



United States General Accounting Office
Washington, DC 20548

Accounting and Information
Management Division

B-284009

December 2, 1999

The Honorable Janet Reno
The Attorney General

Subject: FBI Accountability for Drugs Used in Special Operations:
Deficiencies Identified and Actions Taken

Dear Madam Attorney General:

Since 1990, GAO has periodically reported on government operations that we have identified as "high risk" because of their greater vulnerabilities to waste, fraud, abuse, and mismanagement. As part of the 1999 High Risk Update, we began a review of the asset forfeiture program at the Department of Justice's Federal Bureau of Investigation (FBI), which focused on seized drug and firearm evidence. The objectives of that review were to determine whether the FBI (1) put in place physical safeguards that if operated effectively would help control access to and use of drug and firearm evidence and (2) maintained adequate accountability for such evidence. Within the next several weeks, we will be reporting on the results of that review, which involved four FBI field offices.

The purpose of this letter is to communicate control weaknesses identified during our review involving seized drugs that are no longer needed as drug evidence but are retained for use in reverse undercover operations (RUOs) by the FBI's Miami Field Office.¹ At the Miami Field Office, some drugs that are approved for destruction are not destroyed, but remain in the FBI's custody to be used by agents or other law enforcement personnel in RUOs. These drugs typically have a market or "street" value. In addition, such drugs have been approved for destruction and are removed from FBI storage facilities during the undercover operations. Thus, maintaining effective accountability over drugs used in RUOs is essential to reduce the risk of theft, misuse, and loss.

¹A RUO is an undercover operation implemented by the FBI or another law enforcement agency that involves an arrest scenario targeting an individual suspected of participating in an illegal activity, such as drug trafficking.

Results in Brief

We found that the Miami Field Office did not have (1) specific written procedures for a special operations account used to track drugs reserved for RUOs, (2) adequate information on related chain of custody records to document the activity of specific drug items reserved and/or used for RUOs, and (3) a list or log of drug items in the special operations account to facilitate identifying the type and amount of drugs available for use in RUOs. For example, entries on the written chain of custody related either to initial transfers of drugs into the special operations account or transfers back into the account following unsuccessful undercover operations did not list the quantity of drugs accepted for storage, the barcode number assigned to the drug item, or the case file number from which the drugs were acquired. In addition, we were told by Miami Field Office officials that the documentation for cases from which drugs were reserved for use in RUOs, including chain of custody records, did not annotate the fact that all or part of the drugs were moved to the special operations account established for the reserved drugs. Rather, the original case file documentation for drugs transferred to the special account erroneously indicated that the drugs had been destroyed.

These weaknesses increase the potential for theft, misuse, and loss of drugs used in RUOs. However, during our review, Miami Field Office officials addressed these control deficiencies immediately by developing specific written procedures for tracking the drugs reserved for RUOs.

Scope and Methodology

We statistically sampled a total of 46 drug items at the Miami Field Office that had been entered into the FBI's Automated Case Support (ACS) system between October 1, 1997, and August 31, 1998. For each selected item, our tests included a review of the written chain of custody form and associated documents used to account for that evidence. Six of the 46 drug items selected for our review involved drugs that were entered into a special operations account established to maintain accountability for drugs used in RUOs.² Because the policies we were provided did not specifically address requirements related to this issue, we made inquiries of Miami Field Office officials regarding the procedures for handling, safeguarding, and accounting for the drugs the field office reserved for RUOs. We also obtained additional documentation as necessary to verify the current location and status of the drugs selected for our review. We performed our work in accordance with generally accepted government auditing standards between December 1998 and June 1999. We provided a draft of this letter to the Attorney General for her or her designee's review and comment. According to an official from the FBI's Office of Public and Congressional Affairs, the FBI had no comment on our letter.

²In addition to these six drug items, five other drug items included in our sample involved drugs that had previously been in this special operations account, but had subsequently been transferred to a new case file number which was selected for our review.

Background

In 1994, the Miami Field Office established a special operations account called the Sub F file for maintaining accountability over drugs, primarily cocaine, that are reserved for use in RUOs. Drugs used in RUOs that result in an arrest are to be moved from the Sub F file to a new case file. If an arrest is not made, the drugs used in the operation are to be returned to the Sub F file for use at a later time. As needed, the Drug Program Coordinator can replenish the supply of drug reserves designated for RUOs by selecting various drugs already approved for destruction by the Assistant United States Attorney (AUSA) and transferring accountability for these drugs to the Sub F file.³

Requests to use any of the drugs from the Sub F file are made through the Organized Crime/Drug Program Assistant Special Agent in Charge and administered by the Drug Program Coordinator. An approved Operation Plan must be signed by the Special Agent in Charge ensuring that proper safety and control will be exercised during the proposed undercover operation. The Operation Plan documents the situation (e.g., type of operation, location, subjects, weapons, and counter surveillance); mission (e.g., date and detailed instructions); personnel involved (e.g., cooperative witnesses, assisting personnel, and other participating law enforcement agencies); and communications and logistics (e.g., radio channel, emergency procedures, and miscellaneous information). Miami Field Office officials stated that security of the agents and cooperative witnesses, as well as the drugs, is of priority concern and adequate security must be demonstrated in the Operation Plan. Once the Operation Plan is approved, the drugs will be signed out to the respective squad supervisor and agents for use in the RUO.⁴

In order to remove the drugs from the drug vault for a RUO, the responsible squad supervisor or agent must sign the written chain of custody form. This written chain of custody is a key internal control used by the FBI to track drugs in its custody. According to FBI policy, the written chain of custody must include the signatures of any agent or evidence control personnel who assume custody of the evidence for any purpose from the time the item is entered into evidence until it is disposed. The written chain of custody must also include the reason for any transfer of custody and the time and date of any custody change.

³According to the Miami Drug Program Coordinator, generally about 200 kilograms of cocaine are reserved in the Sub F file; however, the amount of drugs held can fluctuate based on the number and success of the RUOs.

⁴We did not observe and cannot assess the physical security of drugs that were in the custody of case agents during undercover operations involving the drugs selected for our review because these RUOs took place prior to our visit and all but one of the drug items had already been returned to the drug vault. In one case, the drugs had been transferred to a local police department for a RUO.

Maintaining Accountability Over Drugs Used in RUOs

Based on discussions with Miami Field Office officials and a review of documentation relating to various drug items selected for our review, we identified several control deficiencies involving the Sub F file. Specifically, although the Sub F file was established about 5 years ago, no written policies or procedures had been developed at the time of our visit to document the use and tracking requirements of drugs reserved for RUOs. According to Miami Field Office officials, evidence control personnel followed the guidance provided in the FBI's *Manual of Administrative Operations and Procedures* and *Manual of Investigative Operations and Guidelines* related to handling seized drug evidence, but this guidance did not specifically address the need for additional information to ensure complete accountability for drugs reserved for RUOs. Thus, some chain of custody entries did not contain sufficient information to clearly convey activity involving the movement of certain drugs into and out of the Sub F file. In addition, no up-to-date list, or log of drug items currently in the account was maintained to facilitate tracking the type and/or amount of items available for use in RUOs.

Regarding the chain of custody, we noted that limited information provided on this document made it difficult to track specific drug items flowing into and out of the Sub F file. Specifically, as cocaine was added to the Sub F file to replenish depleted supply, an evidence control technician signed the chain of custody, noted the reason as "storage," and provided the date and time of the transaction. However, with regard to the chain of custody for one of the six drug items selected for our review, none of the "storage" entries, whether they related to initial transfers into the account or transfers back into the account following unsuccessful undercover operations, listed the quantity of drugs accepted for storage, the barcode number assigned to the drug item, or the case file number from which the drugs were acquired.⁶

In addition, regarding the permanent transfer of drugs out of the Sub F file, the chain of custody form for two of the six drug items in the Sub F file that were selected for our review did not indicate the case file number to which accountability for the drugs was transferred. Further, we were told by Miami Field Office officials that the documentation for cases from which drugs were reserved for use in RUOs, including chain of custody records, did not annotate the fact that all or part of the drugs were moved to the Sub F file. Rather, the original case file documentation for drugs transferred to the Sub F file erroneously indicated that the drugs had been destroyed.

Using the FBI's ACS system, evidence control personnel eventually reconstructed the movement of individual drug items and provided us documentation as to the status or location for each of the six drug items entered into the Sub F file that had been selected for our review. However, field office officials acknowledged that it is important for the information on associated written chain of custody forms to be

⁶This chain of custody was also used to track three other drug items in the Sub F file that were not selected for our review.

accurate and complete in order to provide a clear record of drug movement into and out of the Sub F file along with appropriate signatures which clearly document who has custody of such drug items.

We also noted that the Miami Field Office did not maintain a current list or log of drug items reserved in the Sub F file. However, using a printout of drug inventory on hand during our visit which listed all drug items, including those in the Sub F file, it was possible to identify drug items other than cocaine that were held in the Sub F file for use in RUOs. For example, we found four bales of marijuana that had been held in the Sub F file for over a year and a half. The Drug Program Coordinator stated that he had not been aware of any marijuana in the Sub F file because he had only recently become the Drug Program Coordinator. In this situation, a current list or log of drugs maintained in the Sub F file could have provided information on the type and amount of drugs available for use in RUOs.

As a result of our inquiries and observations regarding this special operations account, Miami Field Office officials immediately began developing specific written procedures for handling the Sub F file for drugs reserved for use in RUOs. We were provided a copy of these procedures for our review. Because the new procedures were established after our visit, we cannot comment on their implementation. However, based on our review, these procedures if effectively implemented, should address the aforementioned control deficiencies. For example, under the new procedures, when accountability for drugs is transferred from the original case file to the Sub F file, the chain of custody for the original case is to reflect the amount transferred to the Sub F file as well as the amount destroyed, rather than showing that all of the drugs were destroyed.

In addition, under these new procedures, specific drug items designated for the Sub F file will each have their own control sheet and barcode. When drugs are removed for a RUO, the chain of custody will reflect the quantity of drugs being removed as well as the amount remaining in the vault. If the RUO is unsuccessful and the drugs are returned to the Sub F file, the chain of custody will note the amount of drugs being returned. On the other hand, if the RUO is successful and the drugs are transferred to a new case file, the case file number including the new exhibit number, will be placed on the chain of custody for the Sub F file.

Further, as part of the new procedures, a RUO Drug Utilization Log was developed to assist in tracking the account. According to the guidance, the log has been placed in front of a book that contains the control sheets for drug items in the Sub F file. Every time drugs are removed from the Sub F file, an entry is to be made into the log.⁴ Also, if the drugs are not utilized and are returned, the drugs will be re-entered on the log as a return. The log will serve as an up-to-date measure of the total amount of drugs

⁴Entries into the log will include the date, the exhibit number, the amount of drugs to be removed, the case file number drugs are transferred to following return of the drugs to the vault, the new exhibit number, the evidence control personnel initials, and a calculation of the amount of drugs remaining in the Sub F file.

remaining in the Sub F file for RUOs. This procedure will assist the Drug Program Coordinator in determining when additional drug reserves should be added to the account and will also provide a quick reference for drugs in the account to assist in determining when particular drugs are no longer needed and should be destroyed.

Conclusion

Inadequate controls over drugs reserved for use in RUOs increase the risk of theft, misuse, and loss of such evidence. During our review, the Miami Field Office promptly acted to correct identified control weaknesses by developing specific written procedures to address these deficiencies. However, because the procedures were established after our visit to the Miami Field Office, we cannot comment on the effectiveness of their implementation. Therefore, it is important that management oversee and test the implementation of these procedures.

Recommendation

We recommend that the Attorney General require that the Director of the FBI perform appropriate oversight to review and test the procedures recently established by the Miami Field Office to account for drugs used in RUOs to determine if the procedures are operating as intended.

This letter contains a recommendation to you. The head of a federal agency is required by 31 U.S.C. 720 to submit a written statement on actions taken on our recommendations. You should send your statement to the Senate Committee on Governmental Affairs and the House Committee on Government Reform within 60 days of the date of this letter. You must also send a written statement to the House and Senate Committees on Appropriations with the agency's first request for appropriations made over 60 days after the date of this letter.

We are sending copies of this letter to Senator Fred Thompson, Senator Joseph Lieberman, Representative Dan Burton, Representative Henry A. Waxman, Representative Stephen Horn, and Representative Jim Turner in their capacities as Chair or Ranking Minority Member of Senate or House Committees and Subcommittees. We are also sending copies of this letter to Louis J. Freeh, Director of the FBI; Robert L. Ashbaugh, Acting Inspector General, Department of Justice; and the Honorable Jacob J. Lew, Director, Office of Management and Budget.

B-284009

If you have any questions regarding this letter, please contact me at (202) 512-3406.
Key contributors to this assignment were Kenneth Rugar and Linda Sanders.

Sincerely yours,

A handwritten signature in cursive script that reads "Gary T. Engel".

Gary T. Engel
Associate Director
Governmentwide Accounting and
Financial Management Issues

(901801)

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