

(b) If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

Denial; written response; hearing

(c)(1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1) of this section. The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

Imposition of sentence

(d)(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

Statute of limitations

(e) No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which

occurred more than five years before the date of the information alleging such prior conviction.
(Pub. L. 91-513, Title II, § 411, Oct. 27, 1970, 84 Stat. 1269.)

§ 852. Application of treaties and other international agreements

Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit the provision of treatment, education, or rehabilitation as alternatives to conviction or criminal penalty for offenses involving any drug or other substance subject to control under any such treaty or agreement.
(Pub. L. 91-513, Title II, § 412, as added Pub. L. 95-633, Title I, § 107(a), Nov. 10, 1978, 92 Stat. 3773.)

§ 853. Criminal forfeitures

Property subject to criminal forfeiture

(a) Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II of this chapter, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

Meaning of term "property"

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

Third party transfers

(c) 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 forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) 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.

Rebuttable presumption

(d) There is a rebuttable presumption at trial that any property of a person convicted of a felony under this subchapter or subchapter II of this chapter is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

(1) such property was acquired by such person during the period of the violation of this subchapter or subchapter II of this chapter or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this subchapter or subchapter II of this chapter.

Protective orders

(e)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

Warrant of seizure

(f) 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. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

Execution

(g) Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

Disposition of property

(h) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

Authority of the Attorney General

(i) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section

881(e) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

Applicability of civil forfeiture provisions

(j) Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881(d) of this title shall apply to a criminal forfeiture under this section.

Bar on intervention

(k) Except as provided in subsection (n) of this section, no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this subchapter; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

Jurisdiction to enter orders

(*l*) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

Depositions

(m) In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

Third party interests

(n)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably

without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

Construction

(*o*) The provisions of this section shall be liberally construed to effectuate its remedial purposes.

Forfeiture of substitute property

(p) If any of the property described in subsection (a) of this section, as a result of any act or omission of the defendant—

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5). (Pub.L. 91-513, Title II, § 413, as added Pub.L. 98-473, Title II, § 303, Oct. 12, 1984, 98 Stat. 2044, and amended Pub.L. 98-473, Title II, § 2301(d)-(f), Oct. 12, 1984, 98 Stat. 2192, 2193; Pub.L. 99-570, Title I, §§ 1153(b), 1864, Oct. 27, 1986, 100 Stat. 3207-13, 3207-54.)

EDITORIAL NOTES

Codification. The language of section 1153(b) of Pub. L. 99-570, amending this section by the relettering of subsec. (p) as (q) and addition of a new subsec. (p) was executed by the addition of a new subsec. (p), but no relettering of prior subsec. (p) since such prior subsec. (p) had been relettered (*o*) by Pub.L. 98-473, Title II, § 2301(e)(2), Oct. 12, 1984, 98 Stat. 2193.

Amendment by section 1153(b) of Pub.L. 99-570 was executed to section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (this section) as the probable intent of Congress, despite directory language purporting to require the amendment of section 413 of title II of the "Comprehensive Drug Abuse Prevention and Control Act of 1975".

The amendatory language of section 1864(1) of Pub.L. 99-570, directing the substitution of "subsection (n)" for "subsection (*o*)" in the second subsection (h) [originally enacted as (*l*) and relettered (h) by section 2301(e)(2) of Pub.L. 98-473] was executed to such relettered subsec. (h) which was subsequently relettered as (k) by section 1864(4) of Pub.L. 99-570.

The amendatory language of section 1864(3) of Pub.L. 99-570 directing the substitution of "this subchapter" for "this chapter" in subsec. (i)(1) was executed by the substitution of "this subchapter" for "this section" as the probable intent of Congress.

§ 853a. Denial of Federal benefits to drug traffickers and possessors

Drug traffickers

(a)(1) Any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances (as such terms are defined for purposes of the Controlled Substances Act) [21 U.S.C.A. § 801 et seq.] shall—

(A) at the discretion of the court, upon the first conviction for such an offense be ineligible for any or all Federal benefits for up to 5 years after such conviction;

(B) at the discretion of the court, upon a second conviction for such an offense be ineligible for any or all Federal benefits for up to 10 years after such conviction; and

(C) upon a third or subsequent conviction for such an offense be permanently ineligible for all Federal benefits.

(2) The benefits which are denied under this subsection shall not include benefits relating to long-term drug treatment programs for addiction for any person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

Drug possessors

(b)(1) Any individual who is convicted of any Federal or State offense involving the possession of a controlled substance (as such term is defined for purposes of the Controlled Substances Act) [21 U.S.C.A. 801 et seq.] shall—

(A) upon the first conviction for such an offense and at the discretion of the court—

(i) be ineligible for any or all Federal benefits for up to one year;

(ii) be required to successfully complete an approved drug treatment program which includes periodic testing to insure that the individual remains drug free;

(iii) be required to perform appropriate community service; or

(iv) any combination of clauses (i), (ii), or (iii); and

(B) upon a second or subsequent conviction for such an offense be ineligible for all Federal benefits for up to 5 years after such conviction as determined by the court. The court shall continue to have the discretion in subparagraph (A) above. In imposing penalties and conditions under subparagraph (A), the court may require that the completion of the conditions imposed by clause (ii) or (iii) be a requirement for the reinstatement of benefits under clause (i).

(2) The penalties and conditions which may be imposed under this subsection shall be waived in the case of a person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

Suspension of period of eligibility

(c) The period of ineligibility referred to in subsections (a) and (b) of this section shall be suspended if the individual—

(A) completes a supervised drug rehabilitation program after becoming ineligible under this section;

(B) has otherwise been rehabilitated; or

(C) has made a good faith effort to gain admission to a supervised drug rehabilitation program, but is unable to do so because of inaccessibility or unavailability of such a program, or the inability of the individual to pay for such a program.

Definitions

(d) As used in this section—

(1) the term "Federal benefit"—

(A) means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

(2) the term "veterans benefit" means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.

Inapplicability of this section to Government witnesses

(e) The penalties provided by this section shall not apply to any individual who cooperates or testifies with the Government in the prosecution of a Federal or State offense or who is in a Government witness protection program.

Indian provision

(f) Nothing in this section shall be construed to affect the obligation of the United States to any Indian or Indian tribe arising out of any treaty, statute, Executive order, or the trust responsibility of the United States owing to such Indian or Indian tribe. Nothing in this subsection shall exempt any individual Indian from the sanctions provided for in this section, provided that no individual Indian shall be denied any benefit under Federal Indian programs comparable to those described in subsection (d)(1)(B) or (d)(2) of this section above.

Presidential report

(g)(1) On or before May 1, 1989, the President shall transmit to the Congress a report—

(A) delineating the role of State courts in implementing this section;

(B) describing the manner in which Federal agencies will implement and enforce the requirements of this section;

(C) detailing the means by which Federal and State agencies, courts, and law enforcement agencies will exchange and share the data and information necessary to implement and enforce the withholding of Federal benefits; and

(D) recommending any modifications to improve the administration of this section or otherwise achieve the goal of discouraging the trafficking and possession of controlled substances.

(2) No later than September 1, 1989, the Congress shall consider the report of the President and enact such changes as it deems appropriate to further the goals of this section.

Effective date

(h) The denial of Federal benefits set forth in this section shall take effect for convictions occurring after September 1, 1989.

(Pub.L. 100-690, Title V, § 5301, Nov. 18, 1988, 102 Stat. 4310.)

EDITORIAL NOTES

References in Text. The Controlled Substances Act, referred to in text, is title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of this chapter. For complete classification of this Act to the Code, see Short

Title note set out under section 801 of this title and Tables.

Codification. Section was enacted as part of the Anti-Drug Abuse Act of 1988 and not as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970, which enacted this chapter, or the Controlled Substances Act, which comprises this subchapter.

§ 854. Investment of illicit drug profits

Prohibition

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year in which such person has participated as a principal within the meaning of section 2 of Title 18 to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any violation of this subchapter or subchapter II of this chapter after such purchase do not amount in the aggregate to 1 per centum of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

Penalty

(b) Whoever violates this section shall be fined not more than $50,000 or imprisoned not more than ten years, or both.

"Enterprise" defined

(c) As used in this section, the term "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

Construction

(d) The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(Pub. L. 91-513, Title II, § 414, as added Pub. L. 98-473, Title II, § 303, Oct. 12, 1984, 98 Stat. 2049.)

§ 855. Alternative fine

In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(Pub. L. 91-513, Title II, § 415, as added Pub. L. 98-473, Title II, § 2302, Oct. 12, 1984, 98 Stat. 2193.)

§ 856. Establishment of manufacturing operations

(a) Except as authorized by this title, it shall be unlawful to—

(1) knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance;

(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

(b) Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than $500,000, or both, or a fine of $2,000,000 for a person other than an individual.

(Pub.L. 91-513, Title II, § 416, as added Pub.L. 99-570, Title I, § 1841(a), Oct. 27, 1986, 100 Stat. 3207-52.)

§ 857. Use of Postal Service for sale of drug paraphernalia

Unlawfulness

(a) It is unlawful for any person—

(1) to make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia;

(2) to offer for sale and transportation in interstate or foreign commerce drug paraphernalia; or

(3) to import or export drug paraphernalia.

Penalties

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined not more than $100,000.

Seizure and forfeiture

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may

authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

Definition of "drug paraphernalia"

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Controlled Substances Act (title II of Public Law 91–513) [21 U.S.C.A. § 801 et seq.]. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as—

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

Matters considered in determination of what constitutes drug paraphernalia

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate uses of the item in the community; and

(8) expert testimony concerning its use.

Exemptions

(f) This section shall not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.

(Pub.L. 99–570, Title I, § 1822, Oct. 27, 1986, 100 Stat. 3207–51; Pub.L. 100–690, Title VI, § 6485, Nov. 18, 1988, 102 Stat. 4384.)

EDITORIAL NOTES

References in Text. The Controlled Substances Act, referred to in subsec. (d), in provisions preceding par. (1), is Title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables volume.

Codification. Section was not enacted as part of the Controlled Substances Act, Pub.L. 91–513, Title II, which comprises this subchapter.

Effective Date. Section 1823 of Pub.L. 99–570 provided that: "This subtitle [enacting this section] shall become effective 90 days after the date of enactment of this Act [Oct. 27, 1986]."

§ 858. Endangering human life while illegally manufacturing a controlled substance

Whoever, while manufacturing a controlled substance in violation of this subchapter, or attempting to do so, or transporting or causing to be transported materials, including chemicals, to do so, creates a substantial risk of harm to human life shall be fined in accordance with Title 18, or imprisoned not more than 10 years, or both.

(Pub.L. 91–513, Title II, § 417, as added Pub.L. 100–690, Title VI, § 6301(a), Nov. 18, 1988, 102 Stat. 4370.)

EDITORIAL NOTES

References in Text. This subchapter, referred to in text, was in the original "this title" which is Title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

PART E—ADMINISTRATIVE AND ENFORCEMENT PROVISIONS

§ 871. Attorney General

Delegation of functions

(a) The Attorney General may delegate any of his functions under this subchapter to any officer or employee of the Department of Justice.

Rules and regulations

(b) The Attorney General may promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter.

Acceptance of devises, bequests, gifts, and donations

(c) The Attorney General may accept in the name of the Department of Justice any form of devise, bequest, gift, or donation where the donor intends to donate property for the purpose of preventing or controlling the abuse of controlled substances. He may take all appropriate steps to secure possession of such property and may sell, assign, transfer, or convey any such property other than moneys.

(Pub. L. 91-513, Title II, § 501, Oct. 27, 1970, 84 Stat. 1270.)

Code of Federal Regulations

Office of the Attorney General, functions, etc., see 28 CFR 0.5 et seq.

Policies, practices, and procedures, see 21 CFR Chap. II.

§ 872. Education and research programs of Attorney General

Authorization

(a) The Attorney General is authorized to carry out educational and research programs directly related to enforcement of the laws under his jurisdiction concerning drugs or other substances which are or may be subject to control under this subchapter. Such programs may include—

(1) educational and training programs on drug abuse and controlled substances law enforcement for local, State, and Federal personnel;

(2) studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;

(3) studies or special projects designed to assess and detect accurately the presence in the human body of drugs or other substances which are or may be subject to control under this subchapter, including the development of rapid field identification methods which would enable agents to detect microquantities of such drugs or other substances;

(4) studies or special projects designed to evaluate the nature and sources of the supply of illegal drugs throughout the country;

(5) studies or special projects to develop more effective methods to prevent diversion of controlled substances into illegal channels; and

(6) studies or special projects to develop information necessary to carry out his functions under section 811 of this title.

Contracts

(b) The Attorney General may enter into contracts for such educational and research activities without performance bonds and without regard to section 5 of Title 41.

Identification of research populations; authorization to withhold

(c) The Attorney General may authorize persons engaged in research to withhold the names and other identifying characteristics of persons who are the subjects of such research. Persons who obtain this authorization may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.

Effect of treaties and other international agreements on confidentiality

(d) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local law or regulation.

Use of controlled substances in research

(e) The Attorney General, on his own motion or at the request of the Secretary, may authorize the possession, distribution, and dispensing of controlled substances by persons engaged in research. Persons who obtain this authorization shall be exempt from State or Federal prosecution for posses-

sion, distribution, and dispensing of controlled substances to the extent authorized by the Attorney General.

Program to curtail diversion of precursor and essential chemicals

(f) The Attorney General shall maintain an active program, both domestic and international, to curtail the diversion of precursor chemicals and essential chemicals used in the illicit manufacture of controlled substances.

(Pub. L. 91-513, Title II, § 502, Oct. 27, 1970, 84 Stat. 1271; Pub. L. 95-633, Title I, § 108(a), Nov. 10, 1978, 92 Stat. 3773; Pub.L. 100-690, Title VI, § 6060, Nov. 18, 1988, 102 Stat. 4320.)

EDITORIAL NOTES

Effective Date of 1988 Amendment. Amendment by section 6060 of Pub.L. 100-690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub.L. 100-690, set out as a note under section 802 of this title.

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

§ 873. Cooperative arrangements

Powers of Attorney General

(a) The Attorney General shall cooperate with local, State, and Federal agencies concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he is authorized to—

(1) arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances;

(2) cooperate in the institution and prosecution of cases in the courts of the United States and before the licensing boards and courts of the several States;

(3) conduct training programs on controlled substance law enforcement for local, State, and Federal personnel;

(4) maintain in the Department of Justice a unit which will accept, catalog, file, and otherwise utilize all information and statistics, including records of controlled substance abusers and other controlled substance law offenders, which may be received from Federal, State, and local agencies, and make such information available for Federal, State, and local law enforcement purposes;

(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted;

(6) assist State and local governments in suppressing the diversion of controlled substances from legitimate medical, scientific, and commercial channels by—

(A) making periodic assessments of the capabilities of State and local governments to adequately control the diversion of controlled substances;

(B) providing advice and counsel to State and local governments on the methods by which such governments may strengthen their controls against diversion; and

(C) establishing cooperative investigative efforts to control diversion; and

(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this subchapter.

Requests by Attorney General for assistance from Federal agencies or instrumentalities

(b) When requested by the Attorney General, it shall be the duty of any agency or instrumentality of the Federal Government to furnish assistance, including technical advice, to him for carrying out his functions under this subchapter; except that no such agency or instrumentality shall be required to furnish the name of, or other identifying information about, a patient or research subject whose identity it has undertaken to keep confidential.

Descriptive and analytic reports by Attorney General to State agencies of distribution patterns of schedule II substances having highest rates of abuse

(c) The Attorney General shall annually (1) select the controlled substance (or controlled substances) contained in schedule II which, in the Attorney General's discretion, is determined to have the highest rate of abuse, and (2) prepare and make available to regulatory, licensing, and law enforcement agencies of States descriptive and analytic reports on the actual distribution patterns in such States of each such controlled substance.

Grants by Attorney General

(d)(1) The Attorney General may make grants, in accordance with paragraph (2), to State and local governments to assist in meeting the costs of—

(A) collecting and analyzing data on the diversion of controlled substances,

(B) conducting investigations and prosecutions of such diversions,

(C) improving regulatory controls and other authorities to control such diversions,

(D) programs to prevent such diversions,

(E) preventing and detecting forged prescriptions, and

(F) training law enforcement and regulatory personnel to improve the control of such diversions.

(2) No grant may be made under paragraph (1) unless an application therefor is submitted to the Attorney General in such form and manner as the Attorney General may prescribe. No grant may exceed 80 per centum of the costs for which the grant is made, and no grant may be made unless the recipient of the grant provides assurances satisfactory to the Attorney General that it will obligate funds to meet the remaining 20 per centum of such costs. The Attorney General shall review the activities carried out with grants under paragraph (1) and shall report annually to Congress on such activities.

(3) To carry out this subsection there is authorized to be appropriated $6,000,000 for fiscal year 1985 and $6,000,000 for fiscal year 1986.

(Pub. L. 91–513, Title II, § 503, Oct. 27, 1970, 84 Stat. 1271; Pub. L. 96–359, § 8(a), Sept. 26, 1980, 94 Stat. 1194; Pub.L. 98–473, Title II, § 517, Oct. 12, 1984, 98 Stat. 2074; Pub.L. 99–570, Title I, § 1868, Oct. 27, 1986, 100 Stat. 3207–55; Pub.L. 99–646, § 85, Nov. 10, 1986, 100 Stat. 3620.)

EDITORIAL NOTES

References in Text. "This subchapter", referred to in subsecs. (a)(7), (b), was in the original "this title" which is Title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

Codification. Pub.L. 99–570 and Pub.L. 99–646 made similar amendments by adding a new par. (7) to Subsec. (a). As originally enacted, Pub.L. 99–646 referred to "this Act" and Pub.L. 99–570 referred to "this title" and both have been editorially translated as "this Subchapter" in view of prior editorial treatment of references to the Controlled Substances Act.

§ 874. Advisory committees

The Attorney General may from time to time appoint committees to advise him with respect to preventing and controlling the abuse of controlled substances. Members of the committees may be entitled to receive compensation at the rate of $100 for each day (including traveltime) during which they are engaged in the actual performance of duties. While traveling on official business in the performance of duties for the committees, members of the committees shall be allowed expenses of travel, including per diem instead of subsistence, in accordance with subchapter I of chapter 57 of Title 5.

(Pub. L. 91–513, Title II, § 504, Oct. 27, 1970, 84 Stat. 1272.)

EDITORIAL NOTES

Termination of Advisory Committees. Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of two year period following Jan. 5, 1973, and advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of two year period beginning on the date of their establishment, unless in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two year period, or in the case of a committee established by Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, U.S.C.A., Government Organization and Employees.

§ 875. Administrative hearings

Power of Attorney General

(a) In carrying out his functions under this subchapter, the Attorney General may hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States.

Procedures applicable

(b) Except as otherwise provided in this subchapter, notice shall be given and hearings shall be conducted under appropriate procedures of subchapter II of chapter 5 of Title 5.

(Pub. L. 91–513, Title II, § 505, Oct. 27, 1970, 84 Stat. 1272.)

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

Registration requirements, see 21 CFR 1301.01 et seq.

§ 876. Subpenas

Authorization of use by Attorney General

In any investigation relating to his functions under this subchapter with respect to controlled substances, listed chemicals, tableting machines, or encapsulating machines, the Attorney General may subpena witnesses, compel the attendance and testimony of witnesses, and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any desig-

nated place of hearing; except that a witness shall not be required to appear at any hearing more than 500 miles distant from the place where he was served with a subpena. Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Service

(b) A subpena issued under this section may be served by any person designated in the subpena to serve it. Service upon a natural person may be made by personal delivery of the subpena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpena entered on a true copy thereof by the person serving it shall be proof of service.

Enforcement

(c) In the case of contumacy by or refusal to obey a subpena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpena. The court may issue an order requiring the subpenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

(Pub. L. 91–513, Title II, § 506, Oct. 27, 1970, 84 Stat. 1272; Pub.L. 100–690, Title VI, § 6058, Nov. 18, 1988, 102 Stat. 4319.)

EDITORIAL NOTES

Effective Date of 1988 Amendment. Amendment by section 6058 of Pub.L. 100–690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub.L. 100–690, set out as a note under section 802 of this title.

§ 877. Judicial review

All final determinations, findings, and conclusions of the Attorney General under this subchapter shall be final and conclusive decisions of the matters involved, except that any person aggrieved by a final decision of the Attorney General may obtain review of the decision in the United States Court of Appeals for the District of Columbia or for the circuit in which his principal place of business is located upon petition filed with the court and delivered to the Attorney General within thirty days after notice of the decision. Findings of fact by the Attorney General, if supported by substantial evidence, shall be conclusive.

(Pub. L. 91–513, Title II, § 507, Oct. 27, 1970, 84 Stat. 1273.)

Code of Federal Regulations

Registration requirements, see 21 CFR 1301.01 et seq.

§ 878. Powers of enforcement personnel

Officers or employees of Drug Enforcement Administration or any State or local law enforcement officer

(a) Any officer or employee of the Drug Enforcement Administration or any State or local law enforcement officer designated by the Attorney General may—

(1) carry firearms;

(2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpenas, and summonses issued under the authority of the United States;

(3) make arrests without warrant (A) for any offense against the United States committed in his presence, or (B) for any felony, cognizable under the laws of the United States, if he has probable cause to believe that the person to be arrested has committed or is committing a felony;

(4) make seizures of property pursuant to the provisions of this subchapter; and

(5) perform such other law enforcement duties as the Attorney General may designate.

Federal employee status

(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of Title 5.

(Pub. L. 91–513, Title II, § 508, Oct. 27, 1970, 84 Stat. 1273; Pub. L. 96–132, § 16(b), Nov. 30, 1979, 93 Stat. 1049; Pub. L. 99–570, Title I, § 1869, Oct. 27, 1986, 100 Stat. 3207–55; Pub. L. 99–646, § 86, Nov. 10, 1986, 100 Stat. 3620.)

EDITORIAL NOTES

References in Text. "This subchapter", referred to in subsec. (a)(4), was in the original "this title" which is Title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act".

For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

Codification. Amendment by section 1869(2) of Pub.L. 99-570, which directed that in subsec. (a) "or (with respect to offenses under this subchapter or subchapter II of this chapter) and State or local law enforcement officer" be inserted after "Drug Enforcement Administration" was not executed as the probable intent of Congress, in view of the subsequent amendment to subsec. (a) by section 86(2) of Pub.L. 99-646, which directed that "or any State or local law enforcement officer" be inserted after "Drug Enforcement Administration".

§ 879. Search warrants

A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or United States magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time.

(Pub. L. 91-513, Title II, § 509, Oct. 27, 1970, 84 Stat. 1274; Pub. L. 93-481, § 3, Oct. 26, 1974, 88 Stat. 1455.)

§ 880. Administrative inspections and warrants

Controlled premises defined

(a) As used in this section, the term "controlled premises" means—

(1) places where original or other records or documents required under this subchapter are kept or required to be kept, and

(2) places, including factories, warehouses, or other establishments, and conveyances, where persons registered under section 823 of this title (or exempted from registration under section 822(d) of this title) may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of controlled substances.

Grant of authority; scope of inspections

(b)(1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this subchapter and otherwise facilitating the carrying out of his functions under this subchapter, the Attorney General is authorized, in accordance with this section, to enter controlled premises and to conduct administrative inspections thereof, and of the things specified in this section, relevant to those functions.

(2) Such entries and inspections shall be carried out through officers or employees (hereinafter referred to as "inspectors") designated by the Attorney General. Any such inspector, upon stating his purpose and presenting to the owner, operator, or agent in charge of such premises (A) appropriate credentials and (B) a written notice of his inspection authority (which notice in the case of an inspection requiring, or in fact supported by, an administrative inspection warrant shall consist of such warrant), shall have the right to enter such premises and conduct such inspection at reasonable times.

(3) Except as may otherwise be indicated in an applicable inspection warrant, the inspector shall have the right—

(A) to inspect and copy records, reports, and other documents required to be kept or made under this subchapter;

(B) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and labeling found therein, and, except as provided in paragraph (5) [1] of this subsection, all other things therein (including records, files, papers, processes, controls, and facilities) appropriate for verification of the records, reports, and documents referred to in clause (A) or otherwise bearing on the provisions of this subchapter; and

(C) to inventory any stock of any controlled substance therein and obtain samples of any such substance.

(4) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to—

(A) financial data;

(B) sales data other than shipment data; or

(C) pricing data.

Situations not requiring warrants

(c) A warrant under this section shall not be required for the inspection of books and records pursuant to an administrative subpena issued in accordance with section 876 of this title, nor for entries and administrative inspections (including seizures of property)—

(1) with the consent of the owner, operator, or agent in charge of the controlled premises;

(2) in situations presenting imminent danger to health or safety;

(3) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(5) in any other situations where a warrant is not constitutionally required.

Administrative inspection warrants; issuance; execution; probable cause

(d) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this subchapter or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this subchapter or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (b)(2) of this section to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the United States of a need therefor, the judge or magistrate allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

(Pub. L. 91-513, Title II, § 510, Oct. 27, 1970, 84 Stat. 1274.)

[1] So in original. Probably should be "paragraph (4)".

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

§ 881. Forfeitures

Subject property

(a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession,

or concealment of property described in paragraph (1), (2), or (9), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter;

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State; and

(C) no conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, 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.

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an 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.

(8) All controlled substances which have been possessed in violation of this subchapter.

(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, or intended to be distributed, imported, or exported, in violation of a felony provision of this subchapter or subchapter II of this chapter.

Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims; issuance of warrant authorizing seizure

(b) Any property subject to civil forfeiture to the United States under this subchapter may be seized by the Attorney General 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—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this subchapter;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

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.

Custody of Attorney General

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, 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 may—

(1) place the property under seal;

(2) remove the property to a place designated by him; 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.

Other laws and proceedings applicable

(d) The provisions of law 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 any of the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; 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 subchapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

Disposition of forfeited property

(e)(1) Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may—

(A) retain the property for official use or, in the manner provided with respect to transfers under section 1616a of Title 19, transfer the property to any Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property;

(B) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(C) require that the General Services Administration take custody of the property and dispose of it in accordance with law;

(D) forward it to the Drug Enforcement Administration for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General); or

(E) transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

(i) has been agreed to by the Secretary of State;

(ii) is authorized in an international agreement between the United States and the foreign country; and

(iii) is made to a country which, if applicable, has been certified under section 2291(h) of Title 22.

(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay—

(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

(ii) awards of up to $100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of Title 28, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A) except that, with respect to forfeitures conducted by the Postal Service, the Postal Service shall deposit in the Postal Service Fund, under section 2003(b)(7) of Title 39, such moneys and proceeds.

(3) The Attorney General shall assure that any property transferred to a State or local law enforcement agency under paragraph (1)(A)—

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and

(B) is not so transferred to circumvent any requirement of State law that prohibits forfeiture or limits use or disposition of property forfeited to State or local agencies.

Forfeiture and destruction of schedule I or II substances

(f)(1) All controlled substances in schedule I or II that are possessed, transferred, sold, or offered for sale in violation of the provisions of this subchapter shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I or II, which are seized or

come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this subchapter under such circumstances as the Attorney General may deem necessary.

Plants

(g)(1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this subchapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

Vesting of title in United States

(h) 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.

Stay of civil forfeiture proceedings

(i) The filing of an indictment or information alleging a violation of this subchapter or subchapter II of this chapter, or a violation of State or local law that could have been charged under this subchapter or subchapter II 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.

Venue

(j) In addition to the venue provided for in section 1395 of Title 28 or any other 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.

Agreement between Attorney General and Postal Service for performance of functions

(*l*)[1] The functions of the Attorney General under this section shall be carried out by the Postal Service pursuant to such agreement as may be entered into between the Attorney General and the Postal Service.

(Pub. L. 91–513, Title II, § 511, Oct. 27, 1970, 84 Stat. 1276; Pub. L. 95–633, Title III, § 301(a), Nov. 10, 1978, 92 Stat. 3777; Pub. L. 96–132, § 14, Nov. 30, 1979, 93 Stat. 1048; Pub.L. 98–473, Title II, §§ 306, 309, 518, Oct. 12, 1984, 98 Stat. 2050, 2051, 2075; Pub. L. 99–570, Title I, §§ 1006(c), 1865, 1992, Oct. 27, 1986, 100 Stat. 3207–7, 3207–54, 3207–60; Pub.L. 99–646, § 74, Nov. 10, 1986, 100 Stat. 3618; Pub.L. 100–690, Titles V, VI, §§ 5105, 6059, 6074, 6075, 6077(a), (b), 6253, Nov. 18, 1988, 102 Stat. 4301, 4320, 4323–4325, 4363.)

[1] So in original.

EDITORIAL NOTES

References in Text. Subchapter II of this chapter, referred to in text, was in the original "title III", meaning Title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III compromises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

The criminal laws of the United States, referred to in subsec. (a)(4)(B), are classified generally to Title 18, U.S. C.A., Crimes and Criminal Procedure, set out ante.

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b), are set out in Title 28, U.S.C.A., Judiciary and Judicial Procedure, and Federal Rules of Civil Procedure pamphlet.

The Federal Rules of Criminal Procedure, referred to in subsec. (b), are in Title 18, U.S.C.A., set out ante.

The customs laws, referred to in subsec. (d), are classified generally to Title 19, U.S.C.A., Customs Duties.

Schedules I and II, referred to in subsecs. (f) and (g)(1), are set out in section 812(c) of this title.

Codification. "Drug Enforcement Administration" was substituted for "Bureau of Narcotics and Dangerous Drugs" in subsec. (e)(4) to conform to congressional intent manifest in amendment of section 802(4) of this title by Pub. L. 96–132, § 16(a), Nov. 30, 1979, 93 Stat. 1049, now defining term "Drug Enforcement Administration" as used in this subchapter.

Effective Date of 1988 Amendment. Amendment by section 6059 of Pub.L. 100–690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub.L. 100–690, set out as a note under section 802 of this title.

Section 6077(c) of Pub.L. 100–690 provided that: "Section 551(e)(3)(B) [probably means 511(e)(3)(B)] of the Controlled Substances Act, as enacted by subsection (a) [subsec. (e)(3)(B) of this section], shall apply with respect to fiscal years beginning after September 30, 1989."

Regulations for Expedited Administrative Forfeiture Procedures. Section 6079 of Pub.L. 100–690 provided that:

"(a) In General. Not later than 90 days after the date of enactment of this Act [Nov. 18, 1988], the Attorney General and the Secretary of the Treasury shall consult, and after providing a 30–day public comment period, shall prescribe regulations for expedited administrative procedures for seizures under section 511(a)(4), (6), and (7) of the Controlled Substances Act (21 U.S.C. 881(a)(4), (6), and (7)); section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)); and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782) for violations involving the possession of personal use quantities of a controlled substance.

"(b) Specifictions. The regulations prescribed pursuant to subsection (a) shall—

"(1) minimize the adverse impact caused by prolonged detention, and

"(2) provide for a final administrative determination of the case within 21 days of seizure, or provide a procedure by which the defendant can obtain release of the property pending a final determination of the case. Such regulations shall provide that the appropriate agency official rendering a final determination shall immediately return the property if the following conditions are established:

"(A) the owner or interested party did not know of or consent to the violation;

"(B) the owner establishes a valid, good faith interest in the seized property as owner or otherwise; and

"(C)(1) the owner establishes that the owner at no time had any knowledge or reason to believe that the property in which the owner claims an interest was being or would be used in a violation of the law; and

"(2) if the owner at any time had, or should have had, knowledge or reason to believe that the property in which the owner claims an interest was being or would be used in a violation of the law, that the owner did what reasonably could be expected to prevent the violation.

An owner shall not have the seized property returned under this subsection if the owner had not acted in a normal and customary manner to ascertain how the property would be used.

"(c) Notice. At the time of seizure or upon issuance of a summons to appear under subsection (d), the officer making the seizure shall furnish to any person in possession of the conveyance a written notice specifying the procedures under this section. At the earliest practicable opportunity after determining ownership of the seized conveyance, the head of the department or agency that seizes the conveyance shall furnish a written notice to the owner and other interested parties (including lienholders) of the legal and factual basis of the seizure.

"(d) Summons in Lieu of Seizure of Commercial Fishing Industry Vessels. Not later than 90 days after the enactment of this Act [Nov. 18, 1988], the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation shall prescribe joint regulations, after a public comment period of at least 30 days, providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel as defined in section 2101(11a), (11b), and (11c) of title 46, United States Code, for violations involving the possession of personal use quantities of a controlled substance. These regulations shall apply when the violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call, or is actively engaged in fishing operations. The authority provided under this section shall not affect existing authority to arrest an individual for drug-related offenses or to release that individual into the custody of the vessel's master. Upon answering a summons to appear, the procedures set forth in subsections (a), (b), and (c) of this section shall apply. The jurisdiction of the district court for any forfeiture incurred shall not be affected by the use of a summons under this section.

"(e) Personal Use Quantities of a Controlled Substance. For the purposes of this section, personal use quantities of a controlled substance shall not include sweepings or other evidence of nonpersonal use amounts."

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

Inspection, search, and seizure, see 19 CFR 162.0 et seq.

§ 881–1. Expedited procedures for seized conveyances

Petition for expedited decision; determination

(a)(1) The owner of a conveyance may petition the Attorney General for an expedited decision with respect to the conveyance, if the conveyance is seized for a drug-related offense and the owner has filed the requisite claim and cost bond in the manner provided in section 1608 of Title 19. The Attorney General shall make a determination on a petition under this section expeditiously, including a determination of any rights or defenses available to the petitioner. If the Attorney General does not grant or deny a petition under this section within 20 days after the date on which the petition is filed, the conveyance shall be returned to the owner pending further forfeiture proceedings.

(2) With respect to a petition under this section, the Attorney General may—

(A) deny the petition and retain possession of the conveyance;

(B) grant the petition, move to dismiss the forfeiture action, if filed, and promptly release the conveyance to the owner; or

(C) advise the petitioner that there is not adequate information available to determine the petition and promptly release the conveyance to the owner.

(3) Release of a conveyance under subsection (a)(1) or (a)(2)(C) of this section does not affect any forfeiture action with respect to the conveyance.

(4) The Attorney General shall prescribe regulations to carry out this section.

Written notice of procedures

(b) At the time of seizure, the officer making the seizure shall furnish to any person in possession of the conveyance a written notice specifying the procedures under this section. At the earliest practicable opportunity after determining ownership of the seized conveyance, the head of the department or agency that seizes the conveyance shall furnish a written notice to the owner and other interested parties (including lienholders) of the legal and factual basis of the seizure.

Complaint for forfeiture

(c) Not later than 60 days after a claim and cost bond have been filed under section 1608 of Title 19 regarding a conveyance seized for a drug-related offense, the Attorney General shall file a complaint for forfeiture in the appropriate district court, except that the court may extend the period for filing for good cause shown or on agreement of the parties. If the Attorney General does not file a complaint as specified in the preceding sentence, the court shall order the return of the conveyance to the owner and the forfeiture may not take place.

Bond for release of conveyance

(d) Any owner of a conveyance seized for a drug-related offense may obtain release of the conveyance by providing security in the form of a bond to the Attorney General in an amount equal to the value of the conveyance unless the Attorney General determines the conveyance should be retained (1) as contraband, (2) as evidence of a violation of law, or (3) because, by reason of design or other characteristic, the conveyance is particularly suited for use in illegal activities.

(Pub.L. 91-513, Title II, § 511A, as added Pub.L. 100-690, Title VI, § 6080(a), Nov. 18, 1988, 102 Stat. 4326.)

§ 881a. Production control of controlled substances

Definitions

(a) As used in this section:

(1) The term "controlled substance" has the same meaning given such term in section 801(6) of this title.

(2) The term "Secretary" means the Secretary of Agriculture.

(3) The term "State" means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Persons ineligible for Federal agricultural program benefits

(b) Notwithstanding any other provision of law, following December 23, 1985, any person who is convicted under Federal or State law of planting, cultivation, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for—

(1) as to any commodity produced during that crop year, and the four succeeding crop years, by such person—

(A) any price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;

(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(C) crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.);

(D) a disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.); or

(E) a loan made, insured or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Farmers Home Administration; or

(2) a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity that is—

(A) produced during that crop year, or any of the four succeeding crop years, by such person; and

(B) acquired by the Commodity Credit Corporation.

Regulations

(c) Not later than 180 days after December 23, 1985, the Secretary shall issue such regulations as the Secretary determines are necessary to carry out this section, including regulations that—

(1) define the term "person";

(2) govern the determination of persons who shall be ineligible for program benefits under this section; and

(3) protect the interests of tenants and sharecroppers.

(Pub.L. 99-198, Title XVII, § 1764, Dec. 23, 1985, 99 Stat. 1652.)

EDITORIAL NOTES

Codification. Section was enacted as part of the Food Security Act of 1985, and not as part of the Controlled Substances Act, which comprises this subchapter.

Code of Federal Regulations

Denial of program eligibility for controlled substance violation, see 7 CFR 796.1 et seq.

§ 882. Injunctions

Jurisdiction

(a) The district courts of the United States and all courts exercising general jurisdiction in the territories and possessions of the United States shall have jurisdiction in proceedings in accordance with the Federal Rules of Civil Procedure to enjoin violations of this subchapter.

Jury trial

(b) In case of an alleged violation of an injunction or restraining order issued under this section, trial shall, upon demand of the accused, be by a jury in accordance with the Federal Rules of Civil Procedure.

(Pub. L. 91-513, Title II, § 512, Oct. 27, 1970, 84 Stat. 1278.)

EDITORIAL NOTES

References in Text. The Federal Rules of Civil Procedure, referred to in text, are set out in Title 28, U.S.C.A., Judiciary and Judicial Procedure, and Federal Rules of Civil Procedure pamphlet, 1982 ed.

§ 883. Enforcement proceedings

Before any violation of this subchapter is reported by the Administrator of the Drug Enforcement Administration to any United States attorney for institution of a criminal proceeding, the Administrator may require that the person against whom such proceeding is contemplated be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

(Pub. L. 91-513, Title II, § 513, Oct. 27, 1970, 84 Stat. 1278; Pub. L. 96-132, § 16(c), Nov. 30, 1979, 93 Stat. 1049.)

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

§ 884. Immunity and privilege

Refusal to testify

(a) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before a court or grand jury of the United States, involving a violation of this subchapter, and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order issued under subsection (b) of this section or any information obtained by the exploitation of such testimony or other information, may be used against the witness in any criminal case, including any criminal case brought in a court of a State, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

Order of United States district court

(b) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before a court or grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, upon the request of the United States attorney for such district, an order requiring such individual to give any testimony or provide any other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

Request by United States attorney

(c) A United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General designated by the Attorney General, request an order under subsection (b) of this section when in his judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

(Pub. L. 91-513, Title II, § 514, Oct. 27, 1970, 84 Stat. 1278; Pub.L. 100-690, Title VII, § 7020(f), Nov. 18, 1988, 102 Stat. 4396.)

§ 885. Burden of proof; liabilities

Exemptions and exceptions; presumption in simple possession offenses

(a)(1) It shall not be necessary for the United States to negative any exemption or exception set forth in this subchapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this subchapter, and the burden of going forward with the evidence

with respect to any such exemption or exception shall be upon the person claiming its benefit.

(2) In the case of a person charged under section 844(a) of this title with the possession of a controlled substance, any label identifying such substance for purposes of section 353(b)(2) of this title shall be admissible in evidence and shall be prima facie evidence that such substance was obtained pursuant to a valid prescription from a practitioner while acting in the course of his professional practice.

Registration and order forms

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this subchapter, he shall be presumed not to be the holder of such registration or form, and the burden of going forward with the evidence with respect to such registration or form shall be upon him.

Use of vehicles, vessels, and aircraft

(c) The burden of going forward with the evidence to establish that a vehicle, vessel, or aircraft used in connection with controlled substances in schedule I was used in accordance with the provisions of this subchapter shall be on the persons engaged in such use.

Immunity of Federal, State, local and other officials

(d) Except as provided in sections 2234 and 2235 of Title 18, no civil or criminal liability shall be imposed by virtue of this subchapter upon any duly authorized Federal officer lawfully engaged in the enforcement of this subchapter, or upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

(Pub.L. 91-513, Title II, § 515, Oct. 27, 1970, 84 Stat. 1279.)

EDITORIAL NOTES

References in Text. Schedule I, referred to in subsec. (c), is set out in section 812(c) of this title.

§ 886. Payments and advances

Payment to informers

(a) The Attorney General is authorized to pay any person, from funds appropriated for the Drug Enforcement Administration, for information concerning a violation of this subchapter, such sum or sums of money as he may deem appropriate, without reference to any moieties or rewards to which such person may otherwise be entitled by law.

Reimbursement for purchase of controlled substances

(b) Moneys expended from appropriations of the Drug Enforcement Administration for purchase of controlled substances and subsequently recovered shall be reimbursed to the current appropriation for the Administration.

Advance of funds for enforcement purposes

(c) The Attorney General is authorized to direct the advance of funds by the Treasury Department in connection with the enforcement of this subchapter.

Drug Pollution Fund

(d)(1) There is established in the Treasury a trust fund to be known as the "Drug Pollution Fund" (hereinafter referred to in this subsection as the "Fund"), consisting of amounts appropriated or credited to such Fund under section 841(b)(6) of this title.

(2) There are hereby appropriated to the Fund amounts equivalent to the fines imposed under section 841(b)(6) of this title.

(3) Amounts in the Fund shall be available, as provided in appropriations Acts, for the purpose of making payments in accordance with paragraph (4) for the clean up of certain pollution resulting from the actions referred to in section 841(b)(6) of this title.

(4)(A) The Secretary of the Treasury, after consultation with the Attorney General, shall make payments under paragraph (3), in such amounts as the Secretary determines appropriate, to the heads of executive agencies or departments that meet the requirements of subparagraph (B).

(B) In order to receive a payment under paragraph (3), the head of an executive agency or department shall submit an application in such form and containing such information as the Secretary of the Treasury shall by regulation require. Such application shall contain a description of the fine imposed under section 841(b)(6) of this title, the circumstances surrounding the imposition of such fine, and the type and severity of pollution that resulted from the actions to which such fine applies.

(5) For purposes of subchapter B of chapter 98 of Title 26, the Fund established under this paragraph shall be treated in the same manner as a

trust fund established under subchapter A of such chapter.

(Pub.L. 91-513, Title II, § 516, Oct. 27, 1970, 84 Stat. 1279; Pub.L. 96-132, § 16(b), Nov. 30, 1979, 93 Stat. 1049; Pub.L. 100-690, Title VI, § 6254(i), Nov. 18, 1988, 102 Stat. 4367.)

EDITORIAL NOTES

Codification. "Administration" was substituted for "Bureau" in subsec. (b) as the probable intent of Congress in view of amendment by Pub.L. 96-132, which substituted "Drug Enforcement Administration" for "Bureau of Narcotics and Dangerous Drugs" in subsecs. (a) and (b).

§ 887. Coordination and consolidation of post-seizure administration

The Attorney General and the Secretary of the Treasury shall take such action as may be necessary to develop and maintain a joint plan to coordinate and consolidate post-seizure administration of property seized under this subchapter, subchapter II of this chapter, or provisions of the customs laws relating to controlled substances.

(Pub.L. 91-513, Title II, § 517, as added Pub.L. 100-690, Title VI, § 6078(a), Nov. 18, 1988, 102 Stat. 4325.)

EDITORIAL NOTES

References in Text. "This subchapter", referred to in text, was in the original "this title" which is Title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

"Subchapter II of this chapter", referred to in text, was in the original "title III", meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see Tables volume.

PART F—GENERAL PROVISIONS

§ 901. Severability of provisions

If a provision of this chapter is held invalid, all valid provisions that are severable shall remain in effect. If a provision of this chapter is held invalid in one or more of its applications, the provision shall remain in effect in all its valid applications that are severable.

(Pub.L. 91-513, Title II, § 706, Oct. 27, 1970, 84 Stat. 1284.)

EDITORIAL NOTES

References in Text. This chapter, referred to in text, was, in the original, this Act, meaning Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1286, the Comprehensive Drug Abuse Prevention and Control Act of 1970.

§ 902. Savings provisions

Nothing in this chapter, except this part and, to the extent of any inconsistency, sections 827(e) and 829 of this title, shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act.

(Pub.L. 91-513, Title II, § 707, Oct. 27, 1970, 84 Stat. 1284.)

EDITORIAL NOTES

References in Text. This chapter, referred to in text, was, in the original, this Act, meaning Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1236, the Comprehensive Drug Abuse Prevention and Control Act of 1970.

The Federal Food, Drug, and Cosmetic Act, referred to in text, is Act June 25, 1938, c. 675, 52 Stat. 1040, which is classified generally to chapter 9 (section 301 et seq.) of Title 21, U.S.C.A., Food and Drugs.

§ 903. Application of State law

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.

(Pub.L. 91-513, Title II, § 708, Oct. 27, 1970, 84 Stat. 1284.)

§ 904. Payment of tort claims

Notwithstanding section 2680(k) of Title 28, the Attorney General, in carrying out the functions of the Department of Justice under this subchapter, is authorized to pay tort claims in the manner authorized by section 2672 of Title 28, when such claims arise in a foreign country in connection with the operations of the Drug Enforcement Administration abroad.

(Pub.L. 91-513, Title II, § 709, Oct. 27, 1970, 84 Stat. 1284; Pub.L. 93-481, § 1, Oct. 26, 1974, 88 Stat. 1455; Pub.L. 95-137, § 1(a), Oct. 18, 1977, 91 Stat. 1169; Pub.L. 96-132, §§ 13, 15, Nov. 30, 1979, 93 Stat. 1048; Pub.L. 97-414, § 9(g)(1), Jan. 4, 1983, 96 Stat. 2064.)

SUBCHAPTER II—IMPORT AND EXPORT

§ 951. Definitions

(a) For purposes of this subchapter—

(1) The term "import" means, with respect to any article, any bringing in or introduction of such article into any area (whether or not such

bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(2) The term "customs territory of the United States" has the meaning assigned to such term by general note 2 of the Harmonized Tariff Schedule of the United States.

(b) Each term defined in section 802 of this title shall have the same meaning for purposes of this subchapter as such term has for purposes of subchapter I of this chapter.

(Pub.L. 91-513, Title III, § 1001, Oct. 27, 1970, 84 Stat. 1285; Pub.L. 100-418, Title I, § 1214(m), Aug. 23, 1988, 102 Stat. 1158.)

EDITORIAL NOTES

References in Text. This subchapter, referred to in subsec. (b), was in the original "this title" meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises this subchapter. For classification of Part B, consisting of sections 1101 to 1105 of Pub.L. 91-513, see U.S.C.A. Tables volume.

Effective Date of 1988 Amendment. Amendment by Pub.L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub.L. 100-418, set out as a note under section 3001 of Title 19, Customs Duties.

Short Title. Section 1000 of Pub.L. 91-513 provided that: "This title [enacting this subchapter, amending sections 198a and 162 of Title 21, U.S.C.A., Food and Drugs, and following U.S.C.A. titles: section 4251 of Title 18, Crimes and Criminal Procedure, section 1584 of Title 19, Customs Duties, sections 4901, 4905, 6808, 7012, 7103, 7326, 7607, 7609, 7641, 7651, and 7655 of Title 26, Internal Revenue Code, section 2901 of Title 28, Judiciary and Judicial Procedure, sections 529d, 529e, and 529f of Title 31, Money and Finance, section 304m of Title 40, Public Buildings, Property, and Works, section 3411 of Title 42, The Public Health and Welfare, section 239a of Title 46, Shipping, and section 787 of Title 49, Transportation, repealing sections 171 to 174, 176 to 185, 188 to 188n, 191 to 193, 197, 198, 199, and 501 to 517 of Title 21, sections 1401 to 1407, and 3616 of Title 18, sections 4701 to 4707, 4711 to 4716, 4721 to 4726, 4731 to 4736, 4741 to 4746, 4751 to 4757, 4761, 4762, 4771 to 4776, 7237, 7238, and 7491 of Title 26, sections 529a and 529g of Title 31, section 1421m of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under this section and sections 171 and 957 of this title] may be cited as the 'Controlled Substances Import and Export Act'."

§ 952. Importation of controlled substances

Controlled substances in schedules I or II and narcotic drugs in schedules III, IV, or V; exceptions

(a) It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter, except that—

(1) such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and

(2) such amounts of any controlled substance in schedule I or II or any narcotic drug in schedule III, IV, or V that the Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States—

(A) during an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate,

(B) in any case in which the Attorney General finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 823 of this title, or

(C) in any case in which the Attorney General finds that such controlled substance is in limited quantities exclusively for scientific, analytical, or research uses,

may be so imported under such regulations as the Attorney General shall prescribe. No crude opium may be so imported for the purpose of manufacturing heroin or smoking opium.

Nonnarcotic controlled substances in schedules III, IV, or V

(b) It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any nonnarcotic controlled substance in schedule III, IV, or V, unless such nonnarcotic controlled substance—

(1) is imported for medical, scientific, or other legitimate uses, and

(2) is imported pursuant to such notification, or declaration, or in the case of any nonnarcotic controlled substance in schedule III, such import permit, notification, or declaration, as the Attorney General may by regulation prescribe, except that if a nonnarcotic controlled substance in schedule IV or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention.

Coca leaves

(c) In addition to the amount of coca leaves authorized to be imported into the United States under subsection (a) of this section, the Attorney General may permit the importation of additional amounts of coca leaves. All cocaine and ecgonine (and all salts, derivatives, and preparations from which cocaine or ecgonine may be synthesized or made) contained in such additional amounts of coca leaves imported under this subsection shall be destroyed under the supervision of an authorized representative of the Attorney General.

(Pub.L. 91-513, Title III, § 1002, Oct. 27, 1970, 84 Stat. 1285; Pub.L. 95-633, Title I, § 105, Nov. 10, 1978, 92 Stat. 3772; Pub.L. 98-473, Title II, §§ 519-521, Oct. 12, 1984, 98 Stat. 2075.)

EDITORIAL NOTES

References in Text. Schedules I, II, III, IV, and V of subchapter I of this chapter, referred to in subsecs. (a) and (b), are set out in section 812(c) of this title.

Code of Federal Regulations

Importation, search and seizure, see 19 CFR 162.0 et seq.

Policies and procedures, see 21 CFR 1312.01 et seq.

§ 953. Exportation of controlled substances

Narcotic drugs in schedules I, II, III, or IV

(a) It shall be unlawful to export from the United States any narcotic drug in schedule I, II, III, or IV unless—

(1) it is exported to a country which is a party to—

(A) the International Opium Convention of 1912 for the Suppression of the Abuses of Opium, Morphine, Cocaine, and Derivative Drugs, or to the International Opium Convention signed at Geneva on February 19, 1925; or

(B) the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs concluded at Geneva, July 13, 1931, as amended by the protocol signed at Lake Success on December 11, 1946, and the protocol bringing under international control drugs outside the scope of the convention of July 13, 1931, for limiting the manufacture and regulating the distribution of narcotic drugs (as amended by the protocol signed at Lake Success on December 11, 1946), signed at Paris, November 19, 1948; or

(C) the Single Convention on Narcotic Drugs, 1961, signed at New York, March 30, 1961;

(2) such country has instituted and maintains, in conformity with the conventions to which it is a party, a system for the control of imports of narcotic drugs which the Attorney General deems adequate;

(3) the narcotic drug is consigned to a holder of such permits or licenses as may be required under the laws of the country of import, and a permit or license to import such drug has been issued by the country of import;

(4) substantial evidence is furnished to the Attorney General by the exporter that (A) the narcotic drug is to be applied exclusively to medical or scientific uses within the country of import, and (B) there is an actual need for the narcotic drug for medical or scientific uses within such country; and

(5) a permit to export the narcotic drug in each instance has been issued by the Attorney General.

Exception for exportation for special scientific purposes

(b) Notwithstanding subsection (a) of this section, the Attorney General may authorize any narcotic drug (including crude opium and coca leaves) in schedule I, II, III, or IV to be exported from the United States to a country which is a party to any of the international instruments mentioned in subsection (a) of this section if the particular drug is to be applied to a special scientific purpose in the country of destination and the authorities of such country will permit the importation of the particular drug for such purpose.

Nonnarcotic controlled substances in schedule I or II

(c) It shall be unlawful to export from the United States any nonnarcotic controlled substance in schedule I or II unless—

(1) it is exported to a country which has instituted and maintains a system which the Attorney General deems adequate for the control of imports of such substances;

(2) the controlled substance is consigned to a holder of such permits or licenses as may be required under the laws of the country of import;

(3) substantial evidence is furnished to the Attorney General that (A) the controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country to which exported, (B) it will not be exported from such country, and (C) there is an actual need for the controlled substance for medical, scientific, or other legitimate uses within the country; and

(4) a permit to export the controlled substance in each instance has been issued by the Attorney General.

Exception for exportation for special scientific purposes

(d) Notwithstanding subsection (c) of this section, the Attorney General may authorize any nonnarcotic controlled substance in schedule I or II to be exported from the United States if the particular substance is to be applied to a special scientific purpose in the country of destination and the authorities of such country will permit the importation of the particular drug for such purpose.

Nonnarcotic controlled substances in schedule III or IV; controlled substances in schedule V

(e) It shall be unlawful to export from the United States to any other country any nonnarcotic controlled substance in schedule III or IV or any controlled substances in schedule V unless—

(1) there is furnished (before export) to the Attorney General documentary proof that importation is not contrary to the laws or regulations of the country of destination for consumption for medical, scientific, or other legitimate purposes;

(2) it is exported pursuant to such notification or declaration, or in the case of any nonnarcotic controlled substance in schedule III, such export permit, notification, or declaration as the Attorney General may by regulation prescribe; and

(3) in the case of a nonnarcotic controlled substance in schedule IV or V which is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention.

(Pub.L. 91–513, Title III, § 1003, Oct. 27, 1970, 84 Stat. 1286; Pub.L. 95–633, Title I, § 106, Nov. 10, 1978, 92 Stat. 3772; Pub.L. 98–473, Title II, § 522, Oct. 12, 1984, 98 Stat. 2076.)

EDITORIAL NOTES

References in Text. Schedules I, II, III, IV, and V, referred to in text, are set out in section 812(c) of this title.

Code of Federal Regulations

Policies and procedures, see 21 CFR 1312.01 et seq.
Search and seizure, see 19 CFR 162.0 et seq.

§ 954. Transshipment and in-transit shipment of controlled substances

Notwithstanding sections 952, 953, and 957 of this title—

(1) A controlled substance in schedule I may—

(A) be imported into the United States for transshipment to another country, or

(B) be transferred or transshipped from one vessel, vehicle, or aircraft to another vessel, vehicle, or aircraft within the United States for immediate exportation,

if and only if it is so imported, transferred, or transshipped (i) for scientific, medical, or other legitimate purposes in the country of destination, and (ii) with the prior written approval of the Attorney General (which shall be granted or denied within 21 days of the request).

(2) A controlled substance in schedule II, III, or IV may be so imported, transferred, or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations of the Attorney General.

(Pub.L. 91–513, Title III, § 1004, Oct. 27, 1970, 84 Stat. 1287.)

EDITORIAL NOTES

References in Text. Schedules I, II, III, and IV, referred to in text, are set out in section 812(c) of this title.

Code of Federal Regulations

Policies and procedures, see 21 CFR 1312.01 et seq.

§ 955. Possession on board vessels, etc., arriving in or departing from United States

It shall be unlawful for any person to bring or possess on board any vessel or aircraft, or on board any vehicle of a carrier, arriving in or departing from the United States or the customs territory of the United States, a controlled substance in schedule I or II or a narcotic drug in schedule III or IV, unless such substance or drug is a part of the cargo entered in the manifest or part of the official supplies of the vessel, aircraft, or vehicle.

(Pub.L. 91–513, Title III, § 1005, Oct. 27, 1970, 84 Stat. 1287.)

EDITORIAL NOTES

References in Text. Schedules I, II, III, and IV, referred to in text, are set out in section 812(c) of this title.

§ 955a. Transferred

EDITORIAL NOTES

Codification. Section, Pub. L. 96–350, § 1, Sept. 15, 1980, 94 Stat. 1159; Pub. L. 99–570, Title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–95; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3552, which provided that sections 955a to 955d of this title be cited as the "Maritime Drug Law Enforcement Act", was transferred to section 1901 of Title 46, Shipping.

§ 955b. Transferred

EDITORIAL NOTES

Codification. Section, Pub. L. 96–350, § 2, Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–307, § 7, May 19, 1986,

100 Stat. 447; Pub. L. 99–570, Title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–95; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3552, which related to Congressional statement of findings on drug trafficking aboard vessels, was transferred to section 1902 of Title 46, Shipping.

§ 955c. Transferred

Editorial Notes

Codification. Section, Pub. L. 96–350, § 3, Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–570, Title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–95; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3552, which related to unlawful acts and definitions, was transferred to section 1903 of Title 46, Shipping.

§ 955d. Repealed. Pub. L. 99–570, Title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–97

Editorial Notes

Section. Pub. L. 96–350, § 4, Sept. 15, 1980, 94 Stat. 1160, related to seizures or forfeitures of property. See section 1904 of Appendix to Title 46, Shipping.

§ 956. Exemption authority

Individual possessing controlled substance

(a) The Attorney General may by regulation exempt from sections 952(a) and (b), 953, 954, and 955 of this title any individual who has a controlled substance (except a substance in schedule I) in his possession for his personal medical use, or for administration to an animal accompanying him, if he lawfully obtained such substance and he makes such declaration (or gives such other notification) as the Attorney General may by regulation require.

Compound, mixture, or preparation

(b) The Attorney General may by regulation except any compound, mixture, or preparation containing any depressant or stimulant substance listed in paragraph (a) or (b) of schedule III or in schedule IV or V from the application of all or any part of this subchapter if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

(Pub. L. 91–513, Title III, § 1006, Oct. 27, 1970, 84 Stat. 1288.)

Editorial Notes

References in Text. Schedules I, III, IV, and V, referred to in text, are set out in section 812(c) of this title.

Code of Federal Regulations

Inspection, search and seizure, see 19 CFR 162.0 et seq.

Registration requirements, see 21 CFR 1311.01 et seq.

§ 957. Persons required to register

Coverage

(a) No person may—

(1) import into the customs territory of the United States from any place outside thereof (but within the United States), or import into the United States from any place outside thereof, any controlled substance, or

(2) export from the United States any controlled substance in schedule I, II, III, IV, or V,

unless there is in effect with respect to such person a registration issued by the Attorney General under section 958 of this title, or unless such person is exempt from registration under subsection (b) of this section.

Exemptions

(b)(1) The following persons shall not be required to register under the provisions of this section and may lawfully possess a controlled substance:

(A) An agent or an employee of any importer or exporter registered under section 958 of this title if such agent or employee is acting in the usual course of his business or employment.

(B) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment.

(C) An ultimate user who possesses such substance for a purpose specified in section 802(25) of this title and in conformity with an exemption granted under section 956(a) of this title.

(2) The Attorney General may, by regulation, waive the requirement for registration of certain importers and exporters if he finds it consistent with the public health and safety; and may authorize any such importer or exporter to possess controlled substances for purposes of importation and exportation.

(Pub. L. 91–513, Title III, § 1007, Oct. 27, 1970, 84 Stat. 1288; Pub.L. 98–473, Title II, § 523, Oct. 12, 1984, 98 Stat. 2076.)

Editorial Notes

References in Text. Schedules I, II, III, and IV, referred to in subsec. (a)(2), are set out in section 812(c) of this title.

Code of Federal Regulations

Importation, search and seizure, see 19 CFR 162.0 et seq.

Registration requirements, see 21 CFR 1311.01 et seq.

§ 958. Registration requirements

Applicants to import or export controlled substances in schedule I or II

(a) The Attorney General shall register an applicant to import or export a controlled substance in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. In determining the public interest, the factors enumerated in paragraph (1) through (6) of section 823(a) of this title shall be considered.

Activity limited to specified substances

(b) Registration granted under this section shall not entitle a registrant to import or export controlled substances other than specified in the registration.

Applicants to import controlled substances in schedule III, IV, or V or to export controlled substances in schedule III or IV

(c) The Attorney General shall register an applicant to import a controlled substance in schedule III, IV, or V or to export a controlled substance in schedule III or IV, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the factors enumerated in paragraphs (1) through (6) of section 823(d) of this title shall be considered.

Denial of application

(d)(1) The Attorney General may deny an application for registration under subsection (a) of this section if he is unable to determine that such registration is consistent with the public interest (as defined in subsection (a) of this section) and with the United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

(2) The Attorney General may deny an application for registration under subsection (c) of this section, or revoke or suspend a registration under subsection (a) or (c) of this section, if he determines that such registration is inconsistent with the public interest (as defined in subsection (a) or (c) of this section) or with the United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

(3) The Attorney General may limit the revocation or suspension of a registration to the particular controlled substance, or substances, with respect to which grounds for revocation or suspension exist.

(4) Before taking action pursuant to this subsection, the Attorney General shall serve upon the applicant or registrant an order to show cause as to why the registration should not be denied, revoked, or suspended. The order to show cause shall contain a statement of the basis thereof and shall call upon the applicant or registrant to appear before the Attorney General, or his designee, at a time and place stated in the order, but in no event less than thirty days after the date of receipt of the order. Proceedings to deny, revoke, or suspend shall be conducted pursuant to this subsection in accordance with subchapter II of chapter 5 of Title 5. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this subchapter or any other law of the United States.

(5) The Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this subsection, in cases where he finds that there is an imminent danger to the public health and safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the Attorney General or dissolved by a court of competent jurisdiction.

(6) In the event that the Attorney General suspends or revokes a registration granted under this section, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may, in the discretion of the Attorney General, be seized or placed under seal. No disposition may be made of any controlled substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded, except that a court, upon application therefor, may at any time order the sale of perishable controlled substances. Any such order shall require the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances (or proceeds of the sale thereof which have been deposited with the court) shall be forfeited to the United States; and the Attorney General shall dispose of such controlled substances in accordance with section 881(e) of this title.

Registration period

(e) No registration shall be issued under this subchapter for a period in excess of one year.

Unless the regulations of the Attorney General otherwise provide, sections 822(f), 825, and 827 of this title shall apply to persons registered under this section to the same extent such sections apply to persons registered under section 823 of this title.

Rules and regulations

(f) The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration of importers and exporters of controlled substances under this section.

Scope of authorized activity

(g) Persons registered by the Attorney General under this section to import or export controlled substances may import or export (and, for the purpose of so importing or exporting, may possess) such substances to the extent authorized by their registration and in conformity with the other provisions of this subchapter and subchapter I of this chapter.

Separate registrations for each principal place of business

(h) A separate registration shall be required at each principal place of business where the applicant imports or exports controlled substances.

Emergency situations

(i) Except in emergency situations as described in section 952(a)(2)(A) of this title, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 952(a) of this title authorizing the importation of such a substance, the Attorney General shall give manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

(Pub. L. 91–513, Title III, § 1008, Oct. 27, 1970, 84 Stat. 1289; Pub. L. 98–473, Title II, §§ 524, 525, Oct. 12, 1984, 98 Stat. 2076; Pub. L. 99–570, Title I, § 1866(d), Oct. 27, 1986, 100 Stat. 3207–55.)

EDITORIAL NOTES

References in Text. Schedules I, II, III, IV, and V, referred to in subsecs. (a), (b), (c), and (h), are set out in section 812(c) of this title.

This subchapter, referred to in subsec. (f), was in the original "this title" meaning Title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises this subchapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

Labeling and packaging requirements, see 21 CFR 1302.01 et seq.

Recordkeeping and reporting requirements, see 21 CFR 1304.01 et seq.

Registration requirements, see 21 CFR 1311.01 et seq.

§ 959. Possession, manufacture, or distribution for purposes of unlawful importation

Prohibition on controlled substance in schedule I or II

(a) It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II—

(1) intending that such substance will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States; or

(2) knowing that such substance will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States.

United States citizen on board any aircraft or any person on board United States owned or registered aircraft

(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States, to—

(1) manufacture or distribute a controlled substance; or

(2) possess a controlled substance with intent to distribute.

Acts committed outside territorial jurisdiction of United States

(c) This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates this section shall be tried in the United States district court at the point of entry where such person enters the United States, or in the United States District Court for the District of Columbia.

(Pub. L. 91–513, Title III, § 1009, Oct. 27, 1970, 84 Stat. 1289; Pub. L. 99–570, Title III, § 3161(a), Oct. 27, 1986, 100 Stat. 3207–94.)

EDITORIAL NOTES

References in Text. Schedules I and II, referred to in text, are set out in section 812(c) of this title.

§ 960. Prohibited acts A

Unlawful acts

(a) Any person who—

(1) contrary to section 952, 953, or 957 of this title, knowingly or intentionally imports or exports a controlled substance,

(2) contrary to section 955 of this title, knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or

(3) contrary to section 959 of this title, manufactures, possesses with intent to distribute, or distributes a controlled substance

shall be punished as provided in subsection (b) of this section.

Penalties

(b)(1) In the case of a violation of subsection (a) of this section involving—

(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(B) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

(C) 50 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this subchapter or subchapter I of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

(2) In the case of a violation of subsection (a) of this section involving—

(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(B) 500 grams or more of a mixture or substance containing a detectable amount of—

(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

(C) 5 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this subchapter or subchapter I of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a term of suspervised [1] release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of suspervised [1] release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this subchapter or subchapter I of this chapter or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(4) In the case of a violation under subsection (a) of this section with respect to less than 50 kilograms of marihuana, except in the case of 100 or

more marihuana plants regardless of weight, less than 10 kilograms of hashish, less than one kilogram of hashish oil, or any quantity of a controlled substance in schedule III, IV, or V, the person committing such violation shall be imprisoned not more than five years, or be fined not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall, in addition to such term of imprisonment, include (A) a term of supervised release of not less than two years if such controlled substance is in schedule I, II, III, or (B) a term of supervised release of not less than one year if such controlled substance is in schedule IV.

(c) Repealed. Pub.L. 98–473, Title I, § 225, Oct. 12, 1984, 98 Stat. 2030.

Penalty for importation or exportation

(d) Any person who knowingly or intentionally—

(1) imports or exports a listed chemical with intent to manufacture a controlled substance in violation of this subchapter or, in the case of an exportation, in violation of the law of the country to which the chemical is exported; or

(2) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance in violation of this subchapter or, in the case of an exportation, in violation of the law of the country to which the chemical is exported;

shall be fined in accordance with Title 18, or imprisoned not more than 10 years, or both.

(Pub. L. 91–513, Title III, § 1010, Oct. 27, 1970, 84 Stat. 1290; Pub.L. 98–473, Title II, § 225, formerly § 225(a), 504, Oct. 12, 1984, 98 Stat. 2030, 2070; Pub.L. 98–473, § 225 as amended Pub.L. 99–570, Title I, § 1005(c), Oct. 27, 1986, 100 Stat. 3207–6; Pub.L. 99–570, Title I, §§ 1004, 1302, 1866(e), Oct. 27, 1986, 100 Stat. 3207–6, 3207–15, 3207–55; Pub.L. 100–690, Title VI, §§ 6053(c), 6475, Nov. 18, 1988, 102 Stat. 4315, 4380.)

[1] So in original.

Subsec. (c) of this Section Applicable to Offenses Committed Prior to Nov. 1, 1987

Subsec. (c) of this section as in effect prior to repeal by Pub.L. 98–473, § 225, read as follows:

Special parole term

(c) A special parole term imposed under this section or section 962 of this title may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. The special term provided for in this section and in section 962 of this title is in addition to, and not in lieu of, any other parole provided for by law.

[See Codification note below.]

For applicability of sentencing provisions to offenses, see Effective Date and Savings Provisions, etc., note, section 235 of Pub.L. 98–473, as amended, set out under section 3551 of Title 18, Crimes and Criminal Procedure.

EDITORIAL NOTES

References in Text. Schedules I, II, III, and IV, referred to in subsec. (b), are set out in section 812(c) of this title.

"This subchapter" referred to in text, was in the original "this title" meaning Title III of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises this subchapter. For classification of Part B, consisting of sections 1101 to 1105 of Pub.L. 91–513, see Tables volume.

Codification. The directory language of section 1005(c) of Pub.L. 99–570 provided for the amendment of section "1515 of the Controlled Substances Import and Export Act (21 U.S.C. 960)", which amendment has been executed to section 1010 of such Act (21 U.S.C.A. § 960) as the probable intent of Congress.

Amendment of subsec. (b)(3) [now (b)(4)] by section 1866(e) of Pub. L. 99–570, directing the striking out of "except as provided in paragraph (4)" has previously been executed by section 1302(a), (b)(1) of Pub.L. 99–570 which redesignated par. (3) as (4) and struck out the above quoted phrase.

The amendment to subsec. (c) by Pub.L. 99–570, § 1004(a), directing the substitution of "term of supervised release" for "special parole term" wherever appearing has not been executed to such subsec. (c) in view of repeal by Pub.L. 98–473, § 225, eff. Nov. 1, 1987.

Repeals. Section 225(a)(1) to (3) of Pub.L. 98–473, cited to credit, was amended by section 1005(c) of Pub.L. 99–570 to repeal pars. (1) and (2) and renumber par. (3) as section 225(a) of Pub.L. 98–473. Such provisions of section 225(a) of Pub.L. 98–473, which were to take effect Nov. 1, 1987, as a result of repeal were never executed to text of section.

Effective Date of 1988 Amendment. Amendment of section by section 6053(c) of Pub.L. 100–690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub.L. 100–690, set out as a note under section 802 of this title.

Effective Date of 1986 Amendment. Amendment by section 1004(a) of Pub.L. 99–570 to take effect on the date of the taking of effect of section 3583 of Title 18, Crimes and Criminal Procedure, Nov. 1, 1987, see section 1004(b) of Pub.L. 99–570, set out as a note under section 841 of this title.

Effective Date and Savings Provisions of 1984 Amendment. Amendment by Pub.L. 98–473, § 225, effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98–473, and except as otherwise provided for therein, see section 235 of Pub.L. 98–473, as amended,

set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

Code of Federal Regulations

Inspection, search and seizure, see 19 CFR 162.0 et seq.

§ 961. Prohibited acts B

Any person who violates section 954 of this title or fails to notify the Attorney General of an importation or exportation under section 972 of this title shall be subject to the following penalties:

(1) Except as provided in paragraph (2), any such person shall, with respect to any such violation, be subject to a civil penalty of not more than $25,000. Sections 842(c)(1) and (c)(3) of this title shall apply to any civil penalty assessed under this paragraph.

(2) If such a violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally and the trier of fact specifically finds that the violation was so committed, such person shall be sentenced to imprisonment for not more than one year or a fine of not more than $25,000 or both.

(Pub. L. 91–513, Title III, § 1011, Oct. 27, 1970, 84 Stat. 1290; Pub.L. 100–690, Title VI, § 6053(d), Nov. 18, 1988, 102 Stat. 4316.)

Editorial Notes

Effective Date of 1988 Amendment. Amendment by section 6053(d) of Pub.L. 100–690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub.L. 100–690, set out as a note under section 802 of this title.

Code of Federal Regulations

Inspection, search and seizure, see 19 CFR 162.0 et seq.

§ 962. Second or subsequent offenses

Term of imprisonment and fine

(a) Any person convicted of any offense under this subchapter is, if the offense is a second or subsequent offense, punishable by a term of imprisonment twice that otherwise authorized, by twice the fine otherwise authorized, or by both. If the conviction is for an offense punishable under section 960(b) of this title, and if it is the offender's second or subsequent offense, the court shall impose, in addition to any term of imprisonment and fine, twice the term of supervised release otherwise authorized.

Determination of status

(b) For purposes of this section, a person shall be considered convicted of a second or subsequent offense if, prior to the commission of such offense, one or more prior convictions of him for a felony under any provision of this subchapter or subchapter I of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant drugs, have become final.

Procedures applicable

(c) Section 851 of this title shall apply with respect to any proceeding to sentence a person under this section.

(Pub. L. 91–513, Title III, § 1012, Oct. 27, 1970, 84 Stat. 1290; Pub.L. 98–473, Title II, §§ 225(b), 505, Oct. 12, 1984, 98 Stat. 2030, 2070; Pub.L. 99–570, Title I, § 1004(a), Oct. 27, 1986, 100 Stat. 3207–6.)

Editorial Notes

References in Text. "This subchapter", referred to in subsec. (b), was in the original "this title" meaning Title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises this subchapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

Repeals. Section 225(b) of Pub.L. 98–473, cited to credit, was repealed by section 1005(c) of Pub.L. 99–570. Such provisions of section 225(b) of Pub.L. 98–473, which were to take effect Nov. 1, 1987, as a result of repeal were never executed to text of section.

Effective Date of 1986 Amendment. Amendment by section 1004(a) of Pub.L. 99–570 to take effect on the date of the taking of effect of section 3583 of Title 18, Crimes and Criminal Procedure, Nov. 1, 1987, see section 1004(b) of Pub.L. 99–570, set out as a note under section 841 of this title.

Effective Date and Savings Provisions of 1984 Amendment. Amendment by Pub.L. 98–473, § 225(b), effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98–473, and except as otherwise provided for therein, see section 235 of Pub.L. 98–473, as amended, set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 963. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub.L. 91–513, Title III, § 1013, Oct. 27, 1970, 84 Stat. 1291; Pub.L. 100–690, Title VI, § 6470(a), Nov. 18, 1988, 102 Stat. 4377.)

Editorial Notes

References in Text. This subchapter, referred to in text, was in the original "this title" meaning Title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises this subchapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

§ 964. Additional penalties

Any penalty imposed for violation of this subchapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(Pub. L. 91-513, Title III, § 1014, Oct. 27, 1970, 84 Stat. 1291.)

EDITORIAL NOTES

References in Text. This subchapter referred to in text, was in the original "this title" meaning Title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises this subchapter. For classification of Part B, consisting of sections 1102 to 1105 of Title III, see U.S.C.A. Tables volume.

§ 965. Applicability of Part E of Subchapter I

Part E of subchapter I of this chapter shall apply with respect to functions of the Attorney General (and of officers and employees of the Bureau of Narcotics and Dangerous Drugs) under this subchapter, to administrative and judicial proceedings under this subchapter, and to violations of this subchapter, to the same extent that such part applies to functions of the Attorney General (and such officers and employees) under subchapter I of this chapter, to such proceedings under subchapter I of this chapter, and to violations of subchapter I of this chapter. For purposes of the application of this section to section 880 or 881 of this title, any reference in such section 880 or 881 of this title to "this subchapter" shall be deemed to be a reference to this subchapter, any reference to section 823 of this title shall be deemed to be a reference to section 958 of this title, and any reference to section 822(d) of this title shall be deemed to be a reference to section 957(b)(2) of this title.

(Pub. L. 91-513, Title III, § 1015, Oct. 27, 1970, 84 Stat. 1291; Pub. L. 95-633, Title III, § 301(b), Nov. 10, 1978, 92 Stat. 3778.)

EDITORIAL NOTES

References in Text. This subchapter referred to in text, was in the original "this title" meaning Title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises this subchapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

§ 966. Authority of Secretary of the Treasury

Nothing in this chapter shall derogate from the authority of the Secretary of the Treasury under the customs and related laws.

(Pub. L. 91-513, Title III, § 1016, Oct. 27, 1970, 84 Stat. 1291.)

EDITORIAL NOTES

References in Text. This chapter, referred to in text, was, in the original, this Act, meaning Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1236, the Drug Abuse Prevention and Control Act of 1970.

The customs laws, referred to in text, are classified generally to Title 19, U.S.C.A., Customs Duties.

Code of Federal Regulations

Importation, search and seizure, see 19 CFR 162.0 et seq.

§ 967. Smuggling of controlled substances; investigations; oaths; subpenas; witnesses; evidence; production of records; territorial limits; fees and mileage of witnesses

For the purpose of any investigation which, in the opinion of the Secretary of the Treasury, is necessary and proper to the enforcement of section 545 of Title 18 (relating to smuggling goods into the United States) with respect to any controlled substance (as defined in section 802 of this title), the Secretary of the Treasury may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of records (including books, papers, documents, and tangible things which constitute or contain evidence) relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place within the customs territory of the United States, except that a witness shall not be required to appear at any hearing distant more than 100 miles from the place where he was served with subpena. Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Oaths and affirmations may be made at any place subject to the jurisdiction of the United States.

(Aug. 11, 1955, c. 800, § 1, 69 Stat. 684; Oct. 27, 1970, Pub.L. 91-513, Title III, § 1102(t), 84 Stat. 1294.)

EDITORIAL NOTES

Codification. This section was formerly classified to section 1034 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub.L. 97-258, § 1, Sept. 13, 1982, 96 Stat. 877.

Section was also formerly classified to section 198a of this title.

Section was not enacted as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1236) which comprises this chapter.

Effective Date of 1970 Amendment. Amendment by Pub.L. 91-513 effective the first day of the seventh

calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub.L. 91-513.

Savings Provisions. Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub.L. 91-513, not to be affected or abated by reason thereof, see section 1103 of Pub.L. 91-513.

§ 968. Service of subpena; proof of service

A subpena of the Secretary of the Treasury may be served by any person designated in the subpena to serve it. Service upon a natural person may be made by personal delivery of the subpena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpena to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpena entered on a true copy thereof by the person serving it shall be proof of service.

(Aug. 11, 1955, c. 800, § 2, 69 Stat. 685.)

Editorial Notes

Codification. This section was formerly classified to section 1035 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub.L. 97-258, § 1, Sept. 13, 1982, 96 Stat. 877.

Section was also formerly classified to section 198b of this title.

Section was not enacted as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1236) which comprises this chapter.

§ 969. Contempt proceedings

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Secretary of the Treasury may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpenaed person is an inhabitant, carries on business or may be found, to compel compliance with the subpena of the Secretary of the Treasury. The court may issue an order requiring the subpenaed person to appear before the Secretary of the Treasury there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district whereof the subpenaed person is an inhabitant or wherever he may be found.

(Aug. 11, 1955, c. 800, § 3, 69 Stat. 685.)

Editorial Notes

Codification. This section was formerly classified to section 1036 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub.L. 97-258, § 1, Sept. 13, 1982, 96 Stat. 877.

Section was also formerly classified to section 198c of this title.

Section was not enacted as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1236) which comprises this chapter.

§ 970. Criminal forfeitures

Section 853 of this title, relating to criminal forfeitures, shall apply in every respect to a violation of this subchapter punishable by imprisonment for more than one year.

(Pub.L. 91-513, Title III, § 1017, as added Pub.L. 98-473, Title II, § 307, Oct. 12, 1984, 98 Stat. 2051.)

Editorial Notes

References in Text. This subchapter, referred to in text, was in the original "this title" meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises this subchapter. For classification of Part B, consisting of sections 1101 to 1105 of Pub.L. 91-513, see U.S.C.A. Tables volume.

§ 971. Notification, suspension of shipment, and penalties with respect to importation and exportation of listed chemicals

Notification prior to transaction

(a) Each regulated person who imports or exports a listed chemical shall notify the Attorney General of the importation or exportation not later than 15 days before the transaction is to take place.

Regular customers or suppliers

(b)(1) The Attorney General shall provide by regulation for circumstances in which the requirement of subsection (a) of this section does not apply to a transaction between a regulated person and a regular customer or regular supplier of the regulated person. At the time of any importation or exportation constituting a transaction referred to in the preceding sentence, the regulated person shall notify the Attorney General of the transaction.

(2) The regulations under this subsection shall provide that the initial notification under subsection (a) of this section with respect to a customer or supplier of a regulated person shall, upon the expiration of the 15-day period, qualify the customer as a regular customer or regular supplier, unless the Attorney General otherwise notifies the regulated person in writing.

Suspension of importation or exportation: disqualification of regular customers or suppliers; hearing

(c)(1) The Attorney General may order the suspension of any importation or exportation of a listed chemical (other than a regulated transaction to which the requirement of subsection (a) of this section does not apply by reason of subsection (b)) of this section) or may disqualify any regular customer or regular supplier on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance. From and after the time when the Attorney General provides written notice of the order (including a statement of the legal and factual basis for the order) to the regulated person, the regulated person may not carry out the transaction.

(2) Upon written request to the Attorney General, a regulated person to whom an order applies under paragraph (1) is entitled to an agency hearing on the record in accordance with subchapter II of chapter 5 of Title 5. The hearing shall be held on an expedited basis and not later than 45 days after the request is made, except that the hearing may be held at a later time, if so requested by the regulated person.

(Pub.L. 91–513, Title III, § 1018, as added Pub.L. 100–690, Title VI, § 6053(a), Nov. 18, 1988, 102 Stat. 4314.)

EDITORIAL NOTES

Effective Dates and Special Rules. Section 6053(b) of Pub.L. 100–690 provided that:

"(1) Not later than 45 days after the date of the enactment of this Act [Nov. 18, 1988], the Attorney General shall forward to the Director of the Office of Management and Budget proposed regulations required by the amendment made by subsection (a) [enacting this section].

"(2) Not later than 55 days after the date of the enactment of this Act [Nov. 18, 1988], the Director of the Office of Management and Budget shall—

"(A) review such proposed regulations of the Attorney General; and

"(B) forward any comments and recommendations for modifications to the Attorney General.

"(3) Not later than 60 days after the date of the enactment of this Act [Nov. 18, 1988] the Attorney General shall publish the proposed final regulations required by the amendment made by subsection (a).

"(4) Not later than 120 days after the date of the enactment of this Act [Nov. 18, 1988] the Attorney General shall promulgate final regulations required by the amendment made by subsection (a).

"(5) Subsection (a) of section 1018 of the Controlled Substances Import and Export Act, as added by subsection (a) of this section, [subsec. (a) of this section] shall take effect 90 days after the promulgation of the final regulations under paragraph (4).

"(6) Each regulated person shall provide to the Attorney General the identity of any regular customer or regular supplier of the regulated person not later than 30 days after the promulgation of the final regulations under paragraph (4). Not later than 60 days after the end of such 30–day period, each regular customer and regular supplier so identified shall be a regular customer or regular supplier for purposes of any applicable exception from the requirement of subsection (a) of such section 1018 [subsec. (a) of this section], unless the the [sic] Attorney General otherwise notifies the regulated person in writing."

Section effective 120 days after Nov. 18, 1988, see section 6061 of Pub.L. 100–690, set out as a note under section 802 of this title.

CHEMICAL FIELD TEST FOR NARCOTICS AND DANGEROUS DRUGS

Chemical field tests are qualitative examinations which give valuable clues as to the identity of samples. The field tests listed below are easy to perform and not too time consuming. They are, however, only precursory and presumptive. False positives can be obtained with all field tests. Any drug which will be used as evidence must be positively identified by a qualified chemist. Additionally, a negative test does not preclude the possibility of another drug, having similar physiological action, being present.

CAUTION: Law enforcement personnel should take extreme care in handling samples. Do not taste or sniff drugs. Wash hands thoroughly after handling samples. Do not place hands in or on mouth prior to washing hands.

AMPHETAMINES:

TEST MATERIAL: Marquis' Reagent - 8 to 10 drops of 40% formaldehyde solution in 10 ml concentrated sulfuric acid.

CAUTION: Care must be taken not to get Marquis' Reagent on bare skin or clothing. If this happens, wash with copious amounts of water.

TEST PROCEDURE: Place one or two drops of the reagent on the whole or crushed tablet. This should be done on a glass ashtray, inverted tumbler, etc.

Amphetamines react with the reagent to give a red-orange color, turning reddish-brown and then dark brown within one or two minutes.

The reagent gives this characteristic color reaction when applied to white, pink, yellow, or green amphetamine tablets. The speed with which the color is formed appears to depend upon the hardness of the tablet. The red-orange color forms immediately on some tablets while with others it appears in 10 or 20 seconds. Therefore, the critical period of color differentiation for amphetamines is within the first 20 seconds.

As indicated by the table below, the only materials which give the same color change as amphetamine are the phenyl tertiary butyamine hydrochloride tablets and the Wyamine sulfate tablets. Both are similar chemically to amphetamines.

COLOR REACTIONS:

1.	Amphetamine powder and tablets	Red-orange immediately to reddish to dark brown within two minutes
2.	Methamphetamine powder and tablets	Same color change as amphetamine
3.	Phenyl tertiary butylamine hydrochloride tablets	Same color change as amphetamine
4.	Wyamine sulfate tablets	Same color change as amphetamine
5.	Caffene powder and tablets	No color
6.	Mescaline sulfate	Bright orange-red. Color does not change.
7.	Opiates	See opiate listing.

TEST TO DISTINGUISH METHAMPHETAMINE FROM OTHER AMPHETAMINES

TEST MATERIALS:

1. To a 1% solution of sodium nitroprusside, add 10% by volume of acetaldehyde. (This reagent should be refrigerated and made fresh at least monthly.)
2. 2% solution sodium carbonate.

TEST PROCEDURE: Place one or two milligrams of the sample (one or two drops if liquid) into a spot plate depression. Add one drop of Reagent (1) followed by two drops of Reagent (2). An immediate deep blue color indicates the presence of methamphetamine. Benzedrine, dexedrine, or other primary amines yield a slow pink to cherry-red color.

BARBITURATES:

TEST MATERIALS:

A. Zwikker Test

1. Anhydrous methanol
2. Cobalt chloride dissolved in methanol
3. 5% isopropylamine in methanol

CAUTION: The above solutions are volatile and inflammable.

B. Dille-Koppanyi Test (modified):

1. Dissolve 0.1 gram cobalt acetate in 100 ml absolute methanol and 0.2 ml glacial acetic acid.
2. Five percent isopropylamine in absolute methanol.

TEST PROCEDURES:

A. Zwikker Test: Place two drops of solution 1 onto portion of sample in spot plate. Add two drops of solution 2 followed by two drops of solution 3.

B. Dille-Kippanyi Test: Add 2 ml of solution 1 to sample in a test tube and shake. Add 1 ml of solution 2 and again shake. The test may also be performed by dropping a small amount of solution 2 onto crushed tablet or powder and then adding two drops of solution 1.

COLOR REACTIONS: A stable violet or blue color in either of the tests indicates barbituric acid or one of its derivatives. A cloudy solution in the Dille-Koppanyi test does not ordinarily interfere. The cloud is due to starch or other insoluble material.

OPIUM ALKALOIDS AND SYNTHETIC OPIATES:

TEST MATERIALS:

A. Marquis' Reagent - prepared as under amphetamines

B. Nitric Acid - concentrated nitric acid
C. Mecke's Reagent - 0.25 grams selenious acid in 25 ml concentrated sulfuric acid.

CAUTION: Care must be taken not to get any of the above reagents on bare skin or clothing.

TEST PROCEDURES:

A. Marquis' test - use the same procedure as for the field testing of amphetamines.
B. Nitric Acid test - place one or two drops of nitric acid on to a small amount of sample.
C. Mecke's test - place one or two drops of Mecke's reagent onto a small amount of sample.

COCAINE:

TEST MATERIALS

Scott Test

Solution 1: 2% aqueous cobaltous thiocyanate and then diluted 1:1 with 96% USP Glycerine

Solution 2: concentrated hydrochloric acid (HCL)

Solution 3: chloroform

Other: small test tubes

TEST PROCEDURE:

1. Place a small amount of suspected cocaine in a test tube, add 5 drops of Solution 1 and shake. If cocaine is present, a blue color develops at once. Proceed to step 2. Note, if a blue color is not seen, add more sample. If a blue color still does not develop, the sample does not contain cocaine. The test ends here at step 1; do not proceed through steps 2 and 3 since false positives can occur.) Note that the cobalt solution must turn blue. A few blue flecks present are considered as a negative test. However, very pure cocaine crystals will overload the test and form a very heavy, flocculent precipitate and pink solution; reduce the amount of sample and the test again.

2. Add 1 drop of Solution 2 and shake. The blue will disappear resulting in a clear pink solution. Proceed to step 3. Note, if all the blue does not disappear, add a second drop (no more) of HCL and shake.

3. Add several drops of Solution 3 (chloroform) and shake. The $CHCl_3$ layer will develop an intense blue color if cocaine is present. The lower detection limit for cocaine is 0.4 mg.

NOTE: Tropacocaine gives the same blue-pink-blue sequence as cocaine.

COLOR REACTIONS

	Marquis' test	Nitric Acid test	Mecke's test
1. Apomorphine	Purple color with a greenish-blue cast underneath finally turning to a deep blue-black.	Violet color, changing to a mahogany brown and later to an orange color	Dark violet-blue color
2. Codeine	Reddish-violet changing to blue-violet	Orange color formed on the solid material, changing to yellow after solid dissolves	Green, slowly changing to blue-green
3. Dicodid (dihydrocodeinone)	Yellow changing through orange and brown to violet	Gradually turns yellow	Yellow changing to green
4. Dilaudid (dihydromorphinone)	Reddish violet to bluish-violet	Orange-red color formed immediately	
5. Dionin (ethylmorphine)	Purple color	Yellow color	Dark green color
6. Eucodal (dihydrohydroxy-codeinone)	Yellow changing to violet	Yellow color forms slowly from colorless solution	Yellow changing to green
7. Heroin (diacetylmorphine)	Purple color	Yellow color turning green on standing	
8. Metopon (methyldihydro-morphinone)	Red changing to violet	Light yellow color	Brownish-yellow, changing to green and then deep purple
9. Morphine	Purple color	Orange-red color quickly fading to yellow	
10. Papaverine	Pale pink changing to light and then dark blue	Pale yellow or light green, changing to deep orange in 10 to 20 minutes	Olive-green changing to blue
11. Nisentil (alphaprodine hydrochloride)	Orange-red color		
12. Demerol (meperidine hydrocholoride)	On standing a yellow color is formed changing to light and then dark green		

	Marquis' test	Nitric Acid test	Mecke's test
13. Dromoran (n-methyl-morphinan)	Slight brown color changing to a bluish-green in 15 to 20 minutes		
14. Methadone (Dolophin)	No color	No color or light straw color. If mildly heated forms an orange to red color turning to green	Pink color slowly develops on standing
15. Numorphan (Oxymorphone)	Partial purple color with light green in the liquid phase, slowly changing to purple	Yellow color quickly changing to orange-red and slowly changing back to yellow	

DEMEROL AND METHADONE:

TEST MATERIAL: Cobalt Thiocyanate - Dissolve 2 grams cobalt thiocyanate in 100 ml water.

TEST PROCEDURE: Place 3 drop of reagent on the sample.

COLOR REACTION:

1.	Demerol	Intense blue flaky precipitate
2.	Methadone	Same reaction as above

NOTE: Cocaine, procaine (novocaine) and other lidocaine derivatives will also give the same color reaction. Additionally, heroin and quinine interfere with the test and their absence should be proven in preliminary tests.

MARIJUANA, HASHISH AND TETRAHYDROCANNABINOL (THC):

TEST MATERIALS:

A. Duquenois' Reagent - 5 drops of acetaldehyde and 0.4 grams of vanillin in 20 ml of 95% ethyl alcohol.

NOTE: Shelf-life of this reagent is increased by storing it in a refrigerator.

B. Concentrated hydrochloric acid.

CAUTION: Prevent acid from getting on bare skin or clothing.

C. Chloroform.

TEST PROCEDURE: To approximately 25 mg of suspected material in a test tube add 2 ml Duquenois' reagent and shake gently for two minutes. Cautiously add 2 ml of hydrochloric acid, shake gently, and allow 10 minutes for color development. Add 1 or 2 ml of chloroform, shake and let settle. Observe the color in the lower (chloroform) layer.

COLOR REACTION: A positive test is indicated by a blue to violet color being formed when the hydrochloric acid is added and the color being transferred to the chloroform layer. A negative test is indicated by a clear solution or a light yellow or green color in the bottom layer.

This test has been designed for use of suspected marijuana, mixtures of tobacco and marijuana, tobacco which may be been treated with marijuana resin and other dry vegetable matter.

LSD, LYSERGIC ACID, DMT, DET, PSILOCYBIN AND PSILOCIN:

TEST MATERIAL: Paradimethylaminobenzaldehyde - 1 gram of paradimethylaminobenzaldehyde in 25 ml of ethyl alcohol and 25 ml of concentrated hydrochloric acid.

TEST PROCEDURE: Place a small amount of the sample in a small beaker. Add 8 - 10 drops of test material or until the sample is saturated. Tilt beaker so that the solution flows away from the sample and check the color.

COLOR REACTION: A blue color indicates presumptive presence of LSD, lysergic acid, DMT, DET, psilocybin and psilocin.

NOTE: Any ergot alkaloid (ergotamine, ergonovine, etc.) will give a positive test using this reagent.

CAUTION: Law enforcement personnel should take extreme care in handling suspected LSD samples. Wash hands thoroughly after handling samples. Do not place hands in or on mouth prior to washing hands.

OTHER MEANS OF IDENTIFICATION

Two large pharmaceutical companies, Eli Lilly and Company, Indianapolis, Indiana 46206, and Parke, Davis and Company, Detroit, Michigan 48232, have initiated a numerical product identification system. Lilly's is known as "Identi-Code" and Parke, Davis' as "Parcode." The products of these manfacturers are easily identified using these systems.

Additionally, the Physicians' Desk Reference contains a product identification section which may be purchased separately from Medical Economics, Inc., a subsidiary of Litton Publications, Inc., Division of Litton Industries, Ordell, New Jersey 07649.

REAGENT SUPPLIES AND COMMERCIAL TEST KITS

The following list of commercial supplies does not constitute an endorsement by the Drug Enforcement Administration. It is only a list of those kits known to DEA and is presented only as a matter of convenience for law enforcement personnel.

A. The Marquis' Reagent Ampoules, in tins of twelve, may be obtained from the Ferguson Company, 814 Ridgely Street, Baltimore, Maryland 21230.

B. The Cobalt Thiocyanate Reagent Ampoules, in tins of twelve, may be obtained from the Ferguson Company, 814 Ridgely Street, Baltimore, Maryland 21230.

C. Narcotics Identification System (NIK). Commercial test kit used for tentative identification of amphetamines, cocaine, methadone, marijuana, opiates. Becton, Dickenson and Company, Arlington, Texas.

D. The Atkinson Barbituric Test Kit (Zwikker Test) may be obtained from the Atkinson Laboratory, Inc., 3031 Fierro Street, Los Angeles, California 90065. Refills for this kit are also available.

E. Narcoban Test Kit - commercial test kit used for tentative identification of amphetamines, opium alkaloids and opiates, barbiturates, cocaine, demerol and methadone, heroin, LSD, and

marijuana. PM Labs Inc., P.O. Box 804, Tarzana, California 91356.

F. Narcodal Test Kit - commercial test kit used for tentative identification of amphetamines, opiates, barbiturates, LSD, STP, marijuana, and cocaine. Dal-Chem Products, 3251 Camino Colorados, Lafayette, California 94549.

DEA STANDARD DOSAGE UNITS

Substance	Dosage
Amphetamine	10 mg.
Barbiturate	100 mg.
Cocaine	10 mg.
Codeine	60 mg.
Dihydrocodeinone	5 mg.
Dilaudid (hydromorphine)	2 mg.
Dionin (ethylmorphine)	30 mg.
Hashish	135 mg.
Hashish Oil	21 mg.
Heroin	5 mg.
LSD	50 microgram
Marihuana	500 mg.
Meperidine	100 mg.
Mescaline	500 mg.
Methamphetamine	5 mg.
Methadone	10 mg.
Methaqualone	300 mg.
Morphine	10 mg.
Numorphan	1 mg.
Opium	100 mg.
Oxycodone	5 mg.
PCP	5 mg.
Peyote	10 grams
STP	3 mg.
THC	3 mg.
DMT	50 mg.
MDA	100 mg.
Psilocybin	10 mg.
Psilocin	10 mg.
DET	60 mg.