

**Forest Service Manual
National Headquarters - Washington Office
Washington, DC**

**Forest Service Manual 5300 – Law Enforcement
Chapter 5320 – Investigations**

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Responsible Staff:

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Posting Instructions: Amendments are numbered consecutively by title and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this title was FSM 5300-2022-1 to FSM 5300 Zero Code.

Digest: Following is an explanation of the changes throughout the directive by section.

5320: Makes minor technical and editorial changes throughout the chapter. Changes Federal Law Enforcement Training Center (FLETC) to Forest Service National Academy.

5320.3: Adds language to number 4, “on the case determination form by the appropriate Supervisor.”

5320.41: Adds language to number 1 on, “the Office of Professional Responsibility (OPR).” Adds language to number 8, “Office of Professional Responsibility, or the Forest Service National Academy.”

5320.45: Adds language to number 5, “Office of Professional Responsibility or The Forest Service National Academy” and “or their designee.”

5321.11: Updates USDA OIG Hotline number “(800) 424-9121.”

Forest Service Manual 5300 – Law Enforcement

Chapter 5320 – Investigations

Amendment: 5300-2022-2

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5321.4: Updates Responsibility section and sets forth direction on “Forest Service law Enforcement and Investigations personnel will.”

5322.1: Adds language at number 2 on “Prior to issuing a Kalkines warning to an employee, consultation must be sought from the Assistant Director, OPR. Consultation should also be sought from the AUSA, if necessary.”

5322.15: Changes title from “Quick Pay Payment System” to “Reserved” and removes obsolete direction.

5323.1: Removes obsolete direction.

5324.05: Adds direction on Video Surveillance definition “and does not require audio surveillance approval.”

Table of Contents

5320.1 - Authority.....	4
5320.2 - Objective.....	4
5320.3 - Policy	4
5320.4 - Responsibility	5
5320.41 - Washington Office, Director of Law Enforcement and Investigations	5
5320.42 - Line Officers.....	6
5320.43 - Station Directors, Institute Director, and Washington Office Staff Directors Other Than Director of Law Enforcement and Investigations	6
5320.44 - Special Agents in Charge	6
5320.45 - Special Agents and Law Enforcement Officers.....	7
5320.46 - All Employees	7
5321 - Investigations	8
5321.1 - Reporting Known or Suspected Violations.....	8
5321.11 - Bribery or Attempted Bribery of Department Employees.....	8
5321.2 - Other Matters Related to Investigations	8
5321.3 - Investigations by Other Federal Departments or Agencies	8
5321.4 - Investigations and Enforcement Actions	9
5322 - Investigative Procedures	9
5322.1 - Suspect's Rights.....	9
5322.11 - Statements	9
5322.12 - Evidence	9
5322.13 - Payment for Information.....	9
5322.14 - Payment for Evidence	9
5322.15 - Reserved.....	10
5322.16 - Confidentiality of Informants and Information	10
5322.17 - Surveillance	10
5322.2 - Undercover Operations	10
5322.21 - National Crime Information Center	10
5323 - Consensual Monitoring	10
5323.01 - Authority	10
5323.03 - Policy.....	11
5323.04 - Responsibility	11
5323.04a - Washington Office, Director of Law Enforcement and Investigations.....	11
5323.04b - Special Agents in Charge.....	12
5323.04c - All Other Law Enforcement Personnel.....	12
5323.05 - Definitions	12
5324 - Video Surveillance.....	13
5324.01 - Authority	13
5324.03 - Policy.....	13
5324.05 - Definitions	13

5320.1 - Authority

See FSM 5301.

5320.2 - Objective

The objective of all investigations is to gather evidence and determine facts in order to establish an accurate account of what occurred and to identify the responsible person(s).

5320.3 - Policy

1. Law enforcement personnel (FSM 5305) shall take appropriate action to discover and investigate crimes in which the Forest Service is or may be a party of interest.
2. Forest Service records, or other property under the control of a Line Officer and deemed to be pertinent to an investigation, must be made available to law enforcement personnel when requested.
3. Information related to investigations must remain confidential to:
 - a. Ensure the safety of law enforcement personnel, witnesses, and others, and
 - b. Avoid compromising the investigation.
4. Law enforcement personnel are expected to use prudent judgment when initiating cases, based on resources available and other factors. A decision not to open an investigation must be documented in writing and appropriately filed on the case determination form by the appropriate Supervisor.
5. Law enforcement personnel are expected to complete investigations in a timely manner pursuant to policy and legal requirements.
6. Agency officials must ensure that law enforcement personnel have the independence necessary to conduct any investigation in confidentiality and without interference. Employees shall not attempt to overrule or influence the extent and thoroughness of an investigation by agency law enforcement personnel.
7. All employees shall be informed of their responsibility to cooperate during an official investigation.
8. Law enforcement personnel shall conduct criminal investigative interviews of employees in accordance with applicable case law (*Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616 (1967); *Kalkines v. United States*, 473 F.2d 1391 (Ct. Cl. 1973); and, if applicable, *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966)).
9. Employees shall take immediate action to protect evidence when a violation is discovered.

10. Law enforcement personnel shall make media contacts in accordance with the direction in FSH 5309.11, chapter 50, sec. 58, and FSM 5352.

11. The dissemination of sensitive or national security information must be in accordance with security clearance requirements for Federal officers and disseminated only to those with proper security clearances and investigative need.

5320.4 - Responsibility

5320.41 - Washington Office, Director of Law Enforcement and Investigations

It is the responsibility of the Washington Office, Director of Law Enforcement and Investigations (Director, LEI), to:

1. Assign USDA, Hotline/Whistleblower complaints or internally-generated cases involving allegations of illegal acts committed by any employee that are normally accepted by the Department of Justice for prosecution, for investigation by the Office of Professional Responsibility (OPR) after review and approval by the Chief (FSM 5304.1, para. 3).
2. Assign Hotline/Whistleblower complaints involving allegations of an administrative nature against any employee of the Law Enforcement and Investigations program, to OPR, for investigation after review and approval by the Chief or Associate Chief (FSM 5304.1, para. 3).
3. Track, review, and approve investigations conducted by or assigned to OPR pursuant to paragraphs 1 and 2.
4. Review requests for and approve the direct administration of polygraphs to Forest Service employees.
5. Coordinate requests to use the quick pay system for payments of information or evidence.
6. Provide advice on whether information obtained from investigations can be released.
7. Review requests for and grant approval to reveal the true identity of confidential informants.
8. Review and approve undercover operation plans submitted by Special Agents assigned to the Washington Office, Office of Professional Responsibility, or the Forest Service National Academy, and coordinate the implementation of any approved plans by law enforcement personnel, obtain the necessary approvals for consensual monitoring from the U.S. Department of Agriculture (USDA) Office of the Inspector General (OIG) in accordance with FSM 5323. Inform the requesting official of the OIG's decision prior to the date when consensual monitoring is to begin.

5320.42 - Line Officers

It is the responsibility of all Forest Service Line Officers to immediately report, in writing, any allegation(s) of illegal acts committed by any Forest Service employee to the Washington Office, Director, Law Enforcement and Investigations (for employees assigned to the Washington Office, Forest Service National Academy) or to the Special Agent in Charge (for employees assigned to a region or Job Corps Center).

5320.43 - Station Directors, Institute Director, and Washington Office Staff Directors Other Than Director of Law Enforcement and Investigations

It is the responsibility of the Station Directors, Institute Director, and Washington Office Staff Directors other than the Director of Law Enforcement and Investigations (LEI), to ensure that any allegations of illegal acts described in FSM 5320.41, paragraph 1 are immediately reported in writing to the Director, LEI.

5320.44 - Special Agents in Charge

It is the responsibility of Special Agents in Charge to:

1. Ensure that any allegation(s) of illegal acts that meet the criteria in FSM 5320.41, paragraph 1, when committed by any employee are immediately reported in writing to the Director, Law Enforcement and Investigations (Director, LEI or his Designee) (FSM 5304.41, para. 7b(1)).
2. Conduct case investigations on all matters assigned by the Director, LEI or his Designee (FSM 5304.41, para. 7b(5)).
3. Supervise, track, manage, and assign to law enforcement personnel investigations of all felony and serious misdemeanor crimes in the region that are not assigned by the Director, LEI (FSM 5304.41, para. 7b(6)).
4. Establish regional referral procedures through issuance of regional supplements to the Law Enforcement Handbook (FSH 5309.11) for the investigation and enforcement of offenses outside of the jurisdiction of the Forest Service, subject to requirements in of FSM 1104.32b and FSM 5304.41e with approval of Director, LEI.
5. Approve undercover operation plans submitted by Special Agents assigned to a region and coordinate the implementation of any approved plans.
6. Review, process, and forward consensual monitoring requests to the Director, LEI, pursuant to FSM 5323 and FSH 5309.11, chapter 20.

5320.45 - Special Agents and Law Enforcement Officers

It is the responsibility of Special Agents and Law Enforcement Officers to:

1. Obtain advance approval, when required, when purchasing information pursuant to Title 36, Code of Federal Regulations, Part 262 (36 CFR 262) (FSM 5322.13).
2. Obtain advance approval, when required, when purchasing evidence pursuant to 36 CFR 262 (FSM 5322.14).
3. Maintain a confidential file with the name of the information source, confidential informant number, applicable payment receipt indicating the amount paid, date paid, and the case number being investigated (FSH 5309.11; FSH 6509.13b, sec. 705.1; FSM 5322.13).
4. Conduct undercover operations only after receiving approval from the appropriate supervisory law enforcement personnel.
5. Prepare an undercover operations plan whenever feasible and submit such plan for approval through the normal chain of command to the Washington Office, Director, Law Enforcement and Investigations (for Special Agents assigned to the Washington Office, Office of Professional Responsibility or The Forest Service National Academy) or to the Special Agent in Charge (for special agents assigned to a region), or their designee (FSM 5322.2).
6. Prepare consensual monitoring requests and forward them to the Special Agent in Charge (FSM 5323 and FSH 5309.11, ch. 20).

5320.46 - All Employees

Any employee who interferes with an investigation is subject to appropriate disciplinary action and possible criminal prosecution.

It is the responsibility of all employees to ensure that any allegations of illegal acts committed by the Director, Law Enforcement and Investigations that meet the criteria described in FSM 5320.41, paragraph 1, are directly referred by any employee having knowledge of such activity, to the U.S. Department of Agriculture, Office of the Inspector General, Investigations Branch.

It is the responsibility of all employees to ensure that any allegations of illegal acts committed by any other employee of the Forest Service that meet the criteria described in FSM 5320.41, paragraph 1, are directly referred by any employee having knowledge of such activity to the nearest Forest Service law enforcement personnel, or to the Office of Inspector General Hotline, or both.

5321 - Investigations

The “Agreement Between the U.S. Forest Service and the Office of the Inspector General (OIG), U.S. Department of Agriculture (USDA)” sets forth understandings regarding general investigative jurisdictions and conduct of Forest Service-related criminal investigations by the OIG and the Forest Service (FSM 1549.1).

The Secretary of Agriculture has delegated specific authorities to OIG as defined in Title 7, Code of Federal Regulations, Part 2, section 33. The investigative authority, responsibility, and procedures of OIG are described in USDA Departmental Regulation 1710-2.

5321.1 - Reporting Known or Suspected Violations

5321.11 - Bribery or Attempted Bribery of Department Employees

Bribery is the corrupt offering, giving, receiving, or soliciting of anything of value to influence an official act of an employee. This includes situations where a forthright offer is not made, but an offer of a bribe could reasonably be inferred.

Immediately report directly to the U.S. Department of Agriculture (USDA), Office of the Inspector General (OIG) any instances of known or suspected bribery or attempted bribery of USDA employees. Employees may report instances of bribery or attempted bribery by either:

1. Calling the USDA, OIG Hotline number in the Washington, DC area at (800) 424-9121; or
2. Writing to the OIG (USDA/OIG, Hotline, P.O. Box 23399, Washington, DC 20026). Employees should be prepared to describe all circumstances associated with the attempted or suspected bribery. The employee should then follow the instructions of the OIG.

5321.2 - Other Matters Related to Investigations

Nothing in the “Agreement Between the U.S. Forest Service and the Office of the Inspector General (OIG), U.S. Department of Agriculture (USDA)” (FSM 1549.1) is intended to prohibit Forest Service employees engaged in carrying out law enforcement duties from arresting a Forest Service or other Federal employee for violating a law or regulation within Forest Service jurisdiction, or from conducting necessary investigative work related to a violation. In such a case, Forest Service Law Enforcement and Investigations employees making an arrest will notify the Special Agent in Charge of the arrest, who in turn will notify the Washington Office, Director, Law Enforcement and Investigations.

5321.3 - Investigations by Other Federal Departments or Agencies

Special Agents shall refer investigative matters within the jurisdiction of other Federal departments or agencies to those agencies when appropriate.

5321.4 - Investigations and Enforcement Actions

Forest Service Law Enforcement and Investigations personnel will investigate alleged violations of Federal law in connection with crimes affecting Forest Service employees, property, and resources.

Law enforcement personnel shall also investigate violations of laws and regulations affecting persons and their property, providing that the Forest Service has the authority and jurisdiction to act (FSM 5301).

5322 - Investigative Procedures

5322.1 - Suspect's Rights

Law enforcement personnel must take appropriate actions to ensure protection of a suspect's constitutional rights (FSH 5309.11, ch. 20).

Use form FS-5300-52a, Employee Warning (Garrity)-Criminal/Non-custodial to document advice of rights given to agency employees under the Garrity decision (*Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616 (1967)). Use form FS-5300-52b, Employee Warning (Kalkines)-Administrative/Non-Custodial to document advice of rights given to agency employees under the Kalkines decision. Prior to issuing a Kalkines warning to an employee, consultation must be sought from the Assistant Director, OPR. Consultation should also be sought from the AUSA, if necessary (*Kalkines v. United States*, 473 F.2d 1391 (Ct. Cl. 1973)). Form FS-5300-17, Advice/Waiver of Rights may be used to document advice of rights given to agency employees or any other person under the Miranda decision (*Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966)).

5322.11 - Statements

Take all statements in accordance with FSH 5309.11, chapter 20, section 21.11.

5322.12 - Evidence

Collect, process, and secure evidence pursuant to the FSH 5309.11, chapter 20, section 22.

5322.13 - Payment for Information

Special Agents and Law Enforcement Officers may purchase information relating to violations of laws or regulations. Follow the guidelines at Title 36, Code of Federal Regulations, Part 262, and FSH 5309.11, chapter 20, section 25.8, regarding the purchasing of information (FSM 5320.45, para. 1).

5322.14 - Payment for Evidence

Special Agents and Law Enforcement Officers may purchase evidence relating to violations of laws or regulations (FSM 5320.45, para. 2). Follow the guidelines at Title 36, Code of Federal

Regulations, Part 262, and FSH 5309.11, chapter 20, section 25.8, regarding the purchasing of evidence.

5322.15 - Reserved

5322.16 - Confidentiality of Informants and Information

Law enforcement personnel must take appropriate actions to ensure the confidentiality of informants and information (FSH 5309.11, chapter 20, section 21.13b).

5322.17 - Surveillance

See FSH 5309.11, chapter 20, section 26.

5322.2 - Undercover Operations

Conduct undercover operations only under the direct supervision of a Special Agent. A Special Agent shall prepare an undercover operations plan whenever feasible and submit such a plan for approval to the Washington Office, Director, Law Enforcement and Investigations (Director, LEI) (for Special Agents assigned to the Washington Office or the Forest Service National Academy) or the Special Agent in Charge (for Special Agents assigned to a region). The Director, LEI or the Special Agent in Charge, or their designee, will coordinate any implementation of an approved plan with the submitting special agent. (FSH 5309.11, chapter 20, section 27)

5322.21 - National Crime Information Center

The Washington Office of the Federal Bureau of Investigation is the headquarters of the National Crime Information Center (NCIC). Special Agents shall report all stolen Forest Service nonexpendable property to the NCIC (FSM 5304.44). Special Agents shall obtain and maintain the necessary Forest Service NCIC identification number (ORI) needed for data entry and shall control its use.

5323 - Consensual Monitoring

5323.01 - Authority

The Forest Service conducts consensual monitoring under the authority of Title 18, United States Code, section 2511(2)(c); the Office of the Attorney General Memorandum to Heads and Inspectors General of Executive Departments and Agencies, dated May 30, 2002; Title 7, Code of Federal Regulations, section 0.735.11; and Departmental Regulation (DR) 1710-1, dated February 6, 1984.

Consensual monitoring must be conducted in accordance with the following:

1. Fourth Amendment to the United States Constitution,

2. Title III of the Omnibus Crime Control and Safe Streets Act of 1968 as amended (Title 18, United States Code, section 2510 et seq.),
3. Executive Order 11396, "Providing for the Coordination by the Attorney General of Federal Law Enforcement and Crime Prevention Programs,"
4. Presidential Memorandum (untitled), dated June 30, 1965,
5. Attorney General's Memorandum to Heads and Inspectors General of Executive Departments and Agencies, dated May 30, 2002,
6. U.S. Attorney Manual (USAM) section 9-7.302, and
7. USDA Departmental Regulation 1710-1, dated February 6, 1984.

Copies of these documents are available from Special Agents in Charge or the Assistant Director – Investigations.

5323.03 - Policy

All consensual monitoring requests must be approved, in advance, by the Washington Office of the U.S. Department of Agriculture, Office of the Inspector General (OIG). Complete Form OIG-8460-1, Consensual Monitoring Request, and forward it through the normal chain of command to the Washington Office, Director, Law Enforcement and Investigations (Director, LEI). This form may be obtained from the Assistant Director, Investigations.

5323.04 - Responsibility

5323.04a - Washington Office, Director of Law Enforcement and Investigations

It is the responsibility of the Washington Office, Director, Law Enforcement and Investigations to:

1. Review all consensual monitoring requests.
2. Forward all consensual monitoring requests to the U.S. Department of Agriculture, Office of the Inspector General (OIG) for prior approval. If the request requires written Department of Justice (DOJ) approval before monitoring begins, OIG will forward their approved request to the DOJ, Office of Enforcement Operations.
3. Document approved consensual monitoring requests and notify the requesting official of approved requests as soon as possible.
4. Submit any required reports summarizing results of approved consensual monitoring requests to the OIG (FSM 5323.1).

5323.04b - Special Agents in Charge

It is the responsibility of Special Agents in Charge to:

1. Acquire consensual monitoring equipment only after receiving approval from the Washington Office, Director, Law Enforcement and Investigations (Director, LEI).
2. Maintain and issue consensual monitoring equipment needed for telephone interceptions or investigations requiring written or verbal Department of Justice authorization. Consensual monitoring equipment shall be managed and maintained at the regional level.
3. Review consensual monitoring requests for accuracy and use of authorized equipment.
4. Process and forward consensual monitoring requests as soon as possible to the Director, LEI.

5323.04c - All Other Law Enforcement Personnel

It is the responsibility of all other law enforcement personnel to:

1. Obtain verbal or written approval from the appropriate Department of Justice Assistant United States Attorney in the judicial district having jurisdiction over the investigation or offense for non-telephone interceptions.
2. Prepare Form OIG-8460-1, Consensual Monitoring Request, and forward it, along with any necessary attachments, to the Special Agent in Charge (for law enforcement personnel assigned to a region) or to the Washington Office, Director, Law Enforcement and Investigations (Director, LEI) (for law enforcement personnel assigned to the Washington Office or the Forest Service National Academy).
3. Utilize only authorized and assigned equipment provided by the Special Agent in Charge (for law enforcement personnel assigned to a region) or by the Director, LEI (for law enforcement personnel assigned to the Washington Office or the Forest Service National Academy)

5323.05 - Definitions

Consensual Monitoring. Is the investigative use of electronic and mechanical devices to overhear, transmit, or record telephone and non-telephone communications when one or more of the parties to the conversation is an employee who meets the definition of law enforcement personnel (FSM 5305), or one party is cooperating with law enforcement personnel and has consented to the overhearing, transmitting, or recording of the communication.

Consensual Monitoring Request. A request for approval of consensual monitoring, utilizing Form OIG-8460-1, Consensual Monitoring Request.

5324 - Video Surveillance

See FSH 5309.11, chapter 20.

5324.01 - Authority

See FSM 5301.

5324.03 - Policy

1. Conduct video surveillance in accordance with the following:
 - a. Fourth Amendment to the United States Constitution,
 - b. Title III of the Omnibus Crime Control and Safe Streets Act of 1968 as amended (Title 18, United States Code, section 2510 et seq.), and
 - c. United States Attorneys' Manual 9-7.200 - Video Surveillance.

Copies of these documents are available from each Special Agent in Charge (SAC) or from the Assistant Director, Investigations.

2. Coordinate the use of video surveillance equipment with an operational microphone pursuant to FSH 5309.11, chapter 20, section 24 and applicable Federal law.

5324.05 - Definitions

Title III Authorization Request. The formal application process that must be followed to obtain a judicial interception order. The request has certain elements that must be addressed, pursuant to Title 18, United States Code, sections 2516 and 2518.

Video Surveillance. The use of authorized video surveillance equipment, whether operated as a portable unit or from a fixed position, to record events in public areas or places in which the public has an unlimited right of access, such as recreation area facilities, open forest and wilderness areas, or other public areas such as open fields, public streets, and public parking lots where law enforcement personnel have lawful access to the area being monitored or recorded. The use of a fixed remote video unit with the audio capability disabled, such as those utilized for unattended open fields surveillance in cannabis investigations, meets the definition of routine video surveillance and does not require audio surveillance approval.