



Office of the Attorney General
Washington, D. C. 20530

**ATTORNEY GENERAL GUIDELINES
FOR OFFICES OF INSPECTOR GENERAL WITH
STATUTORY LAW ENFORCEMENT AUTHORITY**

I. PURPOSE

These guidelines, required by section 6(e)(4) of the Inspector General Act of 1978 (the "Act"), as amended in 2002, govern the exercise of law enforcement authorities for those Offices of Inspector General that have been granted statutory law enforcement authorities pursuant to that Act. These Guidelines replace the Memoranda of Understanding under which the Department of Justice deputized certain Office of Inspector General investigators as Special Deputy United States Marshals and that described the training and operational requirements applicable to the deputized Office of Inspector General investigators.

II. BACKGROUND

The Department of Justice has primary responsibility for enforcement of violations of federal laws by prosecution in the United States district courts. The Federal Bureau of Investigation is charged with investigating violations of federal laws. Offices of Inspector General have primary responsibility for the prevention and detection of waste and abuse, and concurrent responsibility for the prevention and detection of fraud and other criminal activity within their agencies and their agencies' programs. The Inspector General Act of 1978, 5 U.S.C. app. 3, established criminal investigative jurisdiction for the offices of presidentially appointed Inspectors General. However, prior to enactment of section 812 of the Homeland Security Act of 2002 (Pub. L. No. 107-296), the Inspector General Act did not provide firearms, arrest, or search warrant authorities for investigators of those offices.¹ The Inspectors General of the various executive agencies relied on Memoranda of Understanding with the Department of Justice that provided temporary grants of law enforcement powers through deputations. As the volume of investigations warranting such police powers increased, deputations were authorized on a "blanket" or office-wide basis.

With the enactment of section 6(e) of the Inspector General Act, the Attorney General, after an initial determination of need, may authorize law enforcement powers for eligible personnel of each of the various offices of presidentially appointed Inspectors General. The determination of

¹ Certain Offices of Inspector General had (prior to 2002) and continue to have OIG-specific grants of statutory authority under which they exercise law enforcement powers.

need hinges on the respective office meeting the three prerequisites enumerated in section 6(e)(2). Those Offices of Inspector General listed in section 6(e)(3) of the Act are exempt from the requirement of an initial determination of need by the Attorney General.

Offices of Inspector General receiving law enforcement powers under section 6(e) must exercise those authorities in accordance with Guidelines promulgated by the Attorney General. This document sets forth the required Guidelines.

III. APPLICATION OF GUIDELINES

These Guidelines apply to qualifying personnel in those offices of presidentially appointed Inspectors General with law enforcement powers received from the Attorney General under section 6(e) of the Inspector General Act of 1978, as amended. Qualifying personnel include the Inspector General, the Assistant Inspector General for Investigations under such Inspector General, and all special agents supervised by the Assistant Inspector General for Investigations, provided that those individuals otherwise meet the training and qualifications requirements contained in these Guidelines. These mandatory guidelines do not limit Offices of Inspector General from exercising any statutory law enforcement authority derived from a source other than section 6(e). These Guidelines may be revised by the Attorney General, as appropriate. These Guidelines may be supplemented by agency-specific agreements between an individual Office of Inspector General and the Attorney General.

If the Attorney General determines that an Office of Inspector General exercising law enforcement powers under section 6(e), or any individual exercising such authorities, has failed to comply with these Guidelines, the Attorney General may rescind or suspend exercise of law enforcement authorities for that office or individual.

IV. LAW ENFORCEMENT TRAINING AND QUALIFICATIONS

A Basic and Refresher Training

Each Office of Inspector General must certify completion of the Basic Criminal Investigator Training Program at the Federal Law Enforcement Training Center by each Inspector General, Assistant Inspector General of Investigations, and Special Agent/Investigator who will be exercising powers under these Guidelines. As an alternative, this training requirement may be satisfied by certification of completion of a comparable course of instruction to the Federal Law Enforcement Training Center Basic Criminal Investigator Training Program. Additionally, the Office of Inspector General will provide periodic refresher training in the following areas: trial process; federal criminal and civil legal updates; interviewing techniques and policy; law of arrest, search, and seizure; and physical conditioning/defensive tactics. The specifics of these programs should conform as much as

practicable to standards such as those set at the Federal Law Enforcement Training Center or the Federal Bureau of Investigation Training Academy at Quantico, Virginia.

B. Firearms Training and Qualification Requirements

All individuals exercising authorities under section 6(e) must receive initial and periodic firearms training and qualification in accordance with Federal Law Enforcement Training Center standards. This training will focus on technical proficiency in using the firearms the Special Agent will carry, as well as the policy and legal issues involved in the use of deadly force. The initial training for this requirement must be met by successful completion of an appropriate course of training at the Federal Law Enforcement Training Center or an equivalent course of instruction (that must include policy and law concerning the use of firearms, civil liability, retention of firearms and other tactical training, and deadly force policy).

In addition to basic firearms training, each covered Office of Inspector General will implement a program of quarterly firearms qualifications by all individuals exercising authorities under section 6(e). Such program will be conducted in accordance with recognized standards.

C. Deadly Force Policy

The Offices of Inspector General will abide by the deadly force policy established by the Department of Justice.

V. RANGE OF LAW ENFORCEMENT POWERS

Section 6(e) of the Act provides that the Attorney General may authorize covered individuals to:

1. carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;
2. make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such individual, or for any felony cognizable under the laws of the United States if such individual has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and
3. upon probable cause to believe that a violation has been committed, seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States.

Individuals exercising law enforcement authorities under section 6(e) may exercise those powers only for activities authorized under the Inspector General Act of 1978 or other statute, or as expressly authorized by the Attorney General.²

The Inspector General of each agency covered by these Guidelines, any Assistant Inspector General for Investigations under such Inspector General, and any special agent supervised by such an Assistant Inspector General are authorized to carry their firearms while off-duty when the Inspector General determines that they need to do so for operational or safety reasons.

The possession of firearms on aircraft while on official duty shall be governed by Transportation Security Administration guidelines and common carrier regulations applicable to the transport of firearms.

VI. ADHERENCE TO ATTORNEY GENERAL GUIDELINES

In addition to any other Department of Justice directives or guidance referenced in these Guidelines, Offices of Inspector General will adhere to the Attorney General's Guidelines on General Crimes, Racketeering Enterprise, and Terrorism Enterprise Investigations; the Attorney General's Guidelines Regarding the Use of Confidential Informants; the Attorney General's Memorandum on Procedures for Lawful, Warrantless Monitoring of Verbal Communications; any other Attorney General Guidelines applicable to criminal investigative practices; and updated or amended versions of any of the aforementioned documents.

VII. NOTIFICATION AND CONSULTATION REQUIREMENTS WITH RESPECT TO ALLEGATIONS OF CRIMINAL VIOLATIONS

The Inspector General Act directs expeditious reporting to the Attorney General whenever an Office of Inspector General has reasonable grounds to believe there has been a violation of federal criminal law.

A. Offices Of Inspector General/Federal Bureau of Investigation Mutual Notification Requirements

As the primary investigative arm of the Department of Justice, the Federal Bureau of Investigation has jurisdiction in all matters involving fraud against the Federal Government, and shares jurisdiction with the Offices of Inspector General in the

² Section 6(e) does not, of itself, provide plenary authority to make arrests for non-federal criminal violations. Legal authority for officers to respond to such offenses generally depends on state law. A federal agency may, however, as a matter of policy, permit its officers to intervene in serious criminal conduct that violates state law under certain circumstances.

investigation of fraud against the Office of Inspector General's agency. In areas of concurrent jurisdiction, the Offices of Inspector General and the Federal Bureau of Investigation must promptly notify each other in writing upon the initiation of any criminal investigation. The notification requirement is a continuing obligation when new subjects are added to an investigation. Absent exigent circumstances, "promptly" shall be considered to be within 30 calendar days. Notification by the Offices of Inspector General shall be in writing and addressed to the Federal Bureau of Investigation in the district in which the investigation is being conducted. Notification by the Federal Bureau of Investigation shall be in writing and shall be addressed to the appropriate regional office of the Office of Inspector General. Notifications shall include, at a minimum and where available, (a) subject name, date of birth, social security number, and (b) any other case-identifying information including, but not limited to, (i) the date the case was opened or the allegation was received, and (ii) the allegation that predicated the case. For investigations in which allegations arise that are beyond the scope of the Office of Inspector General's jurisdiction, the Office of Inspector General will immediately notify the appropriate investigative agency of the allegations.

B. Consultation with Prosecutors

In criminal investigations, a federal prosecutor must be consulted at an early stage to ensure that the allegations, if proven, would be prosecuted. Such consultation will also ensure coordination of investigative methods.

VIII. USE OF SPECIALIZED INVESTIGATIVE PROCEDURES AND TECHNIQUES

A. Court-Ordered Electronic Surveillance

Court-authorized interceptions of wire, oral, or electronic communications are among the most intrusive investigative techniques currently available to law enforcement. The rigors of the approval process, expenditures of financial and manpower resources, and the probability of challenges by the defense bar make this technique subject to intense scrutiny. Surreptitious electronic surveillance using closed-circuit television presents similar considerations. Accordingly, any investigation involving the interception of communications pursuant to 18 U.S.C. §§ 2510, *et seq.*, electronic surveillance using closed-circuit television in situations where a warrant is required, or any other court-ordered electronic surveillance, shall be conducted only after consulting with the Federal Bureau of Investigation and appropriate United States Attorney's Office (or Criminal Division litigating component). Subsequent to such notification, the Federal Bureau of Investigation may choose to join the investigation, but is not required to do so. However, in an instance in which the Office of Inspector General intends to engage in court-authorized electronic surveillance without the participation of the Federal Bureau of

Investigation, one of the following federal investigative agencies must participate in the investigation and supervise the application for and use of the surreptitious electronic surveillance: the Drug Enforcement Administration; Bureau of Alcohol, Tobacco, Firearms, and Explosives; Bureau of Immigration and Customs Enforcement; United States Postal Service; United States Secret Service; or Internal Revenue Service.

B. Undercover Investigative Operations

The Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations (the "Undercover Guidelines") ensure that the Federal Bureau of Investigation considers the efficacy, as well as the legal and policy implications, of every proposed undercover operation, and ensure that the use of the undercover investigative technique is subject to a management on-site review and oversight on a regular basis. It is the intent of this provision that undercover operations conducted by the Offices of Inspector General be subject to the same standards that govern the use of this investigative technique by the Federal Bureau of Investigation.

Accordingly, the community of Inspectors General granted law enforcement powers under section 6(e) of the Inspector General Act shall establish an Undercover Review Committee (the Committee) composed of 6 senior headquarters managers selected by the community of Inspectors General, with no two members of the Committee being employed by the same Office of Inspector General, for the purpose of reviewing undercover operations involving sensitive circumstances³ in investigations that are not being conducted jointly with the Federal Bureau of Investigation. The Committee shall also include such representatives from the litigating sections of the Criminal Division of the Department of Justice as are designated by the Assistant Attorney General of the Criminal Division. If an undercover investigation being reviewed by the Committee is being conducted by an Office of Inspector General that is not represented on the Committee, a representative of that Office of Inspector General who is a senior management official shall be added as a full member of the Committee to review that undercover operation. The Federal Bureau of Investigation may designate a representative to participate in the Committee in a consultative role.

Before conducting an undercover operation lasting longer than six months, or involving any of the sensitive circumstances set forth in the Undercover Guidelines, the Office of Inspector General must first notify the Federal Bureau of Investigation. The Federal Bureau of Investigation may choose to join the investigation, in which case the

³ "Sensitive circumstances" are set forth in the Undercover Guidelines, and include investigations involving certain public officials, a significant risk of violence, authorized criminal activity, operation of a proprietary business, the risk for significant civil liability, and other circumstances as defined in those Guidelines.

undercover operation would be subject to review by the Criminal Undercover Operations Review Committee of the Federal Bureau of Investigation. If the Federal Bureau of Investigation opts not to join the case, the undercover operation will be reviewed by the Committee. No undercover operation involving sensitive circumstances may be conducted without the approval of one of these committees.

The approval for each undercover operation involving sensitive circumstances must be renewed for each six-month period, or less, during which the undercover operation is ongoing. The standards of the Committee for approval of the undercover operation shall be the same as those set forth in the Undercover Guidelines. The Committee shall operate in the same fashion as the Criminal Undercover Operations Review Committee as outlined in the Undercover Guidelines.

Each Office of Inspector General whose law enforcement effort contemplates the use of the undercover investigative technique in investigations not involving the sensitive circumstances set forth above shall establish procedures that are consistent with the procedures established for such undercover investigations not involving sensitive circumstances as are set forth in the Undercover Guidelines.

C. Especially Sensitive Targets

- (1) Upon notification pursuant to Part VII, Subpart A of these Guidelines, or otherwise, the Federal Bureau of Investigation may choose to join, but would not be required to join, any investigation that involves:
 - (a) especially sensitive targets, including a member of Congress, a federal judge, a member of the executive branch occupying a position for which compensation is set at Executive Level IV or above, or a person who has served in such capacity within the previous two years;
 - (b) a significant investigation of a public official for bribery, conflict of interest, or extortion relating to the official's performance of duty;
 - (c) a significant investigation of a federal law enforcement official acting in his or her official capacity; or
 - (d) an investigation of a member of the diplomatic corps of a foreign country.
- (2) Investigations involving certain other classes of persons may result in serious security concerns, especially regarding the operation of the Federal Witness Security Program. Therefore, an Office of Inspector General investigation will be coordinated with the

Office of Enforcement Operations of the Criminal Division, Department of Justice, when the investigation:

- (a) involves a person who is or has been a member of the Witness Security Program if that fact is known by the Office of Inspector General;
- (b) involves a public official, federal law enforcement officer, or other government employee or contract employee who is or has been involved in the operation of the Witness Security Program;
- (c) involves the use or targeting, in an undercover capacity, of a person who is in the custody of the Federal Bureau of Prisons or the United States Marshals Service, or is under Federal Bureau of Prisons' supervision; or
- (d) involves the use or targeting, in an undercover capacity, of a Federal Bureau of Prisons employee, if any part of the activity will occur within the confines of, or otherwise would be likely to affect the security of, a Bureau of Prisons-administered facility.

Investigations that require coordination with the Office of Enforcement Operations pursuant to Part VIII, Subpart C.(2)(a)-(d) may be conducted without the participation of the Federal Bureau of Investigation. In such instances, notification of the investigation should not be made to any other agency without the explicit approval of the Office of Enforcement Operations.

D. Consensual Monitoring in Certain Situations

Consensual monitoring of conversations in some circumstances can present unusual problems. Accordingly, if the Office of Inspector General contemplates the use of consensual monitoring involving a consenting or non-consenting person in the custody of the Bureau of Prisons or the United States Marshals Service, the use of any type of consensual monitoring in the investigation, whether telephonic or non-telephonic, must be coordinated with the Office of Enforcement Operations at the Department of Justice.

Consistent with the Attorney General's Memorandum on Procedures for Lawful, Warrantless Monitoring of Verbal Communications, the use of any non-telephonic consensual monitoring in an Office of Inspector General investigation requires the prior approval of the Director or an Associate Director of the Office of Enforcement Operations if any of the following sensitive circumstances are present:

- (a) the monitoring relates to an investigation of a member of Congress, a federal judge, a member of the Executive Branch occupying a position for which compensation is set at Executive Level IV or above, or a person who has served in such capacity within the previous two years;
- (b) the monitoring relates to an investigation of the Governor, Lieutenant Governor, or Attorney General of any State, or Territory, or a judge or justice of the highest court of any State or Territory, and the offense investigated is one involving bribery, conflict of interest, or extortion relating to the performance of his or her official duties;
- (c) any party to the communication is a member of the diplomatic corps of a foreign country;
- (d) any party to the communication is or has been a member of the Witness Security Program and that fact is known to the agency involved or its officers;
- (e) the consenting or non-consenting person is in the custody of the Bureau of Prisons or the United States Marshals Service; or
- (f) the Attorney General, Deputy Attorney General, Associate Attorney General, any Assistant Attorney General, or the United States Attorney in the district where an investigation is being conducted has requested the investigating agency to obtain prior written consent before conducting consensual monitoring in a specific investigation.

IX. PROSECUTOR CONCURRENCE FOR CERTAIN TECHNIQUES

The use and control of informants, sources, and cooperating witnesses is recognized by the courts as lawful and often essential to the effectiveness of properly authorized law enforcement investigations. However, certain guidelines must be applied because the use of informants and cooperating witnesses may involve intrusion into the privacy of individuals, or cooperation with individuals whose reliability and motivation can be open to question. In the following situations, *inter alia*, the prior concurrence of a federal prosecutor must be obtained to avoid problems such as entrapment, danger to the public, and abuse of police authority:

1. when an informant is authorized to participate in criminal activities;
2. when an informant or cooperating witness is a person entitled to claim a federally recognized legal privilege of confidentiality, such as an attorney, member of the clergy, or psychiatrist;

3. when aggregate payments for services or expenses to be made to a source who could be a witness in a legal proceeding exceed \$25,000; or
4. when the use of any member of the news media as a source is planned (and in such a situation the prior written approval of a federal prosecutor must be obtained).

X. RELATIONS WITH THE NEWS MEDIA

The Department of Justice has issued guidelines that prescribe policy and instructions concerning the release of information by Department of Justice employees relating to criminal and civil proceedings (*see* 28 C.F.R. § 50.2). Office of Inspector General personnel must familiarize themselves with and follow these guidelines. In addition, in the course of joint investigations between an Office of Inspector General and the Federal Bureau of Investigation, wherever a “news release” would be permitted pursuant to the guidelines noted above, the Office of Inspector General must coordinate the release with the Federal Bureau of Investigation and the Department of Justice.

XI. REPORTING REQUIREMENTS

Each Office of Inspector General shall make an annual written report to the Attorney General due on November 1 of each year, detailing the investigative and prosecutive activities of that Office of Inspector General. The report shall, at a minimum, contain information on the number of (1) federal criminal investigations initiated, (2) undercover operations undertaken, and (3) times any type of electronic surveillance was used. Additionally, the report shall provide information on all significant and credible allegations of abuse of authorities conferred by section 6(e)(1) of the Inspector General Act by Office of Inspector General investigative agents and what, if any, actions were taken as a result. The names of the agents need not be included in such report.

XII. PEER REVIEWS

In accordance with section 6(e)(7) of the Inspector General Act, covered Offices of Inspector General must implement a collective memorandum of understanding, in consultation with the Attorney General, under which each Office of Inspector General will be periodically reviewed by another Office of Inspector General or a committee of Offices of Inspector General. Reviews should occur no less often than once every 3 years. The purpose of the review is to ascertain whether adequate internal safeguards and management procedures exist to ensure that the law enforcement powers conferred by the 2002 amendments to the Inspector General Act are properly exercised. Results of the review will be communicated to the Attorney General, as well as to the applicable Inspector General.

XIII. NO THIRD-PARTY RIGHTS CREATED

These Guidelines are adopted for the purpose of the internal management of the Executive Branch. These Guidelines are not intended to, do not, and may not be relied upon to, create any rights, substantive or procedural, enforceable at law or in equity by any party in any matter civil or criminal, nor do these Guidelines place any limitations on otherwise lawful investigative or litigation prerogatives of the Department of Justice or otherwise lawful investigative prerogatives of the covered Offices of Inspector General.

Dec. 8, 2004
Date

John Ashcroft
John Ashcroft
Attorney General