

LEGAL AND POLICY ISSUES IN

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[REDACTED]

OPERATIONS

AGC

[REDACTED]

OFFICE OF GENERAL COUNSEL

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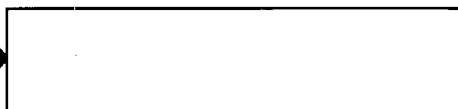
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-07-2011 BY 65179 DMH/SBS

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Legal Authorities

- ◆ The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources (2006)
- ◆ Confidential Human Source Policy Manual (Revised July 2007)
- ◆ Part II.E of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection



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2

Legal Authority

- ◆ Definition of CHS: Any individual who is believed to be providing useful and credible information to the FBI for any authorized information collection activity, and from whom the FBI expects or intends to obtain additional useful and credible information in the future, and whose identity, information, or relationship with the FBI warrants confidential handling.

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Legal Authority

Undercover Activity:

- Any investigative activity involving the use of an assumed identity by an undercover employee for an official purpose, investigative activity, or function.

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Legal Authority

- ◆ Currently "undercover activity" is only permitted in the course of an authorized Preliminary or Full Investigation

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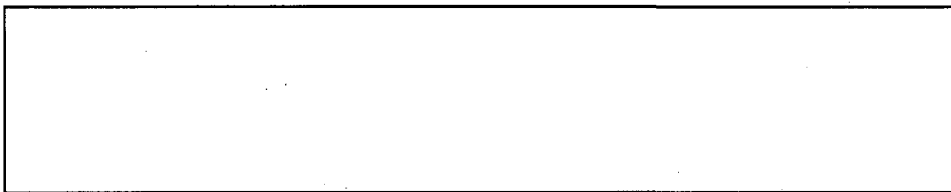
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does not apply to

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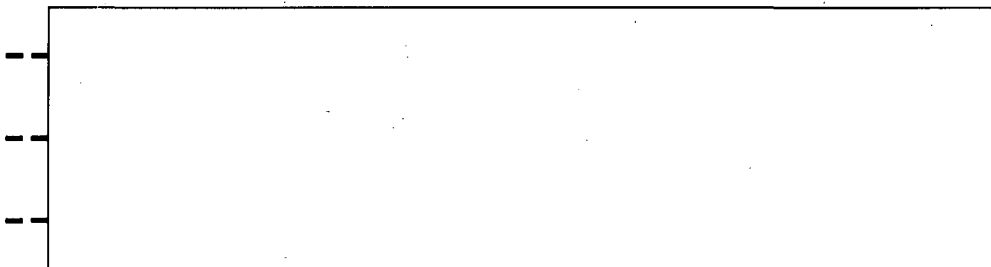
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TYPES OF



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[REDACTED]
Types of [REDACTED]
[REDACTED]

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[REDACTED]
[REDACTED] by the
FBI in order to [REDACTED]
[REDACTED] the FBI [REDACTED]

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[REDACTED]

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Because the [REDACTED] does not also

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[REDACTED]

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Types of

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by the
FBI, in order to
the FBI

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Requires a

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Types of

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the FBI is

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Types of

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The FBI

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The FBI must be

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- e.g.

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[REDACTED]

Types of [REDACTED]

[REDACTED]

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[REDACTED] FBI does not [REDACTED]

[REDACTED] FBI's

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If FBI is [REDACTED]



With [REDACTED]

[REDACTED] but [REDACTED]

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Consensual Monitoring

- ◆ Monitoring of communications for which a court order or warrant is not legally required because of the consent of a party to the communication.
- May only be used in predicated investigations (PI or FI).

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Consensual Monitoring

- ◆ Two-party consent states
 - Treated as OIA.
 - 90-day OIA for CHSs; duration of inv for UCEs
 - SAC approval delegated to SSA
- ◆ Two-party consent states without a law enforcement exception:
 - CA, IL, MD, MT, NH, NV, PA, WA

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[Redacted]

◆ Generally involves [Redacted]

[Redacted]

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[Redacted]

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- If [Redacted]

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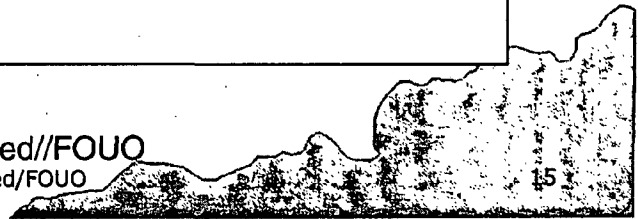
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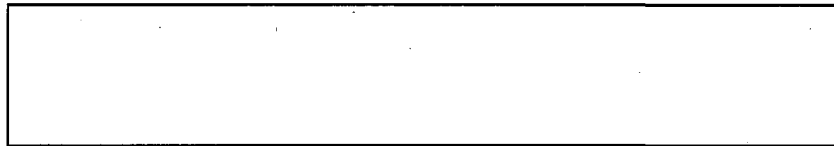
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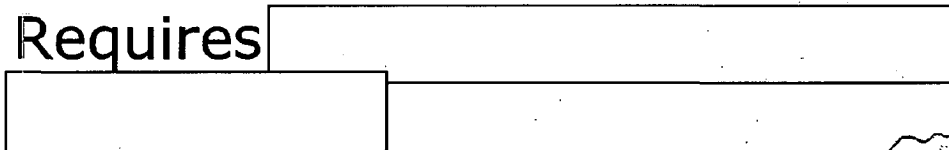


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Video Surveillance

- ◆ Permitted during predicated investigations
- ◆ Allowed if there is no REP or if a participant has consented to the monitoring
- ◆ Requires

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[REDACTED]

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[REDACTED]

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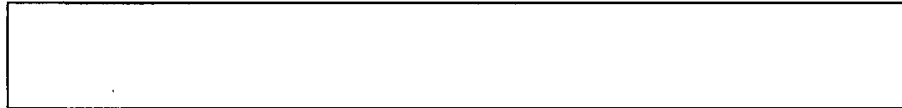
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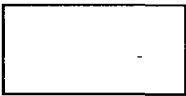
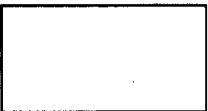
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Attorney General Exemptions

1. Deposit appropriated funds in covert bank account;
2. Covertly lease or purchase real property;
3. Deposit or utilize operational proceeds to offset expenses 
4. Establish  proprietary business

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18

Otherwise Illegal Activity (OIA) -- CHSs

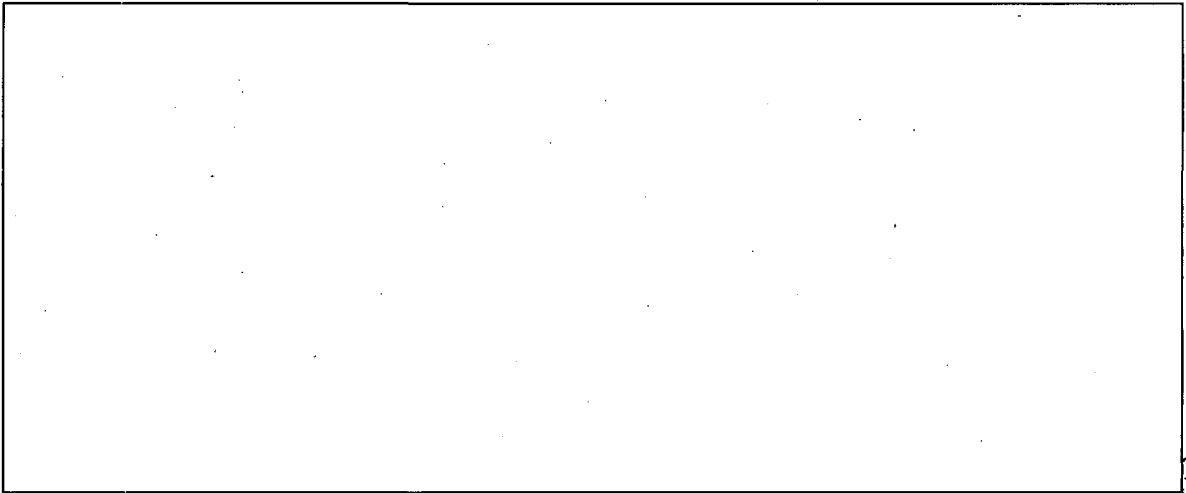
- ◆ Authority -- Part V of the 2007 AG Guidelines for CHSs, and Section 10 of the CHS Policy Manual
- ◆ Tier 1 Offenses – SAC and NSD approval
- ◆ In National Security investigations, Tier I OIA must be approved by SAC and DOJ/NSD
- ◆ Tier 2 Offenses – SAC approval

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OIA



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OIA

◆ 1988 AG Guidelines

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May require

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21

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- ◆ Arms Export Control Act
- ◆ Countries receiving greater scrutiny
- ◆ International Trafficking in Arms Regulations
- ◆ Brokering
- ◆ Dual Use

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22

OIA – Export-Controlled Items

1. ITAR

- International Traffic in Arms Regulations
 - Implements the authority granted under Section 38 of the Arms Export Control Act (AECA, 22 U.S.C. 2778) which authorizes the President to control the export and import of defense articles and defense services.
 - Authority delegated to the Secretary of State, and primarily administered by the Directorate of Defense Trade Controls (DDTC)

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23

OIA – Export-Controlled Items

1. ITAR

- Items designated to be defense articles and defense services under ITAR comprise the United States Munitions List (USML).
 - USML can be found in 22 C.F.R. Chapter I, Subchapter M, Part 121

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OIA – Export-Controlled Items

1. ITAR

- “Export” includes:
 - Disclosing (oral or visual) or transferring technical data to a foreign person, whether in the U.S. or abroad
 - Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the U.S. or abroad.

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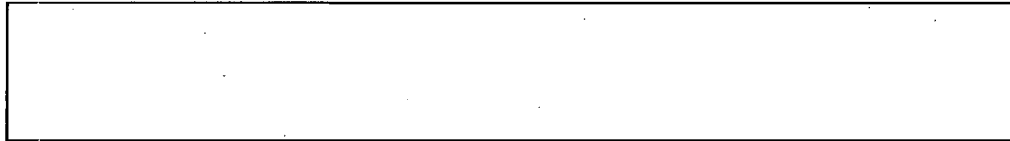
OIA – Export-Controlled Items

1. ITAR

- Brokering Activities also subject to ITAR
 - Broker: Any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee, commission, or other consideration.
 - Includes activities of U.S. persons, wherever located, and foreign persons under U.S. jurisdiction.

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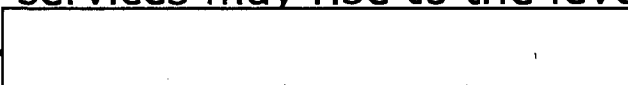
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OIA – Export-Controlled Items

1. ITAR

- No person may engage in brokering activities of ITAR-controlled items without first registering and obtaining a license from the DDTC. 
- ➔ Even informal discussions regarding the export or facilitation of the sale of defense articles or services may rise to the level of brokering. 

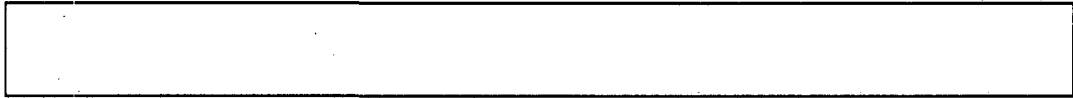
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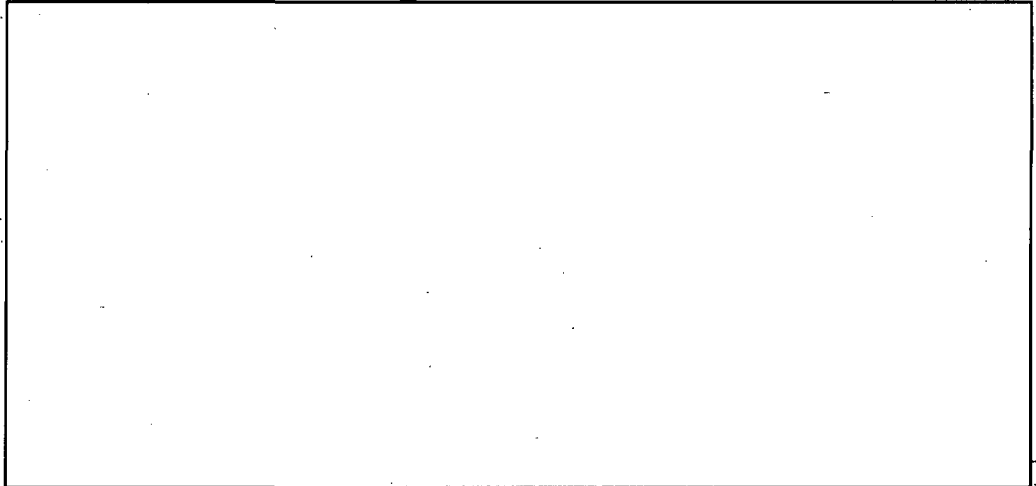
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OIA – Export-Controlled Items

1. ITAR -- Brokering

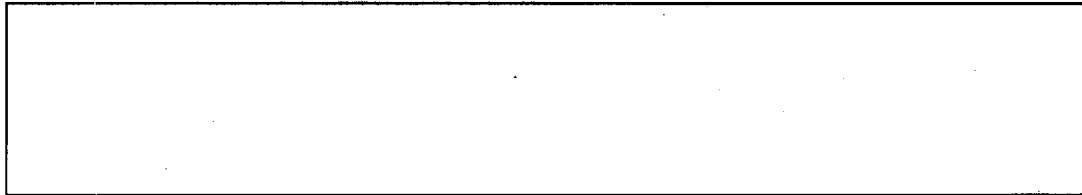
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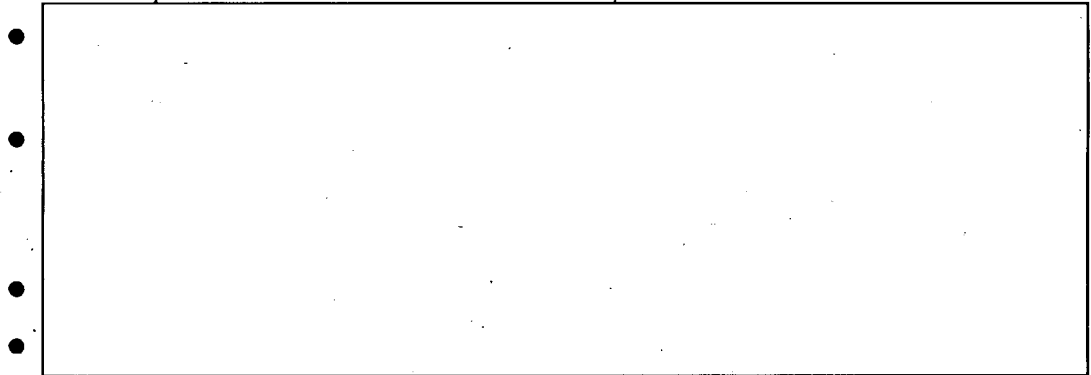
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1. ITAR



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* FBI POC -- detailee to Dept. of State:

◆ SSA [Redacted]

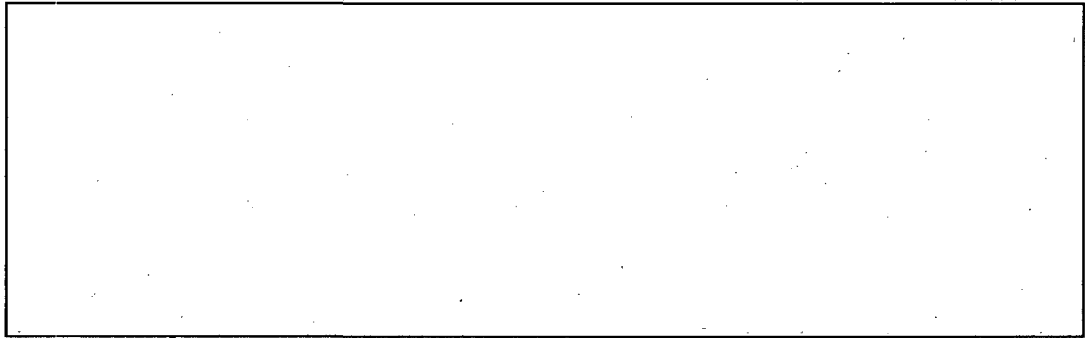
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2. Dual-use

- If an item has a military application but is not ITAR (not on the USML), its export may still be regulated by the Department of Commerce.
 - Statute: Export Administration Act/IEEPA
 - 50 U.S.C. §§2401-2420
 - Implemented by Export Administration Regulations (EAR) 15 C.F.R. Parts 768-799
 - Commerce Control List (CCL)

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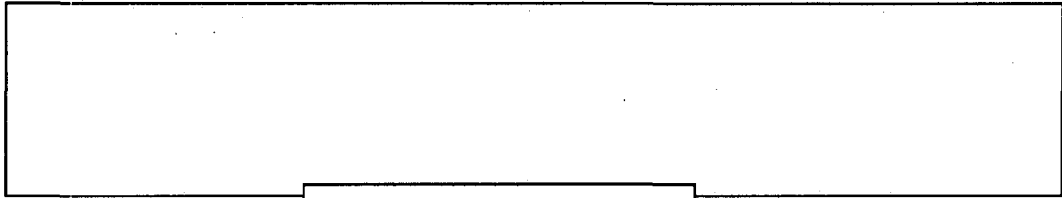
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2. Dual-use

- Examples of dual-use items (CCL or EAR):
 - Night vision goggles, military grade compasses, computer software designed for image enhancement and signal processing

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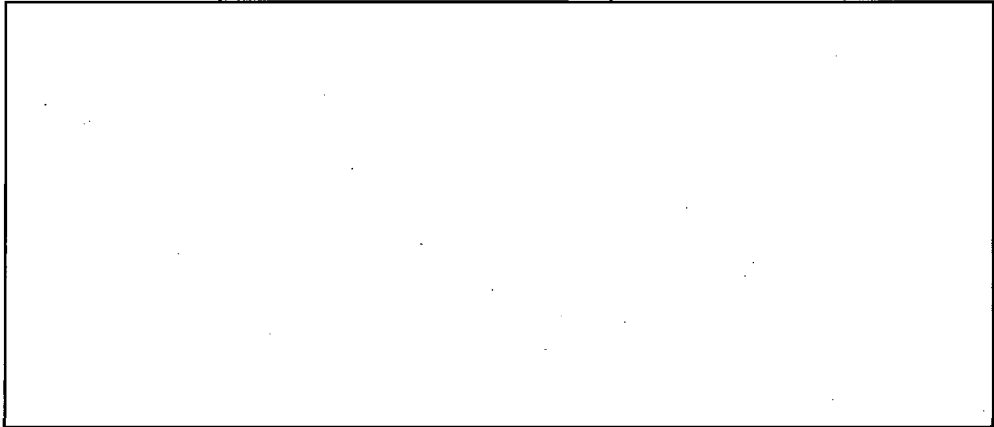


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2. Dual-use

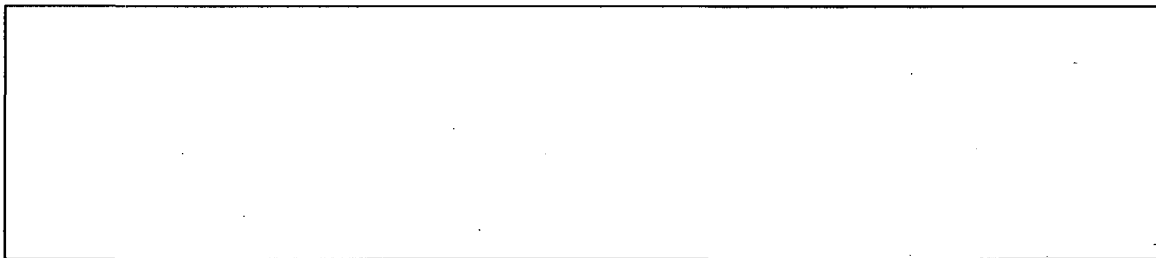


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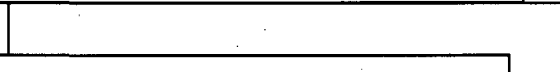
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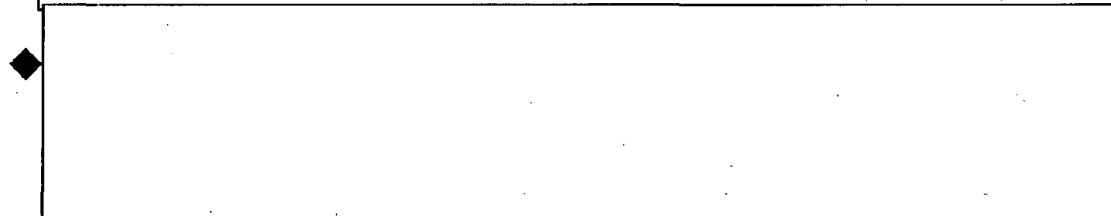


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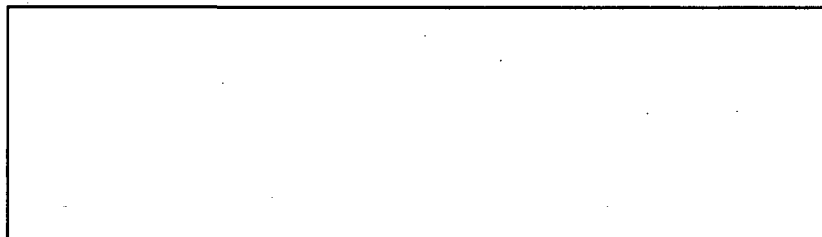
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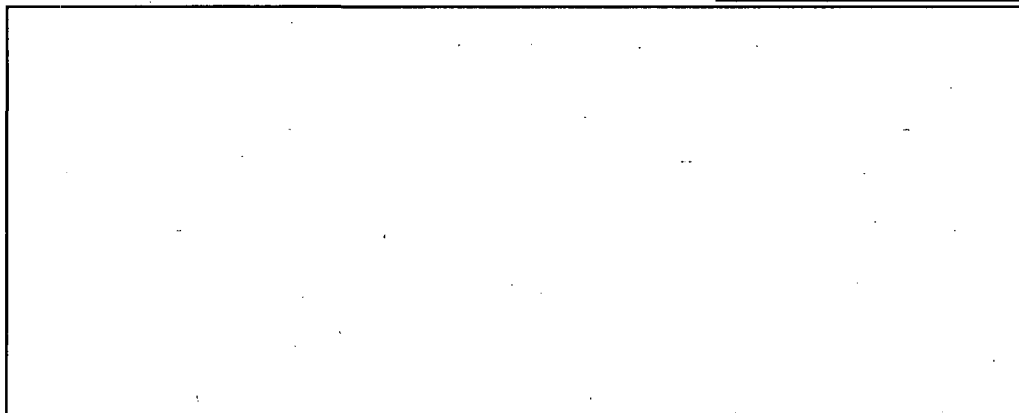
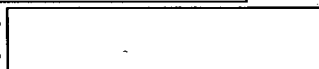
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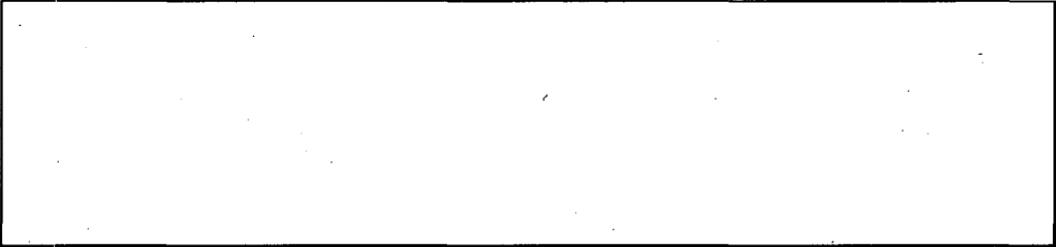
- ◆ Executed between the FBI



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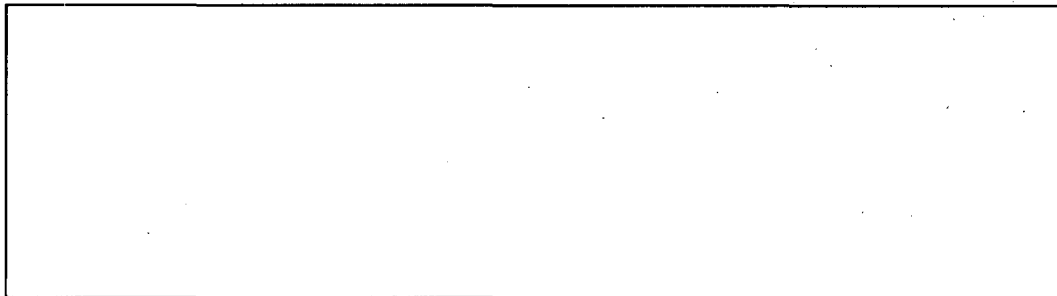
- ◆ Extraterritorial Jurisdiction

- The authority of a government to criminalize activity that occurs outside its territorial borders or to investigate or prosecute such activity
 - ◆ Must be a connection between the prohibited conduct and the U.S. or its interests.


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35



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- ◆ The FBI has worldwide jurisdiction with respect to any federal offense. However, when exercised in the territory of another sovereign, such authority is limited by:
 - International law
 - Statutes - 22 USC 3927(b) requires notification of the Chief of Mission of activity in a foreign country
 -  FBI Policy

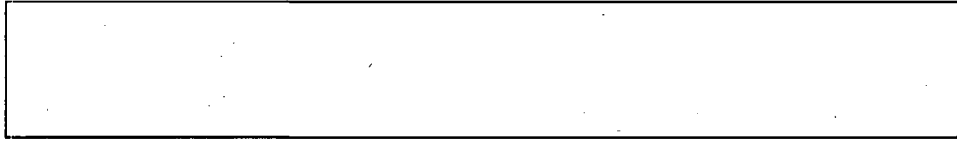
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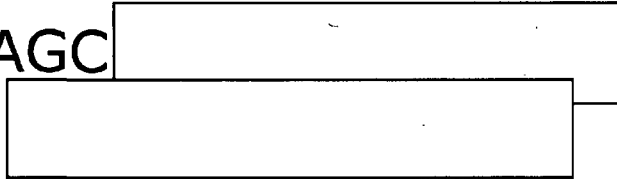
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Questions?

AGC



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37