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(U) Business Record Standard Minimization Procedures

Corporate Policy Notice and Policy Implementation Guide



(U) Federal Bureau of Investigation

(U) Office of the General Counsel

(U) 0642NPG

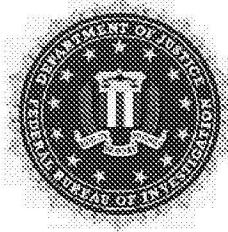
(U) Published Date: September 17, 2013

(U) Review Date: September 17, 2014

(U) Note: This document incorporates the Corporate Policy Notice and the Policy Implementation Guide.

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~~Declassify on: 20380917~~

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FEDERAL BUREAU OF INVESTIGATION
CORPORATE POLICY NOTICE

0642N

1. Policy Notice Title.	Business Record Standard Minimization Procedures Policy Implementation Guide
2. Publication Date.	2013-09-17
3. Effective Date.	2013-09-17
4. Review Date.	2014-09-17
5. Primary Strategic Objective.	

6. Authorities:

6.1. (U) Title 50 United States Code (U.S.C.) Section (§) 1861

6.2. (U) *Attorney General's Guidelines for Domestic FBI Operations* (AGG-Dom)**7. Purpose:**

(U) The purpose of this notice is to establish policies and procedures regarding the proper control, retention, and dissemination of unconsenting United States person (U.S. person, USPER) business record information by the Federal Bureau of Investigation (FBI) and to ensure compliance with the Business Record Standard Minimization Procedures (BR SMP).

8. Policy Statement:

8.1. (U) Scope and Purpose

8.1.1. (U) Pursuant to Title V of the Foreign Intelligence Surveillance Act of 1978 (FISA), the FBI can acquire access to certain business records for foreign intelligence purposes (50 U.S.C. § 1861). Under § 1861, the FBI can require the third party production of any tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities, provided that an underlying investigation of a U.S. person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution. The FBI may acquire tangible things only if the things would be available through a grand jury subpoena or an order issued by a federal court for the production of records or tangible things. In accordance with the AGG-Dom, use of compulsory process pursuant to 50 U.S.C. §§ 1861-63 is an investigative method that may be used in Preliminary and Full Investigations. It is not an approved investigative method in Assessments. Therefore, tangible things sought out must be relevant to an open, predicated, national security investigation.

8.1.2. (U) In accordance with 50 U.S.C. § 1861(g), on March 7, 2013, the Attorney General adopted new BR SMP to govern the retention and dissemination of information acquired pursuant to a § 1861 Foreign Intelligence Surveillance Court (FISC) order (hereafter referred to as BR information). The implementation date of the BR SMP is July 1, 2013.

8.1.3. (U) This *Business Record Standard Minimization Procedures Policy Implementation Guide*

establishes policies and procedures regarding the proper control, retention, and dissemination of unconsenting U.S. person BR information by the FBI to ensure compliance with BR SMP. A U.S. person, as the term relates to BR information, is defined in the statute as a citizen of the United States, an alien lawfully admitted for permanent residence ... an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a) (1), (2), or (3) of this section. (50 U.S.C. § 1801(i))

8.1.4. (U) This policy implementation guide (PG) does not control granting access to information (i.e., who is authorized to approve access and the procedures for gaining access to systems in which the information is contained). Certain requirements within the PG are mandated by the BR SMP, and thus cannot be changed without a revision of the BR SMP by the Attorney General and require approval of the FISC. Although the BR SMP are similar in many ways to the Standard Minimization Procedures for FBI Electronic Surveillance and Physical Search Conducted Under the Foreign Intelligence Surveillance Act (ELSUR SMP), the BR SMP have important distinctions in their scope and application.

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8.1.6. (U) For further details, see the *Business Record Standard Minimization Procedures Policy Implementation Guide*.

9. Scope:

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9.2. (U) This policy applies to information obtained pursuant to a FISA business record order, not to other types of orders.

10. Proponent:

(U) Office of the General Counsel

11. Roles and Responsibilities:

11.1. (U) Applications made pursuant to 50 U.S.C. § 1861 (BR applications) must be narrowly tailored to obtain only that information that is relevant to an authorized investigation, consistent with the FBI's obligation to use the least intrusive means to achieve its investigative goals. Access to the information obtained from the entity upon which a § 1861 order (BR order) is served is limited to authorized users, as defined below, until such time as the information has been deemed to meet the minimization standards set forth in the BR SMP and has been disseminated.

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11.3. (U) For further details, see the *Business Record Standard Minimization Procedures Policy Implementation Guide*.

12. Exemptions:

(U) None

13. Supersession:

(U) None

14. Justification for exigent or special policy consideration:

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15. References, Key Words, and Links:

15.1. (U) 50 U.S.C. § 1861

15.2. (U) FBI Standard Minimization Procedures for Tangible Things Obtained Pursuant to Title V of the Foreign Intelligence Surveillance Act

15.3. (U) Standard Minimization Procedures for FBI Electronic Surveillance and Physical Search Conducted Under the Foreign Intelligence Surveillance Act

15.4. (U) Standard Minimization Procedures Policy Implementation Guidelines

15.5. (U) FBI Domestic Investigations and Operations Guide (DIOG) Section 18.6.7, "FISA Order for Business Records"

16. Definitions:

(U) See Appendix B of the *Business Record Standard Minimization Procedures Policy Implementation Guide*.

17. Appendices, Attachments, and Forms:

17.1. (U) FBI Standard Minimization Procedures for Tangible Things Obtained Pursuant to Title V of the Foreign Intelligence Surveillance Act

17.2. (U) Business Record Standard Minimization Procedures Policy Implementation Guide

Sponsoring Executive Approval

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	Executive Assistant Director, Human Resources Title: Branch
Final Approval	
	Name: Kevin L. Perkins
	Title: Associate Deputy Director

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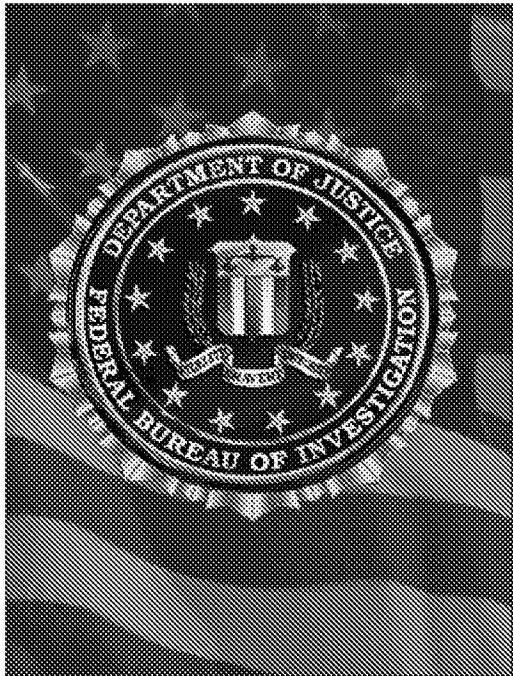
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(U) Federal Bureau of Investigation

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(U) September 17, 2013

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(U) Business Record Standard Minimization Procedures Policy Implementation Guide

(U) General Information

(U) Questions or comments pertaining to this policy implementation guide can be directed to:

(U) Federal Bureau of Investigation Headquarters, Office of the General Counsel

(U) National Security Law Branch

(U) Division point of contact: National Security Law Policy and Legislative Review Unit

(U) This document is a new publication; no previous versions are available.

(U) This document and its contents are the property of the FBI. If the document or its contents are provided to an outside agency, it and its contents are not to be distributed outside of that agency without the written permission of the unit or individual(s) listed in the contact section of this policy implementation guide.

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1. (U) Scope and Purpose

(U) Pursuant to Title V of the Foreign Intelligence Surveillance Act of 1978 (FISA), the Federal Bureau of Investigation (FBI) can acquire access to certain business records for foreign intelligence purposes (Title 50 United States Code [U.S.C.] Section [§] 1861). Under § 1861, the FBI can require the third party production of “any tangible things (including books, records, papers, documents, and other items) for an investigation ...” to obtain foreign intelligence information not concerning a United States (U.S.) person (USPER) or to protect against international terrorism or clandestine intelligence activities, provided that an underlying investigation of an USPER is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution. The FBI may acquire tangible things only if the “things” would be available through a grand jury subpoena or an order issued by a federal court for the production of records or tangible things. In accordance with the *Attorney General's Guidelines for Domestic FBI Operations* (AGG-Dom), use of compulsory process pursuant to 50 U.S.C. §§ 1861-63 is an investigative method that may be used in Preliminary and Full Investigations. It is not an approved investigative method in Assessments. Therefore, tangible things sought must be relevant to an open, predicated national security investigation.

(U) In accordance with 50 U.S.C. § 1861(g), on March 7, 2013, the Attorney General adopted new Standard Minimization Procedures for Business Records (BR SMP) to govern the retention and dissemination of information acquired pursuant to a § 1861 Foreign Intelligence Surveillance Court (FISC) order (hereafter referred to as “BR information”). The implementation date of the BR SMP is July 1, 2013.

(U) This *Business Record Standard Minimization Procedures Policy Implementation Guide* establishes policies and procedures regarding the proper control, retention, and dissemination of unconsenting USPER¹ BR information by the FBI to ensure compliance with BR SMP. USPER BR information may reside in systems such as [REDACTED]

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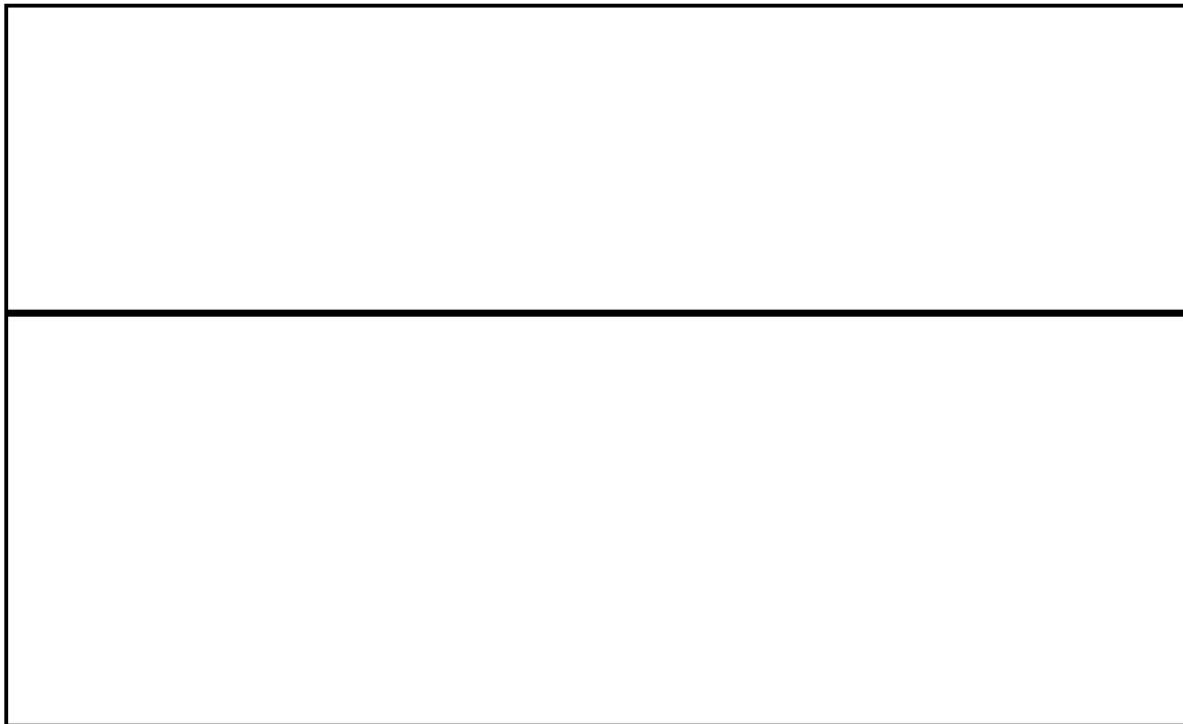
collected in FBI national security cases. This policy implementation guide (PG) does not control granting access to such systems (i.e., who is authorized to approve access and the procedures for gaining access to systems in which the information is contained). Certain requirements within the PG are mandated by the BR SMP, and thus cannot be changed without a revision of the BR SMP by the Attorney General and without approval of the FISC. Although the BR SMP are similar in many ways to the Standard Minimization Procedures for FBI Electronic Surveillance and Physical Search Conducted Under the

¹ (U) USPER, as it relates to BR information, is defined in the statute as “a citizen of the United States, an alien lawfully admitted for permanent residence . . . , an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a) (1), (2), or (3) of this section.” (50 U.S.C. § 1801(i))

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Foreign Intelligence Surveillance Act (ELSUR SMP), the BR SMP have important distinctions in their scope and application.



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2. (U) Roles and Functional Responsibilities

(U) Applications made pursuant to 50 U.S.C. § 1861 (BR applications) must be narrowly tailored to obtain only that information which is relevant to an authorized investigation, consistent with the FBI's obligation to use the least intrusive means to achieve its investigative goals. Access to the information obtained from the entity upon which a § 1861 order (BR order) is served is limited to authorized users, as defined below, until such time as the information has been deemed to meet the minimization standards set forth in the BR SMP and has been disseminated.

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2.1. (U) Authorized User

2.1.1. (U) Role

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2.1.2. (U) Responsibilities

1. (U) Receive legal training on the BR SMP.
2. (U) Abide by the BR SMP, with respect to BR information.
3. (U) Abide by all policies and procedures within this PG.

[REDACTED]

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2.2. (U) Primary Case Coordinator

2.2.1. (U) Role

[REDACTED]

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2.2.2. (U) Responsibilities

1. (U) Receive legal training on the BR SMP [REDACTED]
[REDACTED]
2. (U) [REDACTED]
[REDACTED]
3. (U) Fulfill all of the responsibilities of an ACC, as set forth in subsection 2.3, of this PG.
4. (U) Designate an ACC if needed.
5. (U) [REDACTED]
[REDACTED]

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(U) If BR information is within a primary system, follow the procedures required by the particular system [REDACTED]
[REDACTED]

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(U) In order to maintain an appropriate level of control [REDACTED]
[REDACTED]

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6. (U) [REDACTED]
[REDACTED]

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7. (U) Advise all designees that they must read this PG, and they must obtain legal training on the BR SMP [REDACTED]

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(U) Business Record Standard Minimization Procedures Policy Implementation Guide

[REDACTED] Enlist the assistance of chief division counsel (CDC) or the National Security Law Branch (NSLB) for designees to obtain legal training on the BR SMP [REDACTED]

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8. (U) [REDACTED]

9. (U) [REDACTED]

10. (U) Fulfill all of the responsibilities of handling information outside the primary systems pursuant to these procedures. See subsection 3.3.2, of this PG.

2.3. (U) Additional Case Coordinator**2.3.1. (U) Role**

(U) The ACC is an authorized user designated by the PCC [REDACTED]

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b7E**2.3.2. (U) Responsibilities**

1. (U) Receive legal training on the BR SMP [REDACTED]

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2. (U) [REDACTED]

3. (U) [REDACTED]

4. (U) For dissemination of BR information that resides in a primary system, [REDACTED]

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5. (U) For dissemination of BR information that does not reside in a primary system, [REDACTED]

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6. (U) [REDACTED]

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(U) Business Record Standard Minimization Procedures Policy Implementation Guide

[REDACTED]

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7. (U) If the case coordinators are on notice of the disseminated or uploaded product,

[REDACTED]

8. [REDACTED] (S)

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9. (U) Fulfill all of the responsibilities of handling information outside the primary systems pursuant to these procedures. See subsection 3.3.2. of this PG.

2.4. (U) Office of the General Counsel (OGC), National Security Law Branch

2.4.1. (U) Role

(U) The NSLB provides legal support and training regarding the handling of BR information pursuant to this PG and the BR SMP.

2.4.2. (U) Responsibilities

1. (U) Ensure all authorized users have access to required legal training on the BR SMP, and review and update such training, as necessary. [REDACTED]

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[REDACTED] training conducted by an NSLB attorney in Virtual Academy.

2. (U) Provide legal assistance regarding matters related to criminal discovery requirements and other prosecutorial-related matters and matters relating to attorney-client privilege material.

3. (U) Coordinate with the FBI National Security Branch (NSB) and the Department of Justice (DOJ), National Security Division (NSD), Office of Intelligence (NSD OI) [REDACTED]

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4. (U) [REDACTED]

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5. (U) Maintain the *Business Record Standard Minimization Procedures Policy Implementation Guide*, in consultation with NSB and CyD, to ensure that it is consistent with the BR SMP as well as FBI operational needs. Make needed changes and updates, as necessary, to comply with changes in the law and the BR SMP.

6. (U) Ensure that all necessary policies required by the BR SMP are adopted and/or maintained as required, in coordination with NSB and CyD.

7. (U) Advise FBI Divisions that are responsible for [REDACTED]

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(U) Business Record Standard Minimization Procedures Policy Implementation Guide

2.5. (U) Chief Division Counsel or Associate Division Counsel (ADC)

2.5.1. (U) Role

(U) The role of the CDC or ADC is to provide legal support and training regarding the handling of BR information pursuant to this PG and the BR SMP.

2.5.2. (U) Responsibilities

1. (U) Ensure all authorized users have access to required legal training on the BR SMP.

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2. (U) Provide legal assistance regarding matters related to criminal discovery requirements and other prosecutorial-related matters.

2.6. (U) Systems Administrators

2.6.1. (U) Role

(U) FBI personnel who are subject to, and abide by, the FBI's privileged user policies (CPDs 0571D and 0581D) and who have signed an agreement to comply with the "FBI Information Technology and Information Systems Rules of Behavior for Privileged Users Agreement Form," (FD-889a).

(U) FBI personnel who, in compliance with the FBI's privileged user policies and privileged user rules of behavior, are authorized to modify and maintain the primary systems in accordance with BR SMP requirements identified by OGC.

2.6.2. (U) Responsibilities

1. (U) [REDACTED]

[REDACTED]

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2. (U) Ensure that access to the BR information in the primary systems is limited to authorized users [REDACTED]

[REDACTED]

3. (U) Ensure that [REDACTED]

[REDACTED]

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5. (U) Maintain a record of those [REDACTED]

[REDACTED]

6. (U) [REDACTED]

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(U) Business Record Standard Minimization Procedures Policy Implementation Guide

7. (U) Work with OGC to ensure that any primary systems adequately comply with the requirements of the SMP.

2.7. (U) Security Division (SecD)

2.7.1. (U) Role

(U) The role of SecD is to implement policies delineating the minimum security requirements for FBI information technology and information systems, including minimum standards for governing privileged users and nonprivileged users, systems administrators, and data owners (e.g., National Security Branch, Cyber Division), who, based on their risk assessments, may implement more restrictive policies than those promulgated by SecD.

2.7.2. (U) Responsibilities

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3. (U) Policies

3.1. (U) Review

3.1.1. (U) Initial Review for Overproduction

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(U//~~FOUO~~) If the case coordinator determines that there has been an overproduction of information, he or she should promptly notify, by e-mail or telephone, all of the following: (1) the SSA who approved the BR application at FBI Headquarters (FBIHQ); (2) the OI attorney who drafted the BR application; (3) [REDACTED]; (4) the field office's CDC; and (5) the NSLB attorney assigned to the BR. Within 14 days of the initial notification, the PCC must draft an EC, which will be uploaded to the case file, and [REDACTED]

[REDACTED] FISA overcollections pursuant to the FBI's FISA authority also must be reported to NSLB under CPD 0188D (*Guidance on Intelligence Oversight Board Matters*) and 0188PG (*Guidance on Intelligence Oversight Board (IOB) Matters Policy Implementation Guide (PG)*), subsection 3.1.3. For more information on overcollections, see the *Foreign Intelligence Surveillance Act Overcollection Policy Implementation Guide*.

(U//~~FOUO~~) As indicated above, [REDACTED]

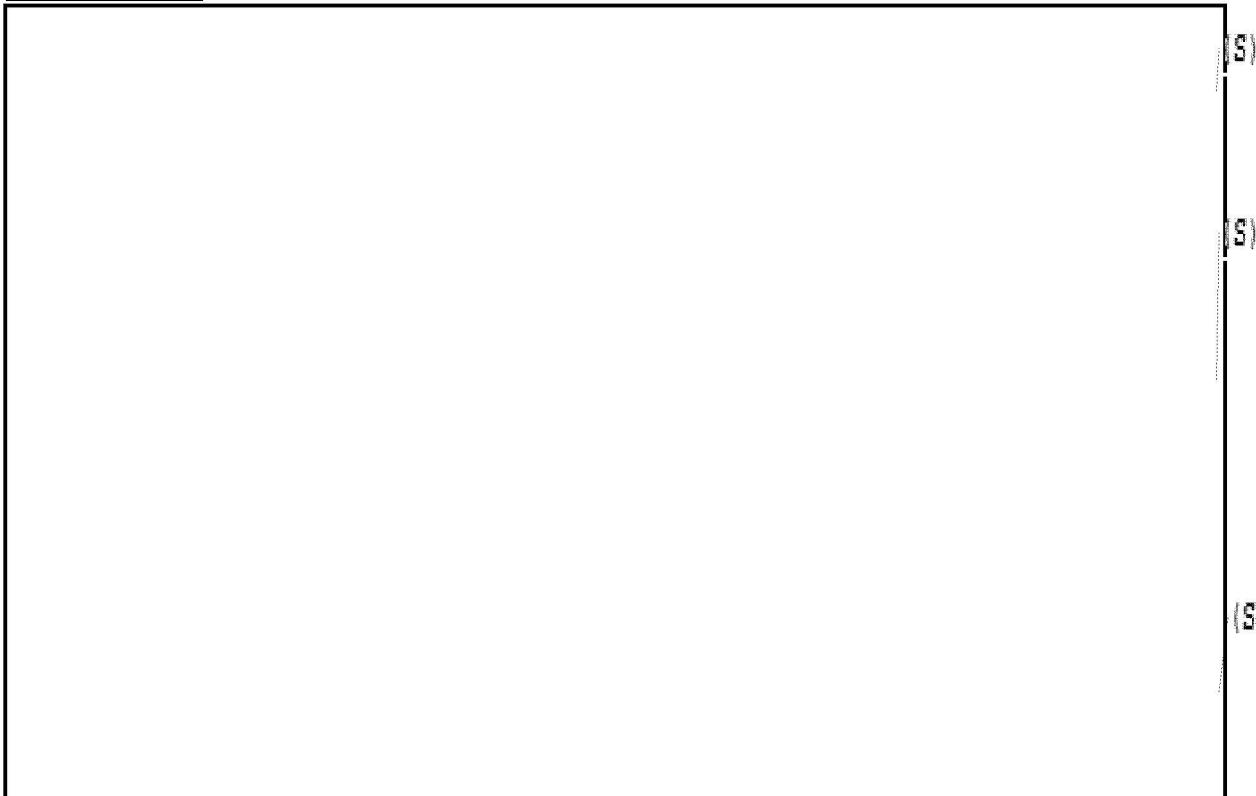
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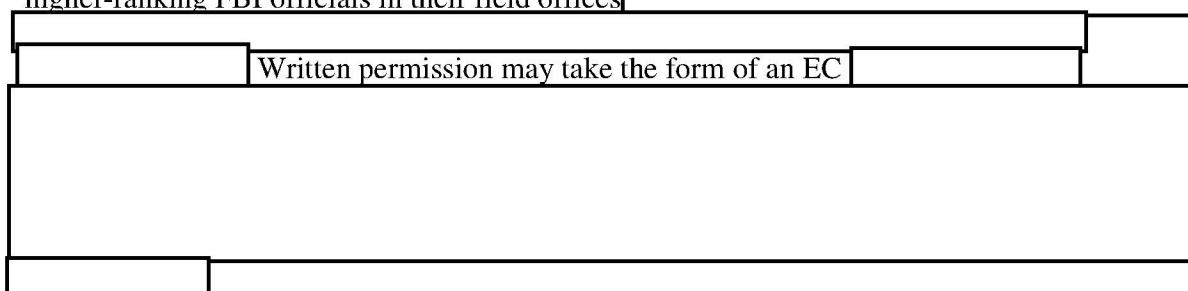
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(U//FOUO) PCCs must obtain the written permission of their immediate supervisors or of higher-ranking FBI officials in their field offices



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3.1.2. (U) Maintenance of Records Prior to Minimization

(U) After the initial review for responsiveness, the BR information should be maintained in working files,



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[REDACTED]

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(U) In some instances, BR information may be [REDACTED]

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[REDACTED]

(U) Authorized users to the primary systems will have access to BR information in those systems [REDACTED]

[REDACTED]

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(U) [REDACTED]

[REDACTED]

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3.1.3. (U) Review and Minimization of Responsive Information

(U) Case coordinators [REDACTED]

[REDACTED]

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(U) Once a determination has been made that [REDACTED]

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meets the Standard. BR information meets the Standard if it reasonably appears to be: (1) foreign intelligence information; (2) necessary to understand foreign intelligence information or to assess its importance; or (3) evidence of a crime (tangible things that are or contain information that reasonably appears to be exculpatory, impeachment, or otherwise discoverable material for a criminal proceeding shall be treated as evidence of a crime).

(U) In order to determine whether the BR information meets the Standard, the authorized user may query repository databases (i.e., the primary systems). [REDACTED]

[REDACTED]

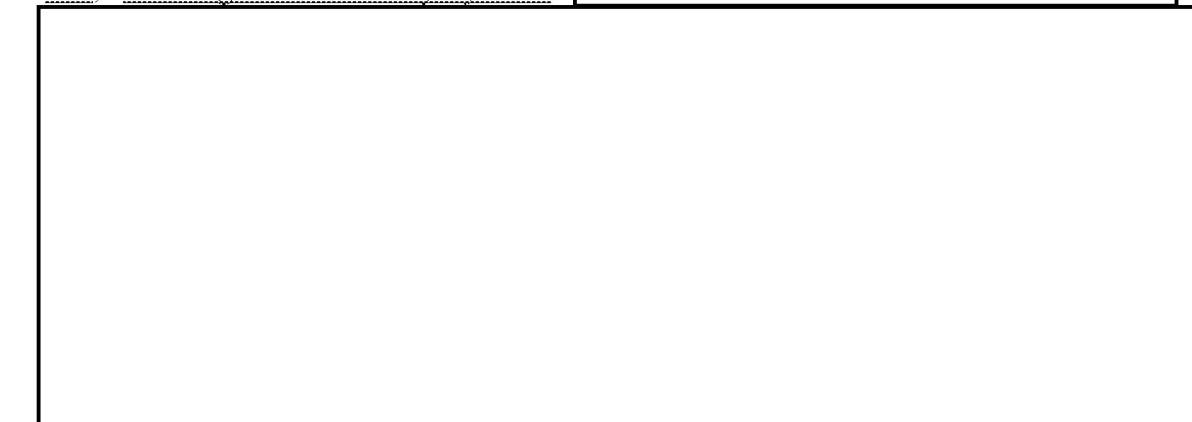
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(U) FBI primary systems allow for electronic marking of BR information. See subsection
3.4., "Markings in the Primary Systems." [REDACTED]

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3.2. (U) Metadata



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[redacted] where doing so is reasonably believed to assist in the mitigation or prevention of such attacks. The Attorney General Guidelines for Victim and Witness Assistance (May 2012) provide guidance on how the FBI and other DOJ components should comply with their statutory obligations to crime victims. Specifically, the Victims' Rights and Restitution Act (VRRA), 42 U.S.C. §10607, requires the FBI to notify victims of national security computer intrusions.

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(U) In order to identify BR information, the following caveat should be on all domestic disseminations, other than disseminations to private entities in the cyber context, as discussed in subsection 3.3.3.¹⁰:

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3.3.1. (U) Disseminations of BR Information Taken Directly from Primary Systems

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3.3.2. (U) Disseminations of BR Information Stored Outside the Primary Systems



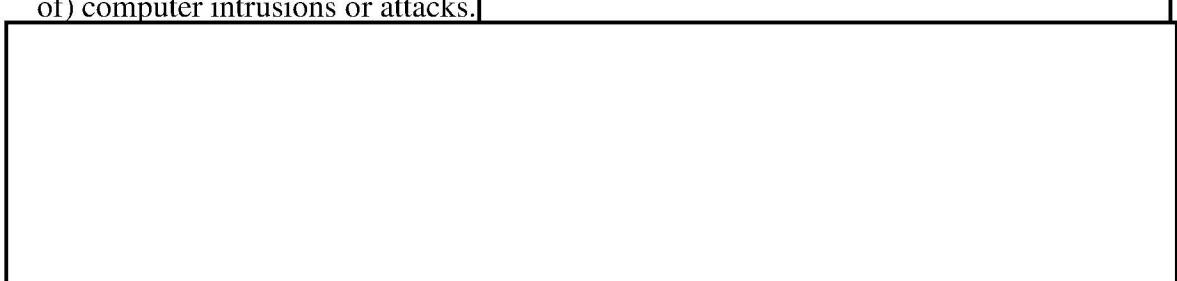
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3.3.3. (U) Disseminations in Cyber Cases

1. (U) The BR SMP provide for the dissemination of BR information that meets the SMP Standard to private entities or individuals when necessary to assist the FBI in its investigative duties or to notify someone that they may be affected by (i.e., a victim of) computer intrusions or attacks.

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3.4. (U) Markings in the Primary Systems

3.4.1. (U) Definition of Marking



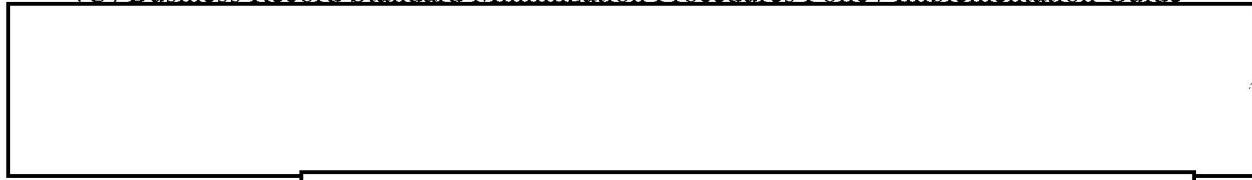
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¹³ (U) For more information, see the appendix to the NSICG.

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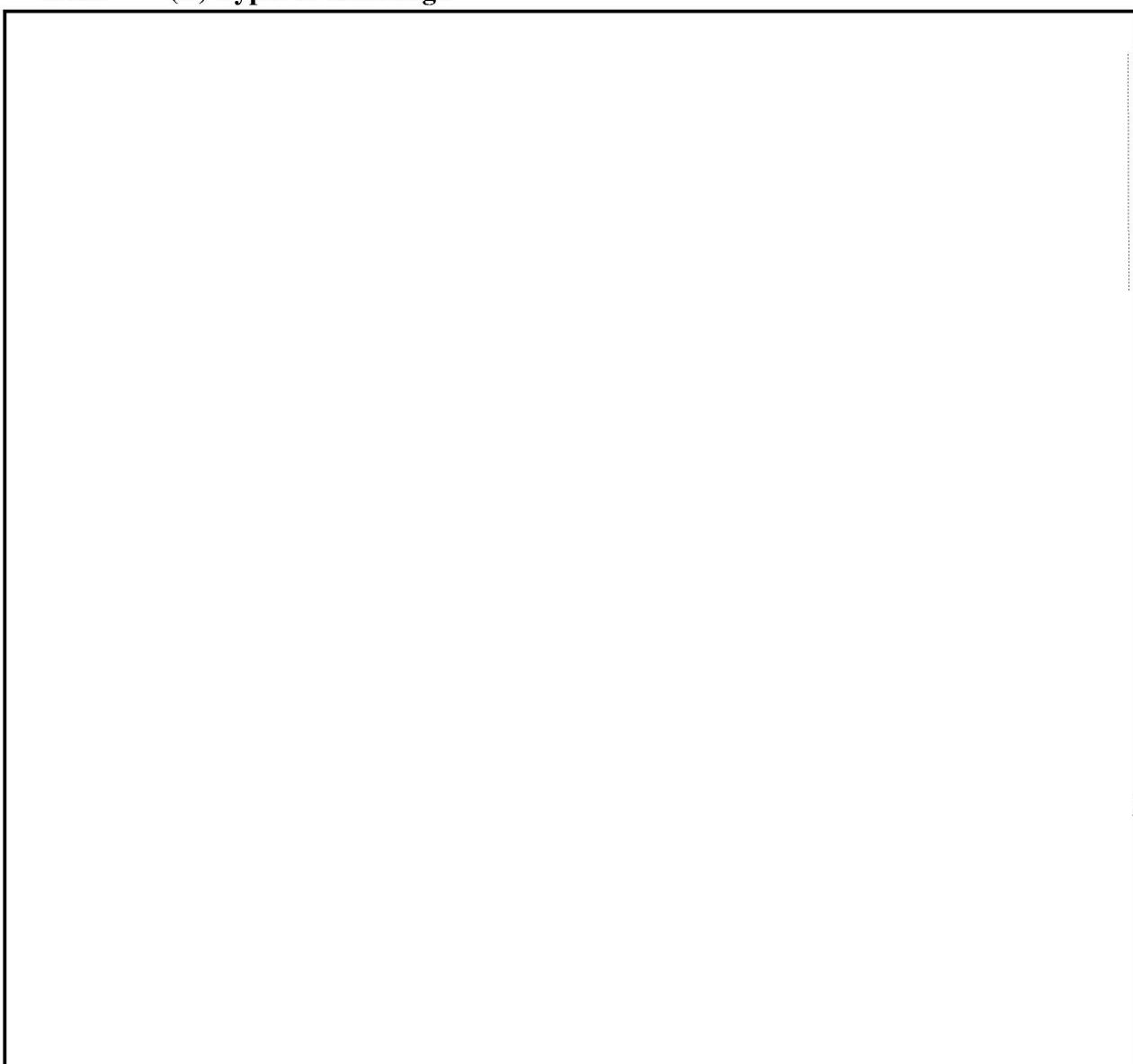
3.4.2. (U) Systems to Which Marking Policy Is Applicable



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3.4.3. (U) Types of Markings



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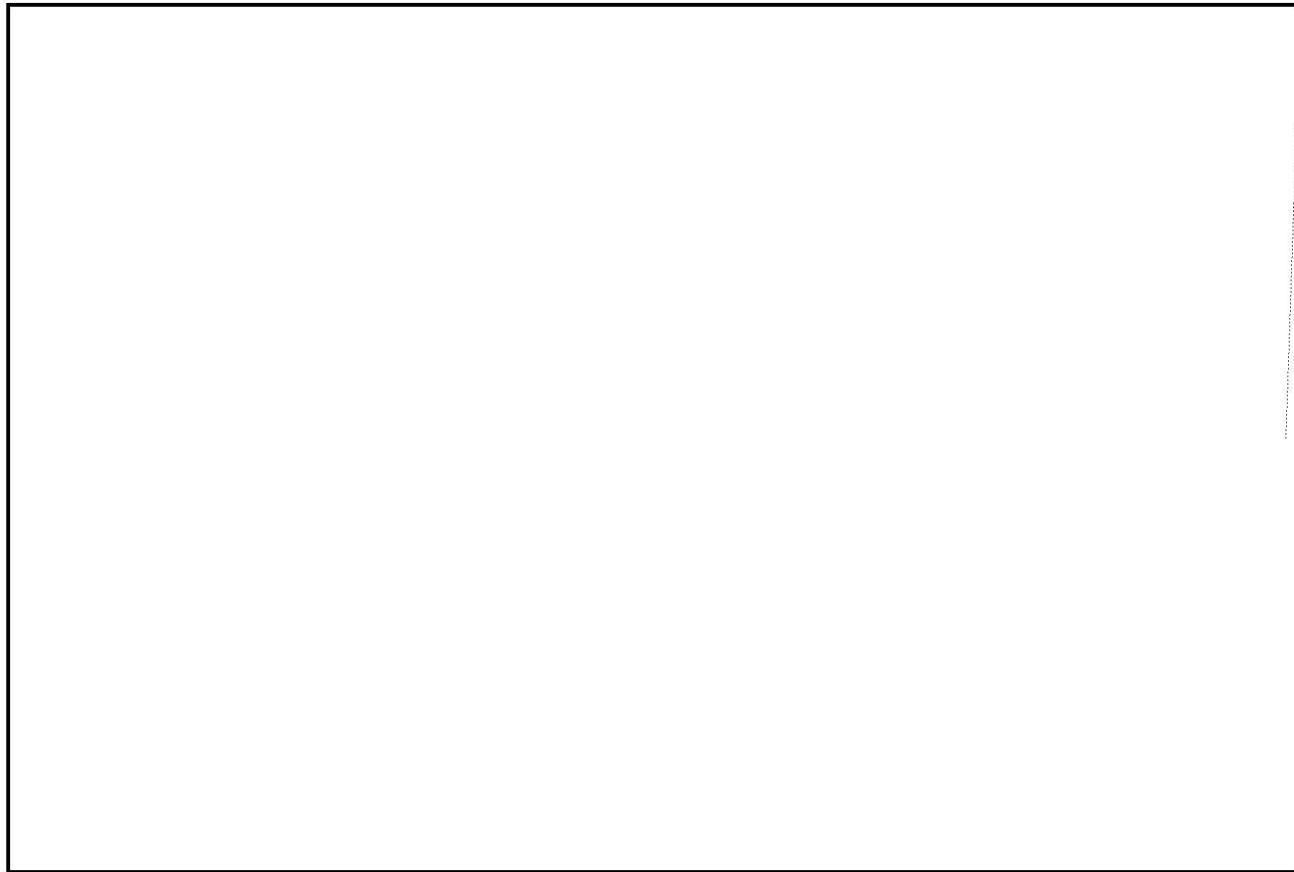
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(U) Business Record Standard Minimization Procedures Policy Implementation Guide

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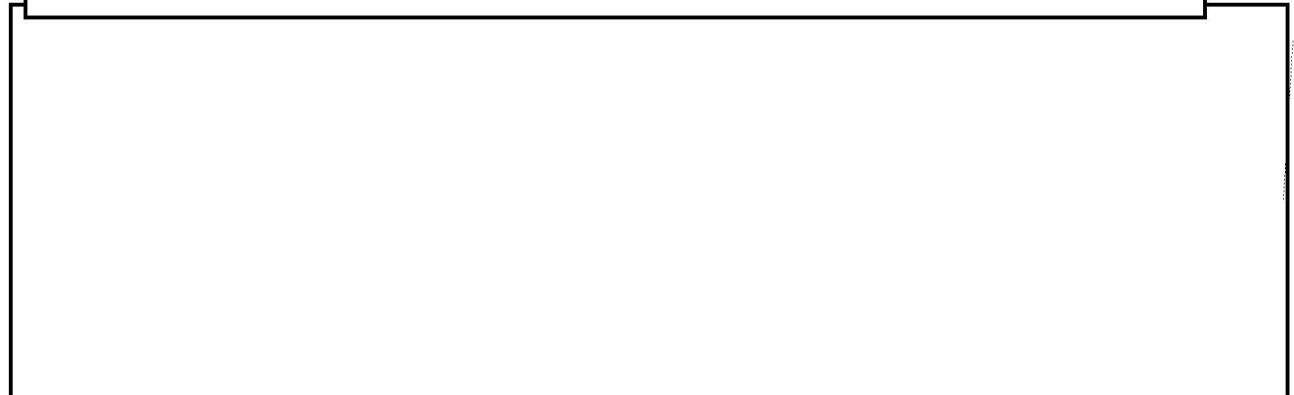
3.4.4. (U) Marking Policy for Information in the Primary Systems

(U//FOUO) Minimization markings are required prior to dissemination of any BR information stored in a primary system. [REDACTED]

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(U) [REDACTED]

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(U) Specific information on several of the minimization markings is listed below.

3.4.4.1. [Redacted] Marking



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3.4.4.2. [Redacted] Marking



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1. (U//~~FOUO~~) The case coordinator,



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- 2.



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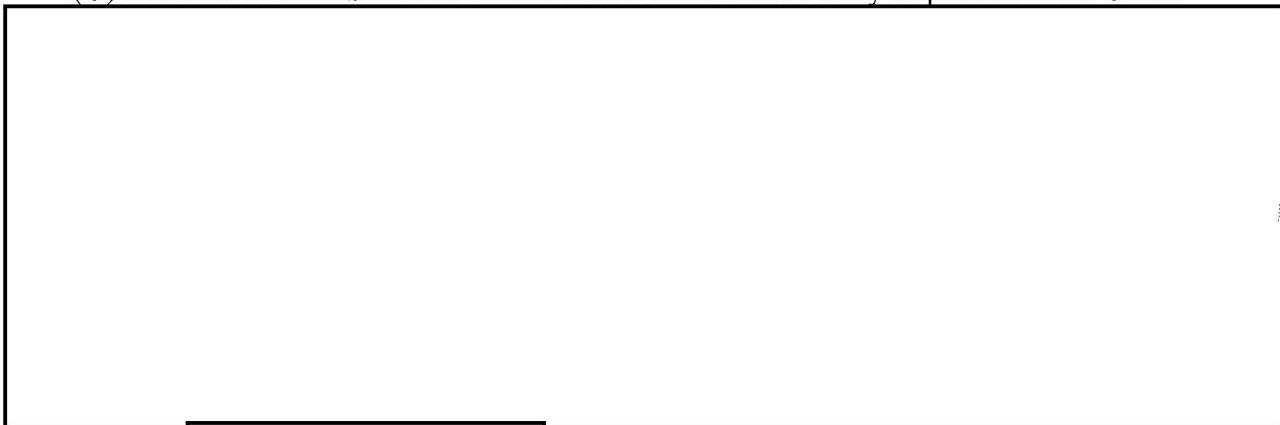
- 3.



4. (U//~~FOUO~~) A record suggests something exculpatory (e.g., indicates a target's actions are not illegal or fall within the government's Brady obligation).

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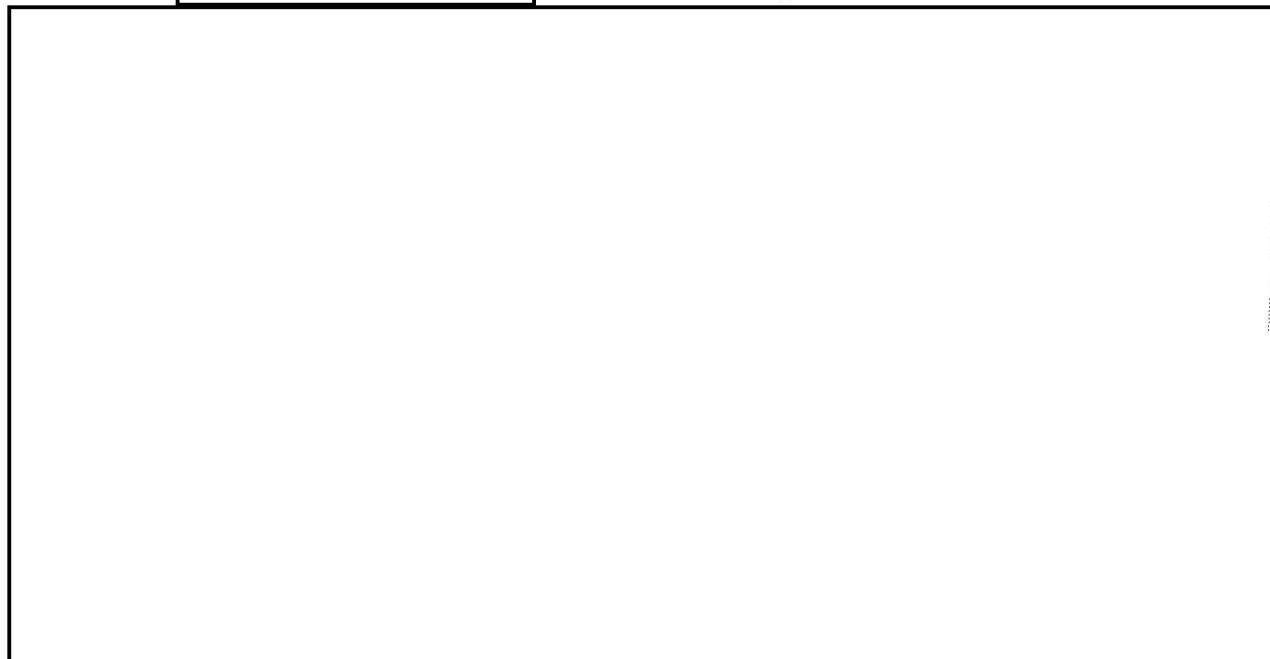
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3.4.4.3.



Standard Marking



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4. (U) Procedures and Processes

4.1. (U) Internal Handling of BR information Outside the Primary Systems

4.1.1. (U) Internal Sharing of BR Information

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4.1.2. (U) BR Information in ECs, IIRs, LHM_s, or Other Documents Uploaded into Systems that Provide Widespread Availability to FBI Personnel

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4.1.3. (U) BR Information in Official FBI Case Files

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5. (U) Summary of Legal Authorities

(U) Legal authorities related to this PG include:

- (U) FBI Standard Minimization Procedures for Tangible Things Obtained Pursuant to Title V of the Foreign Intelligence Surveillance Act (document is classified ~~SECRET~~)
- (U) Standard Minimization Procedures for FBI Electronic Surveillance and Physical Search Conducted Under the Foreign Intelligence Surveillance Act (FISA) (document is classified ~~SECRET~~)
- (U) Standard Minimization Procedures Policy Implementation Guidelines (0137PG) (document is classified ~~SECRET~~)

6. (U) Recordkeeping Requirements

(U) Records created by the recordkeeping requirements herein will be maintained in case files for the time periods required under NARA schedules.

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Appendix A: (U) Contact Information

Office of the General Counsel National Security Law Branch Policy and Legislative Review Unit FBI Headquarters, room 	J. Edgar Hoover Building 935 Pennsylvania Avenue, NW Washington, DC 20535
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Appendix B: (U) Key Words and Acronyms

(U) Key Words

(U)

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(U) [REDACTED] responsive business records that a business generated and maintained in the ordinary course of business

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(U) **FISA BR information:** business records information that is acquired by the FBI pursuant to 50 U.S.C. § 1861 of the Foreign Intelligence Surveillance Act. Under §1861, such information includes “any tangible things (including books, records, papers, documents, and other items) for an investigation ...” to obtain foreign intelligence information not concerning an USPER or to protect against international terrorism or clandestine intelligence activities, provided that an underlying investigation of an USPER is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution.

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- [REDACTED]
- [REDACTED]

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(U) **Metadata:** refers to “Dialing, routing, addressing or signaling information associated with a communication, but does not include information concerning the substance, purport or meaning of the communication.”

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(U) **USPER:** as it relates to BR information, is “a citizen of the United States, an alien lawfully admitted for permanent residence . . . , an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).” (50 U.S.C. § 1801(i)).

(U) Acronyms

ACC	additional case coordinator	
ADC	associate division counsel	
AGG-DOM	<i>Attorney General's Guidelines For Domestic FBI Operations</i>	
BR	business records (e.g., BR information, BR order)	
BR SMP	business records standard minimization procedures	
CDC	chief division counsel	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
EC	electronic communication	
ELSUR SMP	Electronic Surveillance and Physical Search Conducted Under the Foreign Intelligence Surveillance Act	
FBI	Federal Bureau of Investigation	
FBIHQ	Federal Bureau of Investigation Headquarters	
FISA	Foreign Intelligence Surveillance Act	
[REDACTED]	[REDACTED]	
LHM	letterhead memorandum	
NARA	National Archives and Records Administration	
NSB	National Security Branch	
NSD OI	National Security Division, Office of Intelligence (DOJ)	

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NSLB	National Security Law Branch	
OGC	Office of General the Counsel	
PCC	primary case coordinator	
SMP	standard minimization procedures	
USPER	United States person; U.S. person; US person	

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