

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

**Forest Service Handbook 5309.11 – Law Enforcement Handbook
Chapter 20 – Investigative Procedures**

Amendment: 5309.11-2022-1

Effective date: February 17, 2022

Duration: This amendment is effective until superseded or removed.

Superseded Directive: 5309.11-2011-1, 08/03/2011

Approved by: Angela Coleman, Associate Chief

Date approved: February 16, 2022

Responsible Staff:

Posting Instructions: Amendments are numbered consecutively by handbook number 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 handbook was 5309.11-2021-1 to 5309.11_30.

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

5309.11_Chapter 20: Throughout the chapter, revises cross-references and makes minor editorial and technical changes.

21.14: Section retitled from “Tape-Recorded Communication” to “Recorded Communications of Interviews.” Section adds language, “and current Department of Justice guidance. The interviewee should be advised that they are being recorded as per requirements and acknowledge their consent to be recorded” and “An exception to advising the interviewee of the recording is when the recording is being done in an undercover capacity in a single party consent jurisdiction.”

21.15: Section adds language, “The Director, LEI must approve all employee polygraphs.”

21.23: Section adds language, “Law Enforcement personnel are encouraged to record the interaction utilizing an audio or video recording device, whenever possible.”

21.25: Section adds language, “telephonic interpretation” and “or someone fluent in the language.”

21.3: Section adds language, “Additional information relating to internal criminal investigations can be found in FSM 5390.”

21.32a: Section 1 adds language, “and have the employee initial in the applicable boxes on form FS-5300-52a. Before I ask you any questions, you must understand your rights;” Section 1, paragraph “c” adds language, “solely” and “However, your silence can be construed in an administrative proceeding for its evidentiary value that is warranted by the facts surrounding your case.” Section 2 adds language, “and have the employee initial in the applicable boxes on form FS 5300-52b. Prior to conducting a Kalkines Warning/Interview, consultation must be sought from the AD-Office of Professional Responsibility, consultation should also be sought from an AUSA.” Paragraphs “b-d” provide standardized language for pre-interview statements.

22.34a-b: Sections abolished. Removes old direction.

22.4: Section retitled from “Custody and Storage of Evidence” to “Photographing Crime Scene.”

22.41: Section retitled from “Custody of Evidence” to “Photographic and Video Procedures.” Establishes investigative procedures for photographic and video recordings.

22.41a-c: Sections abolished. Removes obsolete direction.

22.42: Section retitled from “Storage of Evidence” to “Definitions.” Adds definitions.

22.42a-i: Sections abolished. Removes obsolete direction.

22.43: Establishes new section titled “Photographing Scene.” Establishes investigative procedures for photographing crime scenes/accidents.

22.44: Establishes new section titled “Video.” Establishes investigative procedures for video recordings.

22.5: Section retitled from “Disposition of Property” to “Custody and Storage of Evidence.”

22.51: Section retitled from “non-evidence” to “Custody of Evidence.”

22.51a: Establishes new section titled “Marking Evidence.”

22.51b: Establishes new section titled “Identification of Property.” Establishes investigative procedures for identifying, marking, classifying, building/maintaining chain-of-custody for property.

22.51c: Establishes new section titled “Booking Evidence.” Establishes procedures for booking evidence.

22.51d: Establishes new section titled “Temporary Storage of Evidence.” Establishes procedures for the temporary storage of evidence.

22.51e: Establishes new section titled “Shipping Evidence.” Establishes procedures for the shipping of evidence.

22.52: Section retitled from “Evidence” to “Storage of Evidence.” Establishes procedures for the creation, maintenance, and storage of evidence within secure rooms, lockers, temporary evidence drops, and storage facilities.

22.52a: Establishes new section titled “Impounded Property.” Establishes procedures for property inventory using agency or other approved forms.

22.52b: Establishes new section titled “Firearms.” Establishes procedures for the taking possession of firearms and/or ammunition, documentation, record checks, and entry into the LEI Reporting System database.

22.52c: Establishes new section titled “Bodily Fluid and Slide Samples.” Establishes procedures for taking, documenting, and transporting bodily fluids.

22.52e: Establishes new section titled “Perishable Evidence.” Establishes procedures for the collection and documentation of perishable evidence.

22.52f: Establishes new section titled “Evidence Subject to Tainting.” Establishes procedures for the prevention of evidence contamination.

22.52g: Establishes new section titled “Knives, Needles, Razors, and Other Sharp Instruments.” Establishes procedures for handling of sharp instruments for cutting/sticking protection and packaging as evidence.

22.52h: Establishes new section titled “Toxic, Flammable and Hazardous Materials.” Establishes procedures for the handling of hazardous materials.

22.52i: Establishes new section titled “Latent Fingerprints.” Establishes procedures for the handling/packaging of latent fingerprints.

22.52j: Establishes new section titled “Fraudulent Documents.” Establishes procedures for the handling/packaging of fraudulent documents.

22.52k: Establishes new section titled “Currency.” Establishes procedures for the seizure, documentation, photography, and other handling of US, foreign, and counterfeit currency.

22.6: Establishes new section titled “Retention and Disposition of Property and Evidence.” Establishes procedures for the retention and disposition of property and/or evidence.

22.61: Establishes new section titled “Non-Evidence.” Establishes procedures for the retention/release of property that is considered non-evidentiary.

22.62: Establishes new section titled “Evidence.” Establishes procedures for the returning of property.

22.63: Establishes new section titled “Disposal of Unclaimed Property.” Establishes procedures for the disposal of unclaimed property. Section 22.53 “Disposal of Unclaimed Property” is abolished.

22.64 through 22.64a-b: Establishes new sections titled “Disposal of Firearms or Ammunition.” Establishes procedures for the final disposition/destruction of firearms and ammunition.

22.65: Establishes new section titled “Disposal of Seized Property.” Establishes direction for LEI personnel with respect to disposal of seized property.

22.7: Establishes new section titled “Evidence Custodians.” Establishes procedures for the assignment, identification, and responsibilities of evidence custodians, alternate evidence custodians, and supervisors for evidence storage facilities.

22.71 through 22.76: Establishes new sections for evidence/evidence rooms inspections, inventory, inspection reporting, special inventory upon change of custodian, and requirement for annual audits for certain categories of evidence.

22.8 through 22.84a: Establishes new sections for a laser scanner program. To include authority, responsibilities, laser scanner program objectives, and policy to govern use/deployment.

23.01 and 23.04: Sections are abolished. Removes obsolete direction.

23.1 and 23.1a-b: Establishes new sections outlining the authority and responsibilities for livestock investigations.

23.11 and 23.11a-b: Sections are abolished. Removes obsolete direction.

23.12: Section has been retitled from “Livestock Removal” to “Violations.”

23.12a-b and 23.13 through 23.13a: Establishes new sections outlining procedures for the handling/processing/removal of unauthorized or excess livestock.

23.14: Section retitled from “Livestock Impoundment and Disposal” to “Criminal Action.” Outlines responsibilities for LEI personnel when encountering violations of 36 CFR 261.7 and/or 18 USC 1857. Sections 23.14a-b are abolished. Removes obsolete direction.

23.15 and 23.15a-b: Establishes new sections outlining procedures for the notification to impound livestock, impoundment processes, holding of livestock, and livestock disposal.

23.3: Adds paragraph 6 “Timber cut in protected, ecologically or culturally sensitive areas.”

23.31: Adds new language to paragraph 5 to determine the dollar value of stolen timber.

23.32: Adds new language to several paragraphs to improve clarity of procedures

23.37e: Section 4, paragraph “d” adds language recommending that scientific value assessments of environmental resources should be conducted by subject matter experts.

23.42: Adds new language “are typically assigned to either Special Agents or a regional/national investigative team, as determined by the Special Agent in Charge, or designee.”

23.51 through 23.53: Adds new direction/procedures for prevention, violation, and investigative procedures for archeological/paleontological, or cultural resources.

24.11: Adds new language “Form IG-8460, Consensual Monitoring Request, shall be used to obtain authorization to intercept verbal communications without the consent of all parties to the communication should be granted under the following circumstances.”

28.3: Adds language “See FSM 5390-Office of Professional Responsibility.”

Table of Contents

20.01 - Authority	11
20.02 - Objectives.....	11
20.04 - Responsibility	11
21 - Interviews.....	11
21.05 - Definitions.....	11
21.1 - Documentation	12
21.11 - Methods of Documenting Interviews	12
21.11a - Statements	12
21.11b - Affidavit (Sworn Statement).....	13
21.11c - Statement (Unsworn).....	13
21.12 - Memorandum of Interview.....	14
21.13 - Informal Notes.....	14
21.14 - Recorded Communications of Interviews	14
21.14a - Recording Equipment.....	16
21.15 - Polygraph Examinations.....	16
21.2 - Suspect's Rights.....	16
21.21 - When Warnings Must Be Given.....	16
21.22 - Advice on Constitutional Rights Based on Miranda Ruling	16
21.23 - Waiver of Rights	16
21.24 - When Warning Need Not Be Given	17
21.25 - Warning to Juveniles.....	17
21.26 - Warning to Non-English Speaking Persons or Persons With Language Barriers...	17
21.27 - Warning to Mentally Incompetent Persons	17
21.28 - Citizen's Civil Rights	17
21.3 - Employee's Rights and Obligations During Internal Criminal Investigations	18
21.31 - Types of Misconduct.....	18
21.32 - Employee Rights During All Interviews	18
21.32a - Types of Warnings.....	19
22 - Evidence	20
22.05 - Definitions.....	20
22.1 - Crime Scene Protection	20
22.2 - Witnesses, Suspects, and Victims	21
22.3 - Crime Scene Search	21
22.31 - Objectives.....	21
22.32 - Searching.....	21
22.33 - Sketching.....	22
22.33a - General Considerations for Making Sketch	22
22.33b - Types of Sketches.....	22
22.4 - Photographing Crime Scene.....	22
22.41 - Photographic and Video Procedures.....	22
22.42 - Photographing Scene	23
22.43 - Video.....	24

22.5 - Custody and Storage of Evidence.....	25
22.51 - Custody of Evidence.....	25
22.51a - Marking Evidence.....	25
22.51b - Identification of Property.....	26
22.51c - Booking Evidence	27
22.51d - Temporary Storage of Evidence.....	27
22.51e - Shipping Evidence	27
22.52 - Storage of Evidence	28
22.52a - Impounded Property.....	28
22.52b - Firearms	29
22.52c - Bodily Fluid and Slide Samples.....	30
22.52d - Liquid Containers	30
22.52e - Perishable Evidence	30
22.52f - Evidence Subject to Tainting	30
22.52g - Knives, Needles, Razors, and Other Sharp Instruments	31
22.52h - Toxic, Flammable, and Hazardous Materials.....	31
22.52i - Latent Fingerprints.....	31
22.52j - Fraudulent Documents.....	31
22.52k - Currency	32
22.6 - Retention and Disposition of Property and Evidence.....	32
22.61 - Non-evidence	33
22.62 - Evidence.....	33
22.63 - Disposal of Unclaimed Property	33
22.64 - Disposal of Firearms or Ammunition	34
22.64a - Disposal of Legal Firearms or Ammunition.....	34
22.64b - Destruction of Seized Firearms or Ammunition.....	35
22.65 - Disposal of Seized Property.....	36
22.7 - Evidence Custodians.....	36
22.71 - Evidence and Evidence Room Inspections and Inventory	36
22.72 - Requirement of Evidence Facility Inspections.....	36
22.73 - Supervisors to Prepare Inspection Reports	37
22.74 - Special Inventory upon Change of Evidence Custodian	37
22.75 - Required Annual Audit of Controlled Substances, Currency, Firearms, and Ammunition.....	37
22.8 - Laser Scanner Program	38
22.81 - Authority	38
22.82 - Objectives.....	38
22.83 - Policy.....	39
22.84 - Responsibility	39
22.84a - Special Agent in Charge	39
23 - Types of Investigations	39
23.1 - Livestock Investigations.....	39
23.1a - Authority	40

23.1b - Responsibility	40
23.12 - Violations	40
23.12a - Excess Livestock	40
23.12b - Unauthorized Livestock.....	41
23.13 - Livestock Removal	41
23.13a - Action on Waived Lands	42
23.14 - Criminal Action	42
23.15 - Livestock Impoundment and Disposal	42
23.15a - Notification of Intent to Impound.....	42
23.15b - Impounding or Holding Livestock	44
23.2 - Occupancy and Use Investigations.....	47
23.21 - Violations	47
23.22 - Actions to Stop Illegal Occupancy.....	47
23.22a - Occupancy Under Claim of Right or Title.....	48
23.23 - Removal of Unauthorized Structures Considered To Be Real Estate	48
23.3 - Timber Investigations.....	48
23.31 - Objectives.....	49
23.32 - Prevention.....	49
23.33 - Violations	51
23.34 - Private Land Violations Extending Onto National Forest System Land	51
23.35 - Investigation Procedures	52
23.36 - Timber Cutting on Unpatented Mining Claims	54
23.37 - Seizure of Timber Cut in Violation	54
23.37a - Seizure of Manufactured Timber Products.....	54
23.37b - Seizure of Timber of Mixed Ownership.....	54
23.37c - Posting of Seized Timber Violation Material.....	54
23.37d - Sale of Seized Timber Violation Material	54
23.37e - Criminal Liability	55
23.4 - Wildland Fire Investigations	56
23.41 - Wildland Fire Origin and Cause Determination	56
23.41a - Wildland Fire Reporting Procedures and Origin and Cause Determination Documentation	56
23.42 - Wildland Fire Criminal and Civil Follow-up Investigations	56
23.5 - Archaeological, Paleontological, or Cultural Resources Investigations	56
23.51 - Prevention.....	57
23.52 - Violations	57
23.53 - Investigative Procedures.....	58
24 - Consensual Monitoring	59
24.1 - Consensual Monitoring Approvals	59
24.11 - Department of Justice Verbal Approval.....	59
24.12 - Telephone Consensual Monitoring Approval	60
24.13 - Department of Justice Written Approval	60
24.2 - Consensual Monitoring Request Data	60

24.21 - Reasons for Interception.....	61
24.22 - Offense.....	61
24.23 - Danger.....	61
24.24 - Location of Devices	61
24.25 - Location of Interception.....	61
24.26 - Time	61
24.27 - Names	61
24.28 - Attorney Approval	62
24.29 - Renewals	62
24.3 - Interceptions.....	62
24.4 - Emergency Consensual Monitoring.....	62
24.41 - Regional Emergency Request Approvals and Transmittal Requirement.....	63
24.42 - Washington Office Emergency Request Approvals and Transmittal Requirement	63
24.5 - Video Surveillance - Agency and Judicial Authorization	63
24.6 - Interception of Verbal Communications During Video Surveillance	64
24.61 - Video Surveillance	64
24.62 - All Other Interceptions of Verbal Communications During Video Surveillance ...	64
25 - Informants.....	64
25.01 - Authority	64
25.05 - Definitions.....	64
25.1 - Informant Suitability Considerations	65
25.2 - Informant Files.....	65
25.21 - Opening Informant File	66
25.22 - Informant Number.....	67
25.23 - Confidentiality of Informants and Information	67
25.23a - Confidentiality of Informants	67
25.23b - Confidentiality of Information.....	67
25.24 - Deactivation of Informant.....	68
25.3 - Guidelines and Instructions to Be Discussed With Informants	68
25.4 - Confidential Sources.....	73
25.5 - Alternate Contact Officer	73
25.6 - Dissemination of Information	73
25.7 - Informant Participation in Authorized Criminal Activity	73
25.8 - Revealing the True Identity of Informant Under Court Order	73
25.9 - Payments for Information	74
25.91 - Payments to Informants	74
25.92 - Documentation of Payments for Information	75
25.93 - Quick Pay Payment System [RESERVED]	75
25.94 - Payments for Evidence.....	75
25.94a - Documentation of Payments for Evidence	75
26 - Surveillance	76
27 - Undercover Operations.....	76

27.04 - Responsibility	76
27.04a - Washington Office, Director of Law Enforcement and Investigations	76
27.04b - Special Agents in Charge	76
27.1 - Security of Undercover Operations.....	76
27.11 - Guidelines	77
27.2 - Classification of Undercover Operations	79
27.21 - Class 1 Undercover Operations	79
27.22 - Class 2 Undercover Operations	79
27.23 - Class 3 Undercover Operations	80
27.3 - Requests for Undercover Operations.....	81
27.4 - Undercover Activity in Multi-Agency Investigations	81
27.5 - Consensual Monitoring in Undercover Operations.....	81
27.6 - Undercover Training for Law Enforcement Personnel	82
28 - Case Management	82
28.1 - Reporting Crimes.....	83
28.2 - General Criminal Investigations	83
28.3 - Internal Investigations.....	84
28.4 - Non-criminal Investigations.....	84
28.5 - Incidents Not Meeting Case Management Criteria	85
28.6 - Investigative Work Plan.....	85
28.7 - Tracking and Reporting Investigations	86
28.8 - Closing Cases.....	87
28.9 - Records, Storage, and Retention.....	87

This chapter identifies investigative procedures concerning subjects' rights, interviews, evidence, informants, consensual monitoring, and undercover operations.

20.01 - Authority

See FSM 5301.

20.02 - Objectives

To ensure all investigative activities conducted by the Forest Service are consistent with constitutional, legal, and agency parameters.

20.04 - Responsibility

It is the responsibility of law enforcement personnel to investigate violations of Federal and State laws that occur on or affect the National Forest System (FSM 5304).

21 - Interviews

21.05 - Definitions

Affidavit (Sworn Statement). A written or printed declaration or statement of facts made voluntarily and confirmed by the oath or affirmation of the person making the affidavit.

Interview. A planned conversation to obtain information about the subject matter of an inquiry. Information obtained during interviews:

- a. Explains, confirms, supplements, and enlarges upon information;
- b. Pinpoints what witnesses heard or observed;
- c. Helps correlate, identify, and explain physical evidence; and
- d. Permits persons involved to admit, deny, and explain actions.

Memorandum of Interview. An informal written record of what occurred at an interview including the date, time, place, and persons present as well as what transpired.

Recorded Communication. A communication electronically or mechanically recorded with a mechanism such as a tape recorder.

Statement. A written and signed record of pertinent information furnished during an interview. This includes both sworn and unsworn statements.

Sworn Statement. See Affidavit.

Unsworn Statement. A statement not given under oath that generally contains relevant information furnished by the witness or suspect, and that is used whenever it is not feasible to place the individual under oath.

21.1 - Documentation

Document all interviews to preserve information. Documenting an interview with a witness or suspect generally provides a written record that assists a prosecutor to:

1. Evaluate a case and plan its presentation at trial,
2. Enable the prosecutor to monitor testimony of a person in court, and
3. Discourage "surprise" testimony by providing a possible basis for impeaching a witness.

21.11 - Methods of Documenting Interviews

21.11a - Statements

1. Signed statements, both sworn and unsworn, serve many purposes, including the following:
 - a. To preclude the likelihood of later denial that a subject furnished the information contained in the statement.
 - b. To render less likely a change of testimony on the part of the subject.
 - c. To impeach the testimony of a subject if such testimony is contrary to a statement.
 - d. To refresh the subject's recollection at a later time.
 - e. To rebut charges that an investigating officer misquoted a subject.
 - f. To enable attorneys to prepare and present cases more effectively.
2. As a general rule, law enforcement personnel should prepare the statement. Notes taken during an interview assist in arranging topics in logical sequence.
 - a. Resolve disagreements as to content before a statement is signed. If the subject desires to give partial or incomplete information or elects to include explanations or even irrelevant material, the officer should include such information. When applicable, a statement should include comments to the effect that the subject has made all pertinent records available or has supplied the investigating officer with all information available and pertinent to an inquiry. This disclosure serves to protect the officer if the subject later claims there had been other information or records which, if considered, would have placed a different interpretation on evidence.

- b. Ensure that a subject has a full opportunity to make any desired correction in a statement. Ensure all corrections are initialed, and the statement is signed by the subject in the investigating officer's presence.
 - c. Do not use threats or force of any kind to obtain a statement.
 - d. In taking statements, keep detailed notes and do not rely solely on memory. Statements could, at times, become admissions or confessions, and questions may result as to the circumstances under which they were obtained. Therefore, keep notes on such matters as the dates and times when an interview begins and ends, the date and time when a statement or confession is signed, the names of persons who witness a signing (if not shown on the statement), and where an interview is held.
3. If a person refuses to sign a statement but admits the content to be true, add an addendum to the statement to the effect it was read to or by the subject who acknowledged the content to be true, but refused to sign the statement. Ensure officers and any other persons who heard the acknowledgment sign the addendum. In every instance when a person refuses to sign a statement, the reason for the refusal should be included in the investigation report.
4. Normally, the best time to obtain a statement is immediately after the interview. The statement can usually be more accurately prepared and the interviewees are usually more apt to sign at that time. However, exceptional circumstances may make it prudent to delay requesting the statement immediately. Such circumstances include the situation where an investigation would likely be adversely affected if the content of the statement is prematurely disclosed, and if it is believed the interviewee is apt to disclose it. To ensure accuracy in such cases, the statement should be prepared as soon after the interview as feasible and the signature merely delayed.

21.11b - Affidavit (Sworn Statement)

Special Agents and Supervisory Special Agents are authorized to administer oaths for law enforcement and non-criminal internal investigation purposes. Special Agents should document sworn statements on form FS-5300-15, Affidavit.

The witnesses or suspect should always sign the affidavit and initial each page. Fraudulent statements furnished to law enforcement personnel, including statements not under oath, may serve as the basis of a criminal prosecution under Title 18, United States Code, section 1001 (18 U.S.C. 1001).

21.11c - Statement (Unsworn)

All law enforcement personnel should document unsworn statements from witnesses or suspects on form FS-5300-16, Statement.

If possible, the witnesses or suspects should always sign the statement and initial each page. Fraudulent statements furnished to law enforcement personnel, including statements not under

oath, may serve as the basis of a criminal prosecution under Title 18, United States Code, section 1001 (18 U.S.C. 1001).

21.12 - Memorandum of Interview

Complete form FS-5300-19, Memorandum of Interview, to document the date, time, place, and persons present as well as what transpires during the interview. It should be promptly signed and dated by law enforcement personnel and forest protection officers who conduct the interview. If a subject is advised of rights during the interview, enter this information on the form and attach a form FS-5300-17, Advice/Waiver of Rights, to the memorandum.

21.13 - Informal Notes

During the course of an interview, an officer should keep informal notes. These notes should contain details to permit officers to refresh their memories in order to prepare a statement or memorandum of interview documenting the interview. Informal notes should be kept in the case file.

21.14 - Recorded Communications of Interviews

All recorded communications must comply with section 21.11a and with FSM 5323 and current Department of Justice guidance. The interviewee should be advised that they are being recorded as per requirements and acknowledge their consent to be recorded. Exhibit 01 is a sample format that may be used for documenting electronically or mechanically recorded communications. An exception to advising the interviewee of the recording is when the recording is being done in an undercover capacity in a single party consent jurisdiction.

21.14 - Exhibit 01

Sample Format for Documenting Recorded Communications

Introductory Statement for Recorded Communications

This is the beginning of a recording with (*name of interviewee*) by (*name and title of interviewer*) that is being conducted at (*address*) on (*date*) at approximately (time in 24-hour format) regarding (incident report number and *subject matter or topic*).

The following persons are present: (*Identify all*).

This interview is being conducted subject to the following conditions: (*state conditions – including the status of any Kalkines, Garrity, or Miranda advisements*). These conditions have been agreed to by (*identify persons participating in the agreement*). (If no conditions have been stipulated or agreed to, this portion of the introductory statement may be omitted.)

At this point the interviewer should address the interviewee by name, stating: "(Name of interviewee), do you accept this introductory statement as being correct and consent to the recording of this interview?" (To this the interviewee should respond: "I do" or "Yes.") The interviewer should then state: "We will then proceed with the interview."

21.14a - Recording Equipment

Use recording devices in accordance with law, Departmental regulations, and agency policy.

21.15 - Polygraph Examinations

Polygraph examinations may be used for criminal investigations with the consent of the subject(s) and consultation with the appropriate prosecuting attorney has been obtained. The Director, LEI must approve all employee polygraphs. Ensure the polygraph examinations are given in accordance with current Department of Justice guidelines.

21.2 - Suspect's Rights

The U.S. Supreme Court has held that in a criminal case the Government may not use statements of a suspect secured during custodial interrogation unless the suspect has been advised and waived their Constitutional protection from self-incrimination (*Miranda vs. Arizona* (1966)).

21.21 - When Warnings Must Be Given

Ensure that subjects who are in a custodial situation and are being questioned about an alleged crime or offense are warned in clear and unequivocal terms of the following:

1. The subject has the right to remain silent,
2. Any statements made may be used as evidence against the subject, and
3. The subject has the right to the presence of an attorney, either retained or appointed.

21.22 - Advice on Constitutional Rights Based on Miranda Ruling

When the warning is provided, read from form FS-5300-17, Advice/Waiver of Rights or from the advice of rights form provided by the Federal Law Enforcement Training Center.

In addition to proving that suspects were properly advised of their rights, it is necessary to prove that they understood those rights and then voluntarily, knowingly, and intelligently waived such rights. Such a waiver may not be presumed or inferred.

If law enforcement personnel are in doubt as to when to advise subjects of their rights, administer the Miranda warning.

21.23 - Waiver of Rights

Suspects who do waive their rights must do so expressly and preferably in writing; documentation of this waiver may be obtained by having the suspect sign form FS-5300-17, Advice/Waiver of Rights. An oral waiver is acceptable; however, a witness should be present.

Law enforcement personnel are encouraged to record the interaction utilizing an audio or video recording device, whenever possible.

21.24 - When Warning Need Not Be Given

Warnings are not appropriate when persons are in the following situations:

1. Are being questioned as witnesses only, and self-incrimination is not a factor.
2. Are being interviewed in the early, fact-finding phase of an investigation where the objective is merely to learn what happened and to develop leads.
3. Are volunteering a confession or admission spontaneously without questioning (although if questioning is needed to clarify or expand the confession or admission, or if the suspect is in custody, the warning must be given).
4. Are being questioned on civil or administrative matters that have no criminal implications even though an attempt is being made to establish the extent of their involvement and/or liability. Self-incrimination is not a factor unless the information sought may lead to a criminal prosecution. When the subject of an investigation in a noncriminal matter (civil, administrative, or personnel) asks to have an advisor, lawyer, or other representative present during an interview, consent to this request.

21.25 - Warning to Juveniles

Apply the procedures set out in section 21.24 to juveniles, with the additional precaution of using language comprehensible to a juvenile. For specific steps to follow, see section 53.22. In addition, follow any local guidelines provided by the U.S. Attorney's Office or the U. S. Magistrate Judge.

21.26 - Warning to Non-English Speaking Persons or Persons With Language Barriers

Language barriers may prevent persons from being informed of their rights. Ensure the constitutional rights of the individuals are protected by using an interpreter, telephonic interpretation *LEP Telephone Interpretation Instructions*, or someone fluent in the language who can relay the information either verbally in language the person understands or in sign language, or utilize an advise of rights form that contains the advisement in the language with which they are familiar.

21.27 - Warning to Mentally Incompetent Persons

Generally, mentally incompetent persons are incapable of understanding their rights. Ensure their constitutional rights are protected by having a lawyer or legal representative present.

21.28 - Citizen's Civil Rights

The civil rights of a citizen are protected in part by Title 18, United States Code, sections 241 and 242 (18 U.S.C. 241 and 242). Law enforcement personnel may be charged with and held personally liable for violating a citizen's constitutional rights. The principal consideration in deciding the officers' culpability in a given situation is whether they were acting in good faith and with reasonable belief that their actions were lawful.

21.3 - Employee's Rights and Obligations During Internal Criminal Investigations

Employees have certain additional rights and obligations during interviews conducted by a representative of the Agency as part of a criminal investigation. These rights and obligations vary depending on whether the allegations may result in criminal charges and/or administrative charges against the employee. Forest Service law enforcement personnel are representatives of the Agency when they interview an employee pursuant to allegations or evidence of criminal misconduct by the employee. Additional information relating to internal criminal investigations can be found in FSM 5390.

21.31 - Types of Misconduct

1. Administrative Investigation (non-criminal). An investigation related to the non-criminal conduct, actions, or performance of an employee to determine whether such conduct, actions or performance violates established ethics and conduct regulations or Agency policy.
2. Criminal. Criminal misconduct is alleged wrongdoing that constitutes a violation of Federal, State, or local criminal statute.

21.32 - Employee Rights During All Interviews

Employees have the right to:

1. Request union representation, if the employee is a Bargaining Union Employee and if the employee reasonably believes that the interview may result in disciplinary action being taken against the employee. Being interviewed as a witness does not afford the employee this right. The request for union representation may be made before or during the interview (Weingarten Right).
2. Be informed as to whether the allegations against them are criminal or administrative. If criminal, employees may be subject to criminal prosecution. If criminal prosecution has been waived, or the investigation is administrative, employees are required to respond to the questions being asked (sec. 21.32a, para. 1 or 2).
3. Ask questions pertaining to their rights, obligations, and consequences before and during the interview.
4. Receive a copy of their signed affidavit and/or transcripts of a taped interview.

21.32a - Types of Warnings

1. Garrity Warning: Employee Warning, Criminal/Non-custodial. For a voluntary interview when there are potential criminal and administrative consequences for the employee, give the following warning to the employee prior to the start of an interview and have the employee initial in the applicable boxes on form FS-5300-52a. Before I ask you any questions, you must understand your rights;

- a. You have the right to remain silent if your answers may tend to incriminate you.
- b. Anything you say may be used as evidence in an administrative proceeding or any future criminal proceeding involving you.
- c. If you refuse to answer the questions presented to you on the grounds that your answer may tend to incriminate you, you cannot be solely discharged for remaining silent. However, your silence can be construed in an administrative proceeding for its evidentiary value that is warranted by the facts surrounding your case.

2. Kalkines Warning: Employee Warning, Administrative/Non-custodial. For a compelled interview with existing or potential administrative consequences, inform the employee of the following and have the employee initial in the applicable boxes on form FS 5300-52b. Prior to conducting a Kalkines Warning/Interview, consultation must be sought from the AD-Office of Professional Responsibility, consultation should also be sought from the US Attorney's Office.

- a. You are going to be asked a number of specific questions regarding the performance of your official duties.
- b. You have a duty to reply to these questions. Agency disciplinary action, including dismissal, may be undertaken if you refuse to answer, or fail to reply fully and truthfully.
- c. The answers you furnish and any information or evidence resulting may be used in the course of civil or administrative proceedings.
- d. Neither your answers nor any information or evidence which is gained by reason of such statements can be used against you in any criminal proceeding, except that if you knowingly and willfully provide false statements or information in your answers, you may be criminally prosecuted for that action.

22 - Evidence

22.05 - Definitions

Evidence is the means by which any alleged matter of fact is proved or disproved. In order to be admissible in a court of law, evidence must be legally obtained, properly identified, carefully preserved, and securely stored. All evidence or seized items must be entered in the LEI Reporting System. Types of evidence include:

1. Direct. Evidence is direct when the facts in dispute are communicated by those who have actual knowledge by means of their senses (sight, hearing, and so forth). It may also take the form of admissions or confessions made in or out of court.
2. Circumstantial. Circumstantial evidence is indirect and relies on inference.
3. Documentary. Documentary evidence includes writings, letters, records, deeds, and so forth.
4. Real. Real evidence is physical or demonstrative evidence. It is something you can see or touch.
5. Digital Image. An image that is stored in numerical form.
6. Discovery. The court process compelling a party to produce evidence that may be used in court.
7. Image. A visual representation of a person, place or thing.
8. Media Device. A device used to capture a picture or video.
9. Memory Device. Includes videotapes, audio tapes, diskettes, memory cards, CD's, DVD's, jump drives or any other device used to save/store electronic data.
10. Storage. The act of preserving an image.

22.1 - Crime Scene Protection

The first officer on the scene has three primary responsibilities:

1. Preserve Life. Render aid to injured persons. Remove people from a hazard or remove the hazard. Take Charge of the situation.
2. Protect the Crime Scene.
 - a. Maintain the crime scene in the same physical condition as it was left by the perpetrator of a crime. The officer on the crime scene has the responsibility to preserve the crime scene.

b. Prevent the destruction or contamination of evidence at a crime scene. Physically protect evidence.

The officer should use rope or flagging to encircle the area of a crime scene. The area should be large enough to ensure that all evidence is protected. If necessary, additional officers should be posted with specific instructions to keep unauthorized persons out of the crime scene area.

3. Control the Crime Scene. Keep all unauthorized persons out of the crime scene area including Forest Service employees, the press, bystanders, and witnesses. Persons refusing to comply with law enforcement's request to stay out of the area may be subject to arrest.

22.2 - Witnesses, Suspects, and Victims

Witnesses, suspects, and victims should be secured, separated, and interviewed as soon as possible. The officer should obtain complete names, addresses, birth dates, and telephone numbers (home and business) of all persons present.

When a person is a victim of a crime, the Forest Service should cooperate with other law enforcement agencies by protecting the crime scene and providing other support as requested to other investigative agencies.

22.3 - Crime Scene Search

22.31 - Objectives

The objectives of a crime scene search are to:

1. Establish the existence of a crime;
2. Identify and locate the perpetrator; and
3. Locate, identify, and preserve evidence which should prove these facts.

22.32 - Searching

Searching must be done in a systematic manner. Any law enforcement personnel who locate potential evidence shall immediately advise the person in charge, and the search should be suspended. The Officer finding the evidence shall make detailed notes describing the item and recording where and when it was found. The officer shall properly identify the evidence by tagging and or placing in a suitable container so as to maintain chain of custody and turned over to the evidence custodian. The recorder shall note the occurrence. When the prescribed procedure has been followed, the search continues or is terminated. Utilize two-officer search teams when conducting searches in an office or residential setting.

22.33 - Sketching

A crime scene sketch is one means of recording and clarifying investigative data. It is not a substitute for notes or photographs but merely a supplement to them.

22.33a - General Considerations for Making Sketch

The officer responsible for the preparation of a crime scene sketch should:

1. Protect the crime scene.
2. Approach the scene in a careful and systematic way to ensure the relationship of objects is preserved.
3. Obtain a comprehensive view of the scene.

22.33b - Types of Sketches

Determination of sketch limits is done by choosing a fixed baseline or fixed points, permanent in nature. The four general types of sketches include:

1. Floor Plan or "Bird's-Eye" View. This is the most commonly used type.
2. Elevation Drawing. This portrays the vertical rather than the horizontal plane.
3. Exploded View. This is a combination of the floor plan and elevation drawing. The floor plan is shown and the walls are presented and flattened to a horizontal plane.
4. Perspective Drawing. This provides a three-dimensional effect, but may not be drawn to scale.

Do not rely on memory. Record all measurements accurately and fill in all details on the rough sketch at the scene.

22.4 - Photographing Crime Scene

22.41 - Photographic and Video Procedures

Photographic and video recording equipment have demonstrated to be of value on the prosecution of criminal and civil cases. In order to maximize the utility of this equipment in these and related areas, law enforcement personnel shall follow the procedures as set forth in this policy.

1. Digital photography: A photo log must be kept to show what digital images were taken. The photo log becomes a part of the investigative report. Use form FS-5300-56, Photographic Record and FS-5300-57, Photographic Record Continuation or the photo log portion of form FS-5300-45, Wildland Fire Origin and Cause Supplemental Incident Report is encouraged for this purpose.

2. Video: Video recordings may be used to supplement still photography, but video recordings shall not be used in place of still photography. When a video recording has been made, the submitting officer should take steps to prevent accidental recording over the existing data. Ensure the original video media is properly documented and secured as evidence.

22.42 - Photographing Scene

Photograph the crime/accident scene accurately and completely before any object is removed, disturbed, or altered. As the investigator enters the crime scene, photograph the area progressively. Take a sufficient number of photographs in accordance with the nature and seriousness of the crime involved when available. Document the photographer's position in relationship to the item being photographed.

1. Officers are permitted to use government issued or government purchased digital cameras for their official duties. This includes government issued cell phones.
2. Officers are prohibited from using government issued or government purchased digital cameras for personal use.
3. Officers shall take photographs of injuries, crime scenes, and other items that require photographs to preserve the perspective of the responding officer at the time of the incident.
4. Photographs should be taken in all instances where viable physical evidence is discovered and in those instances when photographs would aid in the investigation of the crime and subsequent presentation of the case in court.
5. Prior to taking photographs, the officer should ensure the correct date and time is set in the electronic device.
6. Recommend the first photograph be a template containing the Report Number, date and beginning time, location and call type.
7. Photographs of the crime scene should always include, long distance, medium distance and close-up shots in order to establish the relationship or proximity of the items to one another and the surrounding area.
8. Officers should not disturb the scene prior to taking initial set of pictures. This includes the positioning of number cards, measuring scales and labels or evidence markers.
9. Important objects should appear in at least three pictures; an overview, a mid-range shot and close up.

10. The officer shall make every effort to photograph the location surrounding the crime scene or accident scene being documented. If accidental photographs are taken, they shall not be deleted or removed from the memory device.

11. Recommend the last photograph be a template containing the IR Number, date and ending time, location and call type, this may be handwritten onto a piece of blank paper.

12. After the Officer has completed the investigation, the original media device containing the originals shall be downloaded to the case file. This shall be submitted into evidence and labeled as the original. The original shall be labeled with the: 1. Case number; 2. the photographing officer's name; and 3. the date the photographs were taken. The original digital photographs shall not be edited or altered in anyway.

13. Copies of the original/working copy can be made using a memory device for the prosecuting attorney for discovery. In all cases, officers should make every attempt to create a copy rather than print photographs. Anytime a copy is made, it shall be labeled as a copy.

14. Original photographs shall not be altered or edited in any way.

15. It is prohibited for officers to copy digital photographs to use as "trophy" photographs or used outside the scope of their official duties.

16. Upon adjudication of a case, photographs may be used for training with the approval of the case officer or supervisor involved.

17. Photographs shall not be released to the public unless authorized by the Special Agent in Charge.

22.43 - Video

1. The video media memory device shall be labeled with:

- a. The case number,
- b. The name of the officer recording the images,
- c. The date the video was recorded, and
- d. The original shall be placed into evidence.

2. Copies of the original video media memory device can be made for the prosecuting attorney or discovery using a memory device. Anytime a copy is made it shall be labeled as a copy.
3. Original video footage shall not be altered or edited in any way.
4. For additional information on body worn cameras see FSH 5309.11, chapter 50.

22.5 - Custody and Storage of Evidence

22.51 - Custody of Evidence

1. Log and Mark Evidence. Ensure any seized property is properly logged and marked without unnecessary delay. The lead officer at the scene should mark the evidence.
2. Issue Receipt for Property.
 - a. Identity of Owner Is Known. The officer seizing or taking custody of the property should issue a form FS-5300-23, Impounded/Seized Property Record, as receipt for the property when practical. Forms FS-5300-48, Inventory of Seized or Impounded Property Form; (and FS-5300-49, Inventory of Seized or Impounded Property Continuation Sheet) and FS-5300-59, Vehicle Tow/Inventory Report Form may be used in lieu of FS-5300-23. These are all printed multi-part forms and may be ordered from the Beltsville Service Center.
 - b. Identity of Owner Is Unknown. The officer seizing or taking custody of the property should prepare the appropriate form as a receipt for the property. A copy should remain with the property, and a copy should be included with the incident/case information.

22.51a - Marking Evidence

1. Mark Property. The officer seizing or taking custody of any property shall ensure it is properly marked without unnecessary delay.
2. Issue Receipt for Property. The officer seizing or taking custody of property from a person, should issue a form FS-5300-23, Impounded/Seized Property Record, as a receipt for the property, to the person relieved of the property. Form FS-5300-48, Inventory of Seized or Impounded Property Form (and FS-5300-49, Inventory of Seized or Impounded Property Continuation Sheet) may be used in lieu of FS-5300-23. These are all printed multi-part forms and may be ordered from the Beltsville Service Center.

22.51b - Identification of Property

1. Property Classifications. Following is a list of property classifications.
 - a. Evidence. Items that are, or may be, related to a crime, or which may either implicate or exonerate a particular person(s).
 - b. Non-evidence. Property other than evidence or excess personal property; for example, found property or property impounded for safekeeping. Non-evidence may be classified to evidence as appropriate; however, a form FS-5300-1, Incident Report, and a new evidence tag must accompany the reclassification.
2. Evidence Tags. The form FS-5300-23, Impounded/Seized Property Record, may be used for identifying found property or property taken into custody. Complete form FS-5300-23 if the owner of the property is known, and a receipt is necessary. Use the following disposition for the form:
 - a. Page 1. Use this copy for the evidence officer's records.
 - b. Page 2. Place this copy in the case file.
 - c. Page 3. Use this copy for the officer's record.
 - d. Page 4. Provide this copy to the owner, if known, as a receipt for the property taken.
 - e. Page 5. Attach this copy to the property.
3. Commercially produced evidence packaging. The use of commercially produced evidence containers and bags are authorized for the packaging of evidence. When evidence is packaged and no form FS-5300-48, Impounded/Seized Property Record, is used or available the packaging must identify, at a minimum, the following:
 - a. Case number;
 - b. Evidence item number;
 - c. Date and time of recovery;
 - d. Property description and place recovered;
 - e. Name, badge number, and initials of the officer who recovered it; and
 - f. Chain of custody.

4. Chain of custody. All evidence shall include a chain of custody consisting of, at a minimum:

- a. Name and badge number of person initially seizing or relinquishing item;
- b. Name and badge number or signature of person receiving the item (evidence logged into the evidence room shall list “evidence” as received by;
- c. Date/time item transfers custody.

The individuals relinquishing and receiving the evidence items shall each initial on the chain of custody near their name/badge number acknowledging the transfer.

22.51c - Booking Evidence

File property by case number on form FS-5300-23, Impounded/Seized Property Record or approved equivalent. This becomes a record for the chain of custody. When property is booked into the evidence locker or storage facility, the evidence custodian completes a form FS-5300-23, Impounded/Seized Property Record or approved equivalent, which becomes part of the evidence custodian's records. Ensure evidence is properly logged into and out of the evidence lockers or storage facilities using form FS-5300-55, Evidence Room Access Log. Ensure all evidence is entered in the LEI Reporting System.

22.51d - Temporary Storage of Evidence

If an officer is unable to complete the proper packaging and delivery of seized property to the evidence room or approved storage area prior to the end of the Officer's shift, they may, with the approval of a supervisor, temporarily store the property in evidence holding containers such as individual locking drawers or cabinets using locks that when locked, only the custodians shall have access. These are for keeping evidence secured until subsequently transferred to a secure evidence storage facility in the custody of an authorized evidence custodian.

1. Law enforcement personnel shall complete, at a minimum, form FS-5300-48, Inventory of Seized or Impounded Property and store it with the evidence.
2. The law enforcement personnel shall complete the proper storage process as soon as practical.
3. Law enforcement personnel shall not store evidence in unsecured desks, filing cabinets, vehicles, offices, etc.

22.51e - Shipping Evidence

Any evidence item that is required to be shipped shall be sent via registered mail or shipped via a package express service (for example, Federal Express or UPS). In the event an evidence item presents special shipping problems, the crime lab intended to process the item(s) should be

contacted for advice. Items shall be placed in another container or covered with an opaque covering so as to ensure the item is not identifiable as an evidence item from the outside.

22.52 - Storage of Evidence

Supervisors shall establish property rooms, evidence lockers, temporary evidence drops, and outside storage facilities in each district, supervisor', or regional office, (for personnel assigned to a region or reporting to a Special Agent in Charge). Assistant Directors may establish property rooms, evidence lockers, temporary evidence drops, and outside storage facilities (for personnel assigned to the Washington Office and the Federal Law Enforcement Training Center) as needed. These areas shall adequately provide for the safety and security of the property stored in them.

The entry to the evidence storage areas must be controlled to ensure the evidentiary value of the items and to prevent the alteration, removal, theft, destruction, or the commission of other activities that might compromise the material. The following evidence storage facility guidelines must be established and maintained at the following minimum level.

1. Evidence storage facilities must only contain evidence and properly documented impounded or seized property.
2. Access to the facility must be limited to authorized evidence custodians and supervisory personnel.
3. The form FS-5300-55, Evidence Room Access Log, will be maintained for recording the purpose of entering the facility, date, time and name of custodian entering the facility.
4. Ensure evidence section in LEI Reporting System for the specific incident is updated.
5. The form FS-5300-55, Evidence Room Access Log, should be available and maintained for the Evidence Custodian to enter the case information, date and time of submittal, initials, etc.
6. Evidence custodian completes form FS-5300-55 for transfer of evidence to another approved evidence storage facility or State/Federal crime lab.

22.52a - Impounded Property

When an officer impounds or seizes personal property or vehicles, a complete inventory must be made. When an inventory is completed for a vehicle, the evidence officer completes form FS-5300-59, Vehicle Tow/Inventory Report or approved equivalent, which becomes part of the evidence officer's records. For other types of personal property, form FS-5300-23, Impounded/Seized Property Record or form FS-5300-48, Inventory of Seized or Impounded Property and FS-5300-49, Inventory of Seized or Impounded Property Continuation Sheet should be used. See FSH 5109.11 Chapter 50 for additional direction on impoundment procedures.

Book the property into the evidence storage area by using form FS-5300-55, Evidence Room Access Log until it is released back to the owner or is disposed of in accordance with section 22.5, whichever comes first. For property stored at an impound yard or other location, the storage area should be documented on form FS-5300-59, Vehicle Tow/Inventory Report or form FS-5300-48, Inventory of Seized or Impounded Property.

Classify impounded property as either evidence or non-evidence on the form.

Use form FS-5300-60, Disposition of Seized or Impounded Property to document the release of property back to the owner.

22.52b - Firearms

Upon taking possession of a firearm and/or ammunition, officers shall:

1. All firearms must be inspected and unloaded immediately.
2. If ammunition is recovered, the ammunition should be placed in a secure bag or box fitting the size of the ammunition and attached to the weapon, if practical. If not, the ammunition may be stored separately with its own evidence tag affixed to the container.
3. All firearms must have the serial number recorded on the evidence tag. If the serial number is not provided on the weapon, the officer must attach the evidence tag to the firearm and label the evidence tag with their initials, badge number and a brief description of the firearm.
4. All serial-numbered weapons that come within the control of the Forest Service must have a complete check through the National Crime Information Center (NCIC). When a firearm has been determined as stolen, lost, or recovered, the recovering law enforcement personnel should turn it over to the appropriate State, county or local law enforcement agency for follow-up, once no longer necessary for evidentiary purposes.
5. Complete, at a minimum, form FS-5300-1, Incident Report and enter into LEI Reporting System, or direct entry in Mobile LEI Reporting System. The report should include the following information:
 - a. Any dispatch reference number associated with the seizure.
 - b. How the firearm and/or ammunition came into the officer's possession.
 - c. Why the firearm and/or ammunition was seized (for example: search warrant, illegal weapon, found property, safekeeping, et cetera).
 - d. Where the seizure or transfer of possession took place.
 - e. Information regarding from whom the firearm and/or ammunition was taken.
 - f. Any serial numbers, distinguishing marks, owner applied numbers, caliber, etc.

- g. If the firearm and/or ammunition was found property, what investigative steps were taken to attempt to locate the rightful owner.
- h. The results of the NCIC (required after seizure of any firearms) and any local stolen records checks (highly recommended) completed.

22.52c - Bodily Fluid and Slide Samples

The taking of bodily fluids for evidence samples requires a court order unless the individual voluntarily consents. If consent is given, ensure that the person signs form FS-5300-16, Statement, which specifically states that the person is giving consent for the samples. Bodily fluids require special handling and must be obtained at a facility certified to take and preserve the samples. Law enforcement personnel still have the responsibility to ensure the samples are properly transported to the laboratory where the analysis would be performed.

22.52d - Liquid Containers

1. Non-resealable Containers. If an open can or non-resealable bottle containing a liquid is to be booked into evidence, the investigating officer shall empty the contents into an evidence bottle. Sign an evidence seal and place it over the edge of the evidence bottle. Tape the empty container to the evidence bottle, attach a completed evidence tag, and file the evidence in the evidence locker.
2. Resealable Containers. If the container has been opened, but has a screw top or cork, it is not necessary to pour the contents into an evidence bottle. The officer should affix an evidence seal across the top of the container, complete an evidence tag, and file the evidence in the evidence locker.

22.52e - Perishable Evidence

Perishable items, such as trees, plants, mushrooms, or food products, should be photographed; a representative sample taken; and the remaining property disposed of according to the guidelines established by the courts and the U.S. Attorney's Office. Ensure that all disposal orders for perishable evidence are maintained by the investigating officer. In the event it is necessary to store the perishable evidence, the evidence officer should make those arrangements.

22.52f - Evidence Subject to Tainting

Evidence such as green marijuana or blood-soaked clothing should be thoroughly dried prior to storage. Under no circumstances should items be placed into storage while they are still damp. If it is necessary to package the item, it should be done in a paper or burlap sack so the air exchange continues to dry and preserve the item and prevent mildew.

Officers should take particular care to separate soiled items from other items of evidence in an effort to avoid cross-contamination. Cross-contamination may destroy the value of the evidence.

22.52g - Knives, Needles, Razors, and Other Sharp Instruments

Protect all sharp-bladed objects by ensuring the blade is sealed in a manner that would prevent cutting. In the case of hypodermic needles, a small cork or pencil eraser should be stuck on the end of the needle to prevent an accidental puncture wound or they should be packaged in a container specifically designed for the storage of needles/sharps. It is suggested that stiff pieces of cardboard be cut larger than the knife blade and then taped around the blade so that the cardboard protects not only the cutting edge but the knife point. Then affix the evidence tag to the handle of the knife.

In the event that it is not practical to tape the cutting or puncturing surface of the object secured, place it in a box in a manner which prevents the item from being damaged and keeps the sharp point or edge from coming through the box.

22.52h - Toxic, Flammable, and Hazardous Materials

Dangerous chemicals or hazardous flammable materials will not be brought inside government office buildings other than in normal consumer quantities, for example cigarette lighters, nail polish remover, and matches. To prevent an accident, they should be stored in an area away from the office (FSM 6742.4). Law enforcement personnel shall not handle hazardous chemicals unless properly trained and certified. Notify and coordinate with Forest Service and/or cooperating agency hazardous materials specialists for assistance with handling and storage of toxic, flammable, and hazardous materials while maintaining the chain of custody.

22.52i - Latent Fingerprints

Package all items that are to be processed for latent prints in a manner that protects them. The area to be printed should not come in contact with any other surfaces. The use of gloves, cloth, or soft material to examine the items may cause damage to the latent prints. Since latent prints dissipate with age and exposure to heat, examine latent print evidence in a timely manner. Identify all evidence submitted with a request for latent print examination by properly tagging the item with a request for examination, such as "Hold for Printing."

If latent prints are recovered by officers in the field, a latent print card should be filled out. A 3-inch x 5-inch index card may be used. At a minimum, the initials of the officer, badge number, date, case number, and exhibit number must be recorded on the card. The completed card should then be placed in an envelope, sealed, and secured for comparison.

If a fingerprint comparison is necessary, obtain a latent fingerprint comparison sample and submit the evidence to an appropriate crime lab.

22.52j - Fraudulent Documents

Fraudulent documents may be in the form of personalized checks, cashier checks, warrants, documents with forged signatures, or government credit card records. Those items may be placed in a small, clear plastic bag, such as a baggie, with an evidence tag affixed. The evidence

should be submitted in the same manner as all other forms of evidence. Do not attach fraudulent document evidence to reports placed in the case file.

In the event fraudulent documents are submitted for latent print processing, they must be appropriately marked and brought to the attention of the case agent.

22.52k - Currency

1. United States Currency. United States currency (USC) should be seized and documented as one item (for example: If \$500 was found in a glove box of a car, it should be documented as; Item 1 - \$500). Officers shall document and inventory currency in its original location and state. After currency has been seized, Officers shall document/record the serial numbers of each bill seized or controlled. Documentation can be through means such as photo, video, or form entry. Any seized USC should be witnessed by another law enforcement officer or BWC. Large amounts of currency should be counted by a bank money machine. Any USC subject to Federal criminal or civil forfeiture should be converted into a cashier's check (or money order) by bank personnel no later than the third business day after seizure and prior to delivering to the United States Marshals Service (USMS). If there is a Charge for the cashier's check or money order, it shall be paid for out of separate funds, not the seized USC.
2. Foreign Currency. Whenever a foreign currency is taken as evidence, it is not necessary to list the total sum of the denominations. Mark the items in a manner as to identify the property at a future date, each item should be counted, and the sum of the total items submitted should be noted on the evidence tag and in the officer's report. In some cases, it may be necessary to describe the individual items.
3. Counterfeit Currency. When securing counterfeit bills, record serial numbers of each bill seized or controlled and place the bills in an envelope marked "Counterfeit" with an evidence tag attached. Notify the closest office of the U. S. Secret Service, of suspected counterfeit offenses. Ensure that the date, time, and person talked to at the Secret Service is recorded on the envelope containing the suspected counterfeit currency.

22.6 - Retention and Disposition of Property and Evidence

Retain evidence until the case has been closed in the Law Enforcement Reporting system and, if required, the evidence has been properly released for destruction by a court order, U.S. Attorney's Office documents, or District/State's Attorney's Office documents, as appropriate, directing the disposition of the property.

Dispose of evidence according to the State or Federal law prevailing at the time. A copy of the release signed by the prosecuting agency or a judge or magistrate, as appropriate, shall be placed in the case file along with the supplemental report detailing the disposal.

Use form FS-5300-60, Disposition of Seized/Impounded Property, to document the disposition.

All property or evidence that has been discovered, gathered, or received in connection with agency responsibilities shall be processed in accordance with agency evidence handling procedures.

No item seized under this chapter shall be converted to government use, unless authorized under Title 36, Code of Federal Regulations, in writing by the appropriate U.S. Attorney's Office, a court order, or in keeping with any applicable sections of the current edition of the U.S. Department of Justice "Asset Forfeiture Policy Manual".

22.61 - Non-evidence

Retain non-evidence not less than the time current law requires, or 91 days, whichever is less and in accordance with Title 36, Code of Federal Regulations, section 262.12 (36 CFR 262.12).

Release of non-evidence items does not require notification of the officer submitting the property, however, it is highly suggested. The exception is when the items are currency, ammunition, or weapons. Release of currency, ammunition, or weapons requires notification to, and acknowledgement from, the officer who submitted the property prior to its release.

22.62 - Evidence

The case officer/evidence custodian is responsible for promptly returning or disposing of property that is no longer needed as evidence or that satisfies the applicable State or Federal regulation governing its retention. Property is not to accumulate beyond its required storage life.

If the case officer/evidence custodian is no longer employed with the agency or is unavailable, the officer's supervisor may provide a written notice authorizing the release or disposal of evidence items in accordance with the following sections. The supervisor shall take care to ensure the property is authorized for release and that it is released to the proper individual.

The destruction of any property shall be witnessed by either the evidence custodian or case agent, and by at least one additional officer, after which form FS-5300-60, Disposition of Seized/ Impounded Property, form shall be completed.

22.63 - Disposal of Unclaimed Property

Dispose of unclaimed property in accordance with Title 36, Code of Federal Regulations, section 262.12 (36 CFR 262.12) and document on form FS-5300-60, Disposition of Seized or Impounded Property.

Law enforcement personnel shall not retain, convert for their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold, sell, gift, trade, or dispose of in exchange for compensation, any unclaimed property, whether from evidence, safe keeping, or abandoned property, for personal use or a profit, unless authorized in accordance with applicable State/Federal laws and USDA Office of Ethics guidelines.

22.64 - Disposal of Firearms or Ammunition

22.64a - Disposal of Legal Firearms or Ammunition

When a case is completed and where there is no state, local, or Assistant U.S. Attorney's Office documents directing the disposition of the property, the case officer shall be responsible for providing written instruction to the evidence custodian, along with form FS-5300-60, Disposition of Seized/Impounded Property, regarding the final disposition of the firearm or ammunition. A copy of this written direction shall be filed with the original case report in the LEI Reporting System.

Prior to the physical release of a firearm the officer releasing the firearm shall conduct an additional check of the firearm against NCIC stolen weapon files and applicable state databases. If new information regarding the firearm is discovered (e.g. it is now listed as stolen) the original case officer or supervisor shall be notified and the weapon shall not be released without further investigation.

18 U.S. Code, section 922 makes it illegal to deliver a firearm or ammunition to any person if they have any of the following disqualifying conditions:

1. Currently under indictment for, or have been convicted of, in any court a crime punishable by imprisonment for a term exceeding one year.
2. Fugitive from justice.
3. An unlawful user of or addicted to any illegal controlled substance.
4. Has ever been adjudicated as mentally defective or been committed to a mental institution.
5. An alien illegally or unlawfully in the United States.
6. Discharged from the Armed Forces under dishonorable conditions.
7. Has ever renounced their United States citizenship.
8. Is subject to a court order restraining them from harassing, stalking, or threatening an intimate partner or child of such partner.
9. Has ever been convicted in any court of a misdemeanor crime of domestic violence. This includes any misdemeanor conviction involving the use or attempted use of physical force committed by a current or former spouse, parent or guardian of the victim or by a person with a similar relationship with the victim.

Firearms and ammunition shall not be retained for agency use, unless approved in writing, by the Director, Law Enforcement and Investigations.

Firearms, firearm components or accessories, and/or ammunition may not be retained by officers for personal use under any circumstances.

22.64b - Destruction of Seized Firearms or Ammunition

When a case is completed and where there is a court order, or Assistant U.S. Attorney's Office/District or States Attorney's Office documents, directing the disposition of the property, the case officer shall be responsible for providing written instruction to the evidence custodian, along with form FS-5300-60, Disposition of Seized/Impounded Property, regarding the final disposition of the firearm or ammunition. A copy of this written direction shall be filed with the original case report in the LEI Reporting System.

Seized firearms shall be destroyed as follows:

1. Turned over to the Bureau of Alcohol, Tobacco, and Firearms for disposal in accordance with their policy and instructions, or
2. Destruction of the firearms shall be completed by:
 - a. Again ensuring the firearms are unloaded.
 - b. Cutting by using a torch, chop saw or band saw until the firearm is completely inoperable; or, shredding, pulverizing or smelting at a commercial location that conducts these services.
 - c. Destruction of the firearms shall be documented with photographs or video whenever possible. Photographs or video of the destruction shall be placed into the original case file. Description of the firearm, serial number, and reason for destruction shall be noted on the form FS-5300-60, Disposition of Seized/Impounded Property.
3. Destruction/disposal of ammunition shall be completed by:
 - a. Ammunition, if deemed safe to discharge, may be retained to be used for testing firing of firearms seized in the future for prosecutorial purposes.
 - b. Ammunition may be relinquished to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for disposal/destruction.
 - c. Relinquish ammunition to a government-approved explosive ordnance disposal (EOD) service.
4. A minimum of two commissioned law enforcement personnel shall be present during the destruction/disposal of any firearms or ammunition. Both must be listed as witnesses on the supplemental report.

22.65 - Disposal of Seized Property

Law enforcement personnel shall not retain, convert for their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold, sell, gift, trade, or dispose of in exchange for compensation, any evidence or non-evidence item, whether from safe keeping or abandoned property, for personal use or a profit, unless authorized in accordance with applicable State/Federal laws and the USDA Office of Ethics guidelines.

22.7 - Evidence Custodians

An evidence custodian, and no more than two alternates, shall be assigned in writing by the appropriate level supervisor for all forest level or higher evidence storage facilities. Evidence custodians shall be employees of Law Enforcement and Investigations.

Evidence Custodians shall:

1. Maintain the storage areas in a serviceable condition;
2. Establish an identification system for locating the stored items;
3. Maintain records appropriate to items stored;
4. Dispose of property in a proper and timely manner;
5. Comply with applicable statutes, regulations, and guidelines established in this policy;
6. Perform other duties as assigned.

22.71 - Evidence and Evidence Room Inspections and Inventory

All evidence facilities shall be inspected every 6 months. The responsible supervisor shall specify the extent and location of the items to be inventoried. In addition to the announced inspection, each region shall conduct an unannounced evidence inspection on at least 10% of the evidence facilities located within the region annually.

22.72 - Requirement of Evidence Facility Inspections

Inspections of evidence facilities shall, at a minimum, include an examination of the following items:

1. Ensure security of the facility from unauthorized access,
2. Ensure adequacy of facilities for handling contaminated materials,

3. Verify proper packaging and labeling of items stored,
4. Verify NCIC was run on all firearms and serialized items seized,
5. Verify proper storage conditions for the evidence type(s), and
6. Verify only evidence is kept in the evidence facility.

22.73 - Supervisors to Prepare Inspection Reports

Upon the completion of an evidence storage facility inspection, supervisors shall submit a report to the regional office. The report shall, at a minimum, include:

1. The date of the inspection,
2. The identity of those conducting the inspection,
3. The description and location of items selected for inventory,
4. Any findings or significant observations, and
5. Any proposed remediation needed, if applicable.

In the event remediation is required, and within 30 days of the conclusion of the inventory, the supervisor shall report what remedial action was taken to mitigate the issue(s), and a timeline for correcting any outstanding issues past 30 days, to the Special Agent in Charge, for personnel assigned to a region, or the appropriate Assistant Director, for personnel assigned to the Washington Officer or Federal Law Enforcement Training Center, or their designee.

22.74 - Special Inventory upon Change of Evidence Custodian

Whenever there is a change in the primary evidence custodian an inventory will be conducted prior to the change. When this is not possible, a complete inventory will be conducted within 30 days of the change. This inventory shall include all items stored at the facility and/or under the control of that evidence custodian. All locks and/or combinations locks of the evidence facility shall be changed.

22.75 - Required Annual Audit of Controlled Substances, Currency, Firearms, and Ammunition

Law enforcement personnel shall complete an audit of all controlled substances, currency, firearms, and ammunition in their control annually, or more often at the discretion of the Special Agent in Charge (for personnel assigned to a region) or the appropriate Assistant Director (for personnel assigned to the Washington Officer or Federal Law Enforcement Training Center), or their designee.

Upon completion, employees shall submit a report to their supervisor detailing the following:

1. Incident Report (IR) number(s), or state tracking number(s) when no IR number was assigned,
2. Weights for all controlled substances,
3. Amount of currency,
4. Number of firearms, and
5. Amounts of ammunition.
6. A listing of any evidence item listed in item 2-5 above that are no longer needed for investigative purposes, or that has been held for at least the minimum time outlined in sec. 22.5 of this chapter.

22.8 - Laser Scanner Program

22.81 - Authority

Authority to acquire and use Laser Scanners is obtained from FSM 5386.04a, which states the Director, Law Enforcement and Investigations, may provide Technical Investigative Equipment (TIE) to assist employees effectively in conducting criminal, civil or administrative investigations that affect National Forest System lands. Special Agents in Charge may approve the purchase of laser scanners for use by regional law enforcement personnel. Authority to assist cooperating agencies in their investigations or trainings is derived from FSM 5303.2, but will require prior approval of the Regional Special Agent in Charge (SAC), or designee.

22.82 - Objectives

The Laser Scanner Program will be used to provide support to criminal, civil, or administrative investigations on or with a nexus to National Forest System (NFS) lands. There are additional opportunities to conduct scene scans in support of work plans within NFS resource/heritage staff groups. An example of this support would include using the scanner to document the current condition of a heritage site when there is concern the site may be damaged or excavated at a future date. Use of the Laser Scanner Program is authorized, with Special Agent in Charge, or designee, approval to provide support to cooperative agencies criminal or civil investigations as per FSM 5303.2.

Requests in support of Law Enforcement and Investigations cases on National Forest System lands will receive priority over all other requests.

22.83 - Policy

The Law Enforcement and Investigations Laser Scanner Program will provide support, when requested by the Special Agent in Charge of a region, or designee, to any significant incident scene when it is in the agency's interest to thoroughly and systematically document in 3D computer model and HD photo format. Significant incidents include but are not limited to any incident when there is:

1. Loss of life,
2. Serious bodily injury,
3. Significant property or equipment damage,
4. Significant rehabilitation costs,
5. Political sensitivity,
6. Any incident deemed significant by regional leadership for any reason.

22.84 - Responsibility

22.84a - Special Agent in Charge

Each region that purchases a laser scanner(s) is responsible for developing the operational policies and procedures for its use in that region. At a minimum this will include: responsibilities, user qualifications, certification, decertification, operating principles, records maintenance, and equipment storage.

Additional guidance for regional laser scanner programs can be found on the LEI SharePoint site.

23 - Types of Investigations

23.1 - Livestock Investigations

Whenever violations occur, investigate promptly to establish facts. Close coordination should be established with the person(s) responsible for administering and/or monitoring livestock use on National Forest System (NFS) lands. Consider the circumstances of each case carefully. Ensure investigations are thorough and appropriate to the seriousness of the act. Use the facts disclosed to determine appropriate action. Violations primarily occur when livestock other than recreational noncommercial pack and saddle stock are placed or allowed to be on lands within the NFS except as authorized by permit.

23.1a - Authority

Impoundment authority and procedures are set forth in Title 36, Code of Federal Regulations, section 262.10.

23.1b - Responsibility

1. Law Enforcement Personnel. It is the responsibility of law enforcement personnel to:
 - a. Be cognizant of any memorandums of understanding (MOUs) with State livestock brand boards. As appropriate, per the terms of a MOU, request State and local officials to control unauthorized livestock of unknown ownership under applicable State and local laws.
 - b. Implement impoundment procedures under Title 36, Code of Federal Regulations, section 262.10(b) (36 CFR 262.10(b)) to control unauthorized livestock of unknown ownership where local enforcement is not effective.
 - c. Implement impoundment procedures under 36 CFR 262.10(a) to control unauthorized livestock of known ownership after all reasonable efforts to remove them through criminal or other actions have been unsuccessful, or when removal under this authority is necessary for the protection of National Forest System lands against continuing resource damage.
 - d. Ensure the United States is reimbursed as described in 36 CFR 262.10 for costs of impounding unauthorized livestock.
2. Line officers.
 - a. At the direction of forest supervisors, the district ranger shall take impoundment action, keep necessary records, and release livestock to owners upon payment of the redemption price, and, when delegated to the district ranger, advertise and conduct sales of impounded livestock and issue bills of sale for such livestock.
 - b. The forest supervisor shall train and advise forest officers in these procedures. When it is necessary to sell impounded livestock, the supervisor shall process payment to former owners of money collected from sales which exceed impounded costs due the United States.

23.12 - Violations

23.12a - Excess Livestock

Excess livestock are those owned by the holder of a Forest Service grazing permit, but grazing on National Forest System lands in greater numbers as or at times or places other than as permitted in Part 1 of the grazing permit or as authorized on the annual form FS-6500-89, Bill for Collection.

23.12b - Unauthorized Livestock

Unauthorized livestock include any cattle, sheep, goats, hogs, or equines not defined as a wild free-roaming horse or burro by Title 36, Code of Federal Regulations, section 222.20(b)(13) (36 CFR 222.20(b)(13)), which are not authorized by permit or form FS-6500-89, Bill for Collection, to be upon the land on which the livestock are located and which are not related to use authorized by a grazing permit. Noncommercial pack and saddle stock do not fall under this definition when they are used by recreationists, travelers, and other forest visitors for occasional trips, or are to be trailed over an established route when there is no overnight stop on Forest Service-administered land.

1. Excess Livestock. Handle excess livestock violations through grazing permit administration which may include suspension or cancellation of a permit, in whole or in part, depending on the seriousness of the case. Proceed with criminal action under 36 CFR 261.7 or Title 18, United States Code, section 1857 (18 U.S.C. 1857), in cases of flagrant or repeated violations (FSM 2231.62).
2. Unauthorized Livestock. Handle unauthorized livestock violations of 36 CFR 261.7(a) or (b) through criminal proceedings.

Circumstances where livestock that would otherwise meet the definition of "excess," but where the livestock are geographically widely separated from the permitted area, may most appropriately be disposed of by treating the situation as if they were "unauthorized livestock."

3. Livestock Entering National Forest System (NFS) Lands Without the Apparent Knowledge of the Owner. Since livestock can enter upon NFS lands without the knowledge of their owners, do not take criminal action upon initial discovery unless there is sufficient evidence to establish that the owners placed or allowed their livestock to be upon lands within the NFS in violation of 36 CFR 261.7(a). Initial action should be to notify the owner of the livestock of the violation and request removal. Make this notification in writing (FSM 2230). If the owner fails to remove the livestock within a reasonable time as specified, initiate criminal action under 36 CFR 261.7(b).

23.13 - Livestock Removal

1. Known Ownership of Livestock. In cases of known ownership, request an owner or person responsible to remove unauthorized livestock at the earliest, reasonable time. Use the following criteria as an aid in the request and notification aspects for prosecuting cases under Title 36 Code of Federal Regulations, section 261.7 by notifying an owner or person responsible for the unauthorized livestock:
 - a. Notify the party in writing,
 - b. Cite the regulation and/or law that is being broken, and
 - c. List the penalties for each offense.

Hand-carry the notification personally or send by certified, return receipt requested mail to the owner or responsible party.

If livestock must be moved immediately to prevent damage to National Forest System (NFS) lands, a forest officer may move or arrange to have the livestock moved in any way that would not cause physical injury. However, a forest officer has no authority to move livestock from NFS lands to those of other ownership.

2. Unknown Ownership of Livestock. In cases of livestock of unknown ownership, contact the appropriate State livestock brand board (several States have laws that declare livestock of unknown ownership to be property of the State). If appropriate, following contact with the State livestock brand board, proceed as specified in section 23.14b, paragraph 2.

23.13a - Action on Waived Lands

The United States has the right to protect its exclusive possession of lands waived under the Secretary's regulations (36 CFR 222). Take action against all unauthorized livestock use that occurs on waived lands during the period shown on the waiver.

23.14 - Criminal Action

A violation of Title 36, Code of Federal Regulations, section 261.7 or Title 18, United States Code, section 1857 is a crime and is punishable by fine and/or imprisonment.

Law enforcement personnel have the responsibility to make charges or complaints against persons where evidence shows there is probable cause to believe they have committed a crime. Federal laws and regulations, as well as State law, may apply to unauthorized livestock. Federal law supersedes State law where there is a conflict between the two.

23.15 - Livestock Impoundment and Disposal

23.15a - Notification of Intent to Impound

If impoundment is necessary, complete forms FS-2200-28, Notice of Intent to Impound Unauthorized Livestock (Unknown Owner), and FS-2200-29, Notice of Intent to Impound Unauthorized Livestock (Known Owner) (Title 36, Code of Federal Regulations, section 262.10).

1. Notice to Known Owners. If it is determined that there are unauthorized livestock on National Forest System lands, give written notice to the owner that unauthorized use is occurring. Hand-carry this notice personally or send it by certified or registered mail, return receipt requested. In this notice, identify the kind of livestock and location where observed, and inform the owner that if the livestock are not removed they shall be impounded after a specified date.

Although the regulation prescribes that impoundment may be made 5 days after the notice is mailed, it is good practice to ensure that the notice has been received 2 or 3 days

prior to impoundment. However, should a person refuse to accept a certified or registered notice or avoid personal delivery; this action does not preclude impoundment of livestock after the end of the 5-day period.

2. Notice When Ownership Is Unknown. Give the published notice of intent to impound only after unauthorized livestock use is established and a reasonable attempt has been made to determine ownership of the livestock. The area of unauthorized use to be described in the notice must include the specific area where the livestock were seen. It should also encompass the surrounding area on which the livestock may reasonably be expected to travel during the ensuing period.

In cases when livestock ownership is unknown or when there is a possibility livestock of unknown ownership may be gathered with those of known ownership, publish a notice of intent to impound unauthorized livestock.

Send copies of notices to advisory boards, other livestock organizations, brand inspectors, and other State and county officials who are responsible for livestock control.

a. Include the following information in the notice:

(1) The area on which unauthorized livestock use is occurring, and for which the impoundment notice is effective.

(2) That unauthorized livestock shall be impounded after a specific date, which should be at least 15 days after the notice is posted and published.

(3) That owners of the livestock may redeem their animals after showing proof of ownership and paying impoundment costs.

(4) That upon impoundment the animals would be advertised for public sale with a sale date of not less than 5 days after impoundment. The owners may redeem their livestock any time before the time set for sale by showing proof of ownership and paying impoundment charges.

b. Publish and post the notice of intent to impound in the county in which unauthorized use has occurred, including:

(1) Publication in one or more local newspapers.

(2) Posting in the county court house(s).

(3) Posting in one or more local post offices in the county.

23.15b - Impounding or Holding Livestock

1. Impoundment. Notify the State brand inspector for assistance before taking impoundment action. When impoundments of unauthorized animals is undertaken, conduct impoundment promptly and effectively, but only following the 5th or 15th full day after the notice has been issued.

In some cases, it may be necessary to construct temporary fences or corrals to aid in the impoundment. Do not move impounded stock across private land unless the landowner has given written permission. The simplest method of impoundment is usually a roundup. The use of trigger gates, fences, or baited corrals or traps may be considered in planning impoundment. All impoundment and holding action should be accomplished by at least two people.

It may be useful to paint-mark or dye-mark impounded animals to identify them in case of future loss or dispersion. Marking may help separate and identify animals impounded on different days in cases of continued impoundment action. Each animal gathered should be described; for example, kind, class, color, size, general condition (health), and so forth.

Should animals become seriously injured or die during impoundment, document the cause and extent of the injury or the cause of death. Ensure a veterinarian examines an injured or dead animal and determines the extent of injury or cause of death and provides a written statement of opinion. If the owner of the animal is known, inform the owner of the injury or death and encourage the owner to inspect the animal. If the owner believes some compensation is due, advise the owner of the right to file a claim (FSM 6570).

2. Holding Impounded Livestock. Hold impounded livestock in Forest Service-owned facilities on National Forest System (NFS) lands or other Federal land whenever practicable. Keep the impounded animals properly fed and watered. Take all reasonable precautions to protect animals from harm and to keep them in good condition. Some memorandums of understanding (MOUs) between the Forest Service and a State provide for impounded livestock to be turned over to the custody of State brand inspectors. Utilize public sale yards and facilities, provided that use of these facilities does not conflict with State law. The use of privately-owned sale yards and facilities is not advisable. In most cases, it is desirable to have someone guard the animals during their impoundment to keep them safe from harm and prevent removal. Animal Plant Health and Inspection Service (APHIS) shall be requested to assess the condition of the animals and to ensure compliance with the Animal Health Protection Act, Horse Protection Act, and/or Animal Welfare Act.

3. Computing Costs and Establishing Redemption Price. Do not include investigative costs when determining impound costs.

It is intended that the United States be reimbursed for all costs incurred in the gathering, holding, disposal, and investigation of unauthorized livestock. However, when impoundment costs exceed fair market value, establish a minimum acceptable

redemption price for each head of livestock. When authorized by the forest supervisor, forest officers may incur expenses necessary to impound livestock; such expenses must be paid from the appropriation available for the purpose.

Take any action to collect for the value of forage removed and damages caused by unauthorized livestock. Do not assess such costs in connection with the redemption price.

Compute the total charges against the owner for the costs associated with the impoundment of the livestock. Divide the total Charge by the numbers of animals involved to determine the redemption price for each animal. For this computation, consider a female with dependent offspring of less than 6 months of age as one animal.

Include the following items in computing impoundment costs:

- a. Salaries or wages and per diem of employees actually rounding up, impounding, or caring for impounded livestock.
- b. Transportation expenses, including vehicle operation. When a special trip is made to impound known unauthorized livestock, expenses may start from the time the employee leaves headquarters.
- c. Costs of purchasing feed and hauling feed and water for impounded livestock.
- d. Costs of guarding and caring for impounded livestock.
- e. Operation costs of renting or using Forest Service-owned aircraft to locate known unauthorized livestock.
- f. Costs for horse hire and feed for horses used in impoundment efforts.
- g. Advertising costs in connection with the sale of impounded livestock.
- h. Costs for rental corrals, pastures, or other facilities used for holding impounded animals.
- i. Labor, transportation, and other costs of constructing impoundment corrals, excluding costs of materials, such as posts and wire.
- j. Costs for labor and transportation needed to bring existing corrals to be used for impoundment to a usable and safe condition.
- k. Salary or fees for auctioneer.
- l. Grazing fees at the "unauthorized use rate" specified in FSM 2230, for the period of time the animals were on National Forest System lands.

4. Disposal of Impounded Livestock.

a. Sale Advertisement. If required pursuant to an MOU, give a notice of the sale of impounded livestock in the county in which the impoundment was made, immediately following the impoundment of livestock of unknown ownership. Publish the notice in one or more local newspapers, post at the county courthouse, and in one or more local post offices. In this notice, list and describe the animals and specify the date, time, and place of the sale. Use form FS-2200-30, Notice of Sale of Impounded Livestock, for such notice.

b. Livestock Redemption. Notify the known owner of impounded livestock that the animals have been impounded immediately after the impoundment. To redeem animals, an owner shall show proof of ownership of the animals and pay the required redemption price.

If sale advertisements have not been made concurrently with the notice to the owner that animals have been impounded, give sale notice and hold impounded livestock an additional 5 or more days before they are sold. In those cases where there is good reason to believe that the owner would not redeem the animals, advertise sale notices simultaneously with the owner's notification that the owner's animals have been impounded.

An owner may redeem impounded livestock any time before the date and time of the sale by showing proof of ownership and paying costs incurred in gathering and holding the unauthorized livestock.

c. Impounded Livestock Sale. When possible, have a State Brand Inspector present at all sales. Offer impounded livestock that are not redeemed by the date and time set for sale at public auction. Prior to sale, a district ranger shall establish a minimum price for each animal. This minimum price must be no less than the impoundment costs, except where costs exceed the fair market value of the animals.

Sell the animals as individuals. Consider a female with dependent offspring of less than 6 months of age as one animal. Do not group the animals together and sell collectively. Keep records of each animal sold.

If a bid of the minimum redemption price is not received at the public sale, sell the animals by private sale at the established minimum price, or re-offer the animals at public sale for a progressively lower price until a bid is received. If the animals are not sold, they should be condemned and destroyed or otherwise disposed of. Agreements may be made with State agencies to dispose of unredeemed livestock (36 CFR 262.10 (f)).

d. Payments. Do not accept personal checks to cover sale or redemption of impounded animals unless delivery is delayed until collection is affected.

Payments should ordinarily be made in the form of a draft, money order, or cashiers check made payable to "Forest Service, USDA." When processed, remittances should be accompanied by form FS-6500-89, Bill for Collection, prepared in accordance with FSH 6509.11h.

Keep records for each animal sold to show the kind of livestock, brand, place and date of sale, name and address of the purchaser, sale price, and method of payment (for example, money order or draft).

In the event proceeds from the sale of livestock of known ownership exceed claims for damages and impoundment costs charged against the livestock, refund the money collected in excess of that owed the United States to the previous owner of the animals. However, in cases where the previous owner still owes for the value of grazing, make no refunds until such obligations have been paid.

e. Bill of Sale. Upon the sale of any impounded livestock, the forest supervisor is authorized to issue a bill of sale, certificate, or other written evidence of sale to the purchaser. Use form FS-2200-31, Bill of Sale of Impounded Livestock. Although the sales must be made by individual buyers, prepare one bill of sale for all animals purchased by a buyer. Authority for issuing the bill of sale may be delegated to the district ranger.

23.2 - Occupancy and Use Investigations

23.21 - Violations

Consider the unauthorized occupancy and use of National Forest System lands as a violation of Federal regulations. Either criminal and/or civil action may be necessary to resolve the violation, depending on the circumstances and complexities of the case. Consider the unauthorized occupancy and use of non-Federally-owned administrative sites and leased spaces from non-Federal agencies as violations of State laws. Report all such violations to the appropriate local law enforcement agency. The Forest Service jurisdiction in such cases is for the protection of Forest Service personnel and property. See FSM 5335.2 and FSM 2800, chapter 10, section 18, for direction on mining claim violations.

23.22 - Actions to Stop Illegal Occupancy

When the person suspected of illegal occupancy does not claim a right to occupy the land and or building under FSM 5335.1 or FSM 5335.2, or it has been established that such occupancy rights do not exist, the person may be in violation of the law and action must be taken.

If the person is engaged in constructing or maintaining any unauthorized building or other structure, or any unauthorized road, trail, or other improvement on National Forest System (NFS) land, give the person notice to suspend work. See FSM 2810 for direction on structures or impoundments relating to mining claims.

Allow reasonable time for the removal of any such structures.

If the person refuses to cease the prohibited activity and damage is being done to NFS land or resources, law enforcement personnel may:

1. Arrest the person and seize the improvements or structures involved; or
2. Seek an injunction from a U.S. District Court through a U.S. Attorney to force the person to stop the prohibited activity.

23.22a - Occupancy Under Claim of Right or Title

On occasion, a person occupying National Forest System lands may be there under an alleged right or title to the land. For example, a Native American might be claiming a right of occupancy under the Indian Allotment Act (25, U. S. C. 337). Do not initiate criminal proceedings against such occupancies until there has been an assessment of that person's claim of right of occupancy. If the right is in question, then the appropriate course may be to institute civil action to end the occupancy rather than criminal action.

23.23 - Removal of Unauthorized Structures Considered To Be Real Estate

Real estate or real property is defined as the land and, generally, whatever is erected, growing upon, or affixed to the land. One of the conditions for defining real estate is that the property stays in place when the ownership changes; for example, cabins, sheds, trees, and erected enclosures. Crops requiring annual cultivation, fence materials that have not been erected, and trees that have been severed are considered personal property.

Law enforcement personnel shall not destroy real property without the advice of the U.S. Department of Agriculture, Office of the General Counsel, or by court order. Make an attempt to get the owner to remove unauthorized property, both real and personal. If an owner refuses to remove the property, advise the U. S. Magistrate Judge or U.S. Attorney of the request to have the courts instruct the owner to remove the property at the time of criminal action (FSM 2818.4).

23.3 - Timber Investigations

All Forest Service employees shall document and immediately report to Forest Service law enforcement personnel any information indicating possible:

1. Undesignated timber unnecessarily damaged,
2. Undesignated timber negligently or willfully cut,
3. Unauthorized alterations in timber sale or unit boundaries,
4. Purchaser's use of paint on the sale area without the written permission of the Forest Service representative, or
5. Additional trees marked or designated for cutting by unauthorized individuals, including unauthorized Forest Service personnel. If the employee believes that the

timber was cut through mistake or undesignated timber was damaged without negligence, law enforcement personnel shall be notified within 2 days (FSH 2409.15, sec. 13.42c, and FSM 5304.7).

6. Timber cut in protected, ecologically, or culturally sensitive areas.

Law enforcement personnel who receive information regarding timber violations shall follow the applicable case opening guidelines. Law enforcement personnel shall retain records of referrals received from timber staffs or other employees outside of LEI Reporting System in order to identify patterns of cutting and excessive damage to undesignated trees.

Prior knowledge by law enforcement personnel of current and projected timber sale operations, their location, landownership, land lines and survey monuments, log brands being used on each sale, operators, haulers, and locations where timber is being transported to, can be of great assistance to the law enforcement person(s) assigned to conduct the investigation.

23.31 - Objectives

The objectives of the investigation of any alleged timber violation are to determine:

1. Was there a violation of law,
2. What law was violated,
3. Who was the responsible party,
4. What was the extent of the violation (species, volume, and number of trees removed), and
5. What was the dollar loss to the Government. When determining the dollar value of the loss, timber values shall be determined based on Fair Market Value, or other value as directed by the appropriate court with jurisdiction, at the time of the violation. A complete damage assessment should be conducted by subject matter experts, such as soils scientists and wildlife or fisheries biologists, to determine if additional environmental resources were affected and their related restoration and environmental costs.

23.32 - Prevention

1. Functional Control Areas. Timber theft prevention functional control areas include:
 - a. Presale operations (bidding, cruising, sale layout, and so forth);
 - b. The contract pre-work meeting;
 - c. Operations on the sale area (logging and so forth);
 - d. Timber in transit;

- e. Scaling (if applicable); and
 - f. Timber sale accounting, law enforcement, and internal audits. Timber theft violations may, in some cases, be prevented.
 - g. Mill inspections
2. Guidelines. Law enforcement personnel should follow these guidelines in becoming more familiar with timber sale planning and operations, and their role in the prevention of timber theft:
- a. Know when and where timber operations are being conducted, including the haul route and, if applicable, scaling location.
 - b. Know how the timber sale contract designates timber for cutting.
 - c. Know how additionally marked timber is designated for cutting.
 - d. Know how sale boundary and sale unit boundaries are designated and the boundaries of any protected items, such as archeologically significant or threatened and endangered species protection areas, as these areas have a greater potential for adverse environmental and monetary damages.
 - e. Conduct checks of the operations frequently, including unit boundaries and designation of timber. Timber spot checks should be documented on a timber spot check form.
 - f. Check whether a legal survey has been conducted prior to commencement of a timber operation on private land adjacent to National Forest System land.
 - g. Check to see that boundaries of a sale area on private/forest property are well marked and that operators are aware of them.
 - h. Advise operators of applicable laws and regulations.
 - i. Know designated haul routes.
 - j. Conduct unannounced check points for purposes of load ticket compliance (if applicable) and/or branding and painting inspections.
 - k. Maintain strict accountability of tree marking tracer paint (FSH 2409.12, sec. 72).
 - l. Ensure that scalers make current checks of brands assigned to operators and check for misbranding or changes in brands.
 - m. Ensure that Forest Service law enforcement personnel (a minimum of one) serve as members of any activity review or log accountability audit team that assesses relevant timber theft prevention controls.

- n. Review sale inspection reports pertaining to undesignated timber negligently or willfully cut, unauthorized alterations in timber sale or unit boundaries, purchaser use of paint on the sale area, and additional trees marked or designated (FSH 2409.15, sec. 13.42).
- o. Utilize random timber surveillance plots and other innovative prevention measures.
- p. Advise media of successful investigations and criminal and civil penalties assessed for violations.
- q. Utilize tracer paint test kits to ensure the integrity of tree marking paint being used.
- r. Be familiar with local high value species and specialty wood. (Some examples are: big leaf maple, alligator juniper, coastal redwoods, and giant sequoia).

23.33 - Violations

If an investigation indicates there was willful cutting or removal (theft) or other violations of criminal law, handle the case under applicable criminal laws (FSM 5332). Criminal action, based on probable cause that theft occurred, may be considered in conjunction with appropriate contractual or other civil remedies (FSM 5332). All cases of apparent willful cutting and/or removal of undesignated timber should be referred to the U.S. Attorney for prosecutorial determination.

Recognize that in addition to handling willful cutting as a criminal action, the timber sale contract provision B2.132, Negligent or Willful Damage, allows the contract to handle undesignated timber unnecessarily damaged or willfully cut. Payment is covered under contract provision B3.4, other payment rates and includes liquidated damages.

Generally, after criminal action is taken, civil and contractual remedies take place.

Administrative actions that may be pursued include suspension and debarment covered in Title 36, Code of Federal Regulations, section 223.130 and contract cancellation under Title 36, Code of Federal Regulations, section 223.116 (FSM 2433.63 and 2433.8).

23.34 - Private Land Violations Extending Onto National Forest System Land

When any employee discovers what appears to be a violation involving a private land logging operation that extends onto National Forest System (NFS) lands, immediately ascertain the exact location and status of the land involved and notify Forest Service law enforcement personnel responsible for the violation area. Forest Service law enforcement personnel shall notify the appropriate local law enforcement agency. If necessary, confirm the status of the logging operation by checking with the forest or district Forest Management staff.

If the property line had been marked, posted, and maintained to standard (FSM 7152.6), violation of the marked line in itself is sufficient evidence to proceed with the investigation. Otherwise, consider surveying the land lines.

When satisfied that a violation is being committed on NFS land, law enforcement personnel shall, unless there would be an adverse effect on the investigation, promptly serve written notice upon the suspect in the presence of witnesses, if possible, or via certified, registered, restricted delivery via U.S. Postal Service mail or equivalent private parcel delivery service (such as UPS or FedEx), to discontinue the violation.

When suspects have been warned to cease their illegal acts, but refuse to do so, and when irreparable damage to the United States may result from continuation of the violation, the suspects may be arrested by law enforcement personnel or an injunction may be requested. The choice of criminal versus civil remedies should be made only after consultation with the appropriate U.S. Attorney. The injunction procedure involves immediate notice to the U.S. Attorney through the U.S. Department of Agriculture, Office of the General Counsel. At a minimum, furnish the following information:

1. Name, address, and occupation of the suspect.
2. The act or acts of the suspect(s), including dates, times, witnesses, current and threatened damage to the United States, and all other related facts and circumstances.
3. Time and date of notice to cease and desist, by whom the notice was given, witnesses, and response to notice.

The U.S. district court judge issues injunctions based on substantial need for the restraining action. Provide the judge complete and accurate information. Accordingly, continue to check on the actions of the suspect(s) to enable prompt notification of any change which affects the status of the restraining action.

Cooperation from the suspects in non-willful cases may be obtained in finding corners and lines and in determining the amount of timber cut in violation. Although such cooperation may be successful only in apparent non-willful cases, it also may be explored in willful cases if it would not adversely affect a criminal investigation or prosecution.

23.35 - Investigation Procedures

During the initial recognition stages that timber theft may have occurred in conjunction with a timber sale contract, if any circumstance described in section 23.3, paragraph 1, appears to be present, do not implement contract remedies (including notifying the purchaser or suspending harvest operations) prior to the contract administration team and law enforcement personnel making a joint decision on the appropriate course of action.

Prior to contract remedies, law enforcement may choose to conduct a covert operation, such as surveillance. A joint decision may be to suspend operations (if circumstances warrant such

action under contract specifications) in order for law enforcement to protect the crime scene and collect evidence pursuant to the case.

The collection of evidence should be completed as timely as possible. See the following list of specific reviews/actions that should be considered when collecting evidence for a timber theft case:

1. If the timber theft is associated with a contract, review the contract folder and the sale folder to know specifications of the original contract and any changes, modifications, or agreements made that would have a bearing on the original contract specifications. In the sale folder, include all information pertaining to the sale, such as pre-sale activities (cruising and marking timber), environmental assessment, and so forth.

Review contract provisions that deal with timber specifications and operations. Review the sale inspection reports. This documentation is kept by the sale administrator and includes information about day-to-day operations, records any non-compliance or other problems, and documents any agreements made with the purchaser or purchaser's representative.

2. Utilize appropriate resource personnel to assist in collecting evidence (for example, certified cruisers, sale administrator, and registered surveyors for boundary trespass).

3. Identify what specific information needs to be collected for evidence; for example, what specific measurements of the stump are needed in order to derive an estimated timber volume. Document the locations of stumps based on the needed accuracy. Collect samples of stump butt marks as appropriate.

4. Use a recognized, defensible method to calculate the estimated timber volume. The survey must be conducted by or under the supervision of a certified cruiser. A certified cruiser shall conduct a comparison cruise in order to develop a regression analysis. A regression analysis develops a relationship between the stump diameter and the volume of the tree (FSH 2409.12, sec. 81.2). The Washington Office, Law Enforcement and Investigations staff, has a computer regression analysis program available that calculates the volume generated, which may be used after the comparison cruise volume is calculated.

5. Identify resource personnel needed to conduct an economic analysis of resource damages.

Advise the contracting officer of the time needed to complete the investigative procedures on the affected unit(s) and ensure that notification is given to the contracting officer when the unit(s) may be released for further logging operations. Recognize that the contracting officer has contractual obligations, including placing the purchaser in breach, providing contract remedies, and suspending operations.

23.36 - Timber Cutting on Unpatented Mining Claims

See FSM 2813.13 for direction on a claimant's rights to timber.

23.37 - Seizure of Timber Cut in Violation

Without further approvals, law enforcement personnel as agents of the government may, when necessary to prevent loss, seize timber cut in violation wherever found, even though the timber may be upon private land at the time. Exercise the right to seize with extreme care since it may lead to serious complications. Follow Rule 41, Federal Rules of Criminal Procedures, which covers search warrants and search and seizure actions. If the Government seizes material cut in violation, it may prevent civil action to recover the value of such material. Conversely, the Government may be liable for conversion of private property if the seizure is found to be improper.

23.37a - Seizure of Manufactured Timber Products

Timber cut in violation may be seized even though it has been manufactured into lumber, is in the hands of an innocent purchaser, and is upon private lands. The United States has the right to seize buildings or other improvements, whether on lands owned or patented by the Government, when such improvements are constructed wholly or in part from timber cut in violation. Take this action as a last resort to save the United States from loss, and then only upon specific instructions from the U.S. Attorney's Office.

23.37b - Seizure of Timber of Mixed Ownership

When timber of mixed ownership is seized containing illegally cut or removed government timber, the Government may require the owner to prove the percentage of private ownership of the mixed timber prior to the Government releasing any of the seized timber. This may be a complicated situation and such seizures should be coordinated with legal counsel. The rights to seize may be dependent on the manner in which the owner acquired the logs.

23.37c - Posting of Seized Timber Violation Material

Law enforcement personnel shall attach sufficient notices to identify unmistakably all material covered by the seizure. If there is a danger of theft of the material, mark pieces for identification in other ways. Take all reasonable security precautions.

Do not stamp seized material "U.S." unless and until a case is settled in favor of the Government and the material is to be released.

23.37d - Sale of Seized Timber Violation Material

Dispose of forest products seized in accordance with FSM 2466 and Title 36, Code of Federal Regulations, section 223.3, after approval of the U.S. Attorney's Office, when necessary.

23.37e - Criminal Liability

Unauthorized cutting or removal of timber or other forest products from National Forest System lands is normally a violation of law or regulation and the responsible party is criminally liable. Consequently, action is necessary to bring those responsible before a court of law to answer for the crime.

1. Willful Act. A willful act is described as one done intentionally, knowingly, and purposely, without justifiable excuse. The person(s) who do the actual felling or the corporation, partnership, company, or individual by whose direction and for whose benefit the cutting was done may be criminally liable for the violation, depending on their individual criminal intent. These same person(s) may be civilly liable for damages (either single or multiple) depending on the specific circumstances of the case.

Employers also may be civilly liable for the acts of their employees if the employers knew of the violation and took no action to stop it, or if, after the violation was committed; they knowingly approved it or employed persons to do the cutting knowing them to be careless, reckless, and unreliable.

2. Values That May Be Applied. Under a criminal violation for timber theft, two values may be applied:

- a. Fair market value of the timber product. The market value is the value of the timber product at the point of delivery. For example, if the stolen tree is cut into logs and delivered to a mill, the market value is the delivered log value at the mill.
- b. Resource damages value.

Statutory authority to Charge for resource damages criminally is set forth in Title 18, United States Code, section 1361, government property or contracts (depredation of government property). Also, resource damages are included in a civil restitution.

3. Determination of Resource Values. Determine resource damages caused by the violation, including damages to visual, silvicultural, wildlife, archaeological, soils, hydrologic, and recreational resources, and so forth. Some of these values may be based on the "value of the live trees in terms of their contribution to the forest ecosystem" (*U.S. vs Scarry (unpublished, 9th Cir. 1989)*).

4. Calculation of Resource Values. Several methods may apply to calculating a value to these resource damages, including:

- a. Cost of rehabilitation (erosion control, obliterating skid trails, and so forth),
- b. Value of the standing tree on the site ("Fair Market Value" appraisal based on a technique developed by the International Society of Arboriculture), and
- c. Appraised value by re-growing (re-establishing) the stand back to its original size and condition.

d. Scientific value assessments should be conducted by subject matter experts to determine if additional environmental resources were effected and their related restoration, environmental, research data corruption, and/or archeological costs.

23.4 - Wildland Fire Investigations

Wildland fire investigations have two distinct phases. The initial phase is referred to as origin and cause determination. Origin and cause determination relies on an established, systematic methodology to reveal where the fire started and what caused the fire. The second phase of wildland fire investigation involves the follow-up criminal or civil (claims) investigation.

23.41 - Wildland Fire Origin and Cause Determination

Origin and cause determination should be conducted by a person who has been properly trained and certified as a wildland fire investigator (INVF) (see FSH 5109.17, ch. 20, sec. 27.1 and FSM 5372, sec. 44). This involves locating the site where the fire started and determining, through training and experience, the source of ignition (see FSH 5109.31-Wildfire Origin and Cause Determination Handbook-NWCG Handbook 1 for direction on wildland fire investigation procedures).

23.41a - Wildland Fire Reporting Procedures and Origin and Cause Determination Documentation

Forest Service dispatchers shall immediately notify Law Enforcement and Investigations (LEI) when a fire is reported on, or which threatens, National Forest System lands. When wildland arson is suspected, LEI personnel shall be immediately dispatched to the fire.

Document wildland fire origin and cause determinations on both an Incident Report (form FS-5300-1) and on a Wildland Fire Origin and Cause Supplemental Incident Report (form FS-5300-45). Non-law enforcement personnel shall forward these reports to LEI within 5 working days of the incident.

23.42 - Wildland Fire Criminal and Civil Follow-up Investigations

All follow-up investigation (beyond the origin and cause phase) of human caused fires must be assigned to a Law Enforcement Officer or Special Agent. Complex criminal or civil wildland fire investigations are typically assigned to either Special Agents or a regional/ national investigative team, as determined by the Special Agent in Charge, or designee.

If determined by the appropriate Special Agent in Charge, lightning caused fires that result in significant property damage, serious injury or death, or come under increased or unusual scrutiny should be investigated in the same manner as human caused fires.

23.5 - Archaeological, Paleontological, or Cultural Resources Investigations

The problem of vandalism and looting of archaeological, paleontological, or prehistoric resource sites located on Federal lands is a concern to the U.S. Congress, Federal land managers, Native

Americans, educators, and the general public. The preservation of America's heritage is important for cultural, scientific, and educational purposes.

23.51 - Prevention

The main goal for law enforcement personnel, due to the number of archaeological, paleontological, or cultural resource sites across the country, is prevention and/or compliance assurance. But whenever possible, every effort should be made to identify the subjects responsible for the resource damage and/or theft and to prosecute accordingly. Prevention/compliance assurance may be obtained through training, public information, and law enforcement operations. Close coordination between law enforcement personnel and archeologists/paleontologists should occur prior to any violations occurring. Part of this coordination should include identifying sites prior to violations to promote proactive monitoring by law enforcement personnel.

23.52 - Violations

Archaeological resources protected on Federal lands may include sites, artifacts, features, and specimens such as ceremonial structures, rock shelters, caves, mounds and other earthworks, artifact scatters, clothing, ornaments, organic wastes, and other material remains of past human life.

It is unlawful to remove any cultural resource from National Forest System lands unless authorized or permitted. (FSM 2364.2)

Paleontological resources protected on Federal lands include any fossilized remains, traces, or imprints of organisms, preserved in or on the earth's crust, that are of paleontological interest, and that provide information about the history of life on earth.

Paleontological resources do not include:

1. Any materials associated with an archeological resource as defined in the Archeological Resources Protection Act (ARPA)(1979), section 3(1); 16 U.S. Code 470bb(1); or
2. Any cultural item, as defined in the Native American Graves Protection and Repatriation Act (NAGPRA)(1990), section 2; 25 U.S. Code 30001.

Prehistoric/historic resources protected on Federal and Indian lands include any structure, architectural, or archeological artifact, or other material of past human life.

Law enforcement personnel should recognize the methods and techniques used by collectors and looters, understand the components of the illegal artifact and fossil trafficking network, and be able to conduct a thorough crime scene investigation to ensure a successful prosecution.

23.53 - Investigative Procedures

Once a suspected violation is reported to and/or found by a forest officer, consider the following:

1. Does the violation meet the standards for a felony violation?
2. Does the violation meet the standards for a violation of the Archeological Resources Protection Act (ARPA)(1979), National Historic Preservation Act (NHPA)(1966), Native American Graves Protection and Repatriation Act (NAGPRA)(1990), or Paleontological Resources Preservation Act (PRPA)(2009), or other applicable regulation?
3. Coordinate with archeologist/paleontologist early in the investigative process to ensure the investigator understands the scope of the violation.
 - a. ARPA requires a damage assessment report be prepared to determine three values: Cost of Restoration and Repair, Commercial Value and Archaeological Value. The damage assessment must be prepared by a qualified archaeologist.
4. Should surveillance equipment be used? Should physical surveillance of the site take place? Should investigation procedures begin?

After these questions are answered, only law enforcement personnel who are properly trained or qualified, typically through the completion of the Archeological Resources Protection Training Program (ARPTP) or equivalent, and/or a Paleontological Resources Protection Act training, shall conduct the investigation, with input from, or in conjunction with, the effected forest or district archaeologist/paleontologist to determine the scientific and commercial value of the resources.

Paleontological Casual Collection Provisions:

1. The Paleontological Resources Preservation Act (PRPA) allows for the casual collecting of a reasonable amount of common invertebrate and plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools resulting in only negligible disturbance to the Earth's surface and other resources.
2. Title 36, Code of Federal Regulations, part 291, defines a "*reasonable amount*" as a maximum of 100 pounds of common invertebrate and/or plant paleontological resources per calendar year, not to exceed 25 pounds per day. Casual collecting is allowed without a permit on National Forest System lands that are not closed to casual collecting.
3. The Line Officer or their designee may determine that certain invertebrate and plant paleontological resources do or do not meet the definition of "*common invertebrate and plant paleontological resources*" as set forth in this regulations, and thus, whether such resources can be casually collected or must be collected under a permit. It is the responsibility of the collecting public to ensure that they are casually collecting in an area

that is open to casual collection, and that the materials they collect are subject to casual collection.

24 - Consensual Monitoring

24.1 - Consensual Monitoring Approvals

24.11 - Department of Justice Verbal Approval

Form IG-8460, Consensual Monitoring Request, shall be used to obtain authorization to intercept verbal communications without the consent of all parties to the communication should be granted under the following circumstances:

1. Written or verbal authorization has been granted by an appropriate U.S. Attorney or Assistant U.S. Attorney in the judicial district having jurisdiction over the investigation or offense pursuant to FSM 5323.04c, paragraph 1,
2. The Washington Office, Director of Law Enforcement and Investigations, has obtained approval from the U.S. Department of Agriculture, Office of the Inspector General, and
3. One or more of the following criteria is met:
 - a. The investigation is being conducted as an undercover operation, utilizing undercover employees, agents, or operatives, and that person's relationship with law enforcement personnel is concealed from third parties or targets of the investigation; or
 - b. Parties to the communication are not aware of the relationship between law enforcement personnel and the person who is covertly recording or transmitting the conversation as part of an investigation; or
 - c. The investigation involves the use of a remotely placed transmitter or receiving/recording device capable of intercepting verbal communications when placed in open field areas, common areas of government buildings, or in government vehicles, where there is no reasonable expectation of privacy possessed by parties to the communication and the consenting party is present; or
 - d. The investigation involves the use of a remotely placed transmitter or receiving/recording device that has been placed in private areas when a consenting party has consented to the interception of the party's verbal communications. The device may be concealed on the party's person, in personal effects, or in a fixed location. The consenting party must be present during any interception of verbal communications. Law enforcement personnel or parties cooperating with law enforcement personnel may not commit trespass while installing such a device.

24.12 - Telephone Consensual Monitoring Approval

A consensual monitoring request to intercept telephone communications without the consent of all parties to the communication must be granted under the requirements stated in section 24.11, but does not require the verbal or written consent of a U.S. Attorney or Assistant U.S. Attorney as stated in section 24.11, paragraph 1.

24.13 - Department of Justice Written Approval

In addition to the approvals required pursuant to section 24.11, paragraph 1 and 2, prior to conducting any non-telephone consensual monitoring, the investigator should obtain the approval of the Office of Enforcement Operations in the Criminal Division of the Department of Justice when it is known that:

1. The interception relates to an investigation of a member of Congress, a Federal judge, a member of the Executive Branch at Executive Level IV or above, or a person who has served in such capacity within the previous 2 years. This group includes Cabinet members, members of the White House staff, and most Presidential appointees;
2. The interception relates to an investigation of any public official and the offense investigated is one involving bribery, conflict of interest, or extortion relating to the performance of their official duties;
3. The interception relates to an investigation of a Federal law enforcement official;
4. The consenting or non-consenting person is a member of the diplomatic corps of a foreign country;
5. The consenting or non-consenting person is or has been a member of the Witness Security Program and that fact is known to law enforcement personnel;
6. The consenting or non-consenting person is in the custody of the Bureau of Prisons or the U.S. Marshals Service; or
7. The Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorney General for the Criminal Division, or the U.S. Attorney for the judicial district where an investigation is being conducted has requested law enforcement personnel to obtain prior written consent for conducting a consensual interception in a specific investigation.

24.2 - Consensual Monitoring Request Data

Form OIG-8460-1, Consensual Monitoring Request, contains the queries required by the Department of Justice to obtain authorization to intercept verbal communications without the consent of all parties. Requestors should be prepared to elaborate on requests for information, by attachment if necessary. This form is available from the Law Enforcement and Investigations Assistant Director - Investigations.

24.21 - Reasons for Interception

The request must contain a reasonably detailed statement of the background and need for the interception.

24.22 - Offense

If an interception is for investigative purposes, the request must include a citation to the principal criminal statute involved.

24.23 - Danger

If the interception is for protection purposes, the request must explain the danger to the consenting person, or state the officer's safety issue involved in the interception.

24.24 - Location of Devices

The request must state where the interception device will be hidden; for example, on the person, in personal effects, or a fixed location, such as a vehicle, telephone, or building.

24.25 - Location of Interception

The request must specify the location and primary judicial district where the interception(s) will take place. Interception authorization is not restricted to the original district. However, if the location of an interception changes, prompt notice should be given to the Law Enforcement and Investigations (LEI) Special Agent in Charge who shall forward the notice of change to the Director, LEI. The record maintained concerning the request should reflect the change in location.

24.26 - Time

The request must specify the length of time required for the interception. Initially, an authorization requiring Department of Justice verbal or written approval may be granted for up to 90 days from the day the interception is scheduled to begin. If there is need for continued interception, extensions for periods up to 30 days may be granted. In special cases, such as fencing operations conducted by law enforcement personnel, authorization for up to 180 days may be granted with similar extensions.

24.27 - Names

The request must give the names of persons, if known, whose communications the law enforcement personnel expect to intercept and the relationship of such persons to the matter under investigation or to the need for the interception.

24.28 - Attorney Approval

Where the interception concerns non-telephone communications, the request must state that the requestor has discussed the facts of the surveillance with the U.S. attorney, assistant U.S. attorney, or any other designated Department of Justice attorney and that such an attorney has stated that the surveillance is appropriate. While such a statement can be made verbally, the information concerning the conversation should be documented and attached to the interception request.

24.29 - Renewals

A request for renewal authority to intercept verbal communications must contain all the information required for an initial request. The renewal request also must refer to all previous authorizations and explain why an additional authorization is needed.

24.3 - Interceptions

Law enforcement personnel are authorized to intercept verbal communications with an electronic, mechanical, or other device without completing Form OIG-8460-1, Consensual Monitoring Request, under the following circumstances:

1. The interception occurs where all parties to the conversation are aware of and consent to the taping of the conversation.
2. The interception occurs during an initial investigative contact by uniformed law enforcement personnel.
3. The interception occurs on a telephone line used exclusively for emergency communications directed to or originating with the Forest Service, and typically involves emergency medical system requests, public safety requests, or wildfire reports. Monitored and recorded telephone lines exclusively dedicated to emergency communications must not be used for administrative or criminal investigative purposes, except as provided in sections 24.12 and 24.4.

24.4 - Emergency Consensual Monitoring

Prior approval must be received before consensual monitoring of conversations occurs. Where circumstances require monitoring and established authorization and approval procedures cannot be followed, such as imminent loss of essential evidence or a threat to the safety of an agency employee, witness or informant, authorization of an emergency form OIG-8460-1, Consensual Monitoring Request may be granted. This authority may be exercised only during the non-duty hours of the appropriate Department of Justice attorneys (where diligent contact attempts have failed). Approval of this emergency request is reserved to U.S. Department of Agriculture, Office of the Inspector General officials (USDA Office of Inspector General Manual, IG-8460, Consensual Monitoring).

24.41 - Regional Emergency Request Approvals and Transmittal Requirement

Where possible, prior to any emergency consensual monitoring by law enforcement personnel assigned to a region, the Special Agent in Charge shall contact the appropriate regional Inspector General - U.S. Department of Agriculture, Office of the Inspector General (OIG) for interim approval. In all cases, the Special Agent in Charge shall transmit Form OIG-8460-1, Consensual Monitoring Request, to the Director, Law Enforcement and Investigations on the next business day following the emergency request.

24.42 - Washington Office Emergency Request Approvals and Transmittal Requirement

Where possible, prior to any emergency consensual monitoring by law enforcement personnel assigned to the Washington Office, the Director, Law Enforcement and Investigations (LEI) shall contact for interim approval the appropriate regional inspector general with the U.S. Department of Agriculture, Office of the Inspector General (OIG) for the area of the investigation. The affected assistant director shall transmit Form OIG-8460-1, Consensual Monitoring Request, to the Director, LEI on the next business day following the request.

24.5 - Video Surveillance - Agency and Judicial Authorization

The Second, Fifth, Seventh, and Ninth Circuit Courts of Appeal require that a Title III authorization request be prepared for video surveillance into an area where a person may possess a reasonable expectation of privacy. Any video surveillance of areas where a reasonable expectation of privacy exists must be referred to the Director, Law Enforcement and Investigations for approval (FSM 5324.04a). Examples would include the private offices of employees, restricted access areas, and the interior of private homes. In those circuit courts, the following provisions must be addressed in an AO-106, Application and Affidavit for Search Warrant before the court may grant an authorization to conduct video surveillance:

1. The application must contain a showing that normal investigative procedures have been tried and have failed, reasonably appear unlikely to succeed if tried, or are too dangerous to employ;
2. The application must provide a particularized description of the type(s) of visual communications or activities sought to be intercepted, and a statement of the particular offense(s) to which the visual communication or activities relate;
3. The interception period applied for (or authorized) may not be longer than that necessary to achieve the objective(s) of the authorization, but in any event not longer than 30 days; and
4. The interception must be conducted in such a way as to minimize the interception of visual communications (that is, video images) which are not relevant and, therefore, should not be the subject of law enforcement interception.

24.6 - Interception of Verbal Communications During Video Surveillance

The interception of verbal communications during video surveillance may be approved under the circumstances described in sections 24.61 and 24.62.

24.61 - Video Surveillance

Any verbal communications intercepted where the normal conversation is overheard by the operator of the video camera or the speaker has observed the camera operator and elected to continue speaking within hearing distance of the video camera microphone is considered an interception pursuant to section 24.3. No further approvals are necessary.

24.62 - All Other Interceptions of Verbal Communications During Video Surveillance

All other interceptions of verbal communications during video surveillance must be approved pursuant to sections 24.11 and 24.13.

25 - Informants

25.01 - Authority

1. Title 36, Code of Federal Regulations, section 262.2(a) (36 CFR 262.2(a)), provides authority to make payments for information to further investigations of felony and misdemeanor violations.
2. Title 36, Code of Federal Regulations, section 262.3(a), provides the authority to make payments for evidence to further investigations of felony and misdemeanor violations.

25.05 - Definitions

Confidential Source. A person who provides information to the Forest Service, on a regular and confidential basis, as a result of legitimate employment or access to records or information that is maintained and/or controlled by the individual and contain information relevant to Forest Service investigations.

Contact Officer. A Special Agent or law enforcement officer that is responsible for the initial contact and supervision of a confidential source or informant.

Confidential Informant. A person who furnishes information in a continuing and confidential relationship concerning matters within areas of Forest Service criminal investigation responsibilities. An informant is further defined as an individual who may participate in criminal activity when such activity is approved by the U.S. attorney.

Cooperating Defendant/Witness. A person who provides useful, credible information to the Forest Service, that has agreed to testify in court proceedings as a result of the

information provided and may be given consideration by the prosecuting attorney in future court proceedings for the assistance provided.

25.1 - Informant Suitability Considerations

Careful consideration should be given as to whether a person is suitable to cooperate as an informant. Reliability and credibility must be the determining factors as it may be necessary for the informant to testify on behalf of the Government in subsequent court proceedings. Other circumstances may arise that present difficulty in using a person as an informant or cooperating defendant.

Issues of suitability due to media affiliation, military service or past criminal convictions should be reviewed by the U. S. attorney's office or appropriate prosecutor.

Probation. If the person is on probation (State or Federal), the agent should follow accepted procedures for the appropriate jurisdiction. In most circumstances, the approval of the sentencing judge must be obtained by coordination with the probation officer. This should be done prior to using the subject as an informant.

Parole. If the person is on parole, there is typically a very lengthy process that each State requires to be followed prior to using the person as an informant. There is no parole in the Federal system. Adhere to appropriate State procedures in this circumstance.

Active Warrants. If the person has an active warrant for their arrest, the arrest warrant should be cleared with the issuing agency prior to the person serving as an informant.

25.2 - Informant Files

The contact officer shall develop the original informant file and maintain an informant working file. The Director, Law Enforcement and Investigations or designee (for cases assigned to the Washington Office) or Special Agent in Charge or designee (for cases assigned to a region) shall maintain a duplicate working file which contains copies of all documents and notes relevant to an informant as well as a duplicate original informant file. Maintain these files separately in a locked file.

The original informant file must be contained within a sealed envelope that denotes the informant number on the outside. This file must only be opened in the event of an emergency or by court order. The informant working file must include summaries of all information and assistance provided to the agency and other cooperating agencies. The informant working file and all documentation contained within must only refer to the informant by the assigned number. Once an informant is deactivated from use this file must be closed.

It is not necessary to maintain a file on a confidential source. However, documentation for any payments made to sources must be retained for accountability.

25.21 - Opening Informant File

An informant file is opened by transmitting a memorandum directly from the contact officer to the Director, Law Enforcement and Investigations (for cases assigned to the Washington Office) or designee or Special Agent in Charge (for cases assigned to a region) or designee, and submitting the following information in a sealed envelope with only the informant number clearly denoted on the exterior:

1. Full name.
2. Aliases.
3. Place and date of birth.
4. Residence.
5. Contact telephone number.
6. Next of kin and contact number.
7. Employment information.
8. Photograph and finger prints.
9. Alternate contact officer.
10. Informant Number

A narrative summary of the information provided by the informant should also be provided. This summary does not need to be included within the original informant file. The narrative should reference the informant by the informant number only. This narrative will be used to open a working file based solely on the informant number and used to document the informant's work history.

The contact officer/agent also shall conduct a criminal history check and include it in the informant's original file.

The contact officer/agent shall complete a Confidential Informant Log (see ex. 01 for example) to be included in the working informant file to document the history and reliability of the informant's service.

25.21 – Exhibit 01

Informant History of Reliability

<u>DATE</u>	<u>DESCRIPTION</u>	<u>CASE NUMBER</u>
1. 01-10-2009	Controlled buy – 1 oz meth	08-01-123456-D
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

25.22 - Informant Number

An informant number provides for identification of the informant and protects the confidentiality of the individual. The contact officer is responsible for assigning the number and marking it on the face of the envelope containing the informant's identity. Upon receipt by the Director, Law Enforcement and Investigations or designee (for cases assigned to the Washington Office) or Special Agent in Charge or designee (for cases assigned to a region), this number must be entered in a confidential informant log. The confidential informant log and envelope must be placed in a locked file. Thereafter, that number must be used in all investigative reports instead of the individual's name. The informant number should identify the year, controlling officer/agent number and informant number to ensure accountability. (Calendar year – officer/agent badge number – informant number). The informant numbers should also be assigned in sequence. Example 09-123-0001, 09-123-0002, 09-123-0003

25.23 - Confidentiality of Informants and Information

25.23a - Confidentiality of Informants

In order to reveal the true identity of a confidential informant, the Director, Law Enforcement and Investigations shall grant approval (Title 7, Code of Federal Regulations, Part 1, Subpart A, section 1.17; and Title 5, United States Code, section 552(b)(7)).

25.23b - Confidentiality of Information

1. Keep any information and reports obtained in the course of an investigation confidential.
 - a. The release of such information at an improper time may jeopardize prosecution or a subsequent appeal. Discuss such information or provide it to others only on a need-to-know basis. If a question arises regarding the release of any information, seek

advice from the Director, Law Enforcement and Investigations, Washington Office Freedom of Information and Privacy Act Specialist, the U.S. Attorney's Office, and/or the U.S. Department of Agriculture, Office of the General Counsel as appropriate.

b. Improper release of confidential information in violation of agency or departmental policy or Federal law or regulation may subject the employee to disciplinary action, criminal prosecution, and/or civil liability. Line officers and law enforcement personnel shall take every precaution to ensure the confidentiality of all investigations.

2. Ensure that investigative materials, allegations of misconduct, or other sensitive materials are transmitted in a manner to ensure security and confidentiality.

a. When required to transmit sensitive or confidential investigative materials through the United States mail, take every precaution to protect the information from disclosure. Law enforcement personnel shall personally secure and seal the materials in appropriate packaging, and mark the package in such a way as to ensure the integrity of the seal. Law enforcement personnel are encouraged to use overnight mail, when appropriate.

b. When submitting sensitive or confidential information through intra- or inter-office mail, make certain it also is packaged in such a manner to ensure the security and confidentiality of information. When appropriate, use confidential blue envelopes to submit documents.

c. When transmitting information via electronic mail or storing documents electronically, be aware of the potential lack of security on these systems and take every precaution to ensure the confidentiality of sensitive information, especially when the information relates to allegations or investigations of employee misconduct.

25.24 - Deactivation of Informant

The contact officer or the Director, Law Enforcement and Investigations or designee (for cases assigned to the Washington Office) or Special Agent in Charge or designee (for cases assigned to a region) shall deactivate a confidential informant if the informant's conduct or performance is not satisfactory or when the informant is no longer useful. Document this action and place a copy of the documentation in the informant's working file. The confidential informant log shall reflect the date of deactivation in the remarks section as well (sec. 25.2).

25.3 - Guidelines and Instructions to Be Discussed With Informants

Make all informants aware of the following no later than the second contact:

1. Informants' assistance is strictly voluntary and would not exempt them from arrest or prosecution of any violation of law except where such an exemption is formally approved by the local U.S. Attorney.

2. Informants are not and may not consider themselves to be employees or undercover agents of the Forest Service.
3. An informant's relationship must be maintained in the strictest confidence, and the informant shall exercise constant care to ensure that the relationship is not divulged to anyone.
4. Informants shall report information as promptly as possible.
5. Informants shall not participate in acts of violence.
6. Informants shall not use unlawful techniques to obtain information.
7. Informants shall not initiate plans to commit criminal acts.
8. Payments are taxable for Federal income tax purposes.
9. Informants should be generally aware of what kinds of information are useful to the Forest Service.
10. Informants must know an alternate contact officer's identity.

After being advised of these items, the informant shall write "YES" beside each item as an indication that they accept and understand the parameters of their relationship with the agency. The informant shall sign and date at the bottom of the list. The contact officer shall also sign and date this list and when possible the backup officer/agent shall witness and sign and date. (Exhibit 01 is a sample of an informant's checklist). This document must be placed in the sealed envelope and viewed only in the event of an emergency or court order.

25.3 - Exhibit 01

Sample of an Informant's Checklist

Confidential Informant # _____

NAME: _____ DOB: _____

ADDRESS: _____ PLACE OF BIRTH: _____

PHONE: (Residence) _____ (Business/Cell) _____

DL#: _____ SSN: _____

EMERGENCY CONTACT: _____

EMPLOYED BY: _____

Answer each of the questions below by writing YES or NO in the space provided:

1. Do you understand that you are not privileged to break any laws during the course of providing any services for this agency? _____
2. Do you understand that you are not to disclose that you provide a service to this agency to anyone except in answer to a subpoena from a court of law? _____
3. Do you understand that you are not to carry any documents or equipment that connote the law enforcement field? _____
4. Do you understand that you are not to affect any physical arrests for violations of the law as part of your service to this agency? _____
5. Do you understand that you will be subject to searches of your person, vehicle and residence during your service to this agency? _____
6. Do you understand the law as it relates to entrapment? _____
7. Do you understand that you are not a Law Enforcement Officer? _____
8. Do you understand that you are not to use your services for this agency to resolve personal matters? _____
9. Do you consent to have your conversations with potential targets of investigation monitored and recorded? _____
10. Do you understand that you are to keep in constant contact (weekly) with this agency while assisting us? _____

Signature

Date

Witness

Date

Witness

Date

An agency waiver of liability should also be discussed and document with each informant. This waiver should discuss the fact that the assistance is being provided voluntarily without and threats, promises or rewards being made or offered.

25.3- Exhibit 02

Sample Waiver

I, ____ (Informant's name) _____, hereby agree to assist the United States Forest Service in the investigations of the criminal violations occurring in ____ (National Forest)_____ .

I hereby release and acquit this agency, their officers and agents, and employees from any injury or liability, which I may suffer or sustain in the future as a result of these investigations. I am fully aware that I may have to testify in future court proceedings concerning cases in which I might participate. I have entered into this agreement freely and without duress. I fully understand that I am not to participate in any investigations of any criminal activities, unless a sworn member of this agency is directly supervising the investigation. I agree to follow the instructions of the supervising officer/agent while assisting in such investigations. I agree that any compensation paid me with respect to any services rendered by me in connection with any such investigation shall be full and complete payment for those services. I shall have no other or further claim against the above-mentioned agency in connection with such services.

(Signature)

(Date)

(Witness)

(Date)

(Witness)

(Date)

Each informant that will be used to monitor and record conversations shall be advised of their legal Rights under the Fourth, Fifth and Sixth amendments and consent to record the conversations for which they are a party should be documented with a Single Party Consent Form (see ex. 03 for a sample).

25.3 - Exhibit 03

Sample Single Party Consent Form

I hereby voluntarily authorize and give consent to ____ (Agent(s) or Officer(s)) _____
of the United States Forest Service to intercept and record my complete oral and wire
communication pursuant to 18 USC 2511 (2)(c) and (d); during the course of an
investigation of: ____ (Type – drugs, timber, etc...) _____

The communications to be intercepted will begin on or about ____ (time) ____ AM/PM,
on ____ (date) _____, and will involve the following
individuals known to me as:

____ (List known targets as per Consensual Monitoring Request) _____

I affirm that my consent is freely given and that I have been advised of my legal rights under the
Fourth, Fifth and Sixth Amendments to the Constitution of the United States and that it is my
intent to waive such rights.

Name: _____ Signed: _____

Date: _____

WITNESSED BY:

Name: _____ Signed: _____

Date: _____

25.4 - Confidential Sources

Confidential sources shall be advised that they are not acting as undercover agents or employees of the Forest Service, and that under no circumstances should they use unlawful techniques to obtain information.

25.5 - Alternate Contact Officer

An alternate contact officer shall be designated at the time an individual is determined to be suitable as an informant. The alternate contact officer should meet or observe the informant by the second meeting with the contact officer to ensure the continued use of an informant during the absence or transfer of the original contact officer. All documentation of use of the informant shall be maintained by the contact officer/agent only. All documentation related to the informant will be relinquished to the contact officer/agent at the earliest convenience and placed in the informant's working file.

25.6 - Dissemination of Information

Information provided by informants and confidential sources may be disseminated to other regions within the Forest Service. Information relative to criminal activity outside the Forest Service scope of authority may be provided to the appropriate agency.

Document in writing any information disseminated and insert a copy in the informant's working file.

Transmit all documents relevant to an informant by registered, return receipt mail. Maintain a copy of the receipt in the contact officer's/agent's informant working file.

25.7 - Informant Participation in Authorized Criminal Activity

Informants may participate in authorized criminal activity when the local U.S. Attorney approves. The contact officer/agent shall document the approval and forward a copy of the documentation to the Director, Law Enforcement and Investigations or designee (for cases assigned to the Washington Office) or Special Agent in Charge or designee (for cases assigned to a region), who shall insert the documentation in the informant's file.

25.8 - Revealing the True Identity of Informant Under Court Order

In cases where the contact officer has been ordered by a court to reveal the true identity of an informant, the Director, Law Enforcement and Investigations (for cases assigned to the Washington Office) or Special Agent in Charge (for cases assigned to a region) shall be consulted.

25.9 - Payments 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, regarding the purchase of information (FSM 5320.45, para. 1).

Confidentiality of information sources shall be maintained. Payments for information are directed by FSH 6309.32, part 4G13.301-7(c). A copy of each payment for information must be maintained in a confidential informant's working file.

The contact officer/agent obtaining funds for information or evidence shall maintain a confidential informant working file with the number of the confidential informant or name of the confidential source or cooperating defendant, receipts indicating the amount paid, date paid, and the case number assigned to the investigation (FSH 6509.13b, sec. 705.1; and FSM 5320.45). Copies of payment receipts to individuals identified must be forwarded to the Special Agent in Charge or designee. Copies of payments made to confidential informants must be maintained in the confidential informant working file. In cases where the confidential source or one-time payment individual refuses to sign a receipt, note such on the receipt form and post "approved by the Special Agent in charge."

There should be a minimum of two officers/agents present when payments are made for evidence or information.

25.91 - Payments to Informants

Informants may also be paid:

1. For expenses incurred while obtaining information. These include such expenses as those for:
 - a. Fuel,
 - b. Lodging,
 - c. Meals,
 - d. Telephone,
 - e. Other travel,
 - f. Common carrier, and
 - g. Miscellaneous expenses.
2. The performance of services.
3. Intelligence information.

Payments also may be made in the early stages of an informant's development, based on anticipated productivity rather than on a strictly "cash on delivery" basis. This practice may be used to establish a history of reliability for the informant.

Payment schedules for a set fee also may be set up on a continuing basis, such as monthly or bi-weekly, if it would be more advantageous to both the Forest Service and the informant. Expenses such as those listed in paragraphs 1-3, may be considered in addition to a set fee.

There should be a minimum of two officers/agents present when payments are made for evidence or information.

25.92 - Documentation of Payments for Information

Use form FS-5300-20, Record for Purchase of Evidence/Information, to document all payments for information.

1. Payments to Informants. Ensure informant's sign form FS-5300-20, Record for Purchase of Evidence/Information, when they receive a payment for information or assistance unless there is a need to keep their identity confidential. For extremely sensitive situations, enter the informant's number from the informant file in block 14 of form FS-5300-20. In the record, reflect the case number and title (if applicable), name of the contact person making the payment, and what the payment was for, such as evidence, information, or expenses. A copy of the signed FS-5300-20 should be maintained in the informant's working file.
2. Payment to Confidential Sources. Ensure that the confidential source signs form FS-5300-20, Record for Purchase of Evidence/Information, when a payment for information is made unless there is a need to keep the informant's identity confidential. When confidentiality is needed, the contact officer shall enter a code name or number in block 14 of form FS-5300-20, sufficient for the officer to identify the source of the information. In the record, reflect the case number and title (if applicable); name of the contact person making the payment; and what the payment was for, such as evidence, information, or expenses.

25.93 - Quick Pay Payment System [RESERVED]

25.94 - Payments for Evidence

25.94a - Documentation of Payments for Evidence

Utilize form FS-5300-20, Record for Purchase of Evidence/Information, to document the case number, if applicable; case title; name of law enforcement personnel; making payment and what the payment was for, such as evidence, information, or expenses. Follow the same process described in section 25.8 for payments for information.

26 - Surveillance

Surveillances of short duration for a minor offense may be conducted without the involvement of a special agent. Consider any potential personal danger before undertaking a surveillance operation. Complex surveillance operations require special skills and may involve a high degree of personal danger. Implement the raid planning techniques described in FSH 5309.11, chapter 10, section 15. For complex surveillance operations or those that might require some undercover contacts, an operations plan should be submitted to the Special Agent in Charge or designee with oversight from the local forest Special Agent or patrol captain as appropriate.

27 - Undercover Operations

Conduct undercover operations only when an operating plan has been approved (FSM 5322.2).

Nothing in this section restricts law enforcement personnel from operating in plain clothes where such activity does not constitute an undercover operation as described in this section and where such plain clothes activities are otherwise authorized and appropriate.

Forest Service law enforcement authority exists when violations of laws or regulations occur on National Forest System lands or incidents affecting the NFS (FSM 5301).

27.04 - Responsibility

27.04a - Washington Office, Director of Law Enforcement and Investigations

It is the responsibility of the Washington Office, Director, Law Enforcement and Investigations to ensure that a semi-annual review of undercover operations is conducted through the Assistant Director - Investigations. This review must cover the general priorities for the types of investigations where undercover operations would be utilized and must include the status of ongoing undercover operations.

27.04b - Special Agents in Charge

It is the responsibility of Special Agents in Charge to keep the Director, Law Enforcement and Investigations advised of the status of regional undercover operations and to discuss regional priorities for potential undercover operations.

27.1 - Security of Undercover Operations

Do not release information concerning an agency undercover operation to any person who does not have a clear and convincing need to know. Stamp all applications, case reports, memoranda, or other documents relating to any undercover operation as "CONFIDENTIAL." Emphasize that any unauthorized release of information about an undercover operation by any employee of the Agency, whether or not legitimately acquired, would be cause for disciplinary action and/or criminal prosecution.

27.11 - Guidelines

1. The use of undercover operations is a lawful and essential technique in the detection and investigation of crimes related to or affecting the administration of National Forest System lands, facilities, or property. Types of investigations include arson, timber theft, archaeological resource theft and damage, drug violations, contract fraud, and other investigative responsibilities. However, undercover operations can be controversial and potentially dangerous undertakings requiring significant financial and personnel resources. In addition, the use of this technique involves a degree of deception, and sometimes requires the cooperation of persons whose motives and conduct are open to question. Therefore, Forest Service law enforcement personnel shall use good judgment with regard to the use of undercover techniques.
2. Undercover operations may be conducted only when facts or circumstances exist that reasonably indicates an offense has been committed or would be committed in violation of the statutes enforced by the Agency.
3. The objectives of an undercover assignment or operation are to:
 - a. Determine if a violation of law has occurred or is in progress;
 - b. Identify a specific violation of law;
 - c. Locate the violation sites and equipment used;
 - d. Obtain evidence for prosecution;
 - e. Determine the safest and most advantageous time to make arrests, raids, and seizures;
 - f. Identify witnesses and informants;
 - g. Determine association between conspirators;
 - h. Provide the means of entrance to a locked premise for a raiding party;
 - i. Check the reliability of sources of information/informants; and
 - j. Gather intelligence that allows law enforcement management to evaluate threats and organize enforcement activity as needed.
4. Non Commissioned Forest Service employees may be utilized in undercover operations only in extraordinary circumstances which mandate the use of such personnel. Their participation shall be completely voluntary, security measures taken to ensure their protection shall be thorough, and prior approval from the Director, Law Enforcement and Investigations (Director, LEI) or designee must be obtained.

5. Law enforcement personnel shall be familiar with the judicial guidelines relating to entrapment and shall not entrap any person to commit a criminal act.
6. Law enforcement personnel shall not conduct or otherwise engage in any undercover operation that has not been properly authorized as provided in this chapter.
7. Law enforcement personnel shall not interfere in any way with the right of any person to be represented by an attorney or with the attorney-client privilege.
 - a. Law enforcement personnel acting in an undercover capacity should avoid being present during conversations between the subject and attorney, unless they have reason to believe that the attorney is participating in suspected criminal activity or that the officers' presence is unavoidable given the circumstance of the meeting.
 - b. Any information received by an undercover operative which involves legal representation of any person must not be disclosed to persons outside the agency, except that the appropriate U.S. Attorney shall be informed of the existence of such information and, to the extent the U.S. Attorney directs, shall be informed of the substance of such information.
8. Law enforcement personnel engaged in undercover operations shall not commit any acts which could reasonably be perceived as immoral or unethical. Excessive drinking, use of controlled substances, participation in immoral acts or other apparent misconduct that could jeopardize the undercover operation by law enforcement personnel may result in disciplinary action.
9. Undercover operatives shall not pose as physicians, clergymen, or members of the news media, without the approval of the Director, LEI and the appropriate U.S. Attorney if there is significant risk that another individual would be led into a professional or confidential relationship. Operatives should not request information in an undercover capacity from a physician, clergyman, or member of the news media, who is under obligation of a legal privilege of confidentiality, or a professional or confidential relationship.
10. Any undercover operative who becomes aware of credible information suggesting that the life or safety of any person is in serious danger shall immediately communicate that information to law enforcement authorities with appropriate jurisdiction, when it appears to the officer that an adequate opportunity exists for intervention by such authorities.
11. The use of any informant in an undercover operation shall be governed by procedures established in the Forest Service directives system.
12. Undercover operatives shall not knowingly violate anyone's civil rights, nor interfere with anyone's constitutional rights.

13. The use of any electronic surveillance equipment during an undercover operation must comply with all Federal laws and the policies of the agency regarding its use.

14. Law enforcement personnel engaged in undercover operations shall not release investigative information to any unauthorized persons, organizations, or the news media.

27.2 - Classification of Undercover Operations

Undercover operations are classified as Class 1, Class 2 or Class 3. The Special Agent in Charge will approve all Class 3 undercover operations. Class 1 and Class 2 undercover operations may be approved by the Special Agent in Charge or designee.

27.21 - Class 1 Undercover Operations

1. Class 1 undercover operations are to be conducted with Special Agent or patrol captain oversight as appropriate. These operations are to be approved by the Special Agent in Charge or designee.

2. Requires no identification documents (driver's license, social security card, and so forth).

3. Considered plain clothes ruse or role playing without the need for development of a viable undercover identity.

4. Operations are typically conducted for one day or specific days for a short term. There may be the need to conduct multiple day operations as needed to address specific area concerns.

5. Operation plan is required. However, in circumstances when there is a Memorandum of Understanding (MOU) between a cooperating agency that allows for Forest Service personnel to take part in a multi-jurisdictional task force, other agency policies may apply. An operations plan is not needed if the Forest Service is participating as an assisting agency and the lead agency adheres to its operating plan requirements.

27.22 - Class 2 Undercover Operations

1. Class 2 undercover operations are to be conducted with the Special Agent in Charge or designee approval.

2. Requires limited use of identification documents in a short term situation (there may be the need to obtain a driver's license and/or other items such as hunting/fishing licenses).

3. Considered a mid-level operation with specific targets that will require pre-planned, limited contacts.

4. The use of informants for controlled purchases or to attain information in pre-planned, limited contacts with specific known targets.

5. Operations should be directly monitored by a case agent with a prepared response in case of emergency as per the approved operations plan.
6. Operations are typically conducted for less than 6 months in duration.
7. Operation plan is required. However, in circumstances when there is a Memorandum of Understanding (MOU) between a cooperating agency that allows for Forest Service personnel to take part in a multi-jurisdictional task force, other agency policies may apply. An operations plan is not needed if the Forest Service is participating as an assisting agency and the lead agency adheres to its operating plan requirements.

27.23 - Class 3 Undercover Operations

1. Class 3 undercover operations are to be conducted with Special Agent in Charge approval. The Special Agent in Charge will consult with the Washington Office on all Class 3 operations.
2. Requires frequent use of identification documents in a long term situation. Class 3 may require the need to obtain a driver's license, social security card, bank account, credit cards, residence, computer, vehicle or other items as needed. Personnel will coordinate with the Washington Office undercover coordinator to obtain needed identity documents. The Assistant Director of Investigations or designee will serve as the undercover coordinator.
3. Considered a complex operation with multiple known and unknown targets. May require frequent, unplanned contacts with multiple targets.
4. The use of informants for complex controlled purchases or to attain information in potentially life threatening situations with multiple known and unknown targets.
5. Operations may not be directly monitored by case agent, but do require frequent updates and safety checks as required by the approved operations plan.
6. Operations are typically conducted for more than 6 months.
7. Operation plan is required. However, in circumstances when there is a Memorandum of Understanding (MOU) between a cooperating agency that allows for Forest Service personnel to take part in a multi-jurisdictional task force, other agency policies may apply. An operations plan is not needed if the Forest Service is participating as an assisting agency and the lead agency adheres to its operating plan requirements.

27.3 - Requests for Undercover Operations

Requests for undercover operations are submitted on the agency approved operations plan to the appropriate approving official as identified by the class of the operation. Funding requests for operations should be identified within the operations plan.

1. Class 1 Operations – oversight by Special Agent or patrol captain as appropriate with approval by the Special Agent in Charge or designee.
2. Class 2 Operations – approved by Special Agent in Charge or designee.
3. Class 3 Operations – approved by Special Agent in Charge with Washington Office consultation.

Under exigent circumstances, the Special Agent in Charge or designee may approve a Class 1 or Class 2 operation telephonically if appropriate and necessary.

27.4 - Undercover Activity in Multi-Agency Investigations

In multi-agency investigations, Forest Service operations plans are not required if:

1. The undercover operative is not a Forest Service employee or informant.
2. The Forest Service is not assuming a prominent role in managing or directing the operation.
3. The lead agency has obtained authorization for the operation as per their established agency guidelines.
4. Forest Service personnel are conducting activities in accordance with an existing MOU with a cooperating agency that authorizes the Forest Service participation in a multi-jurisdictional task force. In this circumstance, the accepted cooperating agency procedures may be followed.

27.5 - Consensual Monitoring in Undercover Operations

1. The use of electronic recording devices in undercover operations must be in accordance with Title 18, United States Code, Section 2511(2) (c) and (d) and FSH 5309.11.24. One of the following must apply:
 - a. The officer/agent or informant is a party to the conversation being recorded.
 - b. The officer/agent or informant has the permission of one of the parties to the conversation.
2. Each recording should be prefaced with a preamble describing the following:
 - a. Date and time.

- b. Location.
- c. Officer/agent with oversight of the recording.
- d. Suspect(s) (if known).
- e. Crime.

27.6 - Undercover Training for Law Enforcement Personnel

All officers/agents with oversight of Class 2 and Class 3 undercover operations shall complete an undercover operations training session as approved by the Director, LEI.

28 - Case Management

1. This section outlines procedures for managing and overseeing investigations conducted by law enforcement personnel. Its purpose is to facilitate compliance with the Council of the Inspectors General on Integrity and Efficiency (CIGIE). Included in this section are procedures and guidance for: reporting crimes, opening and closing investigations, case numbering, investigative work plans, data input into the case tracking system, and proper storage and retention of reports of investigation.
2. These procedures are in addition to the LEI Reporting System incident statistical reporting requirements. They do not supersede LEI Reporting System requirements or other reporting requirements imposed upon the Forest Service by the U.S. Department of Agriculture, Office of the Inspector General. See FSM 1549.1, paragraph 5a through 5f, for reporting responsibilities.
3. The Director, Law Enforcement and Investigations (Director, LEI) and each Special Agent in Charge is authorized to:
 - a. Open investigations, except internal investigations pertaining to criminal or non-criminal activity related to Forest Service employees (see sec. 28.3 for authorities in investigations related to Forest Service employees).
 - b. Determine investigative priorities,
 - c. Assign Special Agents to conduct or oversee investigations,
 - d. Close investigations, and
 - e. Oversee all other case management requirements set forth in this section, within their assigned area. The Director, LEI and Special Agents in Charge may delegate this authority to appropriate assistants (for example Assistant Director - Investigations, assistant Special Agents in Charge, or Supervisory Special Agents under their immediate supervision).

28.1 - Reporting Crimes

1. Report all known violations of criminal law or regulation on National Forest System lands using the Law Enforcement and Investigations Management Attainment Reporting System as outlined in FSH 5309.11, chapter 40 and FSM 5340.
2. Report all crimes meeting the criteria outlined in section 28.2 (General Criminal Investigations), using an Incident Report FS-5300-01. Submit FS-5300-01 to the Special Agent in charge or designee (for cases assigned to the region). The Special Agent in Charge or designee shall determine if an investigation should be opened. Upon determining to open a case, the Special Agent in Charge or designee shall assign a Special Agent or law enforcement officer to conduct the investigation. Immediately advise the Director, Law Enforcement and Investigations, through the chain of command, of all sensitive investigations which may have an adverse impact on the Agency.
3. A preliminary investigation is defined as the minimum investigative effort necessary to establish the credibility of the information or allegation and is documented on a FS-5300-1, Incident Report. Generally, a preliminary investigation does not extend beyond collecting information at the initial crime scene or recording the initial allegations of criminal activity. Limit preliminary investigations to 5 working days from the occurrence of the crime or receipt of an allegation of a crime. Conduct any follow-up investigation only after the Special Agent in Charge or designate has opened a case and has assigned the case for investigation. In exigent circumstances, cases may be assigned prior to submitting preliminary investigation information.

28.2 - General Criminal Investigations

1. A case must be opened, entered into LEI Reporting System, and assigned to a Special Agent or law enforcement officer in the following situations if not completed by an arrest or no further leads after preliminary investigation has been completed:
 - a. A crime is committed constituting a felony and affecting National Forest System (NFS) lands, facilities, or property and/or their administration.
 - b. A crime is committed constituting a serious misdemeanor and affecting NFS lands, facilities, or property and/or their administration; for example:
 - (1) The case has generated or has the potential to generate significant media attention or notoriety.
 - (2) The case has generated or has the potential to generate Congressional interest.
 - (3) The case involves significant agency liability.
 - (4) The offense resulted in substantial or the potential for substantial property or resource loss.

(5) The outcome of the case could set a precedent and result in change to Forest Service policy or procedures.

c. An investigation involves undercover operations.

d. An assault or serious threat is made against Forest Service personnel, employee(s), or volunteer(s) occurs as a result of work with the Forest Service.

e. A crime requires referral to other Federal, State, or local investigative agency(s) when involvement and/or assistance by law enforcement personnel exceeds immediate initial actions (until an agency with primary jurisdiction assumes responsibility for the incident).

f. An investigation involves the use or planned use of technical investigative equipment and approval of the U.S. Attorney's Office or the U.S. Department of Agriculture, Office of the Inspector General is required for such use (FSM 5320).

g. Payment is made for information and/or evidence for continuing the investigation.

h. The Forest Service is involved in a joint investigation or is assisting another agency in an investigation (not an enforcement action) that involves or may involve a tactical response; for example, participating in raids or assisting in the execution of a warrant.

2. Cases opened and assigned for investigation must be investigated following legal requirements and Forest Service policy in this chapter and FSM 5320.

28.3 - Internal Investigations

See FSM 5390-Office of Professional Responsibility

28.4 - Non-criminal Investigations

1. Normally, law enforcement personnel should not conduct non-criminal investigations. Investigation activities that do occur must be guided by this section. The initial, immediate gathering of information at the scene for non-criminal cases resulting from incidents such as fires caused by non-criminal human acts and aircraft, motor vehicle, or personal injury accidents, and apparent accidental trespass by adjacent landowners, is considered a preliminary investigation. Report these incidents using Law Enforcement and Investigations Management Attainment Reporting System.

2. Limit non-criminal preliminary investigations to the initial gathering of information and/or evidence associated with the scene of the incident or activity being investigated. All subsequent investigative activities, such as interviews or research, are considered follow-up investigative activities.

3. For non-criminal cases involving actual or potential civil claims, assign a case number, and conduct follow-up investigative activities using the procedures for opening criminal investigations (sec. 28.2):
 - a. After agreement has been made with agency financial and/or claims management staff that Law Enforcement and Investigations should conduct the investigation (FSM 5303.11), and
 - b. After the financial and/or claims management staff has agreed to cover the costs of the investigation.

28.5 - Incidents Not Meeting Case Management Criteria

1. After review by the Special Agent in Charge or designee, incidents and/or violations that do not initially meet the case opening criteria will be either:
 - a. Assigned to a Special Agent or law enforcement officer for additional inquiry to develop sufficient information to open a case. Limit such an inquiry to 5 working days after the crime occurs or after receiving an allegation of a crime.
 - b. Deferred to appropriate law enforcement personnel for handling as a law enforcement matter and processed using the judicial process at the appropriate level (for example, Central Violations Bureau, magistrate, or local court system).
 - c. Referred to an external cooperating agency having primary jurisdiction or any other Forest Service function having primary responsibility for addressing the allegation or incident (for example, non-criminal administrative or supervisory issues).
 - d. Opened as a non-criminal investigation pursuant to FSM 5303.11, paragraph 3.
2. These incidents should be reported in the LEI Reporting System.
3. Any allegations or evidence of employee misconduct should be immediately reported to the Director, Law Enforcement and Investigations (for employees assigned to the Washington Office), or the Special Agent in Charge (for employees assigned to a region) (sec. 28.3) and the Assistant Director of OPR.

28.6 - Investigative Work Plan

1. An investigative work plan outlines elements necessary to conduct an investigation and can be an effective tool available to guide the investigator while conducting an investigation.
2. When it is deemed appropriate by the Director, Law Enforcement and Investigations (Director, LEI) (for cases assigned to the Washington Office), the Special Agent Charge (for cases assigned to a region), their designees, or the assigned investigator, an investigative work plan may be prepared prior to conducting the investigation.

3. Preparation of an investigative work plan should be considered before investigating very complex cases and/or cases that exceed the investigator's ability to complete without assistance; for example, cases involving multiple cooperating agencies, the use of additional personnel, financial assistance, undercover operations, and the use of technical investigative equipment and/or consensual monitoring equipment.

4. An investigative work plan should include:

- a. A summary of the primary allegations or offenses to be investigated;
- b. A summary that provides a brief, current synopsis of the investigation;
- c. A listing and priorities of investigative tasks to be accomplished;
- d. Provisions for notifying appropriate cooperating agencies of the investigation, or coordinating the investigation with them;
- e. A listing of personnel and other resources needed to accomplish the investigation, including the estimated cost of completed the investigation;
- f. A listing of special approvals or authorizations needed to complete the investigation (for example, consensual monitoring, undercover operation, memorandum of understanding with cooperating agency);
- g. An estimated completion date for the investigation; and
- h. An assessment of the probability for success if the investigation is completed.

5. The Director, LEI (for cases assigned to the Washington Office) or Special Agents in Charge (for cases assigned to a region) or their designees are authorized to approve investigative work plans.

28.7 - Tracking and Reporting Investigations

1. Cases meeting the criteria for general criminal investigations (sec. 28.2) including internal investigations (sec. 28.3) must be entered into LEI Reporting System, even if a determination is made to discontinue the investigation.

2. Enter data into the LEI Reporting System tracking and status section following the field-by-field instructions.

3. When no further investigation will be conducted, include a thorough explanation in the appropriate category in LEI Reporting System (for example, does not meet established guidelines for prosecution no further leads can be developed, unavailable resources, insufficient funding). Identify the case as closed within LEI Reporting System.

28.8 - Closing Cases

1. Close solved criminal investigations after:
 - a. Criminal prosecution is completed, including sentencing when applicable.
 - b. Criminal prosecution is declined by the U.S. Attorney's Office or appropriate local prosecutor.
 - c. The Director, Law Enforcement and Investigations (Director, LEI) (for cases assigned to the Washington Office), Special Agent in Charge (for cases assigned to a region), or their designee, has determined the case does not meet established guidelines for prosecution of the U.S. Attorney or local prosecutor.
2. Close unsolved criminal investigations when:
 - a. The Director, LEI (for cases assigned to the Washington Office), Special Agent in Charge (for cases assigned to a region), or their designee, determines the case does not meet established guidelines for prosecution of the U.S. Attorney or appropriate local prosecutor.
 - b. The Director, LEI (for cases assigned to the Washington Office), Special Agent in Charge (for cases assigned to a region), or their designee, determines the case will not be investigated due to managerial factors (for example, investigative resources are not available, insufficient funding, and so forth).
 - c. The case opening official determines there are no reasonable investigative leads to continue the investigation.
 - d. Thirty days have elapsed since the last investigative activity on the case and no further investigative activity is anticipated.
 - e. For all closure reasons above, enter a thorough explanation of the reasons for the closure in the appropriate category in the LEI Reporting System.
3. Close cases opened pursuant to FSH 5309.11, chapter 20, when all anticipated investigative actions by law enforcement personnel have been completed. Maintain cases open until final disposition. Close administrative and/or civil cases once they have been referred to other appropriate staffs (for example, Human Capital Management or Claims).

28.9 - Records, Storage, and Retention

1. The Director, Law Enforcement and Investigations (for cases assigned to the Washington Office), or Special Agent in Charge (for cases assigned to a region), is responsible for ensuring that all records, reports, and evidence associated or produced in conjunction with opened cases are secured.

2. For open cases, store all records, information, reports, and evidence obtained in the course of an investigation ensuring the confidentiality of information as required by FSM 5322.16 and FSH 5309.11.
3. After a case is closed, follow the procedures described in the Records Management Handbook, FSH 6209.11, for filing, storing, and retaining documents obtained and/or produced as a result of investigations conducted by law enforcement personnel if not entered into the LEI Reporting System.