Department of Homeland Security
Bureau of Immigration and Customs Enforcement

MEMORANDUM FOR DISTRIBUTION

FROM Michael J. Garcia
Acting Assistant Secretary

SUBJECT Interim Policy on Undercover Operations by the Office of Investigations

The integration of the former INS and Customs investigative operations under a unified chain of command in the Bureau of Immigration and Customs Enforcement (ICE) necessitates interim policies and procedures regarding undercover operations. In an effort to assist field personnel in the performance of their duties, this memorandum designates governing policies and procedures for undercover operations conducted by the Office of Investigations (OI). Unless otherwise noted, the policies and procedures listed herein apply only to undercover operations conducted by OI. The Office of Professional Responsibility (OPR) and the Federal Protective Service (FPS) will continue to utilize their legacy policies in this area until further notice.

An Interim ICE Undercover Operations Handbook (attached) has been prepared which is based upon the Customs Undercover Operations Handbook, (CIS HB 4600-01), dated April 2002. Effective immediately, this memorandum, in conjunction with the Interim Handbook will serve as ICE policy until a new integrated undercover operations handbook is finalized. The Interim Handbook incorporates the interim Undercover Review Committee procedures for the certification and re-certification of ICE undercover operations, and the delegation of authority to certify certain ICE undercover operations to the Director of Operations and Director, Investigations, that I approved on June 20, 2003.

When reviewing the Interim Handbook, please note that many of the titles and organizational names have changed from the original Customs Undercover Operations Handbook and from legacy INS policy and procedure documents. Additionally, until former INS personnel are integrated into TECS, or a uniform case management system is established, references made to the use of TECS are only applicable to authorized users. For ease of reference, significant modifications have been denoted in the gray shaded areas in the Interim Handbook.

Some of the more significant changes in the Interim Handbook are as follows:

CHAPTER 4 - APPLICATION PROPOSAL, APPROVAL AND CERTIFICATION

- Section 4.1 - Who May Conduct (Make Application for) Undercover Operations

  This is a new section that has been added to Chapter 4 that states that only GS-1811 series employees of ICE may make application for and conduct undercover operations. This section has no impact on who may act in an undercover capacity as stated in Section 3.11 - Undercover Operative.
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Section 4.2 - Group Supervisor Approved Undercover Operation

Many of the existing former INS investigations/operations (Level 3) are similar to existing former Customs undercover investigations/operations, which are approved in TECS by a group supervisor. These investigations do not involve any sensitive circumstances and do not require certification for any of the exemptions contained in Title 19, U.S.C., Section 2081 and/or Title 8 U.S.C., Section 1363a. Additionally, these investigations do not require consensual monitoring or electronic surveillance of any of the undercover conversations or activities. When an investigation or operation of this type does require the use of consensual monitoring or electronic surveillance, then the investigation or operation becomes a Special Agent-in-Charge (SAC)-approved investigation or operation (see Interim Handbook, Section 4.3 - SAC Approved Investigations/Operations).

Section 4.8 - Proposal Procedures: Initial Review (Scrub Meeting)

It should be noted that this section of the Interim Handbook contains documentation requirements that are former agency specific.

CHAPTER 8 - REPORTING

Until former INS personnel can integrate into TECS, or a uniform case management system is established, this chapter of the Interim Handbook will only apply to legacy Customs operations. Former INS operational personnel should utilize existing legacy reporting systems (Criminal Investigative Reporting System or CIRS). For reporting requirements, financial issues and audits, all former INS operations utilizing Title 8, U.S.C., Section 1363a (Proprietary) should refer to Policy and Standard Operating Procedures for the Use of Undercover Techniques authorized in Section 294 (Title 8, U.S.C., Section 1363a) of the Immigration & Nationality Act (INA).

CHAPTER 9 - PROCEDURES FOR CLOSING UNDERCOVER OPERATIONS

- Section 9.3.1(2) - Deposits as Miscellaneous Receipts

- Section 9.3.2(1) - Liquidate

The above two sections require actions that are former agency specific. Former INS operations shall follow the Policy and Standard Operating Procedures for the Use of Undercover Techniques authorized in Section 294 (Title 8, U.S.C., Section 1363a) of the INA.

CHAPTER 11 - TRAINING

Former INS personnel who are currently working, or have previously worked, in an undercover capacity are automatically eligible to receive an interim waiver for the requirement that all undercover operatives complete the basic Undercover Operatives School. However, former INS personnel who receive this waiver and regularly work in an undercover capacity will be required to attend future basic Undercover Operatives School. The requirements and conditions for obtaining these waivers are further explained in Chapter 11 of the Interim Handbook.
CHAPTER 12 - MANAGEMENT CONTROLS

Managers overseeing former Customs operations shall continue to adhere to existing management controls and oversight as detailed in Chapter 12 of the Interim Handbook. Until further integration is accomplished, and because former INS personnel do not currently utilize the Customs Undercover Fundamental Financial System (CUFFS), discretion is left to the SAC regarding the application of the policies of this chapter to ongoing legacy INS operations. However, SACs are still required to exercise appropriate controls and oversight of these operations.

HANDBOOK APPENDIX L (Definitions)

The following definitions found in Appendix L of the Interim Handbook have been modified from prior legacy agency policy documents to reflect ICE’s new structure and needs:

*Department of Homeland Security (DHS) Sensitive Circumstances* - modified to include sensitive circumstances for former agencies

*ICE Sensitive Circumstances* - modified to include sensitive circumstances for former agencies

*Umbrella Operation* – formerly defined as “core operation”

*Undercover Review Committee (URC)* modified to include new personnel

In addition to the above-mentioned changes found in the Interim Undercover Operations Handbook, the following interim policies and procedures are to be adhered to by all OI personnel

“UMBRELLA” CONCEPT

Historically, the former INS organization did not utilize long-term established operations to provide support and certification for other multiple close-ended target, organization, or system-specific undercover investigations. Now, most existing former INS undercover investigations/operations that will require re-certification by the Undercover Review Committee (URC) (formally INS Level 1 cases), may be combined with, and investigated under existing certified undercover operations (currently most of these are former Customs operations). Whenever possible, these investigations should be investigated with or under an existing operation within the same SAC office. There may be some instances when an existing former INS undercover operation is utilized as an umbrella operation for multiple former INS investigations. Please contact Undercover Operations for further assistance.

Any existing umbrella operation that will oversee a new (not already existing) ICE investigation that has a sensitive circumstance(s) beyond that of the existing umbrella operation will need to be re-certified at the next URC meeting referencing those new sensitive circumstances. If “exigent” or “emergency” procedures apply, field offices will follow the guidelines set forth in Section 4.8.4 - Proposal Procedures: Approval Under Exigent Circumstances or Section 4.8.5 - Proposal Procedures: Approval Under Emergency Circumstances of the Interim Handbook. Please see Appendix I, for definitions of “emergency,” “exigent” and “sensitive circumstances.”
APPRIOPRIATED FUNDS

Until further notice, each legacy agency must keep its expenditures of appropriated funds segregated. As a result, legacy Customs appropriated funds may be expended only for Customs-related investigative expenses. The same applies for legacy INS appropriated funds. However, if property is purchased to support an investigative need within one legacy organization, it may be used by any agency participating in the operation.

PROCEEDS

Proceeds generated from investigations under an existing “umbrella” operation may be shared by all former agencies with cases under the “umbrella” operation. Keeping with existing policy stated in Section 7.5.1 - Sharing Proceeds, proceeds may not be transferred to, or used by other operations, or used for general office purposes outside the operation, except as noted in the Interim Handbook.

As a reminder, all expenditures within undercover operations shall be “necessary and reasonable” as defined in Section 7.13 - Necessary and Reasonable.

TRACKING

All new ICE OI certified undercover operations will continue to be required to obtain specific three digit numeric identifiers (operation code) at the opening of an operation for tracking purposes in TECS.

Operational personnel managing new ICE OI undercover operations without TECS access should contact Undercover Operations for assignment of an operation code. This code should be referenced on reports of investigation and any financial related documents, i.e., the Expense Approval Form.

Ongoing former INS undercover operations need not obtain an operation code.

CUSTOMS UNDERCOVER FUNDAMENTAL FINANCIAL SYSTEM (CUFFS)

All ongoing former Customs undercover operations and all new ICE undercover operations that involve the tracking of expenses and funding, and utilize any or all of the statutory exemptions, shall use CUFFS as defined in Section 7.7 - Record Keeping and Section 7.7.2 - Financial Records.

Ongoing former INS undercover operations that fall under this category are exempt from utilizing the CUFFS system; however, at the discretion of the SAC, CUFFS should be implemented as soon as it is practical. As such, any former INS undercover operation not utilizing CUFFS will be exempt from policies regarding an operation’s Record Keeper (Section 3.15 - Record Keeper).

FOREIGN (EXTRATERRITORIAL) UNDERCOVER OPERATIONS

ICE special agents will continue to conduct undercover investigations/operations within foreign countries. As before, all ICE undercover investigations/operations that take place in a foreign country shall be conducted in accordance with Title 22, U.S.C., Section 3927(b), “Chief of Mission,” which
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states in part that all executive branch agencies will keep the Chief of Mission informed of all activities and operations of its employees in that country. Any issues arising from this statutory requirement shall be resolved between the Department of State and DHS.

Until final undercover operations policy can be established for ICE, any foreign investigation/operation involving ICE or DHS-sensitive circumstances shall be reviewed at the next scheduled meeting of the URC. The URC will consider the circumstances and objectives of each operation and may recommend placing conditions of approval to certify the operation. In exigent circumstances (as defined in Appendix I), the SAC and the DHS designated foreign official shall approve foreign activity. This does not negate the requirements set forth in the Title 22, U.S.C., Section 3927(b), “Chief of Mission” statute.

Any policy or procedural questions regarding undercover operations by OI personnel should be directed to the Undercover Operations Branch within the Investigative Services Division at OI Headquarters.

Attachment

Distribution List

Director of Operations
Office of the Principal Legal Advisor
Interim Director, Office of Investigations
Interim Director, Office of Professional Responsibility
Interim Director, Federal Protective Service
All Interim Deputy Assistant Directors, OI
All Interim Special Agents in Charge (OI and OPR)
All Interim Resident Agents in Charge (OI and OPR)
All Interim Regional FPS Directors
All Attaches
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Chapter 1  PURPOSE

This Handbook establishes United States Bureau of Immigration and Customs Enforcement (ICE) interim policies, procedures, and guidelines for the conduct of undercover operations and activities. For the purposes of this Handbook, the term “covert” will be used interchangeably with the term “undercover.”

The policies in this Handbook will:

A. provide the greatest degree of flexibility to conduct undercover operations within the limits of law and regulations;

B. establish uniform and effective standards of oversight and accountability; and

promote the innovation and creativity that has been the standard in developing our most effective and successful undercover investigations and operations.

Chapter 2  BACKGROUND

Congress (with the passage of the Homeland Security Act) authorized ICE to conduct undercover investigative operations to obtain evidence or information concerning violations of laws enforced by ICE. ICE has been very successful in conducting undercover operations that have been the genesis of some of the most successful investigations resulting in a significant increase in enforcement actions. Undercover operations are extremely effective when proper planning and resources are available to support the inherent demands placed on the operatives. It is essential to recognize the intensity and frequently changing scenarios that influence the operational and administrative support of operations. A commitment to adequate support and managerial oversight is vital to the success of such endeavors. The Office of Investigations (OI) is committed to targeting the highest level of organized criminal activity possible when employing the certifications necessary to conduct these operations.

2.1 Objectives of Undercover Activities

The following are potential objectives for conducting undercover activities or operations:

A. determine if a violation of law has occurred or is in progress;

B. identify a specific violation of law;

C. disrupt and/or dismantle criminal organizations;

D. locate the violation sites and equipment used;
E. obtain evidence for prosecution and asset seizure;

F. determine the safest and most advantageous time to make arrests, execute search warrants, and make seizures;

G. identify violators and conspirators and their methodology;

H. identify witnesses and cooperating individuals;

I. identify associations between conspirators;

J. check the reliability of sources of information and cooperating individuals; and

K. gather intelligence, which allows management to evaluate threats, place or reallocate resources, and organize enforcement activity.

2.2 Statutory Authority

With the passage of the Homeland Security Act, the Anti-Drug Abuse Act of 1986, which established 19 U.S.C. 2081, and with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which established 8 U.S.C. 1363a, ICE was granted statutory authority to engage in certain undercover activities without regard to particular provisions of the United States Code.

In addition to granting major new authorities to ICE, 19 U.S.C. 2081, “Undercover Investigative Operations of the Customs Service,” and 8 U.S.C. 1363a, “Undercover Investigation Authority,” (Appendix A), imposed certain requirements, which must be met when conducting certified undercover operations.

2.2.1 Certification and Exemptions

19 U.S.C. 2081 and 8 U.S.C. 1363a provide for the granting of specific statutory exemptions which allow ICE to engage in certain activities when conducting undercover operations without violating particular federal statutes that would otherwise apply.

These exemptions may only be employed when the Assistant Secretary, or his/her designee as allowed by statute, certifies in writing that any actions authorized under the exemptions are necessary for the conduct of the undercover operation. This certification occurs through the proposal and approval process as described in Chapter 4. When it is necessary for the detection and prosecution of offenses against the United States, which are within the jurisdiction of the Secretary, Department of Homeland Security (DHS), the exemptions in 19 U.S.C. 2081 and 8 U.S.C. 1363a allow ICE to:

A. use appropriated funds and proceeds to purchase real estate, buildings, and other facilities, and to lease space (lease space only for 8 U.S.C. 1363a);
B. establish or acquire proprietary corporations or business entities as part of an undercover operation, and to operate them on a commercial basis;

C. deposit appropriated funds and proceeds in financial institutions; and

D. expend proceeds from the operation to offset necessary and reasonable expenses incurred in the operation.

2.2.2 Deposit of Proceeds

19 U.S.C. 2081 and 8 U.S.C. 1363a require that proceeds from an undercover operation be deposited into the Treasury of the United States as miscellaneous receipts:

A. if a proprietary business established or acquired as part of an undercover operation is liquidated, sold, or otherwise disposed of; or

B. as soon as proceeds from an operation are no longer necessary for the conduct of such operation.

Note: The above is required in instances where property and/or proceeds are not subject to forfeiture (i.e., pursuant to a tracing provision).

2.3 Department of Homeland Security Guidelines

The Department of Homeland Security (DHS) is currently developing guidelines for sensitive undercover operations conducted by enforcement agencies within the Department. Those guidelines will apply to only undercover operations using Government employees. The ICE sensitive circumstances, however, apply to all persons working in an undercover operation. The anticipated DHS guidelines will establish requirements for the approval and conduct of undercover investigations that involve sensitive circumstances. However, they will not include the detail necessary to provide procedures and policies for day-to-day activities, nor will they apply to undercover activities/operations that do not involve sensitive circumstances as defined in Appendix L (See “DHS Sensitive Circumstances” and “ICE Sensitive Circumstances”).

Accordingly, this Handbook represents official Interim ICE policy concerning the conduct of undercover operations.
Chapter 3 ROLES AND RESPONSIBILITIES

This Section details the roles and responsibilities of those involved in undercover assignments/activities. It is intended to clearly define areas of responsibility to ensure that operations are well coordinated and conducted safely. Due to intensive requirements and the need for internal controls, a separation of duties must be maintained between the following designations:

A. Undercover Project Manager;
B. Case Agent(s);
C. Undercover Operative(s); and
D. Record Keeper.

If the Special Agent in Charge (SAC) determines that, because of resource limitations and the nature of the operation, an exception to this policy is warranted, a justification memorandum must be prepared and forwarded to Undercover Operations outlining the need and justification for the non-separation of duties. A request will then be forwarded to the Deputy Assistant Director, Investigative Services for concurrence. The memorandum will then be returned to the initiating SAC and a copy maintained in the Undercover Operatives file. It is imperative in an undercover operation that there be a separation of duties between the requesting, approving, and recording functions for expenditures.

3.1 Director of Operations

The Director of Operations is responsible for:


B. acting on the recommendations of the Undercover Review Committee (URC) to approve, amend, or disapprove operations involving sensitive circumstances.

3.2 Director, Office of Investigations

The Director, Office of Investigations is responsible for:


B. acting on the recommendations of the Undercover Review Committee (URC) to approve, amend, or disapprove operations involving sensitive circumstances.
C. approving the level of expenses contained in the undercover proposals to determine if they are necessary and reasonable;

D. determining if any sensitive investigative matter not requiring review under the anticipated Interim DHS Guidelines should be referred to the URC for recommendations;

E. deciding, in the event of exigent circumstances, to initiate or extend, for 30 days or less, an undercover operation which otherwise requires review by the URC;

F. informing the Under Secretary for Border and Transportation Security of incidents where an operative is required to act in self-defense while working undercover;

G. informing the Under Secretary for Border and Transportation Security if an undercover operation results in violence in the course of criminal activity, and an undercover operative has participated in any manner in the criminal activity; and

H. reporting monthly to the Assistant Secretary all premium class travel approved in reporting undercover operations.

3.3 Undercover Review Committee (URC)

The URC is responsible for:

A. considering proposals for undercover operations which involve sensitive circumstances;

B. making recommendations to the Director of Operations or the Director, Investigations regarding approval or disapproval of undercover proposals;

C. when appropriate, recommending changes or additions to undercover proposals;

D. consulting with Agency Counsel about any significant and/or unsettled legal questions concerning authority for, or the conduct of, proposed undercover operations;

E. considering ratification of any undercover operation which has been approved under exigent circumstances; and

F. determining whether an operation that has had a significant change in direction or objectives requires a new authorization.

The URC has the authority to approve retention requests for forfeited property that will be utilized in the ICE mission. Luxury or sports cars retained for enforcement use must be limited to undercover operations or surveillance operations. Therefore, all retention requests for luxury
or sports cars must be approved by the URC, per former Customs Directive 5230-022, “Retention of Forfeited Property for Official Use,” dated May 26, 1992.

3.4 Deputy Assistant Director, Investigative Services

The Deputy Assistant Director, Investigative Services, is responsible for:

A. chairing the URC and providing its recommendations to the Director of Operations or Director, Investigations;

B. when appropriate, making recommendations to the SACs regarding proposals for the establishment or reauthorization of undercover operations;

C. making recommendations to the Director of Operations or Director, Investigations for the approval or disapproval of proposals for undercover operations which require certification under 19 U.S.C. 2081 and 8 U.S.C. 1363a, but which do not include sensitive circumstances;

D. determining the appropriate approval level and procedures for proposals to establish or recertify undercover operations pursuant to this Handbook;

E. making recommendations to the Director, Investigations regarding the allocation of funding undercover operations;

F. reporting illegal activity of an undercover operative/employee to the URC;

G. providing operational support to the SACs relating to operational needs and approvals;

H. acting as liaison with other agencies on operational matters which require Headquarters approval;

I. ensuring that persons making presentations before the URC are properly prepared; and

J. approving waivers for undercover training requirements.

3.5 Deputy Assistant Directors (National Security, Financial, Smuggling/Public Safety)

Deputy Assistant Directors, working in conjunction with the Deputy Assistant Director, Investigative Services, and the Unit Chiefs of the programmatic areas, are responsible for:
A. making recommendations to the SACs when appropriate regarding proposals for the establishment or reauthorization of undercover operations;

B. making recommendations to the Director of Operations or the Director, Investigations for the approval or disapproval of proposals for undercover operations which require certification under 19 U.S.C. 2081 and 8 U.S.C. 1363a, but which do not include sensitive circumstances;

C. making recommendations to the Director, Investigations regarding the allocation of funding for undercover operations;

D. coordinating all operational matters with the SACs regarding the creation and submission of proposals for undercover operations within their respective areas;

E. providing input into the initial review of proposals in light of current programmatic priorities and initiatives;

F. ensuring that persons making presentations before the URC are properly prepared;

G. monitoring all ongoing undercover operations to ensure that they are addressing stated operational and programmatic objectives and are being conducted within limitations (if applicable);

H. providing support to the SACs relating to operational needs and approvals; and

I. participating in the field review and reauthorization process.

3.6 Unit Chiefs

The Unit Chiefs of the programmatic areas are responsible for:

A. coordinating all strategic programmatic concerns with the SACs regarding the creation and submission of proposals for undercover operations within their respective areas;

B. providing input into the initial review of proposals in light of current programmatic priorities and initiatives;

C. advising the SACs on the results of the initial review of proposals and providing suggestions when appropriate;

D. monitoring all ongoing undercover operations to ensure that they are addressing national strategy goals and stated programmatic objectives and are being conducted within limitations (if applicable);

E. participating in the field review and reauthorization process;
F. providing Undercover Operations with all information related to the administration of ongoing undercover operations as it relates to the review and approval process;

G. making recommendations to the Deputy Assistant Director, Investigative Services, regarding approval or disapproval of proposals for the establishment or recertification of undercover operations; and

H. making recommendations to the Deputy Assistant Director, Investigative Services, regarding the funding of undercover operations.

3.7 Unit Chief, Undercover Operations

The Unit Chief, Undercover Operations, is responsible for:

A. coordinating the administration of undercover operations by:

1) distributing copies of proposals received from the SACs;

2) scheduling the initial scrub review of proposals;

3) tracking the progress of the initial approval or reauthorization process;

4) scheduling the URC;

5) maintaining the records of the URC;

6) organizing, coordinating, and supervising on-site field reviews;

B. providing input into the initial review of proposals in light of current policies, procedures, and programmatic experience;

C. providing support to the field for programs related to:

1) undercover backstopping;

2) undercover identification;

3) Field Undercover Liaison Coordinators;

4) Field Undercover Review Program;

5) undercover training;

6) undercover policies and procedures;
7) Undercover Review Committee (URC);

8) maintenance of Customs Undercover Fundamental Financial System (CUFFS);

D. assisting in the development and implementation of undercover policy;

E. assisting with liaison duties with other agencies on policy and procedural matters that require Headquarters participation;

F. ensuring the appropriate dissemination of operational information which may come directly to Undercover Operations;

G. coordinating the training of undercover operatives, coordinators, Record Keepers, and liaison coordinators;

H. providing the Deputy Assistant Director, Investigative Services, with an assessment of administrative and investigative performance through:

1) participation in the approval, review, and recertification process;

2) review of monthly financial reports and related documentation;

3) participation in on-site field reviews of ongoing undercover operations;

4) review and evaluation of closeout reports and closeout audits; and

5) development of undercover programmatic management reports.

3.8 Special Agents in Charge (SACs)

The SACs are responsible for submitting proposals for undercover operations, which exceed their approval authority as outlined in Section 4.3. They may only approve undercover operations, which exceed their approval authority when emergency circumstances exist. Prior to an undercover activity or operation, the SACs will ensure that undercover employees:

A. are aware of the conduct that they are expected to undertake and other conduct that may be necessary during the investigation;

B. have successfully completed the Undercover Operatives School, except when a written waiver has been obtained from the Deputy Assistant Director, Investigative Services;

C. have discussed any of the sensitive circumstances as defined in Appendix L that are reasonably likely to occur;

D. are instructed in the law of entrapment;
E. are told that, if they learn that persons under investigation intend to commit a violent crime, they will try to discourage the violence and shall report the information in an expeditious manner to ICE management; and

F. are instructed not to participate in any act of violence, initiate, or instigate any plan to commit criminal acts, use unlawful investigative techniques to obtain information or evidence, or, except in an emergency situation as set out in Section 6.2.6, engage in any illegal activity for which authorization has not been obtained.

During the course of the undercover operation, the SAC is responsible for periodic reviews of the conduct of the undercover employee(s) and others participating in the undercover operation, including any proposed or reasonably foreseeable conduct for the remainder of the investigation, and for:

A. discussing any findings of impermissible conduct with the individual(s) involved; and

B. reporting any findings of impermissible conduct to the Deputy Assistant Director, Investigative Services.

In consultation with the Associate SAC, Assistant SAC (ASAC), Resident Agent in Charge (RAC) (if appropriate), and Group Supervisor, the SAC will:

A. nominate qualified candidates for the Undercover Operatives course;

B. submit requests for waiver from undercover training requirements for potential undercover operatives to the Deputy Assistant Director, Investigative Services, through the Unit Chief, Undercover Operations. This requirement applies to both OI agents and any local or Task Force Officer (TFO) (See chapter 11 for waiver information);

C. ensure that undercover agents are not utilized to such an extent that the stress of undercover work or their repeated use as undercover agents adversely affects their career or their psychological well being;

D. select agents, after consultation with the Undercover Liaison Coordinator, for specific undercover assignments, based on careful consideration of temperament, type of investigation, role to be undertaken, and the number of recent undercover projects;

E. ensure that the appropriate Federal prosecutor is consulted on a continuing basis by the appropriate OI manager, particularly with respect to the legal sufficiency and quality of evidence that is being produced;

F. determine whether expenditures are necessary and reasonable under the spending levels approved by the Director, Office of Investigations;
G. review and approve the CUFFS monthly financial reports for transmittal to Headquarters;

H. review and approve requests to travel on actual expenses and/or to exceed 150% of per diem;

I. ensure that adequate manpower and resources are provided for the safety and security of the operation;

J. approve all requests for undercover identification;

K. ensure that a file containing all undercover identification is maintained and that an annual inventory of undercover identification is completed. The file shall have all original undercover identification not currently being used by the undercover operative and copies of all undercover identification currently being used by the undercover operative; the file should also include a memorandum, signed by the SAC, approving personal undercover bank accounts to include account numbers; (See Section 5.1.2);

L. ensure that all federally-issued undercover identification which is no longer needed in the office is returned to Undercover Operations and that any loss of federally-issued identification is promptly reported via memorandum to Undercover Operations;

M. ensure that all undercover operations are in compliance with reporting requirements and internal controls established to provide financial and administrative accountability;

N. ensure that undercover activities/operations are conducted and supervised in compliance with these guidelines;

O. provide the Deputy Assistant Director, Investigative Services, timely notification of an intent to close an operation;

P. consult with Agency Counsel on pertinent legal issues, especially agent/agency liability; and

Q. approve the necessity for the use of leased vehicles (See Section 7.13.2).

3.9 Undercover Project Manager

This individual is a Senior Special Agent (or higher), appointed by the SAC or RAC, with the responsibility and authority to coordinate all aspects of a particular undercover operation. In certain circumstances and with the written approval of the SAC, a GS-12 special agent may fill the position. If the individual does not have approval authority, he or she will coordinate approvals with the appropriate office manager.
The Undercover Project Manager is responsible for:

A. developing and submitting to the SAC an undercover proposal which conforms to this Handbook;

B. providing supervision relating to the day-to-day operational and strategic decisions and on-site guidance relating to undercover policies and procedures for undercover activities conducted under his or her operation;

C. ensuring that sufficient resources are in place to employ necessary safety and security measures prior to undercover activities;

D. monitoring the overall health of the undercover operatives, in consultation with the Field Undercover Liaison Coordinator, to ensure that investigative objectives do not take precedence over the well-being of the operative;

E. ensuring that the Record Keeper for the operation is changed at an appropriate time (See Roles and Responsibilities for Record Keeper, Section 3.15);

F. ensuring proper coordination of operational activities with Headquarters, foreign offices, and other agencies;

G. reviewing monthly financial reports for proper use of funds and accuracy, and for recommendations to the SAC regarding approval;

H. ensuring that all activities and statistics related to an operation are promptly entered into the Treasury Enforcement Communications System (TECS) Case Management System and linked to the program code for the undercover operation;

I. ensuring that reports, budget requests, and review and recertification proposals are submitted in a timely manner;

J. ensuring that the records and files detailed in Section 7.7 are established and properly maintained;

K. ensuring that all expenditures are properly approved and documented;

L. ensuring that target telephone numbers are provided to the ICE Special Operations Division (SOD) during Category 2 and Category 13 investigations;

M. ensuring that target and operational bank and other financial account numbers are provided to the ICE Money Laundering Coordination Center (MLCC) during Category 2 and Category 13 investigations; and

N. ensuring that the information necessary to comply with these guidelines is provided to the SAC.
3.10 SAC Undercover Operations Coordinator (Optional)

The SAC Undercover Operations Coordinator should be a second line supervisor with several years of undercover investigative/operational management experience. The SAC Undercover Operations Coordinator is responsible for:

A. serving as the primary point of contact for matters which relate to the administration and oversight of all undercover operations within the jurisdiction of the SAC;

B. oversight of the Undercover Project Managers designated by the SAC;

C. ensuring that appropriate personnel are aware of current undercover policies and procedures; and

D. advising the SAC of needed changes to undercover policies and procedures.

3.11 Case Agent

The case agent is responsible for:

A. making the day-to-day operational and strategic decisions involving undercover operations/activities in conjunction with the Undercover Project Manager;

B. preparing and presenting investigative findings to the U.S. Attorney's Office for prosecution;

C. making frequent contact with the undercover operative to monitor case activities and identify operational requirements (except in cases of deep, isolated undercover - See the definition of “Deep Undercover” in Appendix L);

D. continually directing case activities toward a successful conclusion;

E. reporting all case activities and statistics in the TECS Case Management System in a timely manner;

F. providing Special Operations (located within the Drug Enforcement Administration’s [DEA’s] SOD), with the communication numbers (cellular, pager, hard-line, fax, etc.) of the targets(s) of the investigation for appropriate checks (Category 2 and 13 cases only); and

G. ensuring that target and operational bank and other financial account numbers are provided to the ICE Money Laundering Coordination Center (MLCC) during Category 2 and Category 13 investigations; and

H. keeping the Undercover Project Manager apprised of all case-related activities.
3.12 Undercover Operative

The undercover operative is an OI Special Agent, Pilot, Air Enforcement Officer, Air Interdiction Officer, Marine Enforcement Officer, Patrol Officer, or any other ICE Officer; or an officer of a Federal, state, or local law enforcement agency who voluntarily works under the direction and control of the ICE in a particular investigation and whose relationship with law enforcement is concealed from third parties in the course of an investigative operation; or, although this will not be specified in the anticipated DHS Guidelines, any cooperating individual working under the direction and control of the ICE or of another Federal, state, or local law enforcement agency, working jointly with ICE in a particular investigation and whose relationship with law enforcement is concealed from third parties.

Note: The mere use of a cooperating individual to provide information to law enforcement on the activities of criminal groups and individuals does not, in and of itself, qualify as an undercover activity. Usually, if a cooperating individual has contact with the targets of an investigation, some additional sort of participation is required (e.g., offering to buy, sell, or provide goods or services in furtherance of illegal activity).

OI supervisors and managers shall not perform the function of Undercover Operatives without a waiver from the Deputy Assistant Director, Investigative Services. No employee of a government and/or law enforcement organization, excluding an employee of ICE OI, shall perform the functions of an Undercover Operative without a waiver from both the Director, Office of Investigations and a senior manager who is equivalent to the Director, Investigations, from the organization where the employee works.

The undercover operative is responsible for:

A. immediately advising the Case Agent, Undercover Project Manager, or Field Undercover Liaison Coordinator of any reluctance to continue participation in undercover activities;

B. understanding what activities are expected;

C. understanding what activities are likely to occur in undercover scenarios;

D. knowing the objectives and strategy of the undercover operation;

E. knowing the elements of the crimes being investigated;

F. understanding all legal and policy matters in this Handbook, in particular those relating to:

   1) sensitive circumstances;

   2) proper conduct;
3) entrapment;
4) search authority;
5) acts of violence;

6) carrying a firearm and use of alcohol in an undercover capacity as defined below:

As indicated in the former Customs Issuance System Handbook 4500-01A, “Firearms and Use of Force Handbook,” dated December 2001, Chapter 1, Authorization to Carry a Firearm, Section VIII G, “Customs officers are prohibited from consuming alcoholic beverages while carrying firearms, except when engaged in undercover operations necessitating the consumption of alcoholic beverages. In these cases, the consumption of alcoholic beverages will be limited to an amount which does not legally impair the officer’s judgment.” As the INS Firearms Policy does not address the consumption of alcohol during an undercover operation, former Customs Issuance System Handbook 4500-01A, “Firearms and Use of Force Handbook,” dated December 2001, will be controlling on this issue until a new ICE firearms policy is developed;

G. immediately informing the Undercover Project Manager of participation in otherwise illegal activity that was unforeseen and not authorized under Section 6.2.6;

H. immediately informing law enforcement authorities of credible information suggesting that the life or safety of any person is in serious danger; and

I. refraining from excessive drinking, immoral acts, and misconduct that could jeopardize the case.

3.13 Cover Agent

The cover agent is responsible for:

A. ensuring that his or her role in the security of undercover activities is clearly understood for all operational contingencies;

B. reporting any relevant case activities in the TECS Case Management System in a timely manner; and

C. keeping the case agent apprised of all case-related activities.

3.14 Contact Agent

The contact agent is a cover agent used in isolated deep undercover situations and responsible for maintaining contact with the undercover agent to:
A. pass on and receive information relating to investigative activity and strategies;

B. relay to management any instances of unforeseen illegal activity or threat to the safety of third persons; and

C. monitor the undercover agent for safety concerns, signs of stress, or any reluctance to continue and report these back to the appropriate manager or the Undercover Operations Coordinator.

3.15 Record Keeper

The Record Keeper is responsible for:

A. maintaining the financial books and records of the undercover operation in compliance with the CUFFS manual;

B. ensuring that all financial transactions are entered into CUFFS in an accurate and timely manner;

C. ensuring that sufficient backup documentation is maintained for each expenditure to meet audit requirements;

D. immediately notifying the Undercover Project Manager of any improper expenditures;

E. generating the required monthly financial reports and providing them to the Undercover Project Manager for review;

F. ensuring that all property purchased or under control of the operation is properly listed in the Property/Equipment Log for Undercover Operations (Appendix G); and

G. properly documenting the permanent assignment or temporary use of property listed in the Property/Equipment Log for Undercover Operations in accordance with this Handbook.

Note: Because of the high demands that can be associated with the job of Record Keeper, managers need to ensure that the Record Keeper is not kept in a position where either stress-related problems or career stagnation occurs. To guard against these possibilities, the Record Keeper should have the option of being rotated out of that position after 2 years, pursuant to current policy, without any adverse effects. Likewise, the Record Keeper should also have the option of remaining in the position if he or she so desires.

If the Record Keeper is a Criminal Investigator or an Intelligence Research Specialist, a written request by the employee must be submitted through channels to the Unit Chief, Undercover Operations, and approved in writing in order for those positions to remain as Record Keepers for more than 2 years. If the Record Keeper is from an administrative or clerical series, a
written request by the employee must be submitted through channels to the Unit Chief, Undercover Operations, and approved in writing in order for those positions to remain as Record Keepers for more than 4 years. This Section regarding time limitations on Record Keepers does not apply if the position description specifically described the Record Keeper’s duties at the time of the vacancy announcement.

3.16 National Undercover Liaison Coordinator

The National Undercover Liaison Coordinator is responsible for:

A. maintaining liaison with the psychologists contracted by ICE to provide testing, intervention, and debriefing services to undercover agents;

B. recommending the dispatch of the contract psychologist should services be requested for debriefing undercover agents who are experiencing stress related to undercover work;

C. recommending dispatch of the psychologists should a traumatic incident referral concerning undercover operatives be received;

D. acting as advisor to senior management regarding the psychological health and well-being of undercover operatives; and

E. maintaining the undercover operative database and providing requesting SACs with the names of operatives who possess a specific skill, area expertise, or language ability.

3.17 Field Undercover Liaison Coordinator

The Field Undercover Liaison Coordinator is responsible for:

A. tracking undercover operatives in order to ascertain their current status regarding their capability to perform undercover activities;

B. conducting annual interviews to monitor the well-being of undercover operatives;

C. maintaining a file related to the undercover experience and skills for each operative;

D. consulting with the Associate SAC, ASAC/RAC, and Group Supervisor regarding the selection of new undercover operatives;

E. consulting with the Associate SAC, ASAC/RAC, and Group Supervisor regarding the suitability of undercover operatives for specific assignments; and

F. making recommendations to the Associate SAC, ASAC/RAC, and Group Supervisor regarding the observation of stress-related symptoms in undercover operatives.
Chapter 4 APPLICATION, PROPOSAL, APPROVAL, AND CERTIFICATION

When considering the development of an undercover operation, the risks and benefits of the operation must be considered. Some of the factors managers must consider are:

A. the risk of personal injury to individuals, property damage, financial loss to persons or businesses, damage to reputation, or other harm to persons;

B. the risk of civil liability or other loss to the Government;

C. the risk that individuals engaged in undercover operations may become involved in illegal activity; and

D. the suitability of law enforcement participation in the type of activity that is expected to occur.

Undercover operations should be planned to minimize the incidence of sensitive circumstances and reduce the risks of harm and intrusion that are created by such circumstances. Other factors to consider are:

A. coordination with the Office of Air and Marine Interdiction (AMID) over the availability and suitable use of ICE air and marine assets;

B. coordination with the National Law Enforcement Communications Center when undercover activity is anticipated; and

C. coordination with the various Customs Attachés over issues of foreign travel, foreign bank accounts, and conducting undercover activities in foreign countries.

4.1 Who May Conduct (Make Application for) Undercover Operations

Only GS-1811 series employees of ICE may make application for and conduct undercover operations, specifically:

A. Special Agents;

B. Senior Special Agents; and

C. Supervisory Special Agents (Supervisory Special Agents may not be case agents, but may perform as undercover operatives with a specific waiver, per section 3.12).

4.2 Group Supervisor Approved Undercover Investigations / Operations

The Group Supervisor may approve, in writing (former INS Form G-819) or in TECS, undercover investigations/operations which:
A. are anticipated to last less than 6 months;

B. do not involve DHS-sensitive circumstances or ICE-sensitive circumstances as defined in Appendix L;

C. do not require certification for any of the exemptions contained in 19 U.S.C. 2081 and/or 8 U.S.C. 1363a; and

D. the undercover employee and/or operative may have indirect or limited contact with violators or potential violators.

Cases meeting the above criteria, BUT requesting to use consensual monitoring or electronic surveillance, must be approved by the SAC.

4.3 SAC-Approved Investigations / Operations

The SAC may approve, in writing (former INS form G-819) or in TECS, undercover investigations / operations which:

A. are anticipated to last less than six months;

B. do not involve DHS sensitive circumstances or ICE sensitive circumstances as defined in Appendix L;

C. do not require certification for any of the exemptions contained in 19 U.S.C. 2081 and/or 8 U.S.C. 1363a and

D. there will be consensual monitoring or electronic surveillance of undercover conversations or activities.

The SAC must immediately notify Undercover Operations in writing upon approval of an operation. Upon completion of this operation, a closeout report that details the results must be completed and forwarded to Undercover Operations within 60 working days. When it becomes apparent that ongoing activities or operations will exceed the approval authority of the SAC, a proposal must be submitted, as described in Section 4.7, to Undercover Operations within 15 working days.

4.4 Director, Investigations Approved Operations

The Director, Office of Investigations may approve undercover activities and operations without review by the URC when the activities:

A. do not involve DHS sensitive circumstances or ICE sensitive circumstances as defined in Appendix L; and
B. do not require certification for any of the exemptions contained in 19 U.S.C. 2081 and/or 8 U.S.C. 1363a;

Proposals for such operations shall be submitted for review and approval in accordance with the procedures described in Section 4.8.2.

4.5 Operations Requiring Review by the URC

Undercover activities and operations that involve sensitive circumstances must be reviewed by the appropriate URC as described in Sections 4.8.2(2) through 4.8.2(4).

4.6 Joint Undercover Operations

The approval for ICE to take part in a joint undercover operation may be granted only when the participating agency has obtained certification and agrees to comply with applicable ICE policies and procedures. Approval of a joint undercover operation by a participating law enforcement agency does not constitute approval for ICE purposes.

When participating in joint undercover operations, managers should consider that the exemptions granted under 19 U.S.C. 2081 and 8 U.S.C. 1363a can be applied only to the detection and prosecution of offenses within the jurisdiction of the Secretary of Homeland Security. Accordingly, joint undercover investigations that take advantage of the exemptions must have a reasonable likelihood of disclosing an ICE violation.

Approval for a joint undercover operation is the same as approval for any other operation. The SAC can approve a joint operation that does not involve sensitive circumstances as defined in Appendix L and does not require certification. The Director of Operations or the Director of Investigations must certify all undercover operations, which require the use of exemptions, and the URC must review all operations that involve sensitive circumstances.

Proceeds can be shared only with agencies that have received the proper certification to use proceeds to offset necessary and reasonable expenses. (See Section 7.5.1, “Sharing Proceeds”). Participation with ICE in a joint operation does not constitute authority for other agencies to engage in any activities where existing laws and regulations would otherwise forbid them. Likewise, approval for a joint operation or certification by a participating agency does not constitute approval or certification for ICE purposes.

When working with state and local law enforcement agencies, state and local laws will govern the legality and manner in which these agencies engage in the practices mentioned above.

During the course of a joint undercover operation, ICE agents must adhere to all applicable ICE policies and procedures. The ICE managers must be cognizant of any sensitive circumstances that arise during the course of an operation that involves an ICE undercover operative, whether initiated by ICE or not, as these must be reviewed by the URC.
4.7 Proposal Format

Proposal for the initial authorization of an undercover operation must conform to the format contained in Appendix C, “Application for an Undercover Operation.” The proposals should be as concise as possible, identifying, to the extent possible, known targets and expected violations. The proposals should not include sketchy or nebulous references to unknown potential targets or circumstances that may or may not materialize. However, the following information must be included in all proposals:

A. a summary of the investigative activities contained in the TECS Case Management System that demonstrate the necessity for the operation;

B. identification of the targets or systems targeted by the operation and the significance of those targets and the illegal activities;

C. the objective(s) of the operation;

D. the investigative strategy which will be employed;

E. a description of the undercover scenarios likely to take place;

F. a description of the sensitive circumstances likely to exist;

G. the results anticipated over the next 6 months; and

H. anticipated commissions expense (See Section 7.6.1).

A proposal for reauthorization of an existing operation (See Appendix D, Reauthorization Request) should include:

A. a narrative incorporating any changes to the original proposal;

B. a summary of the preceding 6 months' operational activity;

Note: Significant emphasis will be given by the URC only to those events or enforcement activities occurring within the 6 months preceding reauthorization. The application for reauthorization should not reiterate the activity reported in the initial application or previous reauthorization proposals.

C. the extent to which the operation has produced the results initially anticipated;

D. the potential for future success;

E. the extent to which the operation can continue without compromise;
F. the extent to which continuation of the operation may cause injury, financial or otherwise, to the operative(s) or innocent third parties;

G. the extent to which the investment of resources is warranted in light of identified targets of the operation and investigative priorities of the Service; and

H. anticipated commissions expense (See Section 7.6.1).

4.8 Proposal Procedures

Depending on the circumstances involved and the requisite level of approval, procedures for review and approval of undercover operations will vary (See flowchart below in section 4.8.2).

Unless otherwise indicated, the procedures described in this Section are applicable for both new operations and requests for reauthorization of an existing operation.

Each office proposing an undercover operation must maintain files that include copies of:

A. operation proposals;

B. correspondence to Headquarters regarding certification; and

C. correspondence from Headquarters regarding certification.

Field managers are encouraged to work closely with the appropriate Program Manager, Desk Officer, and Agency Counsel when considering the submission of an undercover proposal. The Desk Officer will assist by providing input to ensure that the proposal adequately addresses national priorities and strategies.

4.8.1 Proposal Procedures: Initial Review (Scrub Meeting)

The proposal and any other documentation not available in TECS II, including a memorandum from Agency Counsel, an Assistant United States Attorney, and the DEA letter, if applicable, must be provided to the appropriate Deputy Assistant Director and the appropriate Unit Chief, and subsequently forwarded to the Unit Chief, Undercover Operations.

Requests from former INS personnel for undercover certification do not require a memorandum from Agency Counsel. However, new ICE proposals involving joint former Customs and former INS investigative activities will require a memorandum from Agency Counsel.

The primary purpose of the initial review is to determine if proposals meet the minimum requirements for:

A. sufficiency;

B. programmatic mission;
C. legality; and

D. specificity.

The Scrub Meeting will take place after a thorough review of the proposal and all related documentation available in the TECS Case Management System. During the initial Headquarters review of undercover proposals, Undercover Operations and the programmatic desks are also responsible for assessing the spending authority being requested. Undercover Operations and the programmatic desk, in consultation with the field, will make recommendations regarding the operational budget to the URC, which in turn will review the proposal and make operational and spending recommendations to the Director, Investigations.

The reviewers will also recommend the appropriate level for final approval of the proposal according to the sensitive circumstances and requests for exemptions that may be included.

If there are minor questions about the proposal, the programmatic Desk Officer will contact the proposing SAC office and attempt an expeditious resolution.

If the initial review reveals issues that require revision of the proposal,

A. the programmatic Unit Chief will provide a memorandum to the SAC incorporating the combined comments of the reviewers;

B. copies of the memorandum, along with the proposal, will be retained by the appropriate Unit Chief and by Undercover Operations; and

C. the SAC will provide a revised submission to the affected Deputy Assistant Director, for distribution to both the appropriate Unit Chief and the Unit Chief, Undercover Operations.

If a reply relating to a reauthorization proposal is not received within the specified duration of certifications, the certifications for the operation will end on the posted expiration date.

4.8.2 Proposal Procedures: Final Approval

The appropriate procedure for review and approval of an undercover proposal is based on the (See flowchart below):

A. sensitive circumstances;

B. need for certification under 19 U.S.C. 2081 and/or 8 U.S.C. 1363a; and

C. programmatic area.
The various procedures are described below.

**Note:** Although it is not required, the SAC and the U.S. Attorney or any member of their staffs may attend URC meetings to provide additional details about an undercover proposal.

Each proposal which requires review by the Director of Operations, Director, Investigations, ICE URC, or DHS URC must include a letter from the appropriate Federal prosecutor\(^1\) indicating that he or she:

\(^1\) See Appendix L for definition of “Appropriate Federal Prosecutor”
A. reviewed the proposed operation, including the sensitive circumstances reasonably expected to occur;

B. agrees with the proposal and its legality; and

C. will prosecute any meritorious case that is developed.

4.8.2(1) Approval by the Director of Operations or Director, Investigations

If the proposal requests certification for exemptions under 19 U.S.C. 2081 and/or 8 U.S.C. 1363a, and does not include sensitive circumstances, the following applies:

A. after the initial review, a results package prepared by Undercover Operations, incorporating the recommendations of the appropriate program Unit Chief, will be forwarded through the Deputy Assistant Director, Investigative Services, for review and then to the Director of Operations or Director, Investigations for approval;

B. after action by the Director of Operations or the Director, Investigations, the SAC will be notified in writing of the results; and

C. a copy of the completed package will be sent to Undercover Operations for their permanent records.

4.8.2(2) Review by an ICE URC

An ICE URC will meet and recommend/not recommend certification of proposals:

A. which involve ICE sensitive circumstances 1 through 8 as defined in Appendix L; and

B. which do not involve one of the DHS sensitive circumstances 1 through 17, as defined in Appendix L.

Under these circumstances, the operation does not require the application of the DHS Guidelines, which are now in production, which mandate review by representatives of the DHS Bureaus and the Department of Justice. Therefore, only ICE representatives will sit on these URCs.

The following procedure will apply:

A. following the satisfactory completion of the initial review, copies of the proposal will be provided to the members of the URC;

B. the URC will meet to review the proposal;

C. the URC shall vote to recommend/not recommend certification to the Director of Operations or Director, Investigations;
D. after the meeting, a package with a recommendation from the Chair of the URC will be forwarded to the Director of Operations or Director, Investigations for certification;

E. after action by the Director of Operations or Director, Investigations, the SAC will be notified in writing of the decision; and

F. a copy of the completed package will be retained by Undercover Operations for its permanent records.

4.8.2(3) Review Under the DHS URC

If the proposal includes one or more of the DHS sensitive circumstances defined in Appendix L, the operation requires review by representatives of the DHS Bureaus and the Department of Justice, in addition to the usual URC ICE members. This committee is known as the DHS Undercover Review Committee (DHS URC).

The DHS URC will be chaired by the Deputy Assistant Director, Investigative Services, and will consist of the usual ICE members as described in Appendix L under “URC.” In addition, representatives from the following agencies will attend:

A. Border and Transportation Security Directorate;

B. Department of Homeland Security;

C. any affected DHS Agency, (i.e. U.S. Secret Service); and

D. Department of Justice, Criminal Division.

The following procedure will apply:

A. following the satisfactory completion of the initial review, copies of the proposal will be provided to the members of the DHS URC;

B. the DHS URC will meet to review the proposal;

C. the DHS URC shall vote to recommend/not recommend approval to the Director of Operations or Director, Investigations;

D. a package with a recommendation from the Chair of the DHS URC will be forwarded to the Director of Operations or Director, Investigations for certification;

E. after action by the Director of Operations or Director, Investigations, the SAC will be notified in writing of the decision; and

F. a copy of the completed package will be retained by Undercover Operations.
Note: ICE will have the final decision on operational matters, such as investigative techniques and resource allocations.

If the Department of Justice representative does not join in a recommendation for approval of a proposed operation because of ethical or prosecution considerations, the following process will occur:

A. the Department of Justice representative shall promptly advise the Assistant Attorney General for the Criminal Division;

B. the Chair of the DHS URC shall promptly notify the Director of Operations or Director, Investigations;

C. no further action shall be taken on the proposal until the Assistant Attorney General consults with the Director of Operations or Director, Investigations; and

D. if the Assistant Attorney General and the Director of Operations or Director, Investigations cannot resolve outstanding issues, the undercover proposal must be approved at the DHS Under Secretary for Border and Transportation Security level.

4.8.2(4) Approval Under the Memorandum of Understanding (MOU) with DEA

Undercover operations which fall under the provisions of the current MOU between ICE and DEA (See Appendix K) require additional considerations when determining the necessary steps for approval. When the proposal falls under that agreement and involves activities that are defined as sensitive under Chapter 660 of the DEA Agents Manual, the following procedures apply:

A. the undercover proposal will be forwarded to the Unit Chief, Contraband Smuggling, and will undergo an initial review. DEA should not be provided a copy at this time;

B. when the initial review is completed, the SAC will be notified by the Unit Chief, Contraband Smuggling, that the proposal should be submitted to the local DEA office for processing per the current MOU with DEA;

C. the ICE SAC will notify the Unit Chief, Contraband Smuggling, through the appropriate Desk Officer, of the date the proposal was sent to the local DEA SAIC. Contraband Smuggling will then notify Undercover Operations;

D. simultaneously, the Unit Chief, Undercover Operations, will inform DEA Headquarters personnel to expect the proposal from their SAIC. The Unit Chief, Undercover Operations, and/or the DEA liaison will also provide a copy of the proposal directly to the appropriate individual at DEA Headquarters. The DEA liaison will be responsible for monitoring the progress of the review at DEA and for notifying Undercover Operations of the progress; and
E. the local DEA SAIC will review the proposal and forward it with comments to DEA Headquarters. The DEA SAIC does not have the authority to deny the proposal. DEA Headquarters will provide comments concerning the proposal to the Deputy Assistant Director, Investigative Services. Depending on the degree of sensitive activities involved, one of the following procedures will be employed:

1) approval and/or certification by the Director of Operations or Director, Investigations and the appropriate DEA manager;

2) review by an ICE URC, as described in Section 4.8.2(2), comprising ICE managers and a DEA representative; or

3) review by the DHS URC, as described in Section 4.8.2(3), including a representative from DEA.

As soon as the DEA liaison is notified of the applicable procedure for approval, he or she will notify Undercover Operations, which will advise Contraband Smuggling of the projected date for review/approval. This will enable Contraband Smuggling to notify the SAC to properly prepare for presentation to the URC if required.

If the DEA liaison has not been notified by DEA Headquarters of the method for approval within 10 working days, Undercover Operations will schedule a URC and inform the DEA liaison who will notify DEA Headquarters so that a DEA representative may attend.

4.8.3 Proposal Procedures: Records of the URC

Undercover Operations shall retain a file of:

A. all proposals for approval of undercover operations submitted to the URC;

B. a written record of the URC's action on the application; and

C. any ultimate disposition by the approving official.

Undercover Operations shall also prepare a short summary of each undercover operation recommended for approval by the Committee.

4.8.4 Proposal Procedures: Approval Under Exigent Circumstances

These procedures apply to approval of undercover activities/operations under exigent circumstances as defined in Appendix L.

A failure to submit a timely proposal for recertification of an ongoing undercover operation does not constitute exigent circumstances.
Proposals which involve exigent circumstances that pertain to the MOU with the DEA require different approval steps and are explained below:

4.8.4(1) Activities Which Do Not Fall Under the Provisions of the MOU with DEA

A. An operational proposal in the standard format will be submitted by the SAC to the appropriate Unit Chief having oversight over the activity proposed (Financial Programs, Commercial Fraud, Identity & Benefits Fraud, Strategic, Contraband Smuggling, Cyber, etc.).

Note: This exigent proposal need include only enough information on past activity and potential to satisfy the exigent need for an undercover operation. A more detailed final proposal shall be submitted for certification and will determine the final scope of a long-term undercover operation.

B. In addition, a memorandum detailing the circumstances warranting exigent approval will be submitted by the SAC to the appropriate Unit Chief. This document will be addressed to the Director, Investigations and will include a signature block for approval by the Director, Investigations.

C. The appropriate Unit Chief will provide copies of the proposal and will request exigent approval by UndercoverOperations and Counsel.

D. An immediate initial review will be conducted to prepare the proposal for exigent consideration by the Director, Investigations.

E. Based on the recommendation of the appropriate Unit Chief and the Deputy Assistant Director, Investigative Services, the Director, Investigations will make final determination whether exigent approval is warranted. If approved, the Director, Investigations will authorize the operation on an interim basis not to exceed 30 days. An exigent re-certification will expire 30 days from the original date of expiration.

F. The authority to conduct sensitive undercover activities granted under these provisions must be ratified by the appropriate URC or DHS URC at its next session.

The procedure described above will generally require a 2-day turnaround in Headquarters after receipt of the specific request by Undercover Operations.

4.8.4(2) Activities Which Fall Under the Provisions of the MOU with DEA

The MOU with DEA requires that ICE follow DEA definitions and procedures for exigent approval of undercover operations which fall under its provisions. Those procedures provide the DEA SAIC with the authority to approve sensitive investigative activities under the following conditions:

A. the activity is necessary to prevent the loss of a significant investigative opportunity;
B. due to the exigency of the situation, there is insufficient time to follow the standard proposal/authorization process;

C. the DEA SAIC personally consults with DEA Chief Counsel in advance and the Chief Counsel advises that the activity is legal; and

D. the DEA SAIC must consult with the Federal prosecutor and the Deputy Assistant Administrator for Operations by the most expeditious means possible.

ICE SACs who believe that circumstances involving matters covered under the MOU with DEA warrant immediate action should consult with the appropriate DEA SAIC to initiate these procedures. It is highly recommended that SACs establish local procedures with their DEA counterparts for coordination of these provisions.

If an operation is initiated under these exigent guidelines, a written proposal in the standard format must be provided to the DEA SAIC and the Unit Chief, Contraband Smuggling, within 48 hours. A complete written description of the exigent situation and the activities that resulted from the exigent authorization must accompany the proposal.

4.8.5 Proposal Procedures: Approval Under Emergency Circumstances

The SAC may approve undercover activities or operations that involve sensitive circumstances when emergency circumstances exist. Emergency approval may be granted for a limited period only when the SAC has determined that, without immediate initiation, extension, or renewal of an operation, the life, personal safety of individuals, or property would be placed in serious jeopardy; the other potential emergency circumstances as outlined in Appendix L may exist; or danger to the security of the operation would be irreversibly damaged.

Under these circumstances, the SAC shall attempt to consult with the U.S. Attorney and the Director, Investigations for emergency authorization. However, if attempts to contact the Director, Investigations are unsuccessful, the SAC may authorize the required activities.

These provisions do not provide the SAC with the authority to:

A. approve activities which require statutory exemptions under 19 U.S.C. 2081 and/or 8 U.S.C. 1363a;

B. approve activities which require review and/or approval under the provisions of the MOU with DEA; or

C. delegate the authority to approve sensitive undercover activities under emergency circumstances.

Emergency authorizations of sensitive undercover activities or operations differ from approvals under exigent circumstances in that they are granted before documentation is submitted to
Headquarters. If an operation is initiated, extended, or renewed under these emergency guidelines,

A. a written proposal in the standard format must be provided to the appropriate Unit Chief within 48 hours; and

B. attached to the proposal must be a memorandum to the Director, Investigations with:
   1) the initial finding and a written description of the emergency situation;
   2) an account of the steps taken in attempting to contact the Director, Investigations; and
   3) a description of the activities that resulted from the emergency authorization.

After the initial review, a results package prepared by Undercover Operations, incorporating the recommendations of the appropriate Unit Chief, will be forwarded through the Deputy Assistant Director, Investigative Services, to the Director, Investigations for review and approval.

If an emergency authorization requires review by the DHS URC as described in Appendix L and Section 4.8.2(3), the Deputy Assistant Director, Investigative Services, will notify the URC.

If the proposal for approval of an operation that was initiated, extended, or renewed under these provisions is later denied during the review process, a full report of all activity undertaken during the course of the operation must be submitted to the Director, Investigations within 5 business days. If the operation required review by the DHS URC as described in Section 4.8.2(3), the Director, Investigations will inform the DHS Under Secretary for Border and Transportation Security.

4.9 Program Code Assignment

When an undercover operation has received final approval, a program code from the TECS II Case Management System will be assigned. The code will be issued to identify all related case activities and enable easy retrieval of all case activities and statistics. It is the responsibility of the Undercover Project Manager to see that a program code is obtained from the TECS II Case Management Program Manager at Headquarters. It is the responsibility of all involved in the undercover operation to use the Program Code when required (i.e., Purchase of Information (POI)/Purchase of Evidence (POE), case management, seizures, etc.).

4.10 Duration of Authorization

Except pursuant to extension under exigent circumstances as detailed in Section 4.8.4, no undercover operation may continue longer than is necessary to achieve the objectives specified in the authorization, nor in any event longer than 6 months, without reauthorization.
4.11 Unforeseen Circumstances

If there is significant change in either the direction or objectives of an undercover operation which was approved by a URC, the SAC will submit an amended proposal for review by the URC to determine whether the authorization should be amended to show the expansion of the original operational proposal.

The SAC shall consult with the Deputy Assistant Director, Investigative Services, whenever a serious legal, ethical, prosecutorial, or Departmental policy question arises in any undercover operation. The Deputy Assistant Director, Investigative Services, shall consult with the members of the URC on whether to modify, suspend, or terminate the investigation. When unforeseen sensitive circumstances arise in an ongoing undercover operation, the SAC shall promptly submit a written proposal (in the format contained in Appendix D, "Reauthorization Request") for modification or expansion of the authorization to conduct a sensitive undercover operation.
Chapter 5 UNDERCOVER IDENTIFICATION AND BACKSTOPPING

Obtaining credible undercover identification is crucial to establishing and maintaining an effective undercover identity. Ultimately, ICE is accountable for the actions of all its employees and must maintain accurate records of any aliases or false identities used. This Section provides policies and procedures for the issuance and control of undercover identification.

5.1 Personal Undercover Identification

Undercover (or alias) identification usually falls into two categories: Federally-issued and state-issued identification.

5.1.1 Obtaining Personal Undercover Identification

5.1.1(1) Federally-Issued Identification

All Federally-issued undercover identification/backstopping documentation shall be obtained through the Unit Chief, Undercover Operations. No requests for Federally-issued personal undercover identification will be fulfilled unless the undercover operative has attended Undercover Operatives School or is in possession of a valid waiver signed by the Deputy Assistant Director, Investigative Services. Types of Federal identification include, but are not limited to, the following:

- A. Social Security account numbers;
- B. immigration identification documents;
- C. Federal Aviation Administration (FAA) pilot and medical certificates;
- D. employee identification numbers (EIN);
- E. U.S. Coast Guard licenses and other pieces of marine identification, certifications, and documentation;
- F. FAA registration number/certificates; and
- G. travel documents.

Licenses and certificates requiring technical skill and/or testing to receive the license or certificate (e.g., FAA pilot and Coast Guard licenses) can only be obtained for the level or type of equipment for which the person is authorized pursuant to his or her bona fide license.

The use of fictitious Social Security numbers that are not issued by the Social Security Administration can have very serious consequences. Such numbers may be assigned to private individuals and there can be long-term effects on credit ratings, individual reputations, and the security of the operation. Because of this, the use of non-issued Social Security numbers is
prohibited.

All requests for personal undercover identification shall be forwarded to the Unit Chief, Undercover Operations, requesting that a certain Federally-issued identification or certificate be obtained. The request shall include all completed applicable forms, agreements, and applications required by the issuing agency. These forms/applications shall be original and contain only alias information. The request shall also include copies of the agent's bona fide license or certificate, if applicable. Requirements for specific types of identification can be provided by Headquarters, Undercover Operations.

Other types of identification commonly used are also available but are governed by classified programs and cannot be addressed in this Handbook.

5.1.1(2) State-Issued Identification

Alias identification issued by a state authority (e.g., driver's licenses) will remain the responsibility of the appropriate SAC. The procedures already established by each state or territory shall be followed.

5.1.2 Control of Personal Undercover Identification

All undercover identification is the property of the issuing agency and is subject to the following controls:

A. personal possession of undercover identification by an agent must be approved by the SAC in a memorandum that specifically lists the piece(s) of identification and provides justification for retention of the identification. A copy of this memorandum and the account numbers of all personal bank and credit card accounts subsequently opened in fictitious names will be forwarded to Undercover Operations, which is responsible for maintaining a master file of all the aliases and fictitious bank and credit card accounts used by agents in the field;

B. undercover identification which is not authorized for personal possession by an agent will be retained by the SAC and made available when needed;

C. an undercover identification file will be established for each agent who is issued undercover identification. The file will contain:

1) a complete list of all identification issued to the agent;

2) photocopies of all undercover identification;

3) any retention authorization memoranda;

4) pieces of identification not authorized for retention.
D. if an agent transfers to another OI office, the SAC is responsible for notifying the 
Unit Chief, Undercover Operations, as to which identification is being transferred 
and, if applicable, which is being returned. Photocopies of all alias documents not 
issued through Undercover Operations shall be attached to the notification.

In the event that an agent is separated from ICE, all undercover identity documents and any 
materials related to undercover procedures and policies or specific operations will be collected 
by the SAC. Any document issued pursuant to a Headquarters program shall be returned to 
Undercover Operations within 30 days. All other alias documents obtained directly from an 
issuing agency (e.g., driver's licenses) within a state or other jurisdiction must also be returned 
by the SAC within 30 days, if earlier return is not required by the issuing agency. When an 
agent is transferred, documents issued pursuant to a classified program must be returned to 
Undercover Operations for liquidation or reissuance to the receiving SAC.

Any document issued pursuant to a classified program is to be used for official business only. 
Any loss must be immediately reported to the SAC with a written memorandum detailing the 
circumstances surrounding such loss. The SAC will then notify Undercover Operations, which 
will be responsible for notifying the issuing agency.

At any time, the SAC may require an agent to relinquish any or all of his or her issued personal 
undercover identification. All such items will be properly returned to the issuer by the SAC. 
All the provisions of this Section apply to all ICE employees and to all state and local law 
enforcement officers who obtain undercover identification through the ICE Service.

If fictitious identification is issued to a ICE employee (i.e., ICE Pilot) who is not a Special 
Agent, the request must still come from the nearest SAC office and any issued identification will 
be maintained by that SAC in accordance with the procedures specified above. These 
procedures are to be followed regardless of which operation the undercover employee is 
assisting.

Note: Fictitious identification will only be issued to a Confidential Informant on a case-by-case 
basis. Requests to the Unit Chief, Undercover Operations, must be justified in writing and 
approved by the SAC.

5.2 Maintaining a Personal Financial History

The advent of relatively easy automated access to the financial records of individuals makes it 
very difficult for an undercover identity to withstand the scrutiny of subjects who may seek to 
confirm an operative’s representations. One of the essential features of a solid cover identity is a 
credible financial history. Therefore, ICE policy includes procedures where, on a restricted 
basis, an undercover operative can maintain a bank account and credit cards under a cover 
identity.

As an extension of a cover identity, the bank accounts and credit cards are ICE property and 
must be relinquished to the SAC upon request.
5.2.1 Individual Undercover Bank Accounts

To facilitate and maintain an undercover personal financial history, an agent may choose to establish and maintain a checking and/or credit account in his or her cover identity. The accounts may be used for personal transactions even when the agent is not actively working a certified undercover operation. These accounts can only exist under the following conditions:

A. all bank accounts shall be non-interest bearing to avoid tax complications;

B. written approval must be obtained from the SAC and kept on file in the office;

C. if the agent is not involved in undercover activity, personal funds must be used and Government funds may not be deposited into the account;

D. sufficient personal funds must be deposited prior to making a personal transaction;

E. when directly supporting an undercover operation with the proper certification, the agent may request advances of Government funds to be deposited into the undercover bank account to pay for related business expenses;

F. only personal funds and advances for authorized undercover activity associated with certified (for bank accounts) undercover operations (recorded in CUFFS) may be deposited in these accounts;

G. all expenditures of non-personal funds must be approved by the appropriate undercover operation manager on the Expense Approval Form (Appendix E);

H. copies of the monthly bank statements shall be supplied to and retained by the first line supervisor (this applies to all ICE employees who obtain personal undercover bank accounts; and

I. copies of monthly bank statements and all supporting cancelled checks and receipts that are connected to an undercover operation must remain with that operation’s books and records.

The records should be annotated by the operative with a “P” to indicate a personal transaction or a case number to indicate a business transaction. First-line supervisors will review the records of the account holder to ensure compliance with this policy and to protect against misuse.

Bank maintenance fees may be reimbursed to the undercover operative, and individual business transactions must be posted to CUFFS when operatives are liquidating advances or being reimbursed for business expenses.
5.2.2 Individual Undercover Credit Cards

To facilitate and maintain an undercover personal financial history, a Special Agent may choose to establish and maintain a credit card in his or her cover identity. The account may be used for personal transactions even when the Special Agent is not actively working a certified undercover operation. These accounts can only exist under the following conditions:

A. written approval must be obtained from the SAC and kept on file in the office;

B. if the agent is not involved in a certified undercover operation, personal funds must be used to pay the monthly billing;

C. all accounts must remain current;

D. government funds may not be used to reimburse an operative for interest charged on the account;

E. except under exigent circumstances, non-personal transactions must be approved in advance;

F. account maintenance fees may be reimbursed to the operative;

G. individual business transactions must be posted to the operation’s records when agents are reimbursed for business expenses;

H. copies of the monthly billing statements must be supplied to and retained by the first-line supervisor. This applies to all ICE employees who obtain personal undercover credit cards;

I. copies of all monthly billing statements and supporting receipts that are connected to an undercover operation must remain with the operation’s books and records; and

The records should be annotated with a “P” to indicate a personal transaction and a case number to indicate a business transaction. First-line supervisors will review the records of the account holder to ensure compliance with this policy and to protect against misuse.
Chapter 6  LEGAL/LIABILITY ISSUES

The nature of undercover operations often requires an agent of the Government to appear to be engaged in a criminal enterprise. While this is crucial to the successful integration of operatives with those who commit illegal acts, it also creates unique legal issues. Managers and operatives must become sensitive to these issues to minimize legal challenges and ensure successful prosecutions.

6.1 Procedures for Obtaining Legal Guidance

Undercover operations involve unique operational and administrative situations, which have resulted in many questions related to the practical application of legal principles. Policies and procedures that address these questions must incorporate:

A. legal opinions and guidance obtained from Agency Counsel; and
B. management’s obligation to ensure that adequate controls are in place.

This Handbook provides policies and procedures developed as a result of a large number of written opinions issued by former Customs Chief Counsel. However, new situations and questions develop continually.

When questions arise related to legal matters and associated policies,

A. a supervisor or operation Program Manager will contact Undercover Operations at Headquarters to determine whether the issue has been previously addressed by Counsel and/or existing policy; and
B. if the issue has not been addressed, Undercover Operations will work with Agency Counsel to provide the field office with a response and develop new policies as needed.

6.2 Participation in Otherwise Illegal Activity

Except when authorized pursuant to this Handbook, no undercover operative will participate in any activity that would constitute a crime under Federal, state, or local law if engaged in by a private person acting without authorization. For purposes of this Handbook, such activity is referred to as "otherwise illegal activity."

6.2.1 Justification

No manager shall recommend or approve participation of an undercover operative in otherwise illegal activity unless such participation is justified:

A. to obtain information or evidence necessary for the success of the investigation not reasonably available without participation in the otherwise illegal activity;
B. to establish or maintain credibility of a cover identity; or

C. to prevent death or serious bodily injury.

6.2.2 Minimization

The SAC shall take reasonable steps to minimize the participation of an undercover operative in any otherwise illegal activity.

6.2.3 Prohibitions

An undercover operative shall not:

A. participate in any act of violence except in self defense;

B. initiate or instigate any plan to commit criminal acts except in accordance with Section 6.3.1; or

C. participate in conduct that would constitute unlawful investigative techniques (e.g., illegal wiretapping, illegal mail openings, breaking and entering, or trespass), unless approved by the Department of Justice.

6.2.4 Self Defense

Nothing in this Handbook prohibits an undercover operative from taking reasonable measures of self-defense in any emergency to protect his or her own life or the lives of others.

Reasonable measures of self defense include engaging in proscribed conduct when there is a reasonable belief that to do otherwise would seriously endanger the lives of the undercover operative or others. Such measures must be reported immediately to the appropriate Federal prosecutor and the Director, Investigations who will inform the Under Secretary for Border and Transportation Security and Agency Counsel as soon as possible.

6.2.5 General Authorization

Approval of an undercover operation by the appropriate procedures as described in Chapter 4 shall constitute authorization of:

A. otherwise illegal activity which is a crime under Federal, state, or local law except malum in se crimes (e.g., murder, rape, robbery, aggravated assault);

B. the purchase and possession of stolen or contraband goods;
C. the delivery or sale of stolen property which cannot be traced to the rightful owner;

D. the controlled delivery of drugs (in accordance with the MOU with DEA) and other contraband which will not enter commerce;

E. the payment of bribes which is not included in the sensitive circumstances;

F. the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary (but not any statement under oath or the penalties of perjury, which must be authorized pursuant to Section 6.2.6);

G. participation in otherwise illegal activity which does not involve a significant risk of violence or physical injury; and

H. consensual monitoring, even if a crime under local law.

6.2.6 Authorization of Unforeseen Illegal Activity

If an undercover operative believes it is necessary and appropriate, under the standards set out in Section 6.2.1, to participate in otherwise illegal activity that was not foreseen or anticipated, every effort should be made to consult with the SAC who shall:

A. seek approval under exigent circumstances from the appropriate Federal prosecutor; and

B. approve the activities under emergency authorization.

If consultation with the SAC is impractical, and the undercover employee concludes that there is an immediate and grave threat to life, physical safety, or property, the undercover operative may participate in the otherwise illegal activity, as long as the operative does not take part in, and makes every effort to prevent any act of violence. In cases where a life or personal safety is immediately threatened, reasonable force may be employed in the defense of self or others to prevent death or serious injury.

A decision by an undercover operative to participate in otherwise illegal activity under this subsection may be retroactively authorized, if appropriate. If this occurs, the following steps should be taken:

A. the undercover operative shall make a report to the SAC as soon as possible;

B. the SAC shall submit a written report to the Deputy Assistant Director, Investigative Services; and

C. the Deputy Assistant Director, Investigative Services, shall promptly present a request for retroactive authorization to the URC.
If an undercover operation results in violence during the course of criminal activity, and an undercover operative has participated in any manner in the criminal activity, the SAC shall immediately inform the appropriate Federal prosecutor and the Director, Investigations. The Director, Investigations shall inform the Under Secretary for Border and Transportation Security and Agency Counsel as soon as possible.

6.3 Protecting Innocent Parties Against Entrapment

Entrapment must be scrupulously avoided. In addition to the legal prohibition of entrapment, additional restrictions limit ICE undercover activity to ensure, as much as possible, that entrapment issues do not adversely affect criminal prosecutions.

6.3.1 Authorization Requirements

No undercover activity involving an inducement to an individual to engage in crime shall be authorized unless the approving official is satisfied that:

A. the illegal nature of the activity is reasonably clear to potential subjects;

B. the nature of any inducement offered is justifiable in view of the character of the illegal transaction in which the individual is invited to engage;

C. there is a reasonable expectation that offering the inducement will reveal illegal activities; and

D. one of the following limitations is met:

1) there is a reasonable indication that the subject is engaging, has engaged, or is likely to engage in the illegal activity proposed or in similar illegal conduct; or

2) the opportunity for illegal activity has been structured so that there is reason to believe that any persons drawn to the opportunity, or brought to it, are predisposed to engage in the contemplated conduct.

6.3.2 Exception

While not required by law, the requirement to meet one of the two limitations set forth in Section 6.3.1 are imposed to ensure that the Government does not offer inducements to engage persons in criminal activity who are not predisposed to do so. These standards can be waived only by the Director, Investigations upon a written finding that the activities are necessary to protect life or prevent other serious harm. Moreover, the SAC should consult with the appropriate U.S. Attorney concerning the waiver.
6.4 Search Authority of Undercover Operatives

It is constitutionally permissible for law enforcement officers to conduct criminal investigations without revealing their official status or their clandestine purpose. The extent of a search, the ability to seize or copy evidence, and the recording of oral communications raise numerous complex legal issues. Many of these issues have been addressed by the courts, while others remain untested. If questions arise, managers should obtain legal guidance from Agency Counsel or the U.S. Attorney when possible. This Section provides general guidelines in this area.

6.4.1 Suspect’s Premises

An undercover operative may legally enter a suspect’s premises if that operative:

A. has the suspect’s consent whether expressed or implied.

An operative may obtain evidence:

A. within the scope of the consent by which the operative gains entry; and

B. voluntarily revealed by the unsuspecting suspect (i.e., the plain view doctrine).

Free access to an area over a period of time may significantly expand the scope of a legal search to those items to which the operative has reasonable access by virtue of the scope of the suspect’s consent. (For example, if an operative were a houseguest, it would be reasonable to have access to the closet in the room where he or she was to sleep.) Under certain circumstances where an operative may have access to customer information in a financial institution, a subpoena may be required to comply with the Right to Financial Privacy Act. In these circumstances, consult with an AUSA and Agency Counsel for advice.

6.4.2 Oral Communications

All conversations can be testified to or recorded:

A. in which the operative participates; and/or

B. which can be overheard by an operative who has a legitimate right to be in a location and where the person being overheard has no expectation of privacy.

ICE policies for obtaining approval for such recordings must be followed. The Law Course for Customs Officers and the Interim Technical Surveillance Handbook may be consulted for further legal and procedural guidance.

6.4.3 Removal/Copying of Documents or Property

Documents or property may be removed or copied:
A. under the plain view doctrine, if the operative has a lawful right to be in a location and there is probable cause to believe that the item removed or copied is seizable (e.g., evidence of a criminal violation); or

B. if consent has been granted to be in that location or on the premises and the scope of the consent allows access to, and/or removal of, the documents and/or property. (An example of this would be an operative who is employed as an accountant for a company or business and who is allowed access to records and documents. Another example of this would be if an operative is an employee and is responsible for cleaning the warehouse or office and removing company trash.)

6.5 Alteration of Conveyances

Sometimes, during the course of an investigation, it becomes necessary to make alterations to vehicles, vessels, or aircraft. Whenever such alterations are made, a Report of Investigation (ROI) shall be written to include:

A. the reason for the alteration;

B. a specific description of the changes made;

C. the names of any individuals involved in approving and making the alterations; and

D. the applicable qualifications of the individual performing the work.

All documentation concerning the conveyance must reflect the use and maintenance, which occurred while the conveyance was used in support of an operation. When a conveyance is no longer needed for an operation, it must be returned to its original state, meeting all applicable Federal, state, and local safety and administrative requirements. When the aircraft is returned to its original state for general use, the flight logs to the aircraft and service records must be modified to reflect activity during the operation.

All modifications and/or alterations to any aircraft must be completed by an FAA certified mechanic (refer to Federal Aviation Regulations, Code of Federal Regulations, Title 14, Parts 43, 91[e], and 135, Maintenance and Alterations). No alteration and/or modification is authorized to any vehicle or conveyance if it will risk the life or safety of violators or innocent third parties.

If a conveyance which was altered for an ICE operation permanently leaves the control of ICE because it was inadvertently lost, is turned over to another authorized agency, or was destroyed, the circumstances of the loss of custody must immediately be recorded in an ROI. All effort shall be made to acquire documentation that demonstrates that the altered conveyance will not end up in the possession of an innocent third party. This documentation could include photographs of a crashed aircraft or a written agreement from another agency to meet the criteria established in this policy.
If an altered conveyance is not recoverable because it is in the possession of a violator, the appropriate lookouts must be entered into the National Crime Information Center (NCIC) and TECS II and linked to the case record. A copy of the lookout will be included in the case records.

6.6 Third-Party Assistance

During the course of an undercover operation, ICE is sometimes in a position to benefit from the assistance of private individuals or corporations. Although the assistance of third parties can greatly facilitate the conduct of the operation, it can also raise serious legal, ethical, and liability issues. Managers must ensure that, if third party assistance is accepted, it conforms to legal limitations and does not give the appearance of conflict or impropriety.

6.6.1 Offers of Third-Party Gifts or Bequests

A federal agency may not accept gifts or donations that would augment its appropriation without specific statutory authority. Consequently, DHS cannot accept gifts of money or property that aid and facilitate the work of the Department in law enforcement without congressional approval, due in part to legal considerations and the possibility that accepting monies or other benefits from the private sector may give the appearance that private entities may be influencing federal prosecutions, DHS may be reluctant to seek congressional approval.

Accordingly, all offers of gifts or bequests shall be promptly submitted to the Director, Investigations for forwarding to DHS. To request consideration for acceptance of a gift or money offered by a third party, a memorandum from the SAC requesting concurrence will be sent to the Director, Investigations, which includes:

A. the name of the potential donor;
B. the donor’s past or present business or relationships with the Department;
C. any restrictions on the use of the gift offered;
D. a statement of how acceptance of the gift will facilitate the work of DHS;
E. if the gift is physical property, the estimated fair market value at the time of the donation; and
F. the U.S. Attorney’s concurrence with the proposed gift.

If the Director, Investigations concurs, a cover memorandum recommending approval will be issued and the package will be forwarded to the Assistant Secretary for review, concurrence, and forwarding to DHS.
6.6.2 Indemnification and Hold Harmless Agreements

As a practical matter, indemnification and hold harmless agreements are basically the same. Their legal effect is to provide security or protection against loss, damage, or liability. They create an obligation or duty for one party to be responsible for any loss, damage, or liability another party has incurred while acting on the first party’s request or behalf.

Absent express statutory authority to the contrary, the Government may not enter into an agreement to indemnify where the Government’s liability is indefinite, indeterminate, or potentially unlimited. Such an agreement would violate both the Antideficiency Act, 31 U.S.C. 1341 et seq., and the Adequacy of Appropriations Act, 41 U.S.C. 11, because it would be uncertain if sufficient funds would be appropriated to cover the contingency. Please contact Agency Counsel for other options.

6.7 Personal Assistance Agreement (PAA)

A PAA is an agreement between a Confidential Informant (CI) and a SAC, which details the general activities and responsibilities expected of the CI, places limitations upon his or her behavior, and states the amounts and methods of compensation that the CI could expect to receive if he or she adheres to the provisions of the agreement. The principal reason for a PAA is to limit the Government’s liability arising out of an informant’s activities in connection with an undercover operation or investigation. A PAA will be required when a CI actively participates in an undercover activity associated with an undercover operation and he or she receives commissions, profits, or bonuses as a result of services rendered in furtherance of that operation. A PAA will not be necessary when a CI is only providing information or participation on a casual basis. (For further information, see former Customs Directive 4210-017, “Personal Assistance Agreements with Confidential Informants," dated December 12, 2001.)
Chapter 7 ADMINISTRATIVE MANAGEMENT OF UNDERCOVER OPERATIONS

Due to the unique statutory authority granted in 19 U.S.C. 2081 and 8 U.S.C. 1363a, certified undercover operations may use funds and engage in transactions outside of usual Governmental policies and procedures. This authorization requires that employees involved in undercover operations ensure that all expenditures are properly executed and documented.

The policy and guidelines detailed below are intended to provide managers with a working concept of the scope of the allowances provided through the statutory authority for undercover operations. The policy and guidelines will also serve to standardize record-keeping systems to enhance accountability and strengthen management controls.

7.1 Certification Authority

The provisions authorizing the use of the exemptions from certain laws, as detailed in 19 U.S.C. 2081 and 8 U.S.C. 1363a, are qualified by a stipulation which requires written certification that the use of an exemption is necessary for the conduct of such undercover operations. The authority to provide that certification does not rest in the field and cannot be delegated. It is limited by statute specifically to the Assistant Secretary or to his/her designee as permitted by statute.

7.2 Unforeseen Expenditures

To maintain operational flexibility, it is recognized that the spending levels in the proposal are the SAC’s closest approximations and do not establish an absolute spending limit. However, any material deviation from, or increase in, expenditures of 10 percent or more from the approved spending plan requires review and approval by the Director, Investigations. This can be expeditiously accomplished by faxing/routing a memorandum, through the programmatic desk and Undercover Operations, to the Director, Investigations.

7.3 Use of Proceeds and Business Exemptions

19 U.S.C. 2081 and 8 U.S.C. 1363a authorizes the payment of any necessary and reasonable expenses of a certified undercover operation from proceeds or appropriated funds. However, only those expenditures that directly support the undercover proprietary can properly be made outside Federal Acquisition Regulations (FAR) under the statute’s business exemption. (See Appendix L for a definition of FAR). A proprietary business can be established as a covert business entity for the safety and security of an operation to do the business of the operation and/or conceal the true identity of the operation from the public, targets of the operation, and the private sector.

FAR must be used to purchase equipment or services related to the operation. However, acquisitions of equipment and services may be made outside FAR when necessary to protect the safety, security, coverture, secrecy, and integrity of the undercover business.
The "proprietary" is authorized under 19 U.S.C. 2081 and 8 U.S.C. 1363a to operate on a commercial basis, to engage in covert business transactions necessary for the detection and prosecution of offenses against the United States and for the safety and security of the operation.

Note: If a manager cannot show a legitimate need to conceal the involvement of the Government in a transaction necessary for the operation, the transaction must be made in compliance with FAR.

7.4 Expenditure Approval Levels

When the Director, Investigations certifies the spending levels contained in an operational proposal, approval for individual expenditures which must be made under FAR will follow the normal approval levels established for standard purchases under FAR.

Individual expenditures under the business exemption contained in 19 U.S.C. 2081 and 8 U.S.C. 1363a can be approved at the following levels:

Levels of approval (except property):

A. up to $4,999 Group Supervisor;
B. up to $14,999 ASAC and RAC;
C. up to $29,999 Associate SAC;
D. up to $49,999 SAC;
E. up to $99,999 Deputy Assistant Director, Investigative Services; and
F. over $99,999 Director, Investigations.

Levels of approval for procurement of property:

A. up to $2,499 Group Supervisor;
B. up to $9,999 Associate SAC, ASAC, and RAC;
C. up to $24,999 SAC;
D. up to $49,999 Deputy Assistant Director, Investigative Services; and
E. over $49,999 Director, Investigations.

Each field manager will be held responsible for monitoring expenditures to ensure that they are within the parameters of the spending authority approved by the Director, Investigations.
7.5 Use of Proceeds

When an undercover operation has been certified to expend proceeds, these may be used for any necessary and reasonable expense of the operation.

7.5.1 Sharing Proceeds

The use of proceeds is limited to offsetting necessary and reasonable expenses of the specific operation which generated them. Proceeds may not be transferred to, or used by, other operations, or used for general office purposes outside the operation, except for the following:

7.5.1(1) Reimbursement of Supporting Operations

To the extent that one operation may have incurred expenses in direct support of another operation, the operation receiving the support may reimburse the assisting operation with proceeds, provided that:

A. both operations have the proper certifications;

B. the amount of reimbursement does not exceed actual expenses incurred;

C. no reimbursement is made based on an estimated rate for services performed;

D. both operations retain copies of receipts documenting purchases; and

E. both operations reflect all transactions and the transfer of funds in CUFFS.

7.5.1(2) Reimbursement of Other Agencies

In a properly certified joint undercover operation, proceeds may be used to pay necessary and reasonable expenses, regardless of which participating agency obtained the proceeds or incurred the expenses, provided that:

A. the operation is investigating violations of law clearly within the investigative jurisdiction of ICE; and

B. the expenses were incurred in furtherance of the ICE mission.

When paying for travel or small incidental expenses incurred by agents from other agencies that are assigned to work in a ICE certified undercover operation, a normal advance or reimbursement should be made citing the correct object class code in CUFFS. (Customs Fundamental Financial System.)

If another Federal agency is to receive proceeds obtained in a certified undercover operation to offset expenses, consideration should be given to its authority to offset expenditures from its appropriation. If the agency does not have this authority, it may be required to deposit the
reimbursement in the Treasury. A reimbursable agreement, pursuant to 31 U.S.C. 1535, wherein ICE agrees to pay the agency for services performed on ICE’s behalf, could be used to remedy this. Such an agreement is subject to the following limitations:

A. ICE will reimburse only expenses that were incurred in furtherance of ICE mission;

B. expenses subject to reimbursement will be delineated in the agreement; and

C. reimbursement amounts are limited to funds that ICE makes available only from proceeds.

Managers are encouraged to coordinate the establishment of reimbursement agreements with Agency Counsel.

7.5.1(3) Splitting Proceeds with Other Agencies

When splitting proceeds with other agencies, an agreement should be drawn up in advance detailing the amount or percentage of proceeds each agency expects to receive. This method should be used only when a joint operation exists and each agency has contributed to such a degree toward an expected delivery of proceeds that it would be inappropriate for one agency to claim the whole amount and attempt to reimburse the other. Under this method, any proceeds that have been retained by another agency are not to be considered as being generated by ICE.

The proper procedure for splitting proceeds is to divide the amount received between agencies as close to immediately after their receipt as possible, and before the money is recorded by the operation in CUFFS. (This is done to avoid any confusion associated with paying out a lump sum of money after it has already been recorded in the system and where an appropriate Object Class Code has not been specified.)

Each agency will then record its respective share in accordance with its own policies and procedures for handling proceeds. For ICE, this means recording ICE’s share in CUFFS. A copy of a memorandum signed by the SAC authorizing the sharing and explaining the rationale, as well as a copy of an ROI detailing the amounts received and subsequently shared, are to be placed in the operational files of the Record Keeper.

7.5.2 Purchase of Information (POI)

Like any other necessary expense in support of a certified undercover operation, POI may be paid with proceeds, provided that:

A. the approval levels do not exceed the current delegated authority for standard POI payments;

B. the approval process outlined in the Interim ICE Informants Handbook is followed;
C. the information obtained and the resulting enforcement activities were in direct support of the operation which generated the proceeds;

D. the transaction is properly posted in CUFFS, existing former INS undercover operations do not need to be entered into CUFFS;

E. the Information/Evidence Transaction Receipt (CF-293)
   1) is processed and filed in accordance with standard policy;
   2) includes the TECS II program code for the operation making payment;
   3) is annotated “Paid With Proceeds”; and
   4) the copy that is normally sent to the National Finance Center is included in the operation’s financial records.

7.5.3 Purchase of Evidence (POE)

Proceeds may be used to purchase evidence that is necessary for the support of a certified undercover operation, provided that:

A. the approval levels do not exceed the delegations for standard POE purchases;

B. the approval process outlined in ICE Interim Informants Handbook is followed;

C. the evidence purchased is in direct support of the operation which generated the proceeds; and

D. the transaction is properly posted in CUFFS, existing former INS undercover operations do not need to be entered into CUFFS;

7.5.4 Payment of Overtime

Proceeds may be used to offset overtime costs for ICE employees only, which are directly attributable to an undercover operation that has the proper certification. If another agency has incurred overtime costs in a joint operation with ICE, the operation may use the procedures outlined in Section 7.5.1 in this Handbook. Additionally, ICE has authority under 19 U.S.C. 1616 (a) to share assets after forfeiture. To ensure that appropriate deductions for taxes, withholding, retirement considerations, etc., are applied, these payments must be processed through the National Finance Center. The following procedures will apply:

A. the use of proceeds to pay overtime must be approved by the Director, Office of Investigations as part of the proposal/renewal process or in a memorandum requesting expansion of the certification;
B. the SAC must approve in a memorandum the use of proceeds to offset specific overtime costs;

C. overtime payments will be paid from SAC funds as usual;

D. when the expense is posted to the SAC’s budget plan, the operation will forward a secure check or money order to the National Finance Center, accompanied by a memorandum identifying the account to be credited; and

E. the expense will be posted in CUFFS.

7.5.5 Travel Expenses Associated with Field Review of Undercover Operations

19 U.S.C. 2081(a)(3) and 8 U.S.C. 1363a(a)(4) authorizes using proceeds from an undercover investigative operation to pay “necessary and reasonable expenses” incurred in the undercover operation if the Assistant Secretary of ICE or his or her designee certifies that the use of such proceeds is necessary for the conduct of the undercover operation.

No undercover operation may continue longer than 6 months unless expressly re-authorized. These undercover operation reviews, under the supervision of the Unit Chief, Undercover Operations, are undertaken for the purpose of determining whether the operation is adhering to DHS and ICE operational policy and guidelines. Therefore, the use of the operation's proceeds to offset review expenses by the Undercover Field Review Team are necessary to the conduct of such operation in part because such procedures or reviews are required under DHS policy.

When proceeds of certified undercover operations are sufficient and available, they will be utilized to pay for the travel and related expenses of Undercover Field Review Team. The following procedure will be utilized when undercover proceeds are to be used to pay for the travel and expenses of the Undercover Field Review Team:

A. the field office having jurisdiction over the undercover operation will complete a manual travel authorization for each member of the Undercover Field Review Team, using its office Accounting Processing Code (APC);

B. a manual travel voucher will be completed by each member of the Undercover Field Review Team and forwarded to the field office having jurisdiction over the undercover operation;

C. the field office having jurisdiction over the undercover operation will review the manual travel voucher of each member of the Undercover Field Review Team and authorize payment; and

D. the Record Keeper of the undercover operation will issue an appropriate number of money orders to pay for the travel of each Undercover Field Review Team member. The use of money orders will avoid any potential compromise of personal bank
account numbers and other identifying information of Undercover Field Review Team by any of the targets of the undercover operation.

7.6 Commissions

In order to initiate long-term investigations, ICE must identify, cultivate, and retain assistance from confidential informants (CIs) who are intimately involved in these criminal organizations. The credibility and potential of these CIs and the positions, roles, and relationships they establish are directly related to the commissions that they receive. These commissions are often recurring and amount to significant payments over the duration of the undercover operation. Based on these and other factors, commissions are considered necessary and reasonable.

Compensation paid to an informant in the form of commissions, points, brokerage fees, and monies of a similar nature will collectively be referred to as “commissions” for the purposes of this policy. POI is defined as a payment by the Government to an informant for information or services provided to the Government in connection with an investigation.

7.6.1 Approval of Commissions

In order to pay commissions to a CI, the amounts must be approved in the following manner:

A. Any percentage to be paid to the CI must be stated in a PAA approved by the SAC and reviewed by the Counsel; and

B. The original proposal for certification of an undercover operation and any re-authorizations require the following:

1) a separate line item for anticipated budget expenditures for commissions for each 6-month period;

2) review by the SAC, the Headquarters programmatic area, Undercover Operations, and the URC; and

3) final approval by the Director, Investigations.

7.6.2 Payment of Commissions

One of the following three methods must be used in order to pay a CI commissions derived from a transaction:

A. when commissions are paid to a CI in person using cash or a check, the transfer must be documented on former Customs Form (CF) 293 (clearly checking the “Money Laundering/Pts” box) and be witnessed by two agents (or one agent and another law enforcement officer), and documented in an ROI; (The ROI should only reflect the CI's source number and the amount of commissions paid.)
B. if a CI is unavailable for a person-to-person meeting, he or she may receive a commission payment via an electronic funds transfer (EFT) to a previously designated account and the payment must be documented in an ROI; (The ROI should reflect the CI's source number and the amount of commissions paid, not the account name or number.) and

C. in addition, if a CI is unavailable for a person-to-person meeting, a commission payment in the form of a check may be delivered to the CI using registered mail with a return receipt, or a major express delivery service (e.g., FedEx, UPS, etc.), using a tracking system. This payment must also be documented in an ROI.

7.6.3 Tracking and Documentation of Commissions

The following steps must be taken in order to track and document the payment of commissions to a CI:

A. each operation will maintain documentation of the payments in the form of transaction worksheets, EFT paperwork and bank statements, and CI payment logs and ROIs;

B. each office will maintain a list of the payments in the CI files;

C. each payment is to be documented in the field office's undercover operation's books under Object Class Code No. 91.14, via CUFFS; and

D. information documented in CUFFS is to be reported monthly to Undercover Operations at Headquarters.

7.7 Record Keeping

It is essential that the activities of an undercover operation be sufficiently documented and the records maintained in an organized manner. This will facilitate the application and review of internal controls and audits.

7.7.1 File Systems

The following files and logs will be established and maintained for documenting undercover activities and operations:

7.7.1(1) Office Files

A. Undercover Identification

B. Undercover Liaison Coordinator Files

C. Personal Undercover Checking Account Records

D. Personal Undercover Credit Card Records
7.7.1(2) Operation Files

A. CUFFS

B. Documentation of Expenditures
   1) General requirements
   2) Undercover credit cards

C. Property Log

D. Property Use Files

E. Petty Cash Daily Register

F. Pick-up Log

G. Proposal and Certification Memoranda

H. Primary Personnel Log

I. Management Control Verifications
   1) Record of Petty Cash Review
   2) Field Review Assessment Form
   3) Six-month Review Findings
   4) National Compliance Review Checklist

7.7.2 Financial Records

The CUFFS is the financial record-keeping system for ICE undercover operations. All operations which have been certified to:

A. use appropriated funds to purchase or lease property;

B. establish a proprietary;

C. deposit funds in a bank; or

D. expend proceeds
must establish and maintain CUFFS. All investigative funds, whether appropriated or proceeds, received and expended in conducting certified undercover operations shall be accounted for and reported in CUFFS.

A CUFFS manual and the chart of accounts modified for undercover operations can be obtained by contacting the CUFFS Coordinator, Undercover Operations.

CUFFS serves as an extension of the Asset Information Management System (AIMS) in TECS and tracks operational expenditures and the generation of proceeds. The CUFFS records serve to:

A. establish a uniform system, which is the primary source for audits of financial transactions in undercover operations;

B. provide a mechanism for oversight by managers who are responsible to monitor the proper use of statutory exemptions; and

C. provide the information needed for input into AIMS to liquidate advances from appropriated funds and account for the generation and expenditure of proceeds.

ICE managers will monitor the use of the statutory authority for expenditures in undercover operations through the review of monthly financial reports which are forwarded, through the Headquarters CUFFS Coordinator, Undercover Operations, to the National Finance Center in Indianapolis, Indiana (See Section 8.2). It is imperative that field managers ensure that Record Keepers properly enter all transactions of an undercover operation into the automated CUFFS financial reporting system.

7.7.2(1) Personnel

To ensure accuracy, oversight, and accountability, a Record Keeper must be a ICE employee.

Written exception may be granted by the Director, Investigations on a case-by-case basis (i.e., a contractor hired under FAR or other approved Government contract.)

If a certified undercover operation requires the services of a bookkeeper or accountant to maintain or audit the records of a proprietary corporation, the business exemption under Title 19 U.S.C. 2081 and 8 U.S.C. 1363a may be used.

7.7.2(2) Required Details

To facilitate the documentation of the proper use of funds of undercover operations in CUFFS:

A. all transactions in support of an operation must be recorded, including, but not limited to:

1) those paid with SAC appropriated funds;
2) POI/POE paid with either appropriated funds or proceeds;
3) commissions paid by the Government;
4) trafficker directed funds; and
5) overtime paid with proceeds.

B. the name or memo field of the entry must include sufficient descriptive information to adequately identify every transaction;

C. a case number must be included whenever a transaction can be linked to a case; and

D. all expenditures made through the use of any credit card (covert or overt, except personal transactions using a personal undercover credit card) must be posted individually by appropriate object class code.

Note: Normally, appropriated SAC funds expended by the SAC under FAR for generic items (e.g., cameras, radios, vehicles, tape recorders, etc.) that are not dedicated for use in an undercover proprietary, and which subsequently are used by or loaned to the operation and will be returned to the SAC for general office use, should not be listed as expenditures of the operation or recorded in CUFFS. This also applies to fuel and maintenance for SAC-owned or SAC-leased vehicles used in support of undercover activities (e.g., surveillance and cover teams) if the vehicles are not dedicated for use in the undercover proprietary.

7.7.2(3) Separation of Duties

To ensure proper separation of duties, the Record Keeper:

A. will not have individual signature authority on any bank accounts;

B. will not have approval authority for expenditures; and

C. will not conduct internal audits of the operation.

7.7.2(4) Approval of Expenditures

All expenditures except those approved via a CF-293, “Confidential Expenses Transaction Receipt,” must be approved on the Expense Approval Form (Appendix E). An operation should use the Expense Approval Form in lieu of a Standard Form (SF) 1164 or a CF-148, unless the CF-148 needs to be forwarded to the “Field Procurement Services Branch” at Indianapolis, Indiana, i.e., purchases under FAR exceeding $500. (See section 7.12.1(1).) In situations such as this, both an Expense Approval Form and a CF-148 will be used.
Reimbursement of business expenditures which did not receive prior approval because of exigent circumstances may only be made based on an Expense Approval Form and a memorandum which:

A. explains the exigency that existed;
B. has available supporting documentation attached;
C. is approved by the appropriate supervisor; and
D. is maintained as part of the operation’s records.

Monthly bank account statements, all supporting receipts, and related Expense Approval Forms will be:

A. reconciled with CUFFS;
B. reviewed by the next level supervisor to ensure compliance with this policy; and
C. maintained as part of the operation’s records.

7.7.2(5) Receipts for Expenditures

When possible, every expenditure of funds must be adequately supported by a receipt or other documentation which includes the following information:

A. the date payment was made;
B. payee and amount paid; and
C. a description of items purchased or of services provided.

A receipt is documentation and reasonable proof for a financial transaction. Goods and services paid for by credit card (e.g., hotel bill, rental car, lease agreement, etc.) must be accompanied by the original receipt and the original credit card slip listing the charge. In instances where purchases are made online, a screen print of an Online Order Confirmation can be substituted for a normal paper receipt.

Note: If a receipt is unavailable or impractical to obtain due to an undercover situation, then a memorandum to the file must substitute for the receipt. The memorandum should contain the above information and be signed by the undercover operative and the appropriate office manager. The memorandum will be maintained as part of the records of the applicable operation as if it were a receipt.

7.7.3 Record Keeping: Transactions Involving Confidential Informants (CIs)
The relationship between a CI and ICE can involve financial transactions that are difficult to properly classify, record, and document. Due to unusual circumstances in undercover scenarios, it is sometimes difficult to determine whether a transaction represents income to an informant (which would be POI) or merely an expense of the operation. The scenarios can also make it difficult to obtain proper documentation of expenditures. This Section provides guidance to ensure that these transactions are accurately recorded in CUFFS and properly documented.

In undercover operations, transactions involving CIs will generally fall into one of the three areas identified below:

**7.7.3(1) Purchase of Information (POI)**

POI payments are expenses of an operation paid to a CI and are:

A. payments made by the Government; and

B. payments or purchases which directly benefit the CI.

Such payments are based upon information received or services performed on the Government’s behalf.

All payments to CIs for POI must be supported by a properly executed Confidential Expenses Transaction Receipt (CF-293) pursuant to the approval levels and procedures contained in this Handbook. CF-293s for POI related to an undercover operation must include the TECS II program code and be posted to CUFFS. A copy of the CF-293 will become part of the financial records of the operation.

**7.7.3(2) Confidential Informants’ Expenses**

Generally, expenditures related to activities of a CI will be considered expenses of an operation when they:

A. are necessary for the conduct of the operation;

B. are primarily for the conduct of the Government’s mission (providing only incidental benefit to the CI); and

C. are incurred by the CI in direct support of the undercover operation.

Expenses are not income for a CI and need not be documented on a CF-293. However, they must be approved and documented pursuant to Sections 7.7.2(4) and 7.7.2(5).

Only to the extent that expenditures are necessary for the conduct of the operation are they properly classified as expenses. At times, expenditures might facilitate the operation yet provide to the CI a significant benefit which is incidental to the needs of the Government. Such expenses will be considered POI and documented accordingly. For example, if a CI’s boat required a
satellite location system for an operation, the cost of the system will be considered POI and therefore count towards the threshold levels of the CI. Otherwise, the satellite system is Government property and must be removed at the conclusion of the operation.

Advances can be made to CIs to cover anticipated expenses. The advances are subject to the same policies and procedures for advances found in Section 7.9.

7.7.3(3) Third-Party Payments for Illegal Services and POE

Payments paid by CIs to third parties for illegal services and for POE can make it difficult to properly account for the expenditure. Payments of illegal brokerage fees, commissions, and bribes are not likely to generate proper documentation. Every effort should be made to arrange for an agent to witness the transaction between the CI and the third party. If possible, an agent should be introduced to the third party to execute the transaction.

If circumstances preclude the involvement of an agent in the transaction, funds given to the CI will be documented on an Expense Approval Form (Appendix E), which:

A. is reviewed and approved by the SAC;
B. lists the specific purpose for the expenditure;
C. names the individual to whom the CI will make the payment;
D. reflects the date the money is turned over to the CI;
E. is signed by the CI to acknowledge receipt of the money; and
F. remains a part of the operation’s financial records.

Payments paid by third parties to CIs for illegal purchases or services while acting on behalf of ICE are considered proceeds of the operation and must be surrendered to ICE. At no time should a portion of these funds be retained by the CI. Subsequent payments by ICE to the CI based upon the activities of the CI which resulted in the illegal income are POI. They will be processed pursuant to approval levels and procedures contained in the ICE Interim Informants Handbook. Operational personnel should contact Undercover Operations if there are any additional questions on how to document transactions involving CIs.

7.7.4 Currency Pick-up Operations

This Section provides the administrative guidelines for maintaining records relating to certified undercover operations that conduct currency pick-up transactions. Additional requirements and operational policies are contained in former Customs Directive 4240-001, “Financial Investigations: Currency Pick-up and Delivery Procedures,” dated January 29, 1993.
In addition to the requirements contained in the above-cited Directive, the procedures below will apply. A Pick-up Log will be maintained for every pick-up. (A sample format of a log is contained in Appendix F.) The purpose of the log is to establish a complete record of all details and approvals for all transactions resulting from a particular pick-up event. The log will be maintained until the balance is $0. The following policy applies:

A. the total amount of the pick-up will be entered into the log;

B. any points (commissions) due and paid to the operation will be shown as transferred to proceeds; and

C. POI payments that relate to the pick-up will not be documented in the log. Although the amount is often based on a percentage of the sum picked up, the POI payment is not being paid from these funds. The related POI payment or payment from proceeds will be documented on a CF-293 pursuant to the ICE Interim Informants Handbook.

The Operation Manager can approve transactions that cause money to remain in Government control.

A supervisor above the level of the Operation Manager must approve transactions that transfer control of money outside the Government.

All pick-up transactions will also be recorded in CUFFS in compliance with the procedures in the CUFFS Manual.

### 7.7.5 Primary Personnel Log

A log will be maintained by the Operation Manager to document the period of time that the following key personnel were involved with the operation:

A. Operation Manager;

B. Undercover operative(s); and

C. Record Keeper.

Each time an individual is assigned one of these positions (or is replaced), it will be recorded in the Primary Personnel Log.

### 7.7.6 Backup of Data

Due to the importance of the data and the significant amount of time that would be required to reconstruct it, it is essential that a backup copy be created and updated regularly. Therefore, at a minimum, Record Keepers will make a backup copy of financial data:
A. on a device (hard drive, tape drive, floppy disk, etc.) other than the device which holds the original data; and

B. at the end of a day when new entries were made.

Previous backup copies need not be retained.

7.8 Petty Cash Fund

Many undercover operations have a need to maintain a petty cash fund to cover incidental operational expenses. The establishment of a fund is at the discretion of the SAC. If a petty cash fund is created, it should be maintained in accordance with Department of the Treasury Imprest Fund guidelines.

The principal reason for the petty cash fund is to support covert transactions, which are covered by the business exemption allowing purchases outside of FAR for purchases of $500 or less. The exemption enables the undercover operation to make purchases without revealing the involvement of the Government and without regard to many normal Government restrictions on purchases.

If an expenditure is not covered by the business exemption, cash from the petty cash fund may be used to make FAR purchases. All procedures and policies relating to ordinary Government transactions will apply to these purchases. This includes adherence to the former Customs “Justify Before You Buy/Don’t Buy” list and the $500 limit on transactions. The "Don’t Buy" list is an informal list issued by Procurement, Office of Finance, which applies to certain items purchased under FAR. The list, which should be reviewed whenever an operation is making a purchase under FAR, does not apply to any purchases covered under the business exemption. A copy of the list may be obtained from Procurement. If a FAR purchase exceeds $500, a Request for Property or Services (CF-148) and the procedures in Section 7.12.1(1) must be used.

7.9 Advances

Advances from operational funds may be issued to ensure that employees are not required to expend personal funds for business transactions. The following guidelines will apply:

A. advances will be issued for a specific purpose using an Expense Approval Form (Appendix E) approved by a properly authorized supervisor;

B. the Expense Approval Form will be retained by the Record Keeper or cashier as an interim receipt;

C. the individual receiving an advance will present an original receipt and any remaining funds to the Record Keeper or cashier for liquidation of the advance;

D. the Record Keeper or cashier will attach the receipts to the Expense Approval Form and complete the section to document liquidation of the advance; and
C. a copy of the Expense Approval Form may be provided to the agent and the original with the receipts will be retained in the financial records of the operation.

Generally, advances will be made for a specific purpose and will be liquidated or returned within 5 working days of the completion of achieving the purpose for which the money was advanced. Responsibility for repayment of advances is not transferable to other individuals, nor can the advance be used for purposes other than those authorized on the Expense Approval Form.

Generally, an individual may hold only one outstanding advance at a time. However, under exigent circumstances, multiple advances may be approved on an Expense Approval Form that clearly indicates the number and total amount of outstanding advances held by that individual. When operational needs require providing contingency money to individuals engaged in undercover activities, advances may be authorized by the appropriate manager for up to 30 days.

7.10 Use of Undercover Credit Cards

This Section provides policies and procedures for issuance, use, and control of undercover proprietary credit cards which have been obtained to support an undercover operation, its proprietary, or an undercover operative's cover identity.

These guidelines are to be applied during an ongoing certified undercover operation. Refer to Section 5.2.2 for policy relating to individual undercover credit card accounts used for personal transactions outside of an operation.

The use of an undercover credit card to expend appropriated funds or proceeds is an action under the business exemption of 19 U.S.C. 2081 and 8 U.S.C. 1363a. Therefore, undercover credit cards may only be used in support of covert transactions relating to a certified undercover operation.

Copies of all records of transactions using undercover credit cards, and the payment thereof, must be maintained on file with the operation posting the expense. Unless issued as personal identification under Section 5.2.2, undercover credit cards may not be used for personal transactions.

7.11 Bank Accounts

After the proper certifications have been obtained, bank accounts may be used to support undercover operations which hold the appropriate exemptions under 19 U.S.C. 2081 and 8 U.S.C. 1363a. This Section provides guidelines for the administration and control of these accounts.

As part of the monthly financial review, account statements, supporting documents, and related Expense Approval Forms will be:
A. reconciled with CUFFS and a copy of the Quick Books reconciliation statement attached to the bank statement(s) in the office files;

B. reviewed (and initialed) by the next level supervisor to ensure compliance with this policy; and

C. maintained as part of the operation’s records.

7.11.1 Control of Bank Accounts

When a bank account is opened in a certified undercover operation, the following information will be forwarded in a double envelope to Headquarters, Undercover Operations:

A. the operation name and TECS II program code;

B. the name of the bank;

C. the address of the bank;

D. the type of account;

E. the account name; and

F. the account number.

All bank account transactions will be posted to CUFFS. There should be a separation of duties between the recording and approving functions. As an internal control, the approving official should not have exclusive signature authority over a bank account.

Multiple operations may deposit funds in the same bank account, as long as:

A. each operation has received a separate certification to deposit funds;

B. each operation maintains separate records of related transactions in individual CUFFS systems; and

C. proceeds from one operation are not used to support another operation.

7.11.2 Accounts in the Name of ICE

After the proper certifications have been obtained, an overt account may be opened in the name of ICE to be utilized in furtherance of undercover operations. It may be used to:

A. facilitate the electronic transfer of funds for a certified operation;

B. support transactions of the petty cash funds;
C. support transactions for goods and services in compliance with FAR; or

D. conduct any other transactions to support an operation where security will not be jeopardized.

While overt bank accounts can be useful, they are subject to the following restrictions:

A. only funds, which are in furtherance of an undercover operation, with the proper certification may flow through the account. For example, the account could not be used to receive a flash roll for use in an unrelated investigation;

B. all transactions involving the account must be entered into the CUFFS records of the related certified operation; and

C. funds in the accounts must be safeguarded, as detailed in Section 7.11.3.

7.11.3 Safeguarding Funds

This Section contains guidelines to minimize the risk of loss of Government funds from failed financial institutions and high-risk investments.

7.11.3(1) Funds Deposited in Financial Institutions

The following guidelines will apply to all accounts opened under 19 U.S.C. 2081 and 8 U.S.C. 1363a, whether overt or covert:

A. Accounts will be established in Federally-insured financial institutions, unless the nature of the investigation requires dealing with a particular financial institution;

B. Before opening a bank account, the solvency of the financial institution will be verified through OI’s Financial Resources and Analysis (Administration, Planning and Policy);

C. Without jeopardizing the security of the operation, every effort should be made to place funds into sweep accounts (as defined in Appendix L); and

D. Deposits should not exceed the insurance limits unless:

1) it is necessary for the conduct of the operation; and

2) it is approved by the SAC in a memorandum containing the relevant facts pertaining to the need to exceed insured levels.

E. Deposits of target checks, personal or third party, should be avoided because of the potential for fraudulent, stolen, counterfeit, or altered checks.
7.11.3(2) Appropriate Investment of Funds

Investment of Government funds is often a necessary and prudent means to backstop an undercover business or individual. The amount invested must be limited to the requirements of the undercover operation.

No funds of an undercover operation may be invested in other than interest bearing savings or money market accounts. Government funds may not be exposed to high-risk investments. Speculative investments such as stock/bond mutual funds, purchase of shares of stocks, futures, derivatives, etc., are not permitted unless:

A. the undercover scenario requires them; and

B. it is approved by the Director, Investigations as part of the proposal/re-certification process or in a memorandum requesting expansion of the certification.

The Undercover Project Managers must be sensitive to the statutory requirement to deposit any funds no longer necessary for the conduct of the operation. Certificates of Deposit, because they make funds less liquid for the operation, will not be purchased.

7.11.4 Foreign Bank Accounts

The exemption contained in 19 U.S.C. 2081 and 8 U.S.C. 1363a allowing the deposit of Government funds in commercial bank accounts is not limited to banks in the United States. The proposal for the undercover operation must expressly reference the intent or possibility of establishing a Foreign Bank Account.

It is critical that there be proper coordination with the host nation Customs Attaché in all instances of foreign undercover activity. The Customs Attaché will liaison with the appropriate entity which has been designated by the host government with the authority to maintain undercover accounts. After determining the requirements in maintaining an undercover account, the Customs Attaché will establish an agreement with the host country relative to the account. It will be the Customs Attaché responsibility to work with the host country in controlling the movement of the funds through the foreign undercover bank account.

All the financial review requirements that pertain to domestic bank accounts (See Section 7.11) will also pertain to foreign bank accounts.

7.11.4(1) Establishing a Foreign Bank Account

To establish a foreign bank account in support of an undercover operation, the operational proposal will include a specific request which:

A. demonstrates the operational need for the account;
B. requests the appropriate exemption; and

C. details who will control the account.

Attached to the request will be a memorandum from the appropriate Customs Attaché which:

A. expresses concurrence or disagreement with the proposal;

B. states that a review of the country’s banking and currency laws has been conducted and that the proposed account activities either comply with host country laws and restrictions or have been coordinated with host country authorities to ensure compliance with laws and restrictions; and

C. lists any applicable banking restrictions and reporting requirements.

When notification to the host country would jeopardize the security of an operation, the Customs Attaché and the SAC will coordinate suitable strategy.

If a foreign account is needed in an ongoing certified undercover operation that did not request approval in the original proposal, the procedures described above can be used to amend the certification.

7.11.4(2) Control of Foreign Bank Accounts

ICE will maintain control of any undercover funds deposited in established foreign bank accounts. These accounts are subject to the same controls detailed in Section 7.11.1.

7.11.5 Deposits by Foreign Law Enforcement

Occasionally, ICE is asked to assist in an investigation being conducted by a foreign government, customs, or law enforcement agency by allowing them the use of one or more of our existing undercover bank accounts (foreign or domestic). Such use solely in furtherance of an investigation related to violations of foreign laws would be beyond the scope of our statutory authority.

The exemptions granted under 19 U.S.C. 2081 and 8 U.S.C. 1363a can be applied only to the detection and prosecution of offenses within the jurisdiction of the Secretary of Homeland Security. Accordingly, a SAC that conducts an undercover investigation which involves the deposit of funds by a foreign law enforcement agency must:

A. initiate a joint operation with the foreign law enforcement agency;

B. have a reasonable expectation of disclosing an ICE violation;

C. advise the responsible Customs Attaché, in writing, of the activities relating to their jurisdiction; and
D. forward a copy of the memorandum of notification to the Customs Attaché, with a copy to the appropriate Unit Chief, as well as to the appropriate Deputy Assistant Director, Investigative Services, to become a permanent addition to the operation’s files.

7.12 Purchases Under FAR

Expenditures that cannot be covered by the business exemption and do not jeopardize the security, safety, and covertness of the undercover operatives or operation must be accomplished under the provisions of FAR. The business exemption is the aspect of 19 U.S.C. 2081(a)(1)(A) and (B) and 8 U.S.C. 1363a, which provides an undercover investigative operation the ability to operate on a commercial basis, without compliance with FAR. (See Appendix L and Section 7.3.)

All property purchased through normal FAR guidelines and not dedicated for the sole use of an undercover proprietary is ICE property and, when no longer needed by the operation, shall be utilized in the accomplishment of ICE mission. This applies whether the purchase was funded by proceeds or appropriated funds. The property shall be treated in the same manner as any other property item owned by ICE and must comply with established property management and inventory procedures. Property dedicated for the sole use in the proprietary must be liquidated or disposed of at the conclusion of the operation in accordance with Section 9.3.

7.12.1 Purchases Using Proceeds

Expenditures that are reasonable and necessary to the operation but not necessary to maintain the covert nature or ensure safety and security must be accomplished under the provisions of FAR. This Section includes procedures for spending proceeds under FAR.

7.12.1(1) Purchases Under FAR Using the “Request for Property or Services” (CF-148)

When paying with proceeds, the principal difference from usual Government purchases using a CF-148 is that the vendor will be instructed to bill the SAC directly. Upon receipt of the bill, the SAC office will notify the undercover operation which will make the payment to the vendor with undercover funds. The following procedure will be used to expend undercover proceeds in compliance with FAR:

The SAC will determine that funds are available and enter a procurement action in former Customs Logistics Automated System (CLAS) in TECS which:

A. uses fund 701; and
B. shows 096735 as the APC.
The SAC will prepare a **CF-148** which, in addition to the usual items:

A. is prominently stamped **A NON-ARRS PROCEEDS** at the top of the description (Block 17);

B. shows 096735 as the APC (Block 7); and

C. lists in the remarks (Block 22): fund 701, the TECS program code, the field office mailing address, and a point of contact to whom the bill should be directed.

The SAC will forward the **CF-148** to:

Field Procurement Services Branch  
6026 Lakeside Boulevard  
Indianapolis, IN 46268

The Record Keeper will record a liability for the purchase in CUFFS to ensure that the funds are reserved. The offsetting entry will be recorded against the appropriate expense account.

A copy of the **Expense Approval Form** and the **CF-148** will be retained as a pending transaction.

The Contract Specialist in the Field Procurement Services Branch, Office of Finance, will:

A. process the **CF-148** in a timely manner;

B. issue a **Purchase/Delivery Order (CF-341)** to the vendor; and

C. send a copy to the SAC office point of contact.

If, because of operational requirements, the **CF-341** needs to be sent directly to the SAC for hand delivery to the vendor by an agent, the Field Procurement Services Branch should be contacted at (317) 298-1180.

The Field Procurement Services Branch can also assist the field with any questions relating to the procedures for using proceeds. Questions related to policy for using proceeds should be directed to Headquarters **Undercover Operations**. The following procedures apply:

A. the vendor will ship the goods and/or provide the services and send the invoice to the address on the **CF-341**. All invoices shall be immediately date stamped upon receipt;

B. the Contracting Officer should be contacted if a dispute arises. The Contracting Officer will be responsible for settling with the vendor any disputes regarding the purchase;
C. the appropriate official will pay the vendor directly with proceeds using a payment method that does not compromise the undercover proprietary business (money order, bank draft, etc.);

D. the Record Keeper will record the payment in CUFFS against the liability established when the CF-148 was issued;

E. if the purchase is property valued between $300 and $4,999.99, a copy of the invoice marked PURCHASED WITH PROCEEDS UNDER FAR will be given to the property officer and will be entered immediately into the Property Information Management System in TECS by the SAC office; and

F. if the purchase is property valued $5,000 or more, a copy of the invoice marked PURCHASED WITH PROCEEDS UNDER FAR will be sent to:

   Field Procurement Services Branch
   Personal Property Management Team
   P.O. Box 68915
   Indianapolis, IN 46278

The Personal Property Team will then make the necessary entry into the Property Information Management System in TECS.

To avoid any interest payment or late fees under the Prompt Payment Act, payments must be made on or before the 30th day after the designated billing office has received a proper invoice from the contractor, or on or before the 30th day after Government acceptance of supplies delivered or services performed by the contractor, whichever is later.

If payment is made after this period, the SAC must contact the National Finance Center, which will determine the amount of late payment due under the Act.

7.12.1(2) Purchases Under $500 Using FAR

The petty cash fund may be used to make FAR purchases under $500. See Section 7.8 for further information on the use of the petty cash funds.

7.13 Necessary and Reasonable

The exemptions contained in 19 U.S.C. 2081 and 8 U.S.C. 1363a which allow for procurement outside FAR and the use of proceeds can only be used for necessary and reasonable expenses connected directly with a specific approved/certified undercover operation. Accordingly, the use of proceeds or of equipment, leased vehicles, cellular phones, and other property purchased with proceeds must be limited to the needs of the operation that acquired them and may not be used for general office purposes. Property acquired with proceeds and dedicated for use in the storefront can legally be transferred to another certified undercover operation. The transferred property must be liquidated at the conclusion of an operation or transferred to another certified
undercover operation. Any fees associated with the transfer must be paid by the receiving operation.

Under the statutory framework, ICE officials have reasonably broad discretion in making the determination of what are necessary and reasonable expenses. The following definitions of “necessary and reasonable” should be utilized.

“Necessary” is defined as those expenses that are directly related to the purposes and objectives of the undercover investigative operation.

“Reasonable” is defined as those expenses which, given the circumstances of the undercover operation, are required to maintain the secrecy and accomplish the objectives of the undercover investigative operation.

7.13.1 Prohibited Expenditures

The following expenditures do not qualify under the definition of “necessary and reasonable”:

A. plaques, pins, patches, and other forms of mementos which do not directly support the undercover identity. (This includes mementos that would be given to agents, police officers, U.S. Attorneys, or any others who worked on the investigation);

B. law enforcement equipment to include (unless the undercover operation storefront includes law enforcement equipment):
   1) raid jackets/hats;
   2) body armor;
   3) weapons;
   4) Special Response Team equipment and accessories; and
   5) emergency vehicle equipment (lights, sirens, etc.);

C. law books for general office use;

D. purchase of vehicles, vessels, or aircraft (other than those used for special purposes or undercover work);

E. conferences and training;

F. maintenance and fuel for Government-owned or Government-leased vehicles that are not being used specifically and exclusively for the undercover operation; and
G. any other equipment, furniture, or supplies which are not used for, and dedicated to, the undercover investigative operation.

7.13.2 Leased Vehicles

Vehicles may be leased by an undercover operation as long as they are “necessary and reasonable” expenses of the undercover operation and are used for activities associated with the particular operation. Furthermore, the respective SAC must approve the use of all leased vehicles in undercover operations. SAC approval for all leases must occur during the initial certification and subsequent reauthorization of each undercover operation. Under no circumstances are personnel above the first-level supervisor permitted to use leased vehicles associated with undercover operations.

The narrative portion of the operational proposal must include specific vehicle models, monthly and annual lease costs, operator names, and a brief justification for the use of each vehicle. Initial operational proposals should include estimates of lease costs, types of vehicles anticipated to be used, operators, and a brief justification of their anticipated use. Entries on the cover pages of both the certification and reauthorization applications for undercover operations permits each SAC the opportunity to acknowledge and approve the necessity of the proposed use of leased vehicles for each undercover operation.

A cost comparison should be made to determine the appropriate length of a vehicle’s lease. Should the comparison determine that the penalty for early termination of a lease is less than the sum of the monthly expenses for a lease of a short duration, then a longer lease should be employed. Vehicles remaining under lease at the conclusion of the undercover operation must be returned and the lease terminated.

If proceeds are generated from investigative activities of the undercover operation, those proceeds must be used to pay for the expense of the leased vehicles. Appropriated funds may only be used when proceeds are unavailable.

Vehicles must be leased under the provisions of the FAR, unless the business exemption is used and a covert lease is necessary to maintain operational security.

7.14 Covert Expenditures for Safety and Security

During the course of an undercover investigation, operational needs often require that goods and services be procured in a manner that does not reveal the involvement of the Government. As described above, most of these needs can be met by employing the exemptions granted under 19 U.S.C. 2081 and 8 U.S.C. 1363a. However, there are times when a necessary and reasonable expense of an operation does not seem to be covered by the business exemption, because it is required for the law enforcement mission rather than for direct support of the undercover proprietary.

Clearly, there must be an authorized method for meeting these legitimate safety and security needs. These needs almost always involve expenditures for services such as airfare for cover
agents, room rental for operational security, surveillance vehicle rental, etc., which are necessary for the gathering of evidence related to the investigation.

7.14.1 Cover Agents

When an agent is required to travel in an undercover capacity, one or more cover agents may be required for safety and security. This necessary expense is in support of the undercover investigative operation and is covered by the exemptions granted by 19 U.S.C. 2081 and 8 U.S.C. 1363a. Under the above guidelines, the procurement of tickets, hotel rooms, etc., should follow FAR and the Federal Travel Regulations (FTR).

However, to avoid placing the operation in jeopardy, the cover agents often need to purchase tickets outside of FAR/FTR at the standard rate offered to the traveling public and travel using an undercover identity. These expenditures can be made with the authorization of the SAC and can be delegated down to the approval levels for non-property expenditures listed in Section 7.4 of this Handbook.

In addition, the need to rent a vehicle for surveillance of an undercover meeting may be authorized by the SAC, or an appropriate approving official if the rental is reasonable and necessary, and procurement under FAR would unduly delay the investigation or jeopardize the safety and security of agents or the security of the operation.

7.14.2 Applying the Business Exemption

In the above instances, if using the existing covert proprietary to secure these services would jeopardize the security of the operation, a second business entity may be established to engage in these transactions. For example, if the lease of vehicles were necessary for surveillance to support a strategic investigation which had a small undercover company purporting to be an established exporter, it may be risky for a small company to lease six cars. Therefore, a second, unrelated company may be established to provide the necessary leases and conceal the involvement of the Government.

7.15 Travel in Support of Undercover Operations

Like for any other expenditure, both appropriated funds and proceeds may be used to pay for all travel deemed necessary and reasonable for the undercover operation. Operational funds may not be used to pay for travel that is not directly related to the undercover operation.

All travel (covert or overt) related to an undercover operation is documented either in the former Customs Automated Travel System (CATS) or through the use of manual travel authorization (CF-4835) or G-250 (former INS Manual Travel Authorization), and voucher (SF-1012) in conformance with FTR. The following guidelines apply:

A. CATS (Customs Admin Production Travel function) is used for overt travel related to the operation that is paid with appropriated funds; and
B. all other travel is documented on manual authorizations and vouchers processed in accordance with FTR. The original documents and supporting receipts will be maintained in the operation’s financial records and recorded in CUFFS.

7.15.1 Approval and Documentation

Except with specific approvals, all travel must be within the limits set in FTR. These policies are detailed in former Customs Delegation Order (CDO) 00-017, dated April 27, 2000, entitled “Travel” (or any superseding CDO issued thereafter). They apply to all travel, including travel by undercover operatives, confidential informants (CIs), cover agents, and supervisors. Per DHS and the above ICE policies, the authority to approve actual subsistence travel in undercover operations has been delegated to the SAC.

Undercover expenses incurred during travel are not travel expenses and are therefore not subject to the limits of FTR. However, without direct approval of the SAC, reimbursement for per diem or Meals and Incidental Expenses (M&IE) cannot exceed 300 percent of the rate applicable to the temporary duty location. That amount may only be exceeded when:

A. the travel is covered by the exemption provided in 19 U.S.C. 2081 (a)(3) and 8 U.S.C. 1363a(a)4, which allows the use of proceeds to offset necessary and reasonable expenses incurred by the undercover operation; and

B. a memorandum or, in exigent circumstances, verbal permission granting prior approval by the SAC is made part of the operation’s financial records. The memorandum will include a case number and detail the circumstances warranting approval of subsistence travel in excess of 300% of per diem.

A CI's travel must be documented on a manual travel authorization (former Customs Form CF-4835, dated December 1, 1993, or form G-250,) and travel voucher form SF-1012, in accordance with FTR. The CI's number and assumed name will be used for identity purposes on all travel documents.

In circumstances where a CI has traveled as part of an operation, the travel voucher (SF-1012) will be used in order to pay reimbursement for travel expenses. Block 9 (a) of the SF-1012 form will show the date that the payment was received, block 9 (b) will show the amount received, and block 9 (c) will contain the CI's signature (assumed name) which will be used as the receipt for the cash payment.

In circumstances where the CI is unavailable to physically accept any reimbursement for travel expenses, an EFT may be used. The EFT confirmation report must be attached to the travel voucher (SF-1012). In block 9 (c) of the SF-1012, the agent responsible for the EFT payment will cite the CI's source number and write "paid by EFT." Block 11 of the SF-1012 will contain the agent's name and signature.

In circumstances where the CI's travel is partially paid by the operation, a memorandum itemizing the costs and reimbursements associated with that travel will be attached to the travel
voucher (SF-1012) prior to the SAC’s approval for payment.

7.15.2 Premium and First Class Travel

Authorizations for premium class travel, business class, or first class must be submitted through the Appropriate Deputy Assistant Director to the Director, Investigations for approval. The memorandum must contain supervisory certification that the traveler’s physical location on the conveyance is an integral part of the clandestine mission. Undercover assignments and en route surveillance duties are characteristic examples of these situations. In these cases, the employee’s physical location on the conveyance is dependent on the suspect violator’s location.

The Director, Investigations is responsible for authorizing premium class travel when it is necessary to accomplish a covert investigative work assignment and for ensuring that supervisory certification is obtained and maintained on file for each such assignment. In addition, the Director, Investigations must submit monthly reports to the Assistant Secretary of ICE on any premium class travel that he or she has approved. Authorization for first class travel shall be requested at the earliest possible time, but no later than 10 working days prior to the travel.

If exigent operational circumstances make it impossible to obtain written approval for premium class or first class travel, the SAC shall send a memorandum through the Appropriate Deputy Assistant Director to the Director, Investigations at the earliest possible time, but no later than 2 business days after the start of the travel. The memorandum will:

A. describe the circumstances that required exigent premium class travel;

B. contain supervisory certification that the traveler’s physical location on the conveyance is an integral part of the clandestine mission; and

C. request authorization by the appropriate level as described above.

A copy of the memorandum must be included in the operation’s financial records.

There are times when individuals traveling on the Government’s business cannot travel under Government procurement rules without jeopardizing the operation’s security. Most commonly, this occurs when a cover agent is traveling on the same conveyance as the target and/or undercover operative. As stated above, the exemption for expenditures from proceeds or appropriated funds may be applied in these situations as these expenses are considered necessary or required. However, it is important to note that although those procedures allow travel to be paid for outside FTR, the policies for authorization of actual subsistence travel and/or premium class travel still apply. ICE policies on premium class travel are detailed in former Customs Directive 5340-011A, “Premium-Class Travel,” dated February 5, 2001.
7.16 Regulating Proceeds

ICE laws, 19 U.S.C. 2081 and 8 U.S.C. 1363a, require that, upon completion of a certified undercover operation, the business entity must be liquidated, sold, or otherwise disposed of. The proceeds, following satisfaction of all obligations, are to be deposited in the U.S. Treasury as miscellaneous receipts unless an independent basis for forfeiture exists. Those forfeited proceeds should subsequently be deposited in the appropriate Forfeiture Fund as opposed to miscellaneous receipts.

A. Each undercover operation is unique, resulting in funding levels and expenses which vary greatly among operations. A comprehensive policy covering all undercover operations, dictating the maintenance of a particular funding level including both appropriated funds and proceeds, is not feasible. Some undercover operations may require only small amounts of funds to maintain their covert identity, while others may require larger sums.

D. Therefore, each SAC is expected to periodically review each undercover operation to determine: 1) the amount of proceeds available in each operation; and 2) the amount of funding necessary for continuance of that particular operation. Should the review determine that excess proceeds have been accumulated, the SAC should seize the excess funds and transmit them to the FP&F officer for the initiation of forfeiture proceedings in cases where forfeiture proceedings would pose no risk of exposing the undercover operation. This requires ICE to establish the elements of the offense which provide the basis for forfeiture of the property or proceeds. Statutes that provide for forfeiture of traceable proceeds, include 18 U.S.C. 981, 31 U.S.C. 5317, and 21 U.S.C. 881.

E. The law does not require notice to the individual if the individual no longer has a legal interest in the property or proceeds. For example, if an individual paid proceeds to undercover agents in return for a service, albeit illegal, performed by ICE as part of the undercover operation, the person would no longer have a legal interest in the proceeds. This situation is distinguished from one where the individual retained an interest in the proceeds. In such a case, notice of the forfeiture must be provided to the individual. Accordingly, each SAC shall determine whether persons may have a legal interest in the property or proceeds to be forfeited. While no notice to the individual may be required, statutory forfeiture provisions require satisfaction of certain procedural elements, including publication in a newspaper of general circulation for 3 consecutive weeks (19 U.S.C. 1607).

F. Prior to submission of the Search, Arrest, Seizure (SAS) Report, also known as the Incident Report, to the Fines, Penalties and Forfeitures (FP&F) Officer, the seizing officer must ensure that the probable cause and/or circumstances regarding the seizure and forfeiture of the money or property are articulated in the “Circumstances/Remarks” portion of the SAS. In addition, the SAS Report must have all the appropriate project codes listed in the “Summary Data Section.”
G. The determination as to which proceeds are to be forfeited and placed in the appropriate Forfeiture Fund or liquidated and deposited as miscellaneous receipts must be made by the SAC prior to the issuance of the “Intent to Close Letter” of the undercover operation. Any forfeiture proceeding may result in a claim; therefore, prior to initiating a forfeiture proceeding related to an ongoing undercover operation, management must be cognizant of potential operational exposure if the forfeiture is contested.

H. If a properly certified undercover operation has received appropriated funds, proceeds may be used to replenish the SAC office budget for salaries and expenses. The reimbursement must occur during the same fiscal year the appropriated funds were received by the operation. The amount of reimbursement is strictly limited to the amount of the expense funded by the appropriated funding. OI may use these reimbursed funds to fund other operations during the same fiscal year. OI’s Financial Resources and Analysis (Administration, Planning and Policy) can provide guidance to accomplish reimbursement of the appropriation.

I. Deposit into the Treasury – If it is determined that proceeds are to be deposited into the U.S. Treasury as miscellaneous receipts, a check and a memorandum requesting this action should be sent to:

   National Finance Center/Commercial Accounts Section
   P.O. Box 68908
   Indianapolis, IN 46268
   Attention: Team Leader, Commercial Accounts Team

7.17 Accounting for Property

All property acquired in the course of an undercover operation will be entered into the Property/Equipment Log for the Undercover Operation (Appendix G). The log must list any property that has been provided by the SAC and, because of its use and location, cannot be properly tracked by the usual property management procedures. In addition, a Property Use File should be established and maintained to record the location and the individual responsible for the property item.

Access to property and its assignment will be limited to one or two authorized individuals who are designated as the Operation Property Officer(s). Property will not be made available to be signed in or out without their involvement. However, in their absence, the Supervisory Special Agent assigned to the operation may assign or receive property.

Property which is purchased outside FAR, pursuant to the expenditure of proceeds, can only be used by the operation which purchased it, unless:

   A. another certified undercover operation, in support of its proprietary, funds the transfer with the understanding that the property must be liquidated at the conclusion of the operation; or
B. the property is seized, forfeited, and retained for official use.

Refer to Section 9.3 of this Handbook for guidance on final disposition/liquidation of property acquired in a certified undercover operation.
Chapter 8 REPORTING GUIDELINES

To sufficiently monitor operational activities, financial transactions, and administrative oversight of certified undercover operations, pertinent information must be made available to senior field and Headquarters managers. This Section contains guidelines to provide necessary information while minimizing additional burden on personnel.

8.1 Reporting Case Activities

Investigative case activities are the core of all undercover operations. They must be documented in an ROI in a timely and comprehensive manner pursuant to existing policy contained in the former Customs Case Management Handbook. They can be used by local and Headquarters managers to:

A. monitor the progress towards the objectives of the operation;

B. provide additional detail and explanation of the information contained in new proposals, reviews, and reauthorization requests;

C. support the documentation of certain financial transactions; and

D. provide justification for POI payments to CIs.

Unless there are compelling reasons to do otherwise, access to ROIs should be level 3 in TECS II. If it is necessary to create level 4 access to an ROI, the following individuals in the Office of Investigations must be added to the access list:

A. the Unit Chief for the appropriate programmatic area; and

B. the Desk Officer for the appropriate programmatic area.

To ensure that all related information can be easily retrieved, Undercover Project Managers must confirm that each case record related to an undercover operation has the correct program code.

8.2 Financial Reporting

All certified undercover operations will submit CUFFS financial data through Undercover Operations to the National Finance Center in Indianapolis. The data must be received in Undercover Operations by close of business on the 15th of each month. If the 15th does not fall on a business day, the information must be received by close of business on the last business day before the 15th. The following procedures will be used:

A. pursuant to Section 7.7.2, the Record Keeper will reconcile CUFFS for the month being reported;

B. the SAC will review and certify the data;
C. a complete copy of the CUFFS data will be generated as a “qbb” backup file. The file will be named in the format “0XXXMMYY.qbb” where:

“0” (zero) is a constant;
“XXX” is the TECS II program code; and
“MMYY” is the month and year being reported.

D. by close of business on the 15th of each month, the backup file will be transmitted to Undercover Operations by inter-office email (as specified by Undercover Operations). If there are questions relating to the transmittal of the file, Undercover Operations should be contacted; and

E. Undercover Operations will review the files for accuracy and conformance to the policies and procedures contained in this Handbook. The information will then be transmitted to the National Finance Center by close of business on the 22nd of the month.
Chapter 9  PROCEDURES FOR CLOSING UNDERCOVER OPERATIONS

The procedures for closing undercover operations as set forth in this Handbook are necessary to comply with the provisions of 19 U.S.C. 2081 and 8 U.S.C. 1363a dealing with liquidation, reports to Congress, and audits. Since 19 U.S.C. 2081 and/or 8 U.S.C. 1363a are the general provisions that authorize ICE to conduct certified undercover operations, failure to comply with these laws could result in modification or even loss of this statutory authority.

This Section incorporates procedures for closing undercover operations including:

A. notification to Headquarters;
B. preparation of a closeout report;
C. liquidation of assets; and
D. financial reconciliation and closeout audit.

9.1 Notification of Intent to Close

When a decision has been made to close a certified undercover operation, but before the present certification has expired, the SAC will send a memorandum to the Unit Chief of the appropriate programmatic area and a copy to the Unit Chief, Undercover Operations.

The memorandum should include:

A. code;
B. the date undercover activities will/did cease;
C. an anticipated date when all criminal proceedings (other than appeals) will be concluded;
D. an anticipated date when the closeout report will be completed;
E. the date the records will be available for closeout audit;
F. the name and phone number of a point of contact to coordinate closeout activities; and
G. any operational or administrative matters that may have an impact on the closeout process.

Once the memorandum is received at Headquarters, an interim closeout certification will be issued for a period of 60 days that includes exemptions 3 and 4 (if necessary). This will allow the operation to maintain a bank account and continue using proceeds to fund the closeout
process.

9.2 Closeout Reports

The closeout reports serve to provide an overview of the strategy and results of undercover operations. They should include descriptions of the successes, as well as problems that influenced operational effectiveness.

Closeout reports must be completed as soon as possible, but no later than 60 days from:

A. the date of the interim closeout certification; or

B. the date the last certification expired.

The format of the closeout report (Appendix H) contains a Section for reporting incomplete administrative tasks. A closeout report can be submitted before all related administrative activities have been accomplished. If no additional undercover activities are anticipated, the closeout report should be completed even though:

A. additional statistics may result from upcoming criminal proceedings;

B. not all property has been disposed of; or

C. all funds have not yet been deposited into the Treasury.

For example, if an undercover operation is no longer active and is retaining money in bank accounts to pay for audit travel expenses, the closeout report should be completed. Completion of the outstanding activities will be captured in the closeout audit and/or annual report to Congress.

9.3 Liquidation of Assets

For the purposes of disposal, assets of an undercover operation are divided into four categories:

A. monetary instruments;

B. property acquired outside FAR under the business exemption using appropriated funds or proceeds;

C. property acquired by the operation through FAR using appropriated funds or proceeds and dedicated for use in the proprietary; and

D. property, acquired through FAR but not dedicated for use in the proprietary, which will be retained.
The options for disposing of assets may be different in each category. However, it is essential that:

A. the final disposition of assets be supported with proper documentation;

B. the final disposition of property is consistent with statutory requirements; and

C. the property log is annotated to show the final disposition of each item.

9.3.1 Monetary Instruments

Proceeds that remain at the conclusion of an undercover operation can be liquidated in one of two ways:

9.3.1(1) Forfeiture

If it can be sufficiently documented that the proceeds are a result of a violation of a statute which gives rise to the forfeiture of proceeds, the monetary instruments are subject to forfeiture and deposit in the Treasury Forfeiture Fund.

If the source of the proceeds no longer has a legal claim on the funds, notification of the forfeiture is not required. However, in unusual circumstances, it will be necessary for the SAC to determine whether or not any person, such as an innocent third party, may have a legal interest in the specific proceeds to be forfeited. SACs should consult with the appropriate Agency Counsel for advice in specific instances.

9.3.1(2) Deposit as Miscellaneous Receipts

All proceeds, which are not forfeited as described above, must be deposited into the Treasury of the United States as miscellaneous receipts. Appropriated funds must also be deposited into the Treasury of the United States. This can be accomplished by sending a cashier’s check, money order, or EFT.

To return proceeds or appropriated funds by cashier’s check or money order, the EFT, cashier’s check, or money order should be made payable to the Bureau of Immigration and Customs Enforcement and sent to:

Former Customs Service:

Bureau of Immigration and Customs Enforcement
National Finance Center
Accounts Payable Branch/Commercial Accounts Section
P.O. Box 68908
Indianapolis, Indiana 46268
Attn: Investigative Advances/Covert Operations
Former INS:

Use existing policies and procedures to dispose of proceeds and appropriated funds.

A memorandum identifying the money as proceeds of a specific operation, giving the name of the operation and the program code and requesting deposit in the Treasury should be enclosed with the cashier’s check or money order. If a portion of the funds returned are appropriated funds, include the Accounting Control Transaction (ACT) number on the cashier’s check or money order and specify the breakdown of proceeds and appropriated funds in the memorandum. A copy of the cashier’s check or money order and the memorandum must be added to the financial records of the operation. It is important to note that the deposit of such proceeds may be delayed until they are no longer needed as evidence.

To return proceeds or appropriated funds by EFT, provide the banking institution with a request on U.S. Government letterhead stating that a funds transfer message be transmitted to the Treasury. The written request must contain the following information:

Former Customs Service:

Treasury Department Code or Treasury Department ABA #: 021030004
Amount of EFT: $xx.xx
Treasury Department Name: Treas NYC/(ALC) and Agency Locator Code (ALC): 20060800
Agency Name: U.S. Bureau of Immigration and Customs Enforcement

Former INS:

Use existing INS funds deposit addresses and procedures

A copy of the written request, deposit ticket, documentation from the original EFT, and a memo identifying the funds being returned must be completed. The original ACT number and the original schedule certification number (W9c_ _ _ _) should be included in the memo. Also include the accounting strip information including the budget plan, organization code, and program code. Copies should be sent to the following offices:

A. For appropriated and proceeds EFTs:

Former Customs Service:

Bureau of Immigration and Customs Enforcement
National Finance Center
Accounts Payable Branch/Commercial Accounts Section
P.O. Box 68908
Indianapolis, Indiana 46268
Attn: Investigative Advances/Covert Operations
Former INS:

Use existing INS funds deposit addresses and procedures

B. For appropriated EFTs only:

Former Customs Service:

Administration, Planning and Policy
Financial and Logistics Management
Financial Resources and Analysis
Office of Investigations
425 I Street, Room 4038
Washington, DC 20536

Former INS:

Use existing INS funds deposit addresses and procedures

9.3.2 Property Acquired Outside FAR Under the Business Exemption

If, under the business exemption, appropriated funds or proceeds were expended outside FAR to purchase property for an undercover operation, it must be disposed of in one of three ways:

9.3.2(1) Liquidate

Operational personnel should attempt to dispose of non-sensitive equipment (i.e., furniture, files, copiers, etc.) through completion of an SF 126, “Report of Property for Sale.” This form should be mailed to the National Logistics Center, Fleet and Property Management Branch, P.O. Box 68915, Indianapolis, IN 46268. The National Logistics Center will subsequently interact with General Services Administration (GSA) officials to process the claim for liquidation.

All proceeds from the sale of the property must be deposited in the Treasury.

9.3.2(2) Transfer

After an operation has been concluded, items purchased using the expenditure of proceeds exemption may be transferred to a proprietary in another ongoing certified undercover operation, which must pay any expense associated with the transfer of such property. The transfer must be approved by the Deputy Assistant Director, Investigative Services. The transfer must occur at the time of liquidation. The property cannot be stored in anticipation of starting another operation. However, the property may also be transferred to proprietaries in certified operations in other offices. In either case, the recipient would then become responsible for proper transfer, forfeiture, or liquidation of the property at the conclusion of the operation.
The procedures for transferring property that has been acquired under the expenditure of proceeds exemption to another certified undercover operation requires a memorandum from the Undercover Project Manager which:

A. specifically identifies the equipment being transferred (make, model, serial number, color, etc.);

B. lists the operations involved in the transfer;

C. states that the property was acquired under the proprietary exemption and must be disposed of pursuant to 19 U.S.C. 2081 and 8 U.S.C. 1363a; and

D. includes a signature block for the Undercover Project Manager of the receiving operation.

The transfer memorandum will be forwarded to the SAC for approval.

A. The transfer memorandum will be placed in the Property Use File.

B. Copies of all documents in the original Property Use File will be provided to the receiving operation.

C. The receiving operation will include a copy of the transfer memorandum and all documents from the transferring operation.

D. The Property Log of the transferring operation will be annotated to show the transfer in the “Final Disposition” column.

E. The receiving operation will enter the property into their Property Log showing $0 as the cost of acquisition.

Any expenses incurred in transferring the property must be paid from appropriated funds or proceeds of the receiving operation.

Proceeds cannot be transferred and must be liquidated as described in Section 9.3.1.

9.3.2(3) Forfeit

Any property that has been purchased using the proprietary exemption, which was subject to forfeiture under a statute containing a tracing provision, may be forfeited.

It should be noted that this option is the only time when the type of funds (proceeds or appropriated) needs to be considered for final disposition of goods in an undercover operation. After forfeiture, applicable procedures could be used to acquire the property for Government service.
9.3.3 Property Acquired Through the Use of FAR

If appropriated funds or proceeds were expended using FAR and the property was dedicated solely for use in the proprietary, it must be disposed of in the same manner as described above in Section 9.3.2(1) or (2).

In the case of sensitive law enforcement equipment (i.e., keil kits, radios, technical equipment, etc.), the equipment must not be available to the general public via GSA. This equipment may be transferred to another law enforcement agency in accordance with property transfer guidelines (PIMS) or destroyed.

If appropriated funds or proceeds were expended using FAR, and the property was not dedicated solely for use in the proprietary, then the property should be treated in the same manner as any item owned by ICE.

9.4 Closeout Audits

ICE policy requires that a complete audit be conducted on operations that have been certified to:

A. establish a proprietary;
B. deposit funds in a bank; or
C. expend proceeds.

These audits are not subject to the 180-day time requirement.

Former Customs Service:

All closeout audits will be conducted by the Office of Internal Affairs (IA), Management Inspection Division (MID). After receipt of the memorandum from the SAC that an operation will be closing, Undercover Operations will notify MID to coordinate the scheduling of the audit.

Former INS:

All former INS closeout audits will be conducted by former INS OIA.

9.5 Closeout of CUFFS

When the SAC sends a memorandum to Headquarters stating the intent to close an undercover operation, the following steps should be taken to close out CUFFS:

A. all outstanding advances must be liquidated;
B. the petty cash fund will do a final reconciliation and return any balances to the operation’s bank account;
C. all recurring obligations such as leases and service contracts will be terminated or the obligation transferred to an ongoing operation, if applicable;

D. all outstanding debts of the operation will be settled;

E. all investments will be liquidated and deposited into the operation’s bank account;

F. security deposits or other money owed to the operation will be deposited in the operation’s bank account; and

G. the assets of the operation will be liquidated as per Section 9.3 and the expenses and proceeds from the liquidation will be entered into CUFFS.

Once the above steps have been taken, all remaining funds except $10,000 in proceeds, if available, will be disposed of using one of the methods detailed in Section 9.3. The remaining $10,000 will be used to offset expenses incurred by MID in auditing the operation. Following the audit, MID will provide a detailed account of the expenses to Undercover Operations, which will forward it to the SAC with instructions to transfer the necessary funds. Any money remaining will be deposited into the Treasury General Fund and the CUFFS records will be closed.

The undercover operation must continue to file monthly financial reports as described in Section 8.2 until the CUFFS records are closed. Once the CUFFS records are closed and the final closeout audit is conducted, the final CUFFS reports must be sent to Headquarters, Undercover Operations, as described in Section 8.2.

Chapter 10  TRAUMATIC INCIDENT RESPONSE

Should a traumatic incident occur during an undercover assignment, such as a shooting or other incident threatening life or limb, the SAC should notify Undercover Operations immediately. After notification, and with the concurrence of the Deputy Assistant Director, Investigative Services, Undercover Operations will coordinate the dispatch of a contract psychologist to provide support to the individuals involved and to all affected members of the operative’s office.

The use of an Undercover Operations psychologist is restricted to incidents related to an undercover assignment. They will not seek to analyze the incident, but only to provide assistance in helping the involved employees.

It should be noted that participation in debriefings conducted by psychologists under contract to ICE and participation in the traumatic incident response is voluntary. Although these activities are provided for the safety and well being of the undercover operative, participation is not mandatory.
This type of intervention is separate and distinct from the services provided by the Employee Assistance Program. The services are available only in the case of a traumatic incident occurring during an undercover assignment, or as a result of undercover work.

Chapter 11 TRAINING

Undercover Operations is responsible for the establishment and presentation of the following courses in support of undercover operations:

A. Undercover Manager School;
B. Undercover Operatives School;
C. Field Undercover Liaison Coordinator School; and
D. Undercover Record Keeper School.

All ICE employees who are assigned to work in any undercover capacity, with the exception of casual undercover, must have completed the basic Undercover Operatives School. However, under limited exigent circumstances, this requirement may temporarily be waived with the approval of the Deputy Assistant Director, Investigative Services. Former INS employees, who are currently working or have previously worked in an undercover capacity, are automatically eligible to receive this waiver until space is available for them to attend the basic Undercover Operatives School.

In order to obtain a waiver of the requirement for basic undercover operatives training, the SAC must submit a standard memorandum to the Deputy Assistant Director, Investigative Services, which addresses the following items:

A. the overall experience of the operative, including any previous undercover assignments and undercover training with other agencies;
B. the operational necessity giving rise to the waiver request, including any unique skills or knowledge the agent possesses or any unique relationships he or she has to targets or informants;
C. the exigent circumstances which require that a waiver be granted before the next available training; and
D. the particular undercover role that the agent will be performing and the type and frequency of undercover contacts which are anticipated.

Note: As stated above, Former INS employees, who are currently working or have previously worked in an undercover capacity, are automatically eligible to receive this waiver until space is available for them to attend the basic Undercover Operatives School. Only subsection A above is required to be submitted for this automatic waiver; subsections B through D are not required.
After a waiver is granted, the names of all the employees who have obtained waivers will be submitted to Undercover Operations for inclusion in subsequent Undercover Operatives Schools. The ability to conduct undercover activity under the authority of a waiver will remain in effect until that operative has attended the Undercover Operatives School and has been certified to conduct undercover operations.

As always, every effort should be made to ensure maximum safe coverage for the agent while performing in an undercover assignment. Particularly in those instances where the agent has not been trained in such areas as personal conduct, avoidance of entrapment, and how to respond to a target’s accusations, extra attention should be employed to maintaining the well-being of the agent and the integrity of the operation.

11.1 Start-up Team

The SAC can request a start-up team to assist in the onset of a new certified undercover operation by sending a memorandum to the Deputy Assistant Director, Investigative Services. Undercover Operations, in conjunction with the appropriate program Unit Chief, will assemble a team of managers who have a minimum of 3 years of managerial experience in undercover operations and are knowledgeable about undercover policies, procedures, and record keeping. To ensure compliance with the provisions of this Handbook, the team will travel to the site of the operation to provide instruction for individuals involved in the various aspects of the undercover operation.
Chapter 12 MANAGEMENT CONTROLS

Undercover operations by their nature require that investigators engage in techniques, which are unlike standard Government procedures. The authority granted to ICE to conduct undercover operations allows agents to create businesses as part of the operation that are exempt from some of the statutes that are intended to create checks and balances in the management of public monies. Therefore, it is imperative that field managers employ proper controls to provide complete accountability for the use of this powerful investigative method and all Government monies involved.

This Section provides a review of the management controls, which serve to ensure that the activities of undercover operations are properly documented and reviewed.

12.1 Monthly Reports (Financial)

At the beginning of each month, and after the Record Keeper has completed all CUFFS entries for the previous month, each operation must undergo a thorough financial review by field office managers:

The Record Keeper will prepare a review package with the following information:

A. CUFFS Balance Sheet Report (expanded) ending on the last day of the previous month;

B. copies of the most recent bank statements for all accounts;

C. petty cash funds on hand count sheet;

D. CUFFS Reconciliation Summary Report;

E. CUFFS Profit and Loss by Class Report (collapsed) from inception to the last day of the previous month;

F. CUFFS Profit and Loss Itemized Report for the month being reported;

G. copies of approval documents and transaction documents for any expenditures using the expenditure of proceeds exemption and exceeding $5,000, or the locally established first line supervisor approval level; and

H. budget reports for all outstanding advances received by the operation and summary spending limits of the current certification.

The Operation Manager will use the review package to complete the Undercover Operation Monthly Financial Review Worksheet (Appendix I). This worksheet will include:
A. any findings requiring correction or further review, which will be noted in the spaces provided; and

B. any corrective action taken, which will also be recorded.

The Operation Manager will forward the completed worksheet and review package to the SAC for certification and signature. The review package and worksheet will be retained as part of the operational files.

After the financial review has been completed, but no later than the 15th of each month, a complete copy of the CUFFS database will be transmitted to Undercover Operations by inter-office email as detailed in Section 8.2.

12.2 Petty Cash Review

At least once every 3 months, a supervisor who is not involved in the operation will conduct an unannounced review and reconciliation of the petty cash fund. At a minimum, the cash count must be reconciled with:

the balance shown in the Petty Cash Daily Register;

all outstanding advances;

all documentation relating to expenditures made since the last review; and

all documentation relating to advances made by the operation to the fund.

The audit will also include:

A. a random sampling of not less that ten transactions to determine compliance with record keeping and approval policies and procedures (if less than ten transactions were made in the period, a 100% review will be required); and

B. a review of CUFFS records to determine if all Petty Cash Fund transactions from the last 2 completed months have been properly posted.

A Record of Petty Cash Review form will be used to document the completion of the review. The form will be retained as part of the operation’s records.

12.3 Headquarters Oversight

The Deputy Assistant Director, Investigative Services, and the Deputy Assistant Directors, will employ sufficient Headquarters staff to monitor the conduct of certified undercover operations. They will gather and assess information to establish whether operations are being conducted in accordance with:
A. existing policies and procedures;
B. appropriate operational techniques; and
C. current programmatic priorities.

12.3.1 Ongoing Oversight

During the course of certified undercover operations, the Operational Desk Officer must monitor and review the progress of related cases. This will be accomplished principally through personal contact with field managers and by reading related ROIs and enforcement activity reports. The Desk Officers are charged with finding resolutions to operational and programmatic issues that are encountered.

Program Managers in Undercover Operations will review the financial data sent to Headquarters monthly to confirm that:

A. the financial data is being properly recorded and reported;
B. expenditures are within the amounts approved under the current certification period; and
C. expenditures are “necessary and reasonable” and are made only for items approved under the current certification.

Program Managers in Undercover Operations will also monitor certified operations for conformance to policies and procedures relating to undercover:

A. certification;
B. backstopping;
C. record keeping;
D. training; and
E. the Undercover Liaison Coordinator Program.

In close coordination with the appropriate field managers, the Program Managers in Undercover Operations will attempt to resolve any policy and procedural inconsistencies they note, based on their knowledge of the requirements of this Handbook and related case information. Policy or procedural issues that cannot be adequately resolved, or issues that are determined to be operational in nature, will be referred by memorandum to the appropriate Unit Chief.
12.3.2 On-site Field Reviews

Undercover operations will undergo a detailed on-site review every 2 years to determine whether:

A. the operation is being conducted as originally authorized;
B. the stated goals of the operation are being adequately addressed;
C. the books and records are current and in accordance with policy; and
D. the operation is being properly administered and supported by management.

The intent of the on-site review is to thoroughly examine all operational and administrative aspects of ongoing operations. Reviews will be conducted by representatives from Headquarters and/or field managers. They will include a comprehensive review of information provided to Headquarters as part of the 6-month re-certification packages as well as field interviews of operational personnel.

Operational personnel that will be interviewed during the on-site reviews include:

A. local available senior management (SAC, Associate SAC, ASAC, or RAC);
B. group supervisor and project manager;
C. each case agent;
D. undercover liaison coordinator;
E. each undercover agent;
F. Assistant U.S. Attorney who has prosecuted the most investigations;
G. Record Keeper; and
H. petty cashier (if applicable).

On-site reviews afford management an effective tool to evaluate an operation and provide any needed support. The Field Review Assessment Form will be used as a framework for all on-site reviews. The process will cover:

A. review of ROIs for cases in the operation;
B. review of results of the past 6 months towards the stated goals of the operation;
C. review of the use of statutory exemptions granted to the operation;
D. review of expenditures to be conducted at the very least since the last undercover operations field review;

E. assessment of the proposed budget for the next 6 months;

F. assessment of the operational strategy proposed for the next 6 months;

G. contact with field managers; and

H. identifying areas where Headquarters can provide additional support.

The results of the on-site review will be summarized and provided to local management. The summary report will become part of the operation’s permanent files. At the conclusion of the review, the SAC will also receive a copy of the completed Field Review Assessment Form, which will become part of the operation’s permanent files.

It is incumbent upon the SAC to correct the issues delineated in the Field Review Assessment report and provide a written response of the corrective actions within 45 days to the respective Deputy Assistant Director, who will then forward it to Undercover Operations and the appropriate Unit Chief, for review and concurrence.

12.4 Property Inventories

The Undercover Project Manager will ensure that a complete physical inventory of all items on the Property/Equipment Log for Undercover Operations (Appendix G) is conducted in a timely manner, so that it will coincide with the annual ICE inventory of capitalized property.

The following procedure will be employed:

A. the Undercover Project Manager will request that the SAC assign an individual who is independent from the operation to conduct the inventory;

B. the Undercover Project Manager will provide a complete copy of the Property/Equipment Log to the person assigned to complete the inventory;

C. using the copy of the Property/Equipment Log, the person taking inventory will perform a physical inspection of each item listed, and date and initial the “Inventory” column to indicate that the item has been located;

D. any discrepancies will be brought to the attention of the Undercover Project Manager who will provide an explanation and make the appropriate changes to the Property Files;

E. if, for any reason, an item cannot be physically inspected, the Undercover Project Manager will provide a memorandum explaining the reason and certifying its location and condition; and
F. if any property is determined to be lost, stolen, or destroyed:

1) the Undercover Project Manager will ensure that a CF 52, *Report of Property for Survey*, is completed;

2) the procedures contained in former Customs Issuance System Handbook 5200-13, Personal Property Management Handbook, Chapter 11 (dated March 1996) will be followed to determine final disposition;

3) the final disposition will be noted in the Property/Equipment Log; and

4) a copy of the completed CF 52 will be placed in the Property Use File.

The Annual Property Inventory (Appendix J) will be attached to the annotated copy of the Property/Equipment Log and supporting memorandum(s) and attested to by:

A. the individual who took the inventory;

B. the Operation Manager; and

the SAC or ASAC/RAC.

The package will then be retained as part of the operation’s permanent records.

12.5 Undercover Identification Inventory

Coinciding with the property inventory, the SAC must ensure that a complete physical inventory of all undercover identification is conducted. Using the SAC’s undercover identification files, the individual assigned to inventory covert identification documents must personally ensure that the location of all undercover identification has been properly documented. Agents who have been authorized to retain undercover identification will physically present it for counting. A memorandum specifically listing any discrepancies found and certifying the completion of the inventory will be signed by:

A. the individual who took the inventory;

B. the Operation Manager; and

C. the SAC or ASAC.

The memorandum will then be retained as part of the permanent office records.
12.6 Independent Audits

Auditors from IA’s MID will conduct a comprehensive audit of each undercover operation every 2 years. A copy of the audit report will become part of the operation’s permanent records.
19 U.S.C. 2081. Undercover investigative operations of the Customs Service

(a) Certification required for exemption of undercover operations from certain laws.

With respect to any undercover investigative operation of the United States Customs Service (hereinafter in this section referred to as the “Service”) which is necessary for the detection and prosecution of offenses against the United States which are within the jurisdiction of the Secretary of the Treasury -

(1) sums authorized to be appropriated for the Service may be used -

(A) to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to -

(i) sections 1341 and 3324 of title 31,
(ii) sections 11(a) and 22 of title 41,
(iii) section 255 of title 41,
(iv) section 34 of title 40, and
(v) section 304(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254 (a)), and

(B) to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31;

(2) sums authorized to be appropriated for the Service and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18 and section 3302 of title 31; and

(3) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31;

only upon the written certification of the Commissioner of Customs (or, if designated by the Commissioner the Deputy or an Assistant Commissioner of Customs) that any action authorized by paragraph (1), (2), or (3) of this subsection is necessary for the conduct of such undercover operation.
(b) Liquidation of corporation and business entities.

If a corporation or business entity established or acquired as part of an undercover operation under paragraph (1)(B) of subsection (a) of this section with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his designee determines is practicable, shall report the circumstances to the Secretary of the Treasury. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(c) Deposits of proceeds.

As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under paragraphs (2) and (3) of subsection (a) of this section are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(d) Audits.

(1) The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year, and

(A) submit the results of the audit in writing to the Secretary of the Treasury; and

(B) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(2) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations -

(A) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(B) the number, by programs, of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted; and

(C) the number, by programs, of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto.
(e) Definitions.

For purposes of subsection (d) -

(1) The term “closed” refers to the earliest point in time at which -

(A) all criminal proceedings (other than appeals) are concluded, or

(B) covert activities are concluded, whichever occurs later.

(2) The term “employees” means employees, as defined in section 2105 of title 5, of the Service.

(3) The terms “undercover investigative operation” and “undercover operation” mean any undercover investigative operation of the Service -

(A) in which –

(i) the gross receipts (excluding interest earned) exceed $50,000, or

(ii) expenditures (other than expenditures for salaries of employees) exceed $150,000; and

which is exempt from sections 3302 or 9102 of title 31, except that subparagraphs (A) and (B) shall not apply with respect to the report required under paragraph (2) of subsection (d) of this section.
8 U.S.C. 1363a. Undercover investigation authority

(a) In general
With respect to any undercover investigative operation of the Service which is necessary for the detection and prosecution of crimes against the United States:

(1) sums appropriated for the Service may be used for leasing space within the United States and the territories and possessions of the United States without regard to the following provisions of law:

(A) section 1341(a) of title 31,
(B) section 11(a) of title 41,
(C) section 255 of title 41,
(D) section 34 of title 40,
(E) section 3324(a) and (b) of title 31,
(F) section 22 of title 41, and
(G) subsections (a) and (c) (FOOTNOTE 1) of section 254 of title 41;

(FOOTNOTE 1) See References in Text note below.

(2) sums appropriated for the Service may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to the provisions of section 9102 of title 31;

(3) sums appropriated for the Service, and the proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18 and of section 3302(a) of title 31; and

(4) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302(b) of title 31.

The authority set forth in this subsection may be exercised only upon written certification of the Commissioner, in consultation with the Deputy Attorney General, that any action authorized by paragraph (1), (2), (3), or (4) is necessary for the conduct of the undercover operation.

(b) Disposition of proceeds no longer required
As soon as practicable after the proceeds from an undercover investigative
operation, carried out under paragraphs (3) and (4) of subsection (a) of this section, are no longer necessary for the conduct of the operation, the proceeds or the balance of the proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Disposition of certain corporations and business entities
If a corporation or business entity established or acquired as part of an undercover operation under paragraph (2) of subsection (a) of this section with a net value of over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or Commissioner's designee determines practicable, shall report the circumstances to the Attorney General, the Director of the Office of Management and Budget, and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) Financial audits
The Service shall conduct detailed financial audits of closed undercover operations on a quarterly basis and shall report the results of the audits in writing to the Deputy Attorney General.

-SOURCE-
(June 27, 1952, ch. 477, title II, ch. 9, Sec. 294, as added Pub. L. 104-208, div. C, title II, Sec. 205(a), Sept. 30, 1996, 110 Stat. 3009-567.)

-REFTEXT-
REFERENCES IN TEXT

-COD-
CODIFICATION
In subsec. (a)(1)(A), (E), (2) to (4), "section 1341(a) of title 31" substituted for "section 3679(a) of the Revised Statutes (31 U.S.C. 1341)", "section 3324(a) and (b) of title 31" substituted for "section 3648 of the Revised Statutes (31 U.S.C. 3324)", "section 9102 of title 31" substituted for "section 304 of the Government Corporation Control Act (31 U.S.C. 9102)", "section 3302(a) of title 31" substituted for "section 3639 of the Revised Statutes (31 U.S.C. 3302)", and "section 3302(b) of title 31" substituted for "section 3617 of the Revised Statutes (31 U.S.C. 3302)", on authority of Pub. L. 97-258, Sec. 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.
| **UNDERCOVER OPERATIONS**  
**APPLICATION FOR AN UNDERCOVER OPERATION** |
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date Submitted</strong>:</td>
</tr>
<tr>
<td><strong>Name of Operation</strong>:</td>
</tr>
<tr>
<td><strong>Programmatic Area</strong>: [Contraband Smuggling, Human Trafficking etc…]</td>
</tr>
<tr>
<td><strong>Location</strong>: [SAC or RAC]</td>
</tr>
<tr>
<td><strong>Group Supervisor</strong>: [and contact telephone number]</td>
</tr>
<tr>
<td><strong>Operation Program Manager</strong>: [UC Schools dates 00/00]</td>
</tr>
<tr>
<td><strong>Case Agent(s)</strong>:</td>
</tr>
<tr>
<td><strong>Undercover Operative(s)</strong>: [UC Schools dates 00/00]</td>
</tr>
<tr>
<td><strong>Financial Record Keeper</strong>: [UC Schools dates 00/00]</td>
</tr>
<tr>
<td><strong>Exemption Requested</strong>: [the exemptions should be listed, 1,2,3,4]</td>
</tr>
<tr>
<td><strong>AUSA</strong>: [attach letter from USA or AUSA]</td>
</tr>
<tr>
<td><strong>Counsel</strong>: [and contact telephone No]</td>
</tr>
<tr>
<td><strong>Offsite Location</strong>: [Yes or No]</td>
</tr>
<tr>
<td><strong>Internet Web Site</strong>: [Yes or No]</td>
</tr>
<tr>
<td><strong>Special Interest Aliens</strong>: [If applicable, Yes or No]</td>
</tr>
<tr>
<td><strong>Sensitivity</strong>: [DHS or ICE]</td>
</tr>
<tr>
<td><strong>Funding Requested</strong>: [appropriated funding needed]</td>
</tr>
<tr>
<td><strong>Expenditure Authorization Requested</strong>: [spending ceiling requested (w/ proceeds)]</td>
</tr>
<tr>
<td><strong>DEA Designated ASAC</strong>: [only if appropriate and contact telephone no]</td>
</tr>
<tr>
<td><strong>Related Cases</strong>: [list case numbers - current active cases]</td>
</tr>
<tr>
<td><strong>Leased Vehicles</strong>: [SAC approval, Yes or No]</td>
</tr>
</tbody>
</table>
FOREIGN OFFICES CONTACTED: [If applicable, Yes or No]

PRELIMINARY ACTIVITIES:

Briefly summarize the case activities which have occurred to date. What is the nature and extent of undercover activities that have already occurred? Include a brief description of the operational targets and discuss the focus of the operation. If possible, identify a particular case number which best describes the criminal activities of the subjects under investigation.

POTENTIAL:

Illustrate the potential for success. Specifically, who are the current identified targets? Describe the undercover scenario(s) and the evidence that is anticipated to result from them. Describe the goals that can be achieved over the next six months. What strategies will be employed to achieve them? What objectives must be met before the operation is concluded and when is this likely to occur?

SECURITY:

In light of the previous activities of the investigation, has the operation been compromised in any way so far? How can the project continue without being compromised?

SAFETY:

Describe the nature and frequency of undercover activities and the risk of personal injury, property damage, financial loss, or harm to innocent third parties. How long has the investigation been active? What actions will be taken to ensure the physical and psychological well being of the operative(s) and innocent third parties if applicable (i.e. smugglees)? Have the undercover agents attended and are they certified to conduct undercover work (U/C Operative School)? If not, a request for a waiver to work in an undercover capacity must be submitted from the appropriate SAC and approved by the Deputy Assistant Director, Investigative Services.

SIGNIFICANCE:

Summarize the investment of resources (financial and personnel) that will be devoted to this operation. Demonstrate how the investment is warranted in light of the importance of the identified targets of the operation and the investigative priorities of ICE. Specifically identify the investigative priorities that relate to the operation.

EXEMPTIONS:

List certifications for exemptions under Title 19 U.S.C. 2081 and/or 8 U.S.C. 1363a, necessary for the conduct of the operation. Provide justifications for each of the exemptions requested.
SPECIAL INTEREST ALIENS:

What Special Interest Aliens are likely to be involved in the operation? Identify the nationalities by case and briefly describe how they will be involved.

SENSITIVE CIRCUMSTANCES:

List both DHS and ICE sensitive circumstances, as defined in Appendix (L) of the Interim ICE Undercover Handbook, which are likely to occur in the operation? Identify them and briefly describe what they will involve. (One section for DHS and one for ICE sensitive circumstances.)

OTHER AGENCIES:

If other agencies are involved, provide the following information:

- What is the role and degree of involvement of other agencies in this operation?
- Has this operation been reviewed through another agency's undercover process? If so, what was the result?
- Who is responsible for determining investigative strategies among the agencies involved?
- What MOUs are applicable to this operation and have there been operational issues related to them?
- What arrangements have been made regarding prosecutions relating to the operation?
- Who will present the cases to the United States Attorney’s Office?
- What ICE violations will be considered for prosecution?
- What arrangements have been made with other agencies regarding payment for expenses of the operation?
- What agreements have been reached with other agencies regarding proceeds of the operation?

If this operation is directly related to HIDTA or OCDETF, attach a copy of the proposal to this application.

FOREIGN TRAVEL:

If foreign travel is anticipated, provide the following information:

- Describe any foreign travel anticipated and indicate that appropriate undercover documentation, i.e. undercover identification, required to accomplish the objectives, set forth in the proposal, will be (or have been) identified. The documentation required should be determined in consultation with the relevant Customs Attaché.

If no foreign travel is anticipated put non-applicable (n/a) under this section. (This will not preclude an operation from traveling foreign if circumstances develop during the course of the operation which necessitate foreign undercover activity).
**BUDGET:**

Estimate the budget for six months, providing Object Class Code and line item description. Also explain any unusual or costly expenses. Only include OCC’s that are necessary for the conduct of the operation. In this section list any recoverable funds, however, do not include this amount in the total expenditures. **Please start this section on a separate page and please use this format.**

Funding Requested: 0

<table>
<thead>
<tr>
<th>OCC 21 - Travel &amp; Transportation of Persons</th>
<th>OCC 25 - Other Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>OCC 21.11 Per Diem $2,000</td>
<td>OCC 25.78 Vehicle Maintenance $500</td>
</tr>
<tr>
<td>OCC 21.12 Common Carrier 3,000</td>
<td>OCC 25.48 Custodial Services 200</td>
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<tr>
<td>OCC 21.14 Rental Car less 60 days 2,000</td>
<td>OCC 25.79 Other Maintenance 500</td>
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<tr>
<td>OCC 21.17 Rental Car more 60 days 20,000</td>
<td>OCC 25.25 Other Svcs/Bank Fees 500</td>
</tr>
<tr>
<td>OCC 91.21 CI/Per Diem 1,000</td>
<td>OCC 25.27 Insurance Premiums 2,500</td>
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<td>OCC 91.22 CI/Common Carrier 1,000</td>
<td>OCC 25.12 Consulting/Pers Svcs 5,000</td>
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<td>OCC 21.31 Foreign/Per Diem 1,500</td>
<td>OCC 25.7F Other Storage 1,000</td>
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<td>OCC 21.32 Foreign/ Common Carrier 1,500</td>
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<td>OCC 21.34 Foreign/Rental 500</td>
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<table>
<thead>
<tr>
<th>OCC 22 - Transportation of Things</th>
<th>OCC 26 - Supplies and Materials</th>
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</thead>
<tbody>
<tr>
<td>OCC 22.12 Bills of Lading $500</td>
<td>OCC 26.41 Aircraft Gasoline $100</td>
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<tr>
<td>OCC 22.14 Com Rental Non-Pass 2,000</td>
<td>OCC 26.42 Vehicle Gasoline 500</td>
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<tr>
<td>OCC 22.15 Parcel Post 20</td>
<td>OCC 26.12 Subscrips &amp; Pubs 50</td>
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<td><strong>Subtotal:</strong> $2,520</td>
<td>OCC 26.11 Office Supplies 1,500</td>
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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>OCC 23.21 Rental of Space $15,000</td>
<td>OCC 31.2 Office Equipment $1,000</td>
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<td>OCC 23.52 Telephone-Local 15,000</td>
<td>OCC 31.5 ADP Software 2,000</td>
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<td>OCC 23.53 Telephone-Long Dist 3,000</td>
<td>OCC 31.6 ADP Equipment 1,000</td>
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<td>OCC 23.33 Utilities 1,000</td>
<td>OCC 31.7 Telecomm Equipment 500</td>
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<td>OCC 23.81 Postage 100</td>
<td>OCC 31.9 Other Equipment 500</td>
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<td>OCC 23.71 Other Equip Rental 1,000</td>
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<td><strong>Subtotal:</strong> $35,100</td>
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<table>
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<tr>
<th>OCC 91 - Purchase of Evidence/Info</th>
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<td>OCC 91.11 POI/POE $30,000</td>
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<tr>
<td>OCC 91.13 Source Dev/Casual UC 1,000</td>
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<tr>
<td>OCC 91.14 MLD Fees 1,000</td>
<td><strong>Subtotal:</strong> $32,000</td>
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</table>

**Total Expenses: $130,520**
INFORMANTS:

Provide a list of the informants (by source number) who are currently involved in the operation. For each informant, provide the following information:

- What is the CI number?
- Is the informant a defendant or possible defendant in a criminal matter?
- What is the role of the informant in the operation?
- How has the informant demonstrated their reliability?
- What is the motivation of the informant?
- Who is controlling the informant?
- List by date the payments made to the informant in the last 12 months by any law enforcement agency for any purpose and show who made each payment?
- Place an asterisk by payments that relate directly to this operation.
- List total amount paid to the informant in this operation.
- List any other income derived by the informant from this operation and explain the circumstances for earning it.
- Attach a copy of the written Personal Assistance Agreement (PAA), if applicable, for the informant. (ICE Interim Undercover Operations Handbook, Chapter. 6.7).

LEASED VEHICLES

If the use of leased vehicles is anticipated, specific vehicle models, monthly and annual leased costs, operator names, and a brief justification for the use of each leased vehicle must be indicated. In initial operational proposals, estimates of leased costs and types of vehicles anticipated to be used must be reported. In applications for re-authorization, specific amounts should be shown.

FOREIGN OFFICES CONTACTED

If the operation involves or may involve foreign investigative activities or foreign investigative leads, please indicate the countries involved and identify what foreign offices have been contacted.

NOTE:

Note 1: Applications must be reviewed and concurred by Counsel at Headquarters will be involved in reviews of new operations). This may be documented by either stating Counsel’s concurrence in the SAC’s cover memorandum or in a separate memorandum generated by Counsel. (Please see Chapter 4.8.1 – Proposal Procedures Initial Review)

Note 2: Applications must be accompanied by a letter from an Assistant United States Attorney or the United States Attorney responsible for prosecuting the violators. For contents of the letter, see Chapter 4.8.2.

Note 3: The words “For Official Use Only” must appear at the bottom of each page.
**Note 4:** For standardization purposes please use ARIAL 12 point font for the body of the proposal and 20 point for the re-certification title. Top and side margins should be set to 1 inch with header/footer margins set for ½ inch. Create header/footer with the page number in the bottom center and the date on the same line right justified. By using auto-date, confusion as to versions will be reduced.
UNDERCOVER OPERATIONS
RE-AUTHORIZATION REQUEST

Date Submitted : 
Date of Inception : 
Name of Operation : 
Program Code : 
Programmatic Area : [Contraband Smuggling, Human Trafficking etc…] 
Location : [SAC or RAC] 
Group Supervisor : [and contact telephone number] 
Operation Program Manager : [UC Schools dates 00/00] 
Case Agent(s) : 
Undercover Operative(s) : [UC Schools dates 00/00] 
Financial Record Keeper : [UC Schools dates 00/00] 
Exemption Requested : [the exemptions should be listed, 1,2,3,4] 
AUSA : [attach letter from USA or AUSA] 
Counsel : [and contact telephone No] 
Offsite Location : [Yes or No] 
Internet Web Site : [Yes or No] 
Special Interest Aliens : [If applicable, Yes or No] 
Sensitivity : [DHS or ICE] 
Funding Requested : [appropriated funding being requested] 
Expenditure Authorization Requested : [spending ceiling requested (including proceeds)] 
DEA Designated ASAC : [only if appropriate and contact telephone no]
Related Cases: [list case numbers - current active cases]

Leased Vehicles: [SAC approval, Yes or No]

Foreign Offices Contacted: [If applicable, Yes or No]

**EXPANSION REQUEST:** (if applicable)

State reason for expansion request. (NOTE: Coordinate expansion with Programmatic area)

**[CASE NUMBER]  [CASE NAME]**

BRIEF one to two paragraph synopses of case including undercover methods to be used.

**OPERATIONAL RESULTS:**

Short overview concerning the operation’s modus operandi, i.e., the methods employed by the operation to infiltrate the violator(s). Include the specific investigative focus of the operation, i.e., a smuggling investigation which provides drug transportation services.

Explain any failure to obtain significant results.

**[CASE NUMBER]  [CASE NAME]**

BRIEF one to two paragraph synopses of case including undercover methods used and two to three lines with the significant enforcement results (include dates) over the last six months.

A statistical section, in table format, reflecting the results for the past 6 months, as well as cumulative since the inception of the operation (for entire operation, not broken down by case or programmatic area).

*All investigative cases must contain undercover activity.*

**[SAMPLE TABLE FORMAT]**

<table>
<thead>
<tr>
<th></th>
<th>LAST 6 MONTHS</th>
<th>SINCE INCEPTION</th>
</tr>
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<tbody>
<tr>
<td>Criminal Arrests:</td>
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<td>364</td>
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<td>Administrative Arrests:</td>
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<td>Convictions:</td>
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<tr>
<td>Cocaine:</td>
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<tr>
<td>Marijuana:</td>
<td>1,550 lbs</td>
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<tr>
<td>Other Property Seized:</td>
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</table>
REFERRAL RESULTS

Short narrative of collateral assists to other certified operations or SAC office investigation that include arrests, seizures, and other enforcement activity, i.e., warrants, currency pick-ups, etc.

[CASE NUMBER]  [CASE NAME]
BRIEF one to two paragraph synopses of case and two to three lines with of significant enforcement referral results over the last six months.

A statistical section, in table format, reflecting the referral results for the past 6 months, as well as cumulative since the inception of the operation.

[SAMPLE TABLE FORMAT]

<table>
<thead>
<tr>
<th>INVESTIGATIVE STATISTICS</th>
<th>INVESTIGATIVE STATISTICS</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>LAST 6 MONTHS</td>
</tr>
<tr>
<td>Criminal Arrests:</td>
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<td>Administrative Arrests:</td>
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<td>Indictments:</td>
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<td>Convictions:</td>
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<td>Marijuana:</td>
<td>500 lbs</td>
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<tr>
<td>Real Estate Property:</td>
<td>0</td>
</tr>
<tr>
<td>Other Property Seized:</td>
<td>0</td>
</tr>
</tbody>
</table>

POTENTIAL:

Short narrative relating to the future of the operation, i.e., show the potential for success.

Explain how the operation anticipates identifying and obtaining evidence against the most significant targets, and state how the infiltration methods discussed in the results section have the potential of accomplishing the goals of the operation. Provide a short paragraph concerning any changes in the undercover infiltration method.

Additionally, provide the identity (specific name) of any new targets and their specific criminal activity as it relates to the investigation.

[CASE NUMBER]  [CASE NAME]
BRIEF one to two paragraph synopses (including potential) of the case.

SECURITY:

Has the operation been compromised? If so, what precautions are being taken?
Explain the nature and frequency of U/C activities.

Explain the actions taken to insure the well being of the U/C operative.

Explain the extent the operation can continue without exposure, and injury, financial or otherwise, to innocent third parties.

**SAFETY:**

If applicable, describe any new risks of personal injury, property damage, financial loss, or harm to innocent third parties (i.e., smugglees). What actions will be taken to ensure the physical and psychological well being of the operative(s) and innocent third parties if applicable?

**SPECIAL INTEREST ALIENS:**

What Special Interest Aliens are likely to be involved in the operation? Identify the nationalities by case and briefly describe how they will be involved.

**SENSITIVE CIRCUMSTANCES**

List both DHS and ICE sensitive circumstances, as defined in Appendix (L) of the Interim ICE Undercover Handbook, which are likely to occur in the operation? Identify them and briefly describe what they will involve. (One section for DHS and one for ICE sensitive circumstances.)

**OTHER AGENCIES:**

List all agencies that are participating in the operation.

If there is a new agency participating since the last certification, answer all of the questions below:

If new agencies are involved, provide the following information:

- What is the role and degree of involvement of other agencies in this operation?
- Has this operation been reviewed through another agency’s undercover process? If so, what was the result?
- Who is responsible for determining investigative strategies among the agencies involved?
- What MOU’s are applicable to this operation and have there been operational issues related to them?
- What arrangements have been made regarding prosecutions relating to the operation?
- Who will present the cases to the United States Attorney’s Office?
- What new ICE violations will be considered for prosecution?
- What arrangements have been made with other agencies regarding payment for expenses of the operation?
- What agreements have been reached with other agencies regarding proceeds of the operation?
If this operation has become directly related to a HIDTA or an OCDETF investigation since the last certification, attach a copy of the proposal to this application.

**FOREIGN TRAVEL**

If foreign travel is anticipated, provide the following information:

- Describe any foreign travel anticipated and indicate that appropriate undercover documentation, i.e., undercover identification (*do not discuss classified information here*), required to accomplish the objectives, set forth in the proposal, will be (or have been) identified. The documentation required should be determined in consultation with the relevant Customs Attaché.

If no foreign travel is anticipated put non-applicable (n/a) under this section. (This will not preclude an operation from traveling foreign if circumstances develop during the course of the operation that necessitates foreign undercover activity).
**BUDGET:**

Estimate the budget for six months, providing Object Class Code (OCC) and line item description.

Also explain any unusual or costly expenses.

Include only OCC’s that are necessary for the conduct of the operation. In this section, list any recoverable funds; however, do not include this amount in the total expenditures.

Funding Requested: **0**

Expenditure Authorization Requested: **$130,520**

<table>
<thead>
<tr>
<th>OCC 21 - Travel &amp; Transportation of Persons</th>
<th>OCC 25 - Other Services</th>
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<tbody>
<tr>
<td>OCC 21.11 Per Diem</td>
<td>OCC 25.78 Vehicle Maintenance</td>
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<td>OCC 25.48 Custodial Services</td>
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<td>OCC 21.17 Rental Car more 60 days</td>
<td>OCC 25.25 Other Svcs/Bank Fees</td>
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<td>OCC 25.27 Insurance Premiums</td>
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<tr>
<td>OCC 91.22 CI/Common Carrier</td>
<td>OCC 25.12 Consulting/Pers Svcs</td>
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<tr>
<td>OCC 21.31 Foreign/Per Diem</td>
<td>OCC 25.7F Other Storage</td>
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<tr>
<td>OCC 21.32 Foreign/ Common Carrier</td>
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<tr>
<td>OCC 21.34 Foreign/Rental</td>
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<td><strong>Subtotal:</strong></td>
<td>$32,500</td>
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<thead>
<tr>
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<th>OCC 26 - Supplies and Materials</th>
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<tbody>
<tr>
<td>OCC 22.12 Bills of Lading</td>
<td>OCC 26.41 Aircraft Gasoline</td>
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<td>OCC 26.42 Vehicle Gasoline</td>
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<td><strong>Subtotal:</strong></td>
<td>OCC 26.11 Office Supplies</td>
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<td>OCC 26.12 Other Supplies</td>
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<td>OCC 26.56 Marine Supplies</td>
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<table>
<thead>
<tr>
<th>OCC 23 - Rent, Comm. Utilities</th>
<th>OCC 31 – Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>OCC 23.21 Rental of Space</td>
<td>OCC 31.2 Office Equipment</td>
</tr>
<tr>
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<td>OCC 31.5 ADP Software</td>
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<td>OCC 23.53 Telephone-Long Dist</td>
<td>OCC 31.6 ADP Equipment</td>
</tr>
<tr>
<td>OCC 23.33 Utilities</td>
<td>OCC 31.7 Telecomm Equipment</td>
</tr>
<tr>
<td>OCC 23.81 Postage</td>
<td>OCC 31.9 Other Equipment</td>
</tr>
<tr>
<td>OCC 23.71 Other Equip Rental</td>
<td><strong>Subtotal:</strong></td>
</tr>
<tr>
<td><strong>Subtotal:</strong></td>
<td>$5,000</td>
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<tr>
<th>OCC 91 - Purchase of Evidence/Info</th>
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<tbody>
<tr>
<td>OCC 91.11 POI/POE</td>
<td>OCC 91.11</td>
</tr>
<tr>
<td>OCC 91.13 Source Dev/Casual UC</td>
<td>OCC 91.13</td>
</tr>
<tr>
<td>OCC 91.14 MLD Fees</td>
<td>OCC 91.14</td>
</tr>
<tr>
<td><strong>Subtotal:</strong></td>
<td><strong>$32,000</strong></td>
</tr>
</tbody>
</table>

**Total Expenses: $130,520**
INFORMANTS:

Provide a list of the informants (by source number) who are currently involved in the operation. For each informant, provide the following information:

- What is the CI number?
- Is the informant a defendant or possible defendant in a criminal matter?
- What is the role of the informant in the operation?
- How has the informant demonstrated their reliability?
- What is the motivation of the informant?
- Who is controlling the informant?
- List by date the payments made to the informant in the last 12 months by any law enforcement agency for any purpose and show who made each payment?
- Place an asterisk by payments that relate directly to this operation.
- List total amount paid to the informant in this operation.
- List any other income derived by the informant from this operation and explain the circumstances for earning it.
- Attach a copy of the written Personal Assistance Agreement (PAA), if applicable, for the informant. (ICE Interim Undercover Operations Handbook, Chapter. 6.7).

LEASED VEHICLES

If the use of leased vehicles is anticipated, specific vehicle models, monthly and annual leased costs, operator names, and a brief justification for the use of each leased vehicle must be indicated. In initial operational proposals, estimates of leased costs and types of vehicles anticipated to be used must be reported. In applications for reauthorization, specific amounts should be shown.

FOREIGN OFFICES CONTACTED

If the operation involves or may involve foreign investigative activities or foreign investigative leads, please indicate the countries involved and identify what foreign offices have been contacted.

FINANCIAL/CURRENCY PICKUP OPERATIONS:

As per IOPN 01-20, dated June 22, 2001, all OI field offices must comply with the reporting requirements to the MLCC as specified. With that in mind, the IOPN can be retrieved in the former Customs Intranet.
The Unit Chief, Cornerstone/ MLCC and the Unit Chief, Financial Programs have determined that in an effort to fulfill the functions of the MLCC, timely and accurate reporting of currency pickups must occur. As part of the re-certification process, all certified undercover currency pickup operations are requested to submit as an attachment only, pickup information which includes date, amount, and location of pickup (City and State). The reporting should only include pickups generated by their operation and not done in support of other offices. This information will be used to conduct quality checks on the data contained within the MLCC, operational compliance to the reporting of undercover pickups and to highlight undercover activity.

**NOTE:**

**Note 1:** If there is a significant change in the direction of the operation, objectives of the operation, or investigative program area, which is outside of the scope of its original certification, utilize Application for an Undercover Operation. Contact Undercover Operations for assistance in making this determination.

**Note 2:** Reauthorization applications must be reviewed and concurred with by Agency Counsel. This may be documented by either stating Agency Counsel’s concurrence in the SAC’s cover memorandum or in a separate memorandum generated by Agency Counsel.

**Note 3:** Reauthorization applications must be accompanied by a letter from an Assistant United States Attorney or the United States Attorney responsible for prosecuting the violators. For Contents of the letter, see Chapter 4.8.2 of the Interim Undercover Operations Handbook.

**Note 4:** The words “For Official Use Only” must appear at the bottom of each page.

**Note 5:** For standardization purposes please use Arial 12 point Font for body of the proposal and 20 point for re-certification title. Top and side margins should be set to 1 inch with header/footer margins set for 1/2 inch. Create header/footer with the page number in the bottom center and the date on the same line right justified. By using auto-date, confusion as to versions will be reduced.
BLANK PAGE
## Expense Approval Form

**Handbook 4600-01**

### Operation Name:

### Program Code:

### Date:

### Case No.:

### *CUFFS Transaction No.:

### Name of Requestor (print):

### Amount Requested: $

### Description and Justification:

_______________________________________________________________________________________________

_______________________________________________________________________________________________

_______________________________________________________________________________________________

_______________________________________________________________________________________________

### APPROVAL

I hereby authorize an expenditure [ ] and/or advance [ ] not to exceed $___________ for the purpose described above. This amount is within my approval authority as contained in the Undercover Operations Handbook.

**Transaction Type Approved** (check all that apply)

- [ ] Covert
- [ ] CF-148
- [ ] Confidential Informant Expense
- [ ] Purchase of Information
- [ ] Overt
- [ ] Proceeds Card
- [ ] General Expense
- [ ] Purchase of Evidence
- [ ] Petty Cash

**Funds Transfer:**

- [ ] Within USCS Control
- [ ] To Outside USCS Control

### Name: _________________________________________ Title: ____________________________

**Signature:** X ________________________________ **Date:** _____________

### ADVANCE

I hereby acknowledge receipt of $___________ as an advance for the expenditure described above. I currently hold _____ additional outstanding advance(s) totaling $___________.

### Date of Advance: ________________

### Cashier: _______________________________

### Name: _________________________________________ Title: ____________________________

**Signature:** X ________________________________ **Date:** _____________

### Certification/Liquidation of Advance

**Date:** ________________

**Certification Document(s) Attached:**

- [ ] Receipt
- [ ] Certification Form
- [ ] CF-293
- [ ] Report of Investigation

**Expense amount:** $___________

**Money Returned by Purchaser:** _________________________

**Amount of Advance:** $___________

**Cashier:** __________________________________________
<table>
<thead>
<tr>
<th>Date:</th>
<th>Transaction No.:</th>
<th>Record Keeper:</th>
</tr>
</thead>
</table>

Customs Form 7625 (04/02)
### PICK-UP LOG FOR UNDERCOVER OPERATIONS

**Handbook 4600-01**

**Operation:**

<table>
<thead>
<tr>
<th>Date</th>
<th>Transaction Number</th>
<th>Amount</th>
<th>UC Agent/CI</th>
<th>Report/Case Number</th>
<th>Points</th>
<th>Disposition Status</th>
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**DISPOSITION CODES:**

- A = Assisting Other Offices
- B = Bank Deposit
- C = Cash
- D = Drafts
- E = EFTs
- O = Other
- P = Physical Delivery
- S = Seized
- T = Transfer

Customs Form 7626 (04/02)
## PROPERTY/EQUIPMENT LOG
### FOR UNDERCOVER OPERATIONS

**Handbook 4600-01**

Interim ICE Under September 2003 Operation:

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Purchase Date</th>
<th>Vendor</th>
<th>Cost</th>
<th>Purchase Method (see codes)</th>
<th>Location of Equipment</th>
<th>Final Disposition (see codes)</th>
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</table>

**PURCHASE CODES:**
P=Procured  
A=Appropriated  
F=Federal Acquisition Regulations  
N=Non-Federal Acquisition Regulations

**DISPOSITION CODES:**
R=Retained  
S=Seized  
L=Liquidated

Customs Form 7627 (04/02)
EVALUATION FORMAT FOR UNDERCOVER OPERATIONS
(CLOSEOUT REPORT)

I. Prepare a project folder indicating the name of the operation.

II. Prepare a memorandum to report the issuance of the closeout report.

(Sample Format)

TO: Deputy Assistant Director, Investigative Services
    Washington, D.C.

FROM: (Full Name of [SAC])
    Special Agent in Charge
    (City, State)

SUBJECT: Closeout Report - OPERATION NAME

In accordance with the Undercover Operations Handbook, attached is the closeout report for OPERATION NAME, a certified undercover operation. Also in accordance with this Handbook, a request is hereby made for a closeout audit to be conducted on the books and records of the aforementioned operation.

If you have any questions or need additional information, please call SS/A (name of agent) at (XXX) XXX-XXXX.

Attachment

cc: Programmatic Desk

III. Prepare a title page to capture the following:

   Name of the operation
   SAC office (full address)
   Other agencies (full address): FBI; CBP; DEA; etc.
   Second agency (full address): state and local police departments

IV. Include a table of contents.

   A. Include a copy of the letter of joint understanding, if another agency participated in the operation.

VI. Prepare a page, which identifies each participating member of the evaluation team by name, title, and city/state. Include the addresses of those agencies other than ICE.
VII. Prepare a *Project Overview* page. This should include a brief overview of the operation.

VIII. Prepare an *Initial Goals and Objectives* page. List the operational goals and objectives and state whether or not the stated goals and objectives were achieved.

IX. Provide narratives to address each of the items identified in the *UNDERCOVER OPERATION EVALUATION CHECKLIST*. 


UNDERCOVER OPERATION EVALUATION CHECKLIST

The evaluation should begin with a summary of the entire operation. Format the evaluation by describing, recommending, and commenting on each of the following elements. You may utilize graphs, charts, or photographs for illustration purposes.

I. GENERAL
   A. Method of undercover penetration.
   B. Target selections.
   C. Equipment used -- surveillance, recording, etc.
   D. Manpower resources.
   E. Safety of the undercover operative and backup personnel.
   F. Case development -- ICE (Class I, II, III)/local/other/Federal.
   G. The development of intelligence and sources.
   I. Civil aspects that arose out of the operation.
   J. The impact that the projects had on the cited problems.
   K. The techniques employed by those who violated ICE laws and regulations.
   L. The adequacy of the security and procedures used to enforce the laws targeted by your project.
   M. The use of other elements of ICE, other Federal agencies and local law enforcement in the undercover operation.
   N. Use of informants.
   O. Benefits of the operation.
   P. Pitfalls to avoid in future operations.
II. STATISTICAL DATA DERIVED FROM THE OPERATION

A. Provide Case Management System Statistics in summary form. It is not necessary to include printouts from the Case Management System.

B. Provide statistics not captured by the Case Management System relevant to the Operation:
   (1) In a currency laundering operation: the number of clients and amount of cash laundered; technology: the number of clients, type of technology, dollar value shipped/seized, etc.
   (2) The amount/type/value of merchandise seized or recovered.
   (3) The expected number of indictments as a result of the undercover operation.
   (4) A summary of dispositions to date, if any.
   (5) Data concerning narcotics and dangerous drugs seized.

III. FUNDING ACCOUNTABILITY

A. List all Appropriated Funds expended by object class code for the operation.

B. List all Proceeds expended by object class code for the operation.

C. Include copies of the following Quick Books reports:
   (1) Balance Sheet
   (2) Profit and Loss by Class (Collapsed)
   (3) Cumulative Trial Balance

D. Provide a list of all equipment procured for the operation and list it by make, model, serial number, and price.

(Exception: The use of an informant will require the original pay receipts to be maintained in the respective source file with copies in the case file for accountability and cross reference.)

(Exception: Equipment to be retained by the office must include a brief description of intended use and must be certified that it has been added to the office inventory.)
UNDERCOVER OPERATION MONTHLY FINANCIAL REVIEW
WORKSHEET INSTRUCTIONS

The Interim Undercover Operations Handbook requires that a monthly financial review be performed on each open undercover operation.

I. In preparation for the monthly review, the Record Keeper for the operation should be asked to provide the following:
   - CUFFS Balance Sheet Report (expanded) ending on the last day of the previous month;
   - copies of the most recent bank statements for all accounts;
   - petty cash funds on hand count sheet;
   - CUFFS Reconciliation Summary Report;
   - CUFFS Profit and Loss by Class Report (collapsed) from inception to the last day of the previous month;
   - CUFFS Profit and Loss Itemized Report for the month being reported;
   - Copies of approval documents and transaction documents for any expenditures;
     > using the business exemption; and
     > exceeding $5,000 (or the locally established first-line supervisor approval level); and
   - budget reports for all outstanding advances received by the operation, and summary spending limits of the current certification.

II. The Operation Manager will use the review package to complete the attached Undercover Operation Monthly Financial Review Worksheet.
   - Any findings requiring correction or further review will be noted in the spaces provided.
   - Any corrective action taken will also be recorded.

III. The Operation Manager will forward the completed worksheet and review package to the SAC for certification and signature.

   (ii) The review package and worksheet will be retained as part of the operational files.

UNDERCOVER OPERATION MONTHLY FINANCIAL REVIEW WORKSHEET

Name of Undercover Operation

____________________________
Appendix I

Month/Year Being Reviewed: _______/_______

Current Certification Expiration Date: ________________

Signature of Operation Manager: ________________

Signature of SAC: ________________

Record Keeper: ________________

I. Review the Balance Sheet Report.

   The following, at a minimum, must be evaluated:

   A. Any bank accounts with balances over $100,000.

      As a rule, bank account balances in domestic banks should not exceed $100,000. Undercover operations may, in certain circumstances, need to exceed this $100,000 limit. In such situations, it is the responsibility of the SAC to minimize the risk of loss. If it is necessary to exceed the $100,000 limit, SACs must follow the policy provided in former Customs Directive 1220-009, “Administration of the U.S. Treasury Forfeiture Fund,” dated October 5, 1993.

      In addition, SACs must be aware that funds deposited into foreign financial institutions may not have any protection. SACs must evaluate the operational necessity of keeping large amounts of funds in foreign accounts against the risk of loss.

Reviewer’s findings and comments: Initials: ________
B. Any outstanding advances of funds and/or outstanding liabilities.

_This gives an indication of funds advanced to other persons/entities. By reviewing this report on a monthly basis, the manager can determine whether advances are being liquidated in a timely manner. Managers should question any large, or increasing, liabilities or advances. The manager must also carefully examine any advances to other offices/operations, to ensure that the advances are only in support of this undercover operation. End-of-month money pickups that have not been distributed will show as liabilities._

Reviewer’s findings and comments:  
Initials: ________

C. Any undeposited funds.

_Undeposited funds increase the risk of loss or theft. The SAC is responsible for ensuring that undeposited funds are safeguarded and are only left undeposited when required by operational necessity._

_If a petty cash fund is maintained by the undercover operation, SACs must follow the policy contained in the Undercover Operations Handbook. The Petty Cash Daily Register must be properly maintained and all transactions must be posted to CUFFS within the month they occur._

Reviewer’s findings and comments:  
Initials: ________
Appendix I

D. Compare the bank account balances shown on the Balance Sheet Report with balances shown on the bank statement for each account. Verify that any differences in these amounts are reconciled in the Reconciliation Report for each account.

*On the Reconciliation Report, the "Cleared Balance" should be the same as the bank statement balance. "The Ending Account Balance" should be the same as the amount shown on the Balance Sheet Report.*

Reviewer’s findings and comments:  
Initials: ________

II. Review the Profit and Loss by Class (Collapsed) Report.

The following, at a minimum, must be evaluated:

A. Any negative balances in the Net Income row.

*This report shows receipts and disbursements from the inception of the operation to the end of the reporting month. The class name columns represent various funding sources, either appropriated funds or proceeds. Expenses can only be charged against a particular funding source to the extent that there are funds available. Any negative amounts in the Net Income row must be examined and corrected.*

NOTE: Some operations have established sub-classes of funding source class names. In this case, the column showing the total by class name should be examined, not columns showing sub-classes. See your record keeper for more information on this rather technical subject.

Reviewer’s findings and comments:  
Initials: ________
B. If the report shows an "Unclassified" column, there should be no dollar amounts (other than $0.00) shown.

All receipts and disbursements must be associated with a particular funding source, represented in Quick Books by a class name. If the record keeper does not put a class name on a transaction, Quick Books automatically creates a column labeled "Unclassified." Our financial system cannot process unclassified entries and any such entry must be corrected.

Reviewer’s findings and comments:  

Initials: ________

C. If the report shows an account row labeled "6999. Uncategorized Expenses," verify that there are no dollar amounts (other than $0.00) shown.

All expenses must be charged to the appropriate government object class code (OCC). The CUFFS Manual established a chart of accounts in which each OCC has a unique account number. Account number 6999 may not be used. If there are entries posted to this account, they must be corrected.

Reviewer’s findings and comments:  

Initials: ________
Appendix I

III. Review the Itemized Profit and Loss Report.

The following, at a minimum, must be evaluated:

A. Verify that all funds received during the month, from any source, are recorded properly.

*SACs are responsible for ensuring that all funding associated with the undercover operation is recorded on the books. This includes funding provided by Headquarters and funding provided by the SAC, such as special operation funding, POI/POE directly associated with the undercover operation, money laundering funds, etc. If the operation involves money pick-ups, a Pick Up Log must be kept for each one. It also includes any proceeds received in the operation. The reviewer should verify with the record keeper and operation manager that all funding has been entered into the books and properly classified.*

Reviewer’s findings and comments: Initials: ________

B. Verify that expenditures are recorded properly.

*The "Name" and "Memo" columns in the report must provide enough information to allow the reviewer to determine whether income and expense items are properly entered into the appropriate accounts. Whenever an expense can be attributed to a particular investigation, the case number must be included in the memo column.*

*NOTE: Account # 6341 (OCC 23.3E, Telephone Equipment Rental) should not be used. Although this OCC is the proper place for telephone rental, the Accounting Services Division, Indianapolis, has advised that former Customs Asset Information Management System (AIMS) uses the Travel Tables to track investigative advances and proceeds and does not allow entries to OCC 23.3E. Therefore, OCC 23.3 must be used for telephone equipment rental.*

Reviewer’s findings and comments: Initials: ________
Appendix I

C. Look for unusual transactions that may indicate that the expenses are not necessary and reasonable.

*Refer to the Undercover Operations Handbook for guidance on necessary and reasonable expenditures.*

Reviewer’s findings and comments:  
Initials: ________

D. Review the attached approval documents to verify that authorization for the expenditure was obtained at the management level appropriate for the amount of the expenditure. Review transaction source documents (e.g., receipts) to verify that expenditures correspond to approval documents.

Reviewer’s findings and comments:  
Initials: ________

E. Ensure that any property that has been acquired over the past month has been properly recorded in the Property/Equipment Log and, if necessary, PIMS.

Reviewer’s findings and comments:  
Initials: ________
Appendix I

IV. Review the money laundering funds and the special operation funding investigative advance Budget Report(s) for the following:

A. Verify that investigative advances requiring it are budgeted properly.

Some investigative advances comprise multiple object class codes (OCCs). Examples include money-laundering advances, where the advance contains both recoverable and non-recoverable (expense) amounts, and special operations advances used to fund the general expenses (travel, services, supplies, etc.) of the operation. Since these funds are advanced by OCC in the former Customs financial system, budgets must be set up in Quick Books to show spending limits according to the OCC. Quick Books then automatically tracks expenses against the budget(s).

Reviewer’s findings and comments:Initials: ________

B. Verify that expenditures do not exceed budgeted amounts.

If a SAC determines that monies in the investigative advance need to be reprogrammed from one OCC to another, this should be coordinated with the Headquarters Program Management Staff and the Accounting Services Division in Indianapolis. SACs are responsible for ensuring that funds received as investigative advances are not overspent in a given OCC. The Budget Report will track this and show if an overspending situation has occurred.

Reviewer’s findings and comments:Initials: ________
DATE:

TO: Special Agent in Charge (SAC)

FROM: Associate/Assistant SAC or Resident Agent in Charge (RAC)

SUBJECT: Annual Property Inventory - OPERATION ______________

On ________________, a property inventory for OPERATION ______________ was conducted in accordance with the Undercover Operations Handbook. All equipment listed on the Property/Equipment Log was physically located and examined. Any items not located are annotated on the Property/Equipment Log and supporting documentation is provided as to the status of these item(s).

I certify that I have physically examined each item on the Property/Equipment Log and the physical location is correct as indicated in the log.

____________________________
Agent/Officer Conducting Inventory

I certify that this inventory is a true and accurate representation of all property purchased or leased by this undercover operation. I further certify that this property is being utilized exclusively for this undercover operation.

____________________________
Group Supervisor/Project Manager

I certify that the annual property inventory for OPERATION ______________ has been conducted as prescribed in the Interim Undercover Operations Handbook.

____________________________
Associate SAC/ASAC/RAC
MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DRUG ENFORCEMENT ADMINISTRATION AND THE UNITED STATES CUSTOMS SERVICE TO IMPLEMENT TITLE 21 CROSS-DESIGNATION POLICIES AND PROCEDURES

I. Preamble

The illicit traffic in controlled substances has been recognized as a paramount concern of the United States. The Drug Enforcement Administration (DEA) and the United States Customs Service (Customs) are fully committed to working together at all levels to ensure that the full force of this nation's law enforcement resources are brought to bear on this problem. Ensuring the safety, efficiency, and effectiveness of drug-related enforcement efforts requires the full cooperation, communication, and coordination between DEA and Customs at all levels.

It is in this spirit of common mission and mutual respect for each other's respective duties, authorities, and responsibilities that this Memorandum of Understanding (MOU) is entered into by DEA and Customs. All DEA and Customs personnel will ensure that the full spirit of cooperation, communication, and coordination is achieved consistent with this MOU.

II. Purpose

This MOU sets forth policies and procedures for the cross-designation of Special Agents of Customs by DEA. The purpose of cross-designation is to enhance the overall drug enforcement strategy and efforts of the United States by empowering cross-designated Customs Agents to enforce the provisions of the Controlled Substances Act (21 U.S.C. §§ 801-904) and the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971) (hereinafter collectively referred to as "Title 21"), subject to applicable law, regulations, policies, and the provisions of this MOU. Furthermore, this MOU is also intended to promote close cooperation, communication, and coordination between DEA and Customs, and to prevent dangerous, confrontational, and duplicative activities.

III. Other Directives and Agreements

A. Previous Cross-Designation Implementation Directives

This MOU supersedes previous implementing memoranda, directives, and associated documents addressing DEA/Customs cross-designation, including: (1) Implementation Directive for the Establishment of Narcotics Smuggling and Money Laundering Task Forces, dated March 14, 1990; (2) Implementation Memorandum for
Appendix K


B. Money Laundering Agreements

Where applicable to the activities of cross-designated Customs Agents, the provisions of the following agreements and any amendments thereto will be adhered to:

(1) Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General, and the Postmaster General Regarding Money Laundering Investigations, effective date August 16, 1990; and (2) Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General, and the Postmaster General Regarding the Conduct of International Drug Money Laundering Investigations, effective date July 20, 1994.

IV. Authority for Cross-Designation

The authority of the Attorney General to cross-designate Customs Agents to enforce Title 21 has been delegated to the DEA Administrator by Reorganization Plan No. 2 of 1973, Executive Order 11727, dated July 6, 1973 and 28 C.F.R. §§ 0.100 and 0.101. This authority was further delegated to the DEA Deputy Assistant Administrator for Investigative Support by 28 C.F.R., Part 0, Appendix to Subpart R, § 11.

This MOU implements 28 C.F.R., Part 0, Appendix to Subpart R, § 11 which requires that all Title 21 activities by cross-designated Federal law enforcement officers be done under the supervision of DEA. For purposes of this MOU such supervision shall be general in nature.

V. Roles

DEA will continue to carry out its responsibilities as mandated by Reorganization Plan No. 2 of 1973 and its implementing executive orders and regulations. Customs will continue to carry out its responsibilities under its traditional variety of Acts. Additionally, cross-designated Customs Agents will conduct investigations under Title 21. These investigations will be restricted to individuals and organizations involved in the smuggling of controlled substances across U.S. international borders or through Ports of Entry (POE). This will include Customs assuming responsibility for all POE seizures by Customs personnel that are based on Customs-obtained information from point of seizure through the final judicial stage. Customs will also assume responsibility for border or POE cold seizures by Customs personnel.

Cross-designated Customs Agents will not use Title 21 authority to perform domestic or non-smuggling investigative activities either on their own initiative or in conjunction with other Federal, State, or local law enforcement agencies.
Appendix K

DEA will continue to conduct Title 21 investigative activity related to border or POE seizures that are based upon DEA information and will coordinate these activities with Customs.

VI. **Cross-Designation Procedures**

Cross-designation procedures will be as provided in Attachment A.

VII. **Coordination and Supervision**

A. **Headquarters Coordination**

The DEA Assistant Administrator for Operations (AO) and the Customs Assistant Commissioner for Enforcement (AC/E) will meet regularly to ensure bilateral oversight of the cross-designation program at the policy level. A Headquarters Review Team (HRT), co-led by the DEA AO and the Customs AC/E, will monitor the implementation of the agreement, develop new national-level initiatives, and resolve any policy issues referred by field management. Prior to the HRT addressing field issues, efforts must be made to resolve such issues at the lowest possible level by respective agency counterparts.

In the event of an operational problem or other significant field issue, the HRT may elect to appoint a fact-finding team composed of both DEA and Customs personnel. The fact-finding team will conduct a factual investigation, in the field if appropriate, and report its findings to the HRT.

DEA and Customs Headquarters will each assign a Special Agent supervisor in a liaison capacity for the purpose of ensuring day-to-day coordination and cooperation in investigative activities. The Headquarters liaison officers will be members of the HRT.

B. **Coordination of Title 21 Activities and Operations**

1. **Accountability and Responsibility**

DEA and Customs supervisors at each level are responsible and strictly accountable for ensuring that personnel under their supervision fully comply with this MOU. DEA and Customs Special Agents in Charge (SACs) shall ensure that the terms of this MOU are fully complied with by personnel under their supervision. Any failure of subordinate personnel to fully comply with this MOU will be deemed to be the responsibility of the appropriate SAC.

2. **Designated ASACs**

Each DEA and Customs SAC will designate an Assistant Special Agent in Charge (hereinafter "designated ASAC") to act as the focal point for cross-designation
matters and to ensure cooperation, communication and coordination in Title 21 matters. The designated ASACs will have general oversight over cross-designation matters and will resolve through mutual consultation whenever possible any Title 21 operational issues referred to them. The responsibilities of the designated ASAC will not be delegated below the ASAC level.

3. First-Line Supervisors

In addition, to ensure cooperation and coordination, first-line supervisors will have the primary responsibility for maintaining continuous communication on Title 21 activity and drug smuggling cases, and will exchange information and intelligence. Customs cross-designated first-line supervisors and counterpart DEA first-line supervisors will make Title 21 decisions appropriate to their level of authority. Decisions requiring second-level Customs supervisory approval will be referred to the Customs Resident Agent in Charge (RAC) or ASAC as appropriate.

4. Joint Investigations and DEA Participation

Whenever appropriate and feasible, the utilization of joint DEA/Customs investigations is encouraged. DEA Agents may accompany cross-designated Customs Agents on any operation involving Title 21 activity.

5. Issue Resolution

First-line DEA and Customs supervisors will attempt to resolve any Title 21 operational issues through mutual consultation. If the DEA first-line supervisor has objections to a proposed Title 21 operational matter which cannot be resolved with his or her counterpart Customs first-line supervisor, the matter will be referred to the second-level DEA and Customs supervisors for review.

If the second-level DEA and Customs supervisors cannot resolve an issue related to a Title 21 operational matter, it will be referred to the DEA and Customs SACs who will make every effort to resolve the matter through mutual consultation. If the two SACs cannot resolve the issue, the decision of the DEA SAIC on Title 21 operational matters will be final. In the event the DEA SAIC disapproves a proposed Title 21 activity by cross-designated Customs Agents, the DEA SAIC will provide the counterpart Customs SAC with reasons in writing for the disapproval. Each SAC will forward a copy of the written reasons for disapproval to his or her respective Headquarters.

C. Coordination of Policies and Procedures


DEA and Customs will compile a "Cross-Designation Manual" which will contain pertinent information to the cross-designation program. At a minimum, this manual will
contain the following: (a) a current copy of this MOU; (b) *Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General, and the Postmaster General Regarding Money Laundering investigations*, effective date August 16, 1990; (c) *Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General, and the Postmaster General Regarding the Conduct of International Drug Money Laundering Investigations*, effective date July 20, 1994; (d) *Memorandum of Understanding Between the U.S. Customs Service and the Drug Enforcement Administration*, dated December 11, 1975; (e) the agreement entitled *Interim Procedures for Handling of Seizures Made by Cross-Designated Customs Agents*, dated November 7, 1990; (f) the DEA/Customs *Cross Designation Operations Guidelines*; (g) a current copy of Subchapter 662 of the *DEA Agents Manual*, entitled "Undercover Activities"; (h) a current copy of Subchapter 660 of the *DEA Agents Manual*, entitled "Sensitive Investigative Activities"; (i) a current copy of the Customs policies and procedures on drug smuggling investigations; (j) a current copy of Customs policies and procedures on controlled deliveries, cold convoys, and controlled importation/exportation of contraband; and (k) a current copy of Customs policies and procedures on foreign drug investigations.

A copy of the Cross-Designation Manual will be issued to DEA and Customs SACs and designated ASACs, cross-designated Customs Agents and supervisors, and other personnel as appropriate. The manual will be handled in accordance with the appropriate security procedures of each agency. Neither DEA nor Customs may disclose outside its agency any portion of the manual originating from the other agency without the express authorization of the originating agency.

2. Modifications in Policy and Procedures

DEA and Customs will each keep the other informed of any changes in policies or procedures which might affect the Title 21 activities of cross-designated Customs Agents. Each agency will provide the other with any written changes in such policies and procedures and amended versions of the documents in the Cross-Designation Manual, including those listed above in Section VII(C)(1).

D. Cross-Designated Customs Agents Supervised by Customs Supervisors Who Are Not Cross-Designated

Some cross-designated Customs Agents may perform Title 21 activities as a collateral duty or otherwise may not regularly report to a cross-designated first-line Customs supervisor. However, such cross-designated Customs Agents will report to and be supervised by a cross-designated Customs supervisor for all Title 21 activities. In such cases, the coordination, supervision, review, and approval requirements of this MOU will fully apply.

E. Operational Procedures
Cross-designated Customs Agents will operate under established Customs policies, procedures, and guidelines, and will adhere to the DEA/Customs Cross-Designation Operations Guidelines, currently reproduced in the Cross-Designation Manual.

F. **Investigative Expenses**

Each agency will bear its own investigative and informant expenses.

G. **Intelligence Sharing and Access to Information Systems**

*DEA and Customs will develop an intelligence/operational mechanism to ensure the appropriate and timely exchange of drug smuggling information and intelligence. Within security parameters for each agency's data bases, all DEA and Customs Agents will be granted access to information from the other agency's data bases in accordance with standard information sharing mechanisms. Exchange of intelligence and information by DEA and Customs counterparts on a local level is expected and strongly encouraged.*

H. **Sources, Informants and Defendant-Informants**

In accordance with Section VII(E) of this MOU, Customs cross-designated Agents will adhere to the DEA/Customs Cross-Designation Operations Guidelines regarding sources, informants, and defendant-informants, but Customs will manage, supervise, and pay its own sources of information, informants, and defendant-informants (cooperating defendants). Each agency's informants will routinely be debriefed by the controlling agency on matters of interest to the other agency.

I. **Evidence Processing**

DEA procedures for the processing of seized drug evidence will be used by cross-designated Customs Agents.

Customs "Zero Tolerance" drug seizures will not be processed through the DEA Laboratory if they do not meet local Federal District U.S. Attorney quantitative criteria for prosecution. Abandoned controlled substances seized by Customs will not be analyzed where there is no possibility of identifying any culpable parties.

All non-drug evidence that requires processing will be handled in accordance with each agency's established procedures.

J. **Training**

DEA and Customs will jointly develop and implement a program of training addressing applicable policies and procedures of DEA and the Department of Justice.
and the implementation of the cross-designation program and the requirements of this MOU.

VIII. **Investigative Activities and Techniques**

A. **Sensitive Investigative Activities**

1. **General**

   Specific investigative activities that are "sensitive" under DEA policy, and approval requirements and procedures, including the required level of approval, are located in Subchapter 660 of the *DEA Agents Manual*, which is reproduced in the *Cross-Designation Manual*.

   Any Title 21 activity by cross-designated Customs Agents that would constitute a sensitive investigative activity under the above DEA policy must be reviewed and approved by Customs in accordance with its internal policies and procedures as modified by Section VIII(A) of this MOU.

2. **Proposed Sensitive Investigative Activity**

   A proposed sensitive investigative activity by cross-designated Customs Agents shall be the subject of a written proposal. This proposal must address, at a minimum, the subjects listed in Section 6603.2(B) of the *DEA Agents Manual*. The Customs SAC will forward the written proposal to Customs Headquarters for approval, with a copy to the appropriate DEA designated ASAC, who will review it and forward it to the appropriate DEA SAIC. The DEA SAIC will review the proposal and, forward it with any comment to DEA Headquarters. DEA comments on the proposal will be forwarded to the Customs, Director of Domestic Operations for review and approval in accordance with Subdivisions 3 or 4 of this Section as appropriate.

3. **Activities Requiring Approval by the Customs Director of Domestic Operations and the DEA Deputy Assistant Administrator for Operations (DO)**

   Title 21 sensitive investigative activities that require the approval of the DEA DO will be approved by the Customs Director of Domestic Operations in consultation with the DEA DO. If the DEA DO has any objections to the activity that cannot be resolved with the Customs Director of Domestic Operations, the activity will not proceed.

4. **Activities Requiring Approval by DEA Administrator**

   If DEA policy requires that the proposed Title 21 sensitive investigative activity be approved by the DEA Administrator, a sensitive activity review committee meeting will be convened by Customs in accordance with its own internal procedures and consistent
with Subchapter 660 of the *DEA Agents Manual*. The DEA DO will represent DEA at this meeting. If the proposed activity is approved at the meeting, the proposal will then be forwarded to the DEA Administrator and the Commissioner of Customs by each agency in accordance with its own internal procedures. The Administrator and the Commissioner will review the proposal in mutual consultation for final authorization. The decision of the DEA Administrator will be final as to whether the proposed sensitive investigative activity is to proceed and any conditions required for approval.

B. **Controlled Deliveries**

1. **General**

   The purpose of controlled deliveries and other similar techniques by cross-designated Customs Agents is to identify, arrest, and convict individuals and organizations responsible for smuggling controlled substances across U.S. borders. Cross-designated Customs Agents may utilize their Title 21 authority to engage in these techniques in accordance with the provisions of this MOU.

2. **Definitions**

   For purposes of this MOU, the following definitions apply.

   a. **Controlled Deliveries With a Cooperating Defendant**

      Controlled deliveries, as they relate to this MOU, involve the delivery of a controlled substance to suspect violators who are anticipating receipt of the substance. This type of controlled delivery generally follows the discovery and seizure of a controlled substance by a Customs inspector and the subsequent arrest of the driver/operator and/or passenger at the POE. In this situation, a controlled delivery may be implemented by cross-designated Customs Agents if the conveyance operator or passenger agrees to cooperate with the Government and deliver the controlled substance to any intended recipient.

      In the controlled delivery utilizing a cooperating defendant (e.g., conveyance operator), the violator is under arrest, is in the custody and control of cross-designated Customs Agents, has agreed to assist the Agents in the delivery of the controlled substance and is, in most situations, aware of the intended destination of the controlled substance.

   b. **Controlled Deliveries with a Non-Cooperating Violator**

      This technique is also frequently referred to as a "cold convoy." As it relates to this MOU, it is an investigative technique in which controlled substances, when discovered in the course of Customs inspectional activities, are allowed to proceed from
the border or POE to the intended destination(s) within the United States without the violator(s) being aware that the controlled substances have been discovered. The violator(s) is a non-cooperating violator in the controlled delivery investigation resulting from the discovery of the controlled substance at the border or POE.

The non-cooperating violator is not under arrest, is not in custody, has not agreed to assist the Agents in the delivery of the controlled substance and, in most instances, the Agents are not aware of the actual destination(s) of the controlled substance within the United States.

c. **Controlled Importation**

   This enforcement activity is also referred to as controlled deliveries from outside the United States. As it relates to this MOU, this technique generally involves cross-designated Customs Agents, acting in an undercover capacity and/or with the assistance of a confidential informant, providing a transportation service from the source of a controlled substance, who may be located in a foreign country and making delivery of the controlled substance to a specifically identified intended destination(s) and target(s) within the United States.

d. **Controlled Exportation**

   This enforcement activity is also referred to as a controlled delivery from the United States to a foreign country. As it relates to this MOU, this technique involves the delivery of controlled substances to a location outside of the United States to a suspect violator(s) who is the subject of a criminal investigation.
3. Notice of Proposed Operation

The cross-designated Customs first-line supervisor proposing the controlled delivery or other similar techniques, including cold convoys, controlled importations, and controlled exportations (hereinafter collectively referred to as "controlled deliveries") will provide the counterpart DEA supervisor the following information ("operational plan") verbally prior to the commencement of the proposed operation and in writing as soon as possible but no later than 48 hours after the commencement of the operation:

a. Date/Time of anticipated Controlled Delivery;

b. Port/Location of Arrival or Departure;

c. Agency and/or Customs office Requesting Controlled Delivery (include case number)

d. Name, Address, and Telephone Number of Case Agent and Supervisory Point of Contact;

e. Name, Address, and Telephone Number of Assistant U.S. Attorney (AUSA) responsible for prosecution;

f. Controlled substance to be delivered, imported or exported (type and quantity)

g. Conveyance Identification (i.e., aircraft tail number, vehicle license number and registration number, maritime vessel name and registry, container number, etc.)

h. Type of controlled delivery, (i.e., Undercover Agent, Participating Informant, Cooperating Defendant, or Non-cooperating Violator); and

i. Summary of investigative activity which requires controlled delivery. This summary shall include intended destination of the controlled substance, the target(s) if known, routing, method of conveyance, and specific precautions to be implemented to reduce the risk of losing the controlled substance and allowing its entry into the stream of commerce (such as the utilization of court authorized electronic surveillance, beepers, tracking devices, and fixed post, video, vehicular, and aircraft surveillance, etc.) The summary should also include specific instructions regarding processing by Inspectional personnel (if any). This summary shall also advise of notification to the Domestic Air
4. **Review of Proposed Controlled Delivery Operations**

The DEA first-line supervisor will forward the plan to the DEA designated ASAC of the destination area for review. The Customs first-line supervisor will forward the plan to his or her Customs counterpart in the destination area for appropriate action.

The DEA designated ASAC will appoint a DEA first-line supervisor assigned to the location of the intended delivery to act as a point of contact for the responsible cross-designated Customs first-line supervisor. The DEA point of contact will render appropriate assistance to the Customs operation and will be responsible for relaying information regarding the operation to the DEA designated ASAC.

The DEA designated ASAC is responsible for determining whether the proposed operation will interfere with another operation or investigation and whether the operational plan is consistent with applicable DEA policy and procedures and the provisions of this MOU. The designated DEA ASAC is responsible for advising the Customs designated ASAC of any objections to the operational plan. Both ASACs will work together to resolve any such issues.

Any issues which cannot be resolved by these ASACs will be referred to the DEA and Customs SACs responsible for the location of the intended delivery. In no instance will a delivery be made without an approval of the operational plan by both Customs and DEA in the destination location. In accordance with Section VII (B)(5) of this MOU, the decision of the DEA SAIC will be final as to Title 21 operational matters.

In the event there is insufficient time to forward and review the operational plan in writing, this review process may be conducted by telephone followed up by written documentation within 48 hours of the commencement of the operation.

5. **Changes in the Plan and Newly Developed Information**

In the event a controlled delivery operation does not proceed as anticipated (e.g., unanticipated delay, loss of load, change in location or route of delivery, or change in intended recipient), the responsible cross-designated Customs first-line supervisor will advise the DEA first-line supervisor point of contact as soon as possible. Both first-line supervisors are responsible for relaying this information to their respective designated ASACs as soon as possible. This notification process also applies to newly developed information which was not known at the initiation of the operation (e.g., identification of the intended delivery location, recipient, or target in cases where this information was unknown).
Appendix K

Any change in the operational plan is subject to the review and approval process described above in Section VIII (B)(4).

C. Reverse Undercover Operations

1. Reverse Undercover Activities Defined

For purposes of this MOU, a "reverse undercover" operation 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 undercover role is one of seller of illegal products or services. Reverse undercover techniques include furnishing a violator with a difficult-to-obtain item or service, furnishing a violator with a controlled substance, or displaying ("flashing") controlled substances.

2. Furnishing a Difficult-to-obtain Item or Service

Furnishing a violator with a difficult-to-obtain item or service, other than controlled substances, may be authorized when there is strong reason to believe that such activity will lead to the prosecution of one or more individuals who finance, control, or direct a drug smuggling organization, or to the interdiction of drugs from a significant drug smuggling operation. Such activity is defined as a "sensitive investigative activity" under DEA policy. Authorization for cross-designated Customs Agents to engage in this activity must be obtained in advance in accordance with Subchapters 660 and 662 of the DEA Agents Manual, and Section VIII (A) and other applicable provisions of this MOU.

3. Furnishing of Controlled Substances to a Violator With No Expectation of Recovery

Furnishing a controlled substance to a violator with no expectation of recovery is defined as a "sensitive investigative activity" under DEA policy. Authorization for cross-designated Customs Agents to engage in this activity must be obtained in advance in accordance with Subchapters 660 and 662 of the DEA Agents Manual, and Section VIII(A) and other applicable provisions of this MOU.

4. Displaying ("Flashing") Controlled Substances

In reverse undercover operations where the display of quantities of controlled substances is required, the drugs will be obtained from a DEA regional laboratory. Cross-designated Customs first-line supervisors will notify their counterpart DEA first-line supervisors of proposals for flashing controlled substances. Approval for such activity by cross-designated Customs Agents must be obtained from both DEA and Customs SACs. Close contact and coordination between DEA and Customs, and with other Federal, State and local agencies, in these operations is mandatory in order to avoid a dangerous or confrontational situation.
D. **Non-Seizure of Controlled Substances**

Normally, whenever cross-designated Customs Agents gain specific knowledge of a shipment, delivery, or cache of controlled substances, such controlled substances must be seized. Non-seizure of such controlled substances may be a "sensitive investigative activity" under DEA policy. Authorization for cross-designated Customs Agents to engage in this activity must be obtained in advance in accordance with Subchapters 660 and 662 of the *DEA Agents Manual*, and Section VIII (A) and any other applicable provisions of this MOU.

NOTE: This section does not apply to those situations in which controlled substances are intercepted in transit and a decision is made not to seize them immediately, but to proceed instead with a controlled delivery, cold convoy, or other similar technique. Such cases will be handled in accordance with Section VIII (B) of this MOU.

E. **Disposition of Forfeited Assets**

The agreement entitled interim Procedures for Handling of Seizures Made by Cross-Designated Customs Agents, dated November 7, 1990, will govern the disposition of assets seized and forfeited by cross-designated Customs Agents.

F. **Interaction with Other Law Enforcement Agencies**

Cross-designated Customs first-line supervisors will advise their DEA counterpart supervisors of all significant Customs interaction with Federal, State or local law enforcement agencies in connection with Title 21 activities. All coordination, supervision, review, and approval provisions of this MOU will fully apply to all Title 21 activity by cross-designated Customs Agents, including such activities performed in conjunction with any other Federal, State, or local law enforcement agency.

G. **Conduct of Collateral Investigations**

When an investigation by cross-designated Customs Agents in one area requires that investigative leads be followed through a collateral investigation in another area, the following procedures will be used:

1. If there are cross-designated Customs Agents in close proximity to the second area, they will be sent the action request by appropriate means. The first-line DEA supervisor in the originating area will promptly be advised of the request and that supervisor will inform the DEA office in the second area of the request. DEA and Customs designated ASACs will be routinely notified of collateral requests. Local coordination will follow between Customs and DEA in the second area.
2. If there are no cross-designated Customs Agents near the second area, the Customs request, passed by the originating area DEA supervisor, will be responded to by the DEA office in the second area in a prompt manner.

H. **Conduct of Foreign Drug Investigations**

1. **General**

   Within the context of the National Drug Control Strategy, DEA Country Attaches will service requests for foreign investigations in Customs drug smuggling cases. This will be done in close coordination and, wherever possible, with the assistance of the counterpart Customs Attaché. An information copy of the request will be sent to the Customs Attaché.

2. **Foreign Travel**

   In order to obtain country clearance for foreign travel by Customs personnel, confidential informants, or cooperating individuals, Customs Headquarters will obtain, review, and validate the following information and supply it to DEA Headquarters:

   a. Name and title of travelers;
   b. Social security number of travelers;
   c. Date of birth of travelers,
   d. Official U.S. passport numbers of travelers;
   e. Date of expiration of travelers, official U.S. passport;
   f. Travelers, security clearance;
   g. Brief statement describing the reasons travel is necessary;
   h. U. S. laws violated;
   i. Stage of investigation (i.e., investigative stage, pre-grand jury, post-indictment, trial and/or sentencing stage, AUSA request);
   j. Persons, firms, or organizations to be visited;
   k. Countries to be visited;
After receipt of the above information, DEA Headquarters will review it and, upon concurrence, facilitate country clearance.

I. Reporting Investigative Results

The reporting rules of each agency will be followed for every investigation or activity. Customs reports of investigation (CF-23) in Title 21 cases will be attached to a DEA-6 cover sheet to give DEA the necessary case classification and indexing information required to enter the information into its automated system. A DEA-202 will be completed and provided to DEA on any subject arrested by Customs for a Title 21 violation.

IX. Miscellaneous Provisions

A. Effective Date

This MOU will take effect when signed by the Administrator of DEA and the Commissioner of Customs. It will remain in effect unless terminated or modified in accordance with its terms.
Appendix K

B. Review

This MOU will be reviewed one year after its initial effective date. After this one-year review, it will be reviewed thereafter every two years, or at any time, upon a written request by either party. These reviews will be the joint responsibility of the DEA Assistant Administrator for operations and the Customs Assistant Commissioner for Enforcement, or their designees. Both parties will cooperate in resolving any issues and in executing any necessary or appropriate modifications of this MOU.

C. Modifications

All modifications of this MOU must be mutually agreed upon by DEA and Customs and must be in writing. The DEA Administrator and the Commissioner of Customs may delegate to appropriate officials within their respective organizations the authority to approve and sign modifications of this MOU, or to approve and sign appendices, addenda or other agreements related to it.

D. Termination

This MOU can be terminated only by the mutual written agreement of the DEA Administrator and the Customs Commissioner, or by either party providing a minimum of 30 days written notice to the other.

X. No Private Right Created

This document is an internal agreement between DEA and Customs and does not create or confer any right or benefit on any other person or party, private or public. Nothing in this agreement or its addenda, attachments, or other associated documents is intended to restrict the authority of either signatory to act as provided by law, statute, or regulation or to restrict any agency from enforcing any laws within its authority or jurisdiction.

XI. Signatures

Thomas A. Constantine George J. Weise
Administrator Commissioner
Drug Enforcement Administration United States Customs Service

8/8/94 8/8/94
Date Date
ATTACHMENT A

CROSS-DESIGNATION PROCEDURES--August 8, 1994

1. Title 21 cross-designation may be requested by Customs for Group Supervisors and Special Agents assigned to groups primarily dedicated to investigation of drug smuggling. Many Customs offices do not have groups primarily dedicated to the investigation of smuggling of one particular type of contraband, such as drugs. Where this situation exists in Customs offices located in a high-threat smuggling area, cross-designation may be requested for those Agents who will perform Title 21 activities as a collateral duty.

2. DEA and Customs SACs and the designated ASACs will maintain a continuous dialogue concerning the need for cross-designated Customs Agents.

3. The Customs SAC will forward a request to the Assistant Commissioner of Customs for Enforcement (AC/E), identifying the Customs Special Agents to be cross-designated. The request should be submitted on a current cross-designation form. Customs Headquarters must respond, via memorandum or electronic mail, within five working days of receipt.

4. After receiving approval from Customs Headquarters to nominate Special Agents for cross-designation, the Customs SAC will formally request that the DEA SAIC approve the names. This request will be in the same format as sent to Customs Headquarters.

5. Within seven days of receipt of a cross-designation request from the Customs SAC, the DEA SAIC will forward the request to DEA Headquarters with either an endorsement or the specific reasons why disapproval is recommended. A copy of this transmission will be provided to the Customs SAC at the time it is sent to DEA Headquarters.

6. DEA Headquarters will notify Customs Headquarters and the DEA SAIC of the disposition of the request. DEA will provide Customs with specific reasons in writing for any disapproval of a cross-designation request.

7. Cross-designation will be granted at the discretion of the DEA Administrator and will continue unless terminated on a case-by-case basis on written notice by DEA to Customs. In the event that a cross-designated Customs Agent is reassigned either by geographic location, function, duties, or responsibilities, his or her cross-designation is automatically terminated and must be renewed pursuant to these procedures. It is the intention of the parties that this cross-designation of Agents arrangement shall continue as long as it makes an effective contribution to drug enforcement efforts.
8. As current cross-designations issued under previous procedures expire, those Customs Special Agents who still require Title 21 authority will be cross-designated pursuant to these procedures.
DEFINITIONS

The following definitions are provided as guidance and are not intended to be all-inclusive.

Agent or ICE Agent: For the purposes of this Handbook, the term Agent or ICE Agent shall refer to any ICE Special Agent or to any other ICE officer or Federal, state, or local law enforcement officer working with ICE on an undercover investigation.

Appropriate Federal Prosecutor: A U.S. Attorney, an Assistant U.S. Attorney or Section Chief in the Criminal Division of the Department of Justice.

Business Exemption: For the purposes of this Handbook, this term is used to refer to 19 U.S.C. 2081(a)(1)(A) & (B) and 8 U.S.C. 1363a(a)(1) & (2), which allows an undercover proprietary the ability to operate on a commercial basis and to purchase property, buildings, and other facilities and to lease space without compliance with Federal Acquisition Regulations (FAR) or the provisions of 31 U.S.C. relating to Government-owned corporations. If an operation seeks to purchase or lease space or acquire property outside FAR, it must also be exempted as a proprietary. If, on the other hand, an operation is engaging in undercover transactions but does not need to establish a corporation or to purchase buildings or lease space or acquire property outside FAR, then the Business Exemption is not necessary.

When used in conjunction with the Use of Proceeds Exemption, an undercover proprietary can use undercover proceeds to establish a proprietary and to purchase or lease reasonable and necessary goods and services related to the operation without compliance with FAR.

Business Transaction: A purchase, sale, or other transaction involving items or services in furtherance of an undercover activity or a certified undercover investigative operation.

Case Agent: The Special Agent assigned responsibility in the TECS II Case Management system for an investigation. This Agent may also be responsible for presentation of the investigation to the appropriate U.S. Attorney’s office for prosecution. Some undercover operations may have several cases and case Agents.

Casual Undercover Activities: with or without fictitious identification requiring:

- no change in appearance or personal habits; and
- indirect contact with violators or potential violators, such as undercover telephone calls or performing secondary duties at a storefront which requires little or no contact with suspects.

This type of undercover activity does not require completion of Undercover Operatives School and can be approved by a SAC, ASAC, or RAC.
**Appendix L**

**Certified Undercover Operation:** An undercover operation which has received written certification from the Assistant Secretary or his/her designee that any action under one or more of the exemptions contained in 19 U.S.C. 2081 and/or 8 U.S.C. 1363a is necessary for the conduct of the operation.

**Commissions:** Any monies or other financial compensations, which are:

- retained by, or paid to, a potential target or source of an investigation; and
- paid for, or derived from, criminal activities.

**Contact Agent:** An experienced undercover operative assigned to maintain contact with an undercover operative in deep isolated undercover operations where the nature of the assignment does not allow for regular contact with law enforcement.

**Confidential Informant:** For the purposes of this Handbook, a Confidential Informant is an individual who:

- is a source of information;
- has been properly documented according to ICE policies contained in the Interim Informants Handbook;
- works under the direction and control of an authorized representative of a Federal law enforcement agency; and
- is not a sworn law enforcement officer acting solely in an official capacity.

**Cover Agent:** The Agent assigned to provide safety and security for an undercover activity, meeting, or location.

**Cover:** This term is used in this Handbook interchangeably with “undercover.”

**Customs Undercover Fundamental Financial System (CUFFS):** The automated financial record-keeping system maintained to record all the financial transactions of a certified undercover operation.

**Department of Homeland Security Sensitive Circumstances:** For purposes of this Handbook, *DHS Interim Guidelines*, sensitive circumstances are present if there is a reasonable expectation that the undercover operation will involve:

1. an investigation of possible criminal conduct by any elected or appointed official or political candidate for a judicial, legislative, management, or executive-level position of trust in a Federal, state, or local governmental entity or political subdivision thereof;
2. an investigation of any public official at the Federal, state, or local level in any matter involving systematic corruption of any governmental function;

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

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

5. establishing, acquiring, or using a proprietary which will be conducting business with the public;

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

7. activity that is proscribed by Federal, state, or local law as a felony or that is otherwise a serious crime, but not including:
   - the purchase of stolen or contraband goods;
   - the purchase of fraudulent immigration documents;
   - the delivery, sale, use, ownership, or possession by the Government of contraband or stolen property whose ownership cannot be determined;
   - the controlled delivery of drugs or other contraband which will not enter the commerce of the United States;
   - the domestic transportation or concealment of illegal aliens when the undercover operative (see definition) does not have substantial control or direction of the scheme involving the domestic transportation or concealment of illegal aliens;
   - the payments of bribes which are not included in the other sensitive circumstances; or
   - the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary (this exception does not include any statement under oath or the penalties of perjury;

8. using a legal marriage or a sting operation;

9. a significant risk that an undercover operative (see definition) will be arrested or will supply false testimony or false documentation in a legal or administrative proceeding;
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10. an undercover operative will be required to give a sworn statement or testimony in any judicial or administrative proceeding in an UNDERCOVER capacity;

11. attendance at a meeting or participation in communications between any individual and his or her lawyer where the purpose of the meeting or communication involves the defense of any person on criminal charges or involves civil or administrative proceedings to which the United States may be a party;

12. a significant risk that a third party will enter into a professional or confidential relationship with a person participating in an undercover operation who is, or is acting as, an attorney, physician, psychologist, member of the clergy, spouse, member of the news media, or other person who is under a legal obligation of confidentiality;

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

14. a significant risk of violence, physical injury to individuals, or financial loss to a third party/innocent individual;

15. activities which could result in significant claims against the United States arising in tort, contract, or property law, or for compensation for the "taking" of property;

16. untrue representations by a person participating in the undercover operation concerning the activities or involvement of any third person without that individual's knowledge or consent, and there is a reasonable possibility that the false or misleading representations may cause significant embarrassment or physical or financial harm to the third person;

17. the undercover operation will be conducted substantially outside the United States. However, an undercover operation will not be considered to involve a sensitive circumstance if the only extraterritorial conduct consists of minimal contacts within the immediate border areas of Canada and Mexico; and

   a. any such minimal contacts with subjects are necessary to maintain the credibility, cover, or safety of the undercover employee or cooperating individual; or

   b. any such minimal contacts with persons other than subjects are solely for information gathering purposes, do not involve use of recording or broadcasting devices, occur under circumstances in which no person or entity has a reasonable expectation of privacy, and none of the other sensitive circumstances described in other sections of these guidelines are present.

**DHS Undercover Review Committee (DHS URC):** Committee composed of representatives from: the Border and Transportation Security Directorate, the Department of Homeland Security
Emergency Circumstances: For purposes of this Handbook, “emergency circumstances” are defined as those instances where:

- events in an investigation require an immediate response by investigators; and
- there will be serious negative consequences of a delayed response, such as:
  - the delay could place any individual in jeopardy of serious injury or death;
  - the delay would prevent or unduly delay Agents from interdicting the introduction of controlled substances or other prohibited articles into commerce;
  - the delay would prevent or unduly delay Agents from interdicting the unlawful import/export of munitions, weapons, hazardous materials, precursor chemicals, nuclear or missile proliferation technology or materials, or other dangerous items; or
  - the delay would have a negative impact on national security or foreign policy issues.

Entrapment: When the Government plants the disposition to commit an offense in the mind of a person who is not otherwise disposed to commit an offense, and then induces the commission of that offense in order to prosecute.

Exigent Circumstances: For purposes of this Handbook, “exigent circumstances” are defined as those instances where:

- events in an investigation require a rapid response by investigators; and
- there will be definitive negative consequences of a delayed response, such as:
  - the delay would seriously impede the investigation to the extent that violators may not be apprehended; or
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- the delay would cause the loss of evidence or information critical to the continuation of the investigation or the successful prosecution of suspects.

**Federal Acquisition Regulations (FAR):** The term refers to those regulations that govern the normal procurement procedures that agencies of the U.S. Government must follow when acquiring property or leasing space. Undercover operations of the ICE may be specifically exempted from these requirements if they are certified under the provisions of 19 U.S.C. 2081(a)(1) and 8 U.S.C. 1363a(a) and such acquisition outside the FAR is necessary to protect the safety and security of the operation.

**Field Undercover Liaison Coordinator:** The Special Agent experienced in undercover work who has volunteered and successfully completed the Undercover Liaison Coordinator Course. He or she will monitor, assist in the debriefing, and make recommendations to the ASAC, Associate SAC, and SAC for the selection of undercover Agents.

**Headquarters Undercover Liaison Coordinator:** The Program Manager who is an experienced undercover operative with undercover managerial experience and who is available for consultation with management and field coordinators on problems related to undercover assignments. This individual is responsible for coordinating field interventions and debriefings with licensed clinical psychologists under contract to ICE as deemed necessary by management.

**ICE Employee:** An individual hired by ICE under applicable Office of Personnel Management procedures, who is under the supervision and control of an OI supervisor.

**ICE Sensitive Circumstances (ICE Policy):** In addition to the DHS sensitive circumstances, the following areas are also considered sensitive for the conduct of ICE investigations:

1. Transmittal of weapons or munitions articles, hazardous materials, or nuclear or biological materials beyond the immediate control of ICE agents;

2. expenditures in excess of $150,000, or generation of proceeds in excess of $50,000;

3. operations which continue for more than 1 year beyond the first undercover activity;

4. indemnification / hold-harmless agreements;

5. third-party funding sources (funding provided by other Federal sources, such as High Intensity Drug Trafficking Areas or Organized Crime Drug Enforcement Task Forces is not third-party funding. The acceptance of funding or property from private parties is proper only under very strict guidelines after approval from the Department of the Homeland Security);

6. when a proprietary undercover business is established exclusively to engage in business transactions to support an illegal activity and will not seek to do business with the general public. A “Proprietary Undercover Business” is defined as a sole proprietorship,
partnership, corporation, or other business entity operated on a commercial basis. As applied to ICE Undercover operations, the definition of “on a commercial basis” will include individuals who only engage in illegal business;

7. an undercover operative will be a major participant in the scheme to move or transport aliens illegally across an international border or will participate in the operation of an illegal alien safe or stash house; or

8. the undercover operation will require the use of proceeds generated by the undercover operation to offset necessary and reasonable expenses incurred in the operation of the proprietary.

It is anticipated that the DHS Guidelines will consider only activities of Government employees for determining sensitive circumstances. However, under ICE policy, activities of informants, which would constitute sensitive circumstances, will be reviewed in order to make a determination.

This list is not all-inclusive. Any activity, which presents or has the potential for presenting serious legal, ethical, or policy issues should be reviewed and, if considered sensitive, handled according to this subsection.

**Joint Undercover Operation**: A joint undercover operation will exist when ICE and another law enforcement agency are investigating the same targets, have agreed to work jointly, and have each provided manpower or other resources in support of an investigation which involves undercover activity, regardless of which agency initiated the investigation:

- the exercise of Customs authority under 19 U.S.C. 2081 and/or 8 U.S.C. 1363a;
- undercover activities conducted by OI;
- undercover activities conducted by cooperating individuals who work under the direction and control of an OI field office; or
- undercover activities which are supported by ICE funding.

Participation by OI that is limited to furnishing support, such as conducting a surveillance or providing technical assistance, does not constitute a joint undercover operation.

**Long Term Undercover**: An assignment that involves:

- assuming a fictitious identity with significant changes in appearance or personal habits in order to regularly meet with violators or potential violators with the intention of the assignment continuing for a period of greater than 6 months; and
- frequent and repetitious contact with the same violators or potential violators in covert
Moderate Undercover: An assignment that involves:

- assuming a fictitious identity, which may or may not involve a change in appearance or personal habits; and

- a limited number of short-duration, face-to-face contacts with violators or potential violators at a ICE-controlled covert location or an alternate location.

Money Laundering Points: Any monies or other financial compensations which:

- are retained by, or paid to, the undercover operation by a potential target or source of an investigation; and

- constitute a percentage paid for, or derived from, money laundering activities.

Operation Property Office: The ICE employee designated to control access to all property for which an operation is accountable. Property will not be available to be signed in or out without this person’s or his or her designee’s authorization.

Personal Assistance Agreement: An agreement reached between a Cooperating Individual (CI) and a SAC, which details the general activities and responsibilities expected of the CI as well as the limitations placed upon his or her behavior. The agreement may also state the amounts and methods of compensation, if any, that the CI could expect to receive if he or she otherwise adheres to the provisions of the agreement.

Personal Transaction: A purchase, sale, or other transaction involving items or services not related to ICE or official business.

Personal Undercover Credit Card: A credit card issued in a fictitious personal or corporate name used for support of a personal undercover identity. This card is owned by the undercover operative and can be used for business transactions or for personal transactions to strengthen an undercover identity.
**Proceeds:** Funds acquired from non-Government sources during the course of an undercover operation, including, but not limited to:

- gross income and net profits from undercover endeavors (including money laundering "points" received);
- any tangible assets received from targets of an investigation as a result of undercover endeavors;
- violator/trafficker directed funds;
- interest on undercover bank accounts;
- funds received for sales by undercover businesses;
- monies received by an undercover Agent or CI for illegal services; and
- salaries paid to undercover Agents by a third party.

Proceeds are considered Government funds and are subject to the same controls and procedures applicable to appropriated funds except as provided by the exemptions in 19 U.S.C. 2081 and 8 U.S.C. 1363a. Tangible assets (other than money) acquired during the course of an undercover operation, such as real estate, conveyances, or property is not considered proceeds. These assets will be recorded in the property records of the operation pursuant to Chapter 7.16 of this Handbook.

**Proceeds Credit Card:** A credit card issued as a Government credit card for overt purchases of $2,500 or less, under the provisions of the FAR, utilizing proceeds from an undercover operation.

**Proprietary:** A sole proprietorship, partnership, corporation, or other business entity operated on a commercial basis, which is owned, controlled, or operated wholly or in part on behalf of ICE and whose relationship with ICE is concealed from third parties.

As applied to ICE undercover operations, the definition of operating "on a commercial basis" will include activities by undercover operatives who only engage in otherwise illegal business as well as activities of undercover operatives who engage in both legal and illegal business transactions.

An undercover company or undercover operative that is established exclusively to engage in business transactions with targets of investigation to support an illegal activity and will not seek to do business with the general public is considered a proprietary, as defined under 19 U.S.C. 2081 and 8 U.S.C. 1363a. However, although this is not considered sensitive according to DHS sensitive circumstances, this is considered an ICE sensitive circumstance.
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(For example, a cooperating individual or undercover Agent who is established in an apartment to provide the service of illegally exporting munitions would be considered a proprietary undercover business. This will enable the SAC to seek the business exemption required to acquire services and property, as well as perform other necessary transactions in a covert manner outside the FAR, when necessary. If, however, the operation did not seek to establish a corporation or to purchase or lease space or acquire property outside the FAR, then the business exemption is not required.)

Undercover business activities that are both of a legal and illegal nature and which might engage in business with the general public are considered to be sensitive.

The type of proprietary that engages in business with the general public is discouraged but not prohibited. It must be understood that once a proprietary business is established that will, as part of its covert façade engage in business with the general public, liability is connected with that activity as it would in a general business sense. Precautionary steps in protecting the general public and interests of ICE must be undertaken by the certified covert operation to ensure that liability concerns that could be generated by the activity are addressed.

**Record Keeper:** The ICE employee responsible for recording in CUFFS all financial transactions of a certified undercover operation. Federal law requires that the person accountable for financial records of the Federal Government be a Federal Government employee. It is ICE policy that the Record Keeper also be an ICE employee. This requirement can be waived with the written permission of the Director, Office of Investigations.

**SAC Undercover Liaison Coordinator:** The second line Supervisory Special Agent who is responsible for coordinating the administration and oversight of all undercover operations worked under the jurisdiction of the SAC. This is an optional position, which may be established by the SAC.

**Sensitive Circumstances:** See “ICE Sensitive Circumstances” or “Department of Homeland Security Guidelines for Undercover Operations by DHS Enforcement Bureaus Sensitive Circumstances.”

**Sweep Account:** Concerns have arisen that some undercover operations have inadequately safeguarded bank deposit balances in excess of $100,000. Protection of these funds is sought by distributing and maintaining balances of less than $100,000 in multiple accounts with the same financial institution. Unless an undercover operation has a unique EIN assigned to each account, these funds are not safeguarded. The FDIC Federal Deposit Insurance Program does not determine coverage on a per account basis. In this instance, the multiple account balances would be added together and insured up to a total of $100,000 per financial institution. As a result, the use of a daily sweep account is recommended.

The concept of a sweep account is to protect a company’s bank deposits. Uninsured funds are moved into secure financial instruments overnight and returned the following morning. To ensure the safety of these undercover operation deposits, funds should be swept into U.S.
Treasury obligations versus publicly held corporation bonds. The primary benefits of a daily sweep account include: 1) no red flags are raised since the same safeguard technique is used by private industry, 2) funds are secured in the event the bank fails during normal business hours, and 3) a higher rate of interest is earned.

**Umbrella Operation**: A certified undercover operation instituted principally to establish a long-term, activity-based infrastructure to provide support and authenticity for other close-ended target, organization, or system-specific undercover operations.

**Undercover Activities**: Any investigative activity involving the use of an undercover operative of ICE or other Federal, state, or local law enforcement organization working with ICE.

**Undercover Credit Card**: A credit card issued in a fictitious personal or corporate name used for operational-related transactions in support of an undercover activity or undercover operation.

**Undercover Employee/Operative**: A Special Agent, Pilot, Air Enforcement Officer, Air Interdiction Officer, Marine Enforcement Officer, or Patrol Officer or of a Federal, state, or local law enforcement agency, who voluntarily works under the direction and control of the particular investigation, whose relationship with law enforcement is concealed from third parties in the course of an investigative operation; or

for ICE purposes the definition shall also include any cooperating individual, working under the direction and control of ICE or of another Federal, state, or local law enforcement agency working jointly with ICE in a particular investigation, whose relationship with law enforcement is concealed from third parties.

**Note**: The mere use of a cooperating individual to provide information to law enforcement on the activities of criminal groups and individuals does not, in and of itself, qualify as an undercover activity. Usually, if a cooperating individual has contact with the targets of an investigation, some additional sort of participation is required (e.g., offering to buy, sell, or provide goods or services in furtherance of illegal activity).

**Note**: ICE supervisors and managers shall not perform the function of Undercover Operatives without a waiver from the **Deputy Assistant Director, Investigative Services**.

**Undercover Identification**: Any identification document issued in a fictitious name or alias, including official documents, whether counterfeit or genuine, created by any agency of the Federal, state, or local government, or by a bank or financial institution; or any credit card, license, or other document which is offered as proof of identity.

**Undercover Operation**: An investigation involving a series of related undercover activities over a period of time. A "series of related undercover activities" consists of numerous separate contacts by an undercover employee/operative with the individual(s) under investigation. However, undercover activity involving sensitive circumstances constitutes an undercover
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operation regardless of the number of contacts involved.

**Undercover Project Manager:** A Senior Special Agent (or higher) who has the responsibility and authority to coordinate all aspects of a particular undercover operation.

**Undercover Review Committee (URC):** The URC is the body responsible for reviewing proposals for undercover activities, which involve sensitive circumstances. The permanent members of the committee are:

- Deputy Assistant Director, Investigative Services (Chair)
- Deputy Assistant Directors, (National Security Investigations, Financial Investigations, Smuggling/Public Safety Investigations, and Investigative Services)
- Unit Chief, Strategic
- Unit Chief, National Security Unit (NSU)
- Unit Chief, Compliance Enforcement
- Unit Chief, Financial Infrastructure Protection
- Unit Chief, Financial Programs
- Unit Chief, Commercial Fraud
- Unit Chief, Critical Infrastructure Protection
- Unit Chief, Human Trafficking
- Unit Chief, Contraband Smuggling
- Unit Chief, Identity and Benefits Fraud
- Unit Chief, Human Rights Violations
- Unit Chief, Cyber
- Unit Chief, Undercover Operations
- Unit Chief, Investigative Support
- Unit Chief, Special Operations, and
- Agency Counsel

Additional members from other agencies will be included pursuant to the anticipated DHS Guidelines, as detailed in Chapter 4.8.2 of this Handbook.

To promote consistency, members will attend every meeting of the URC. Substitutions will be allowed only when the principal is on leave or away from the office on official business.

**Use of Proceeds Exemption:** The term used to refer to 19 U.S.C. 2081(a)(3) and 8 U.S.C. 1363a(a)(4) which provides an undercover operation the ability to use proceeds to offset any reasonable and necessary expense of the operation without regard to certain sections of 31 U.S.C. relating to the disposition of public monies.

**Covert Expenditures:** Necessary expenditures incurred in direct support of an investigation in which the identification of ICE as a party to the transaction must be concealed from the vendor, third parties, or the public in order to avoid compromising covert locations or activities. Covert expenditures are justified when a reasonable
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articulable expectation exists that an overt expenditure will compromise the covert activity or location. These expenditures are not subject to FAR if the undercover operation has been granted or authorized to use exemptions.

**Overt Expenditures:** Necessary expenditures incurred in direct support of an investigation where it cannot be shown that it is necessary to conceal the involvement of ICE to avoid compromising a covert activity or location. These expenditures are subject to FAR.

**Violator/Trafficker Directed Funds:** Those funds or monetary instruments provided by a violator to the undercover operation with the understanding that the funds are to be used in a specific way for the benefit of the violator or to further the illegal activity.
ACRONYMS

A

ACT – Accounting Control Transaction
AIMS – Asset Information Management System
AMID - Air and Marine Interdiction Division
AMOR - Air and Marine Operations Report
APC – Accounting Processing Code
ASAC – Assistant Special Agent In Charge
AUSA - Assistant U.S. Attorney

B

C

CATS – Customs Automated Travel System
CD – Customs Directive
CDO – Customs Delegation Order
CF – Customs Form
CI – Confidential Informant
CLAS – Customs Logistics Automated System
CUFFS Customs Undercover Fundamental Financial System

D

DEA – Drug Enforcement Administration
DHS – Department of Homeland Security

E

EFT – Electronic Funds Transfer

F

FAA - Federal Aviation Administration
FAR – Federal Acquisition Regulations
FP&F – Fines, Penalties and Forfeitures
FTR – Federal Travel Regulations
Appendix M

G

GSA – General Services Administration

H

I

IA – Office of Internal Affairs
ICE – Bureau of Immigration and Customs Enforcement
INS – Immigration and Naturalization Service

J - L

M

MID – Management Inspection Division
MOU – Memorandum of Understanding
M&IE – Meals and Incidental Expenses

N

NSU – National Security Unit
NCIC - National Crime Information Center

O

OCC – Object Class Codes
OI – Office of Investigations

P

PAA – Personal Assistance Agreement
PIMS – Property Information Management System
POE – Purchase of Evidence
POI – Purchase of Information

Q

R

RAC – Resident Agent In Charge
RI – Report of Investigation

S

SAC - Special Agent in Charge
S/A/S – Search/Arrest/Seizure Report
SF – Standard Form
SOD - Special Operations Division

T

TFO - Task Force Officer
TECS - Treasury Enforcement Communications System

U

URC – Undercover Review Committee
U.S. – United States

V - Z