

Procedures.

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- (2) The investigation may dictate that ATF deposit money into the account. This situation should be communicated to the Chief, SOD, with the original request to use a letter of credit.
- (3) The final authority to use a letter of credit is the Chief, SOD. That decision will be made after examining the letter of credit and conferring with the Office of Chief Counsel and the Resource Management Branch, Financial Management Division.
- (4) The Office of Chief Counsel will advise the Chief, SOD, of the obligations ATF will incur with each letter of credit.
- (5) The SAC, Resource Management Branch, will advise the Chief, SOD, if ATF cannot meet the obligations incurred by the letter.

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42. UNDERCOVER MERCHANDISE.

- a. Policy. It is ATF policy to use undercover merchandise as an investigative technique only after special agents have explored all possible alternatives and determined that using undercover merchandise is essential to the success of the investigation.
- b. Undercover Merchandise. Undercover merchandise is any tangible item purchased using agent cashier funds or acquired through other means for the purpose of sale, trade, or display in furtherance of an ATF investigation. This includes ATF property or other merchandise (e.g., Title II firearms, explosives, flashrolls, narcotics)

that may be exhibited to a person and in which the proprietary interest does not change. Special agents shall exercise adequate controls and security in the use of all undercover merchandise.

- c. Acquisition. Before purchasing any undercover merchandise, the requesting SAC should contact another field division or the appropriate Headquarters division chief for assistance in determining if merchandise currently available in inventory would meet the needs of the division. If the merchandise needed is explosives, inert explosives, or inert explosive devices, the SAC shall contact the Chief, Explosives Technology Branch, to determine what items are available.
- (1) Agent Cashier Funds. Funds to purchase undercover merchandise will be obtained in the manner prescribed in ATF O 3251.1.
 - (2) Approved Expenditures. In accordance with ATF O 3251.1, the expenditure of agent cashier funds is limited to specified purposes stated on ATF F 3251.3. Therefore, if undercover merchandise is to be purchased, funds must be specifically requested for that purpose.
 - (3) Reporting Procedures.
 - (a) Purchase of Undercover Merchandise. Purchase of undercover merchandise will be reported on ATF F 3251.2A, Report of Expenditures (for Investigative Purposes), and will include the date of purchase, identity of the seller, a detailed description and identification of items, and the amount of expenditure. Special agents will obtain and attach all paid receipts, invoices, etc., to ATF F 3251.2A.
 - (b) Sale/Trade of Undercover Merchandise. Sale/trade of undercover merchandise shall be recorded on ATF F 3120.2. The report shall include the date of the sale/trade; identity of the purchaser (suspect), if known (otherwise, nickname and/or description); detailed description, identification, and value of the items sold/traded; identity of the seller (in the case of informants, the assigned informant control number shall be used); and the amount of the sale and balance, if any, of unsold/untraded merchandise. In the case of a trade, the property acquired from the trade shall be completely described.

- 1 Cash Proceeds From the Sale of Undercover Merchandise. The proceeds of the sale of undercover merchandise are recovered funds and must be deposited in the General Fund of the Treasury when the investigation is closed. Special agents shall transmit these proceeds, through the field division office, to the Headquarters agent cashier with ATF F 3251.2. (Refer to ATF O 3251.1, subparagraph 13f.) The funds will be returned using a money order or cashier's check, made payable to the Bureau of Alcohol, Tobacco and Firearms. Because the proceeds will be deposited to the General Fund of the Treasury, the payee will not be the designated agent cashier.
 - 2 Retention for Evidence of Proceeds and/or Property From Sale of Undercover Merchandise. In instances where proceeds or property from the sale of undercover merchandise is retained as evidence, the retention shall be reported as contained in ATF O 3400.1A, Property Taken Into Bureau Custody. In these instances, ATF F 3400.16, Property Inventory/Forfeited Property Appraisal Report, shall be attached to ATF F 3120.2. If evidence is released by the court for ATF disposition or it is determined that the funds or property is not needed as evidence, it will be disposed of according to ATF O 3400.1A.
- (c) Retention of Undercover Merchandise as Evidence. Any undercover merchandise that becomes evidence in criminal investigations shall be documented and maintained according to ATF O 3400.1A.
- (4) Required Receipts. The special agent obtaining the agent cashier funds shall obtain a signed receipt in all instances when the custody of the undercover merchandise is transferred to an informant, police officer, or special agent. The informant may sign an assumed name, provided the receipt contains the informant control number. ATF F 3251.1 (exhibit 6) shall be used. Receipts shall be attached to ATF F 3251.2A.
 - (5) Other. Acquisition of undercover merchandise from a local, State, or Federal agency, such as food stamps, tools, televisions, etc., for purposes of resale or trade by means other than through

expending agent cashier funds must receive the SAC's prior approval. The authorized receipt of this type of undercover merchandise shall be documented on ATF F 3120.2, listing merchandise received and from whom it was received. The sale/trade of undercover merchandise acquired in this manner shall be documented as stated herein.

d. Prohibited Merchandise.

- (1) The following items shall not be used as undercover merchandise: property subject to forfeiture proceedings, detained or retained property, evidentiary property, and property being processed as abandoned. Only property to which ATF or another agency has legal title shall be used as undercover merchandise.
- (2) Certain investigative and undercover situations require the use of "props." Before the use of a prop is approved, specific reasons for its use should be outlined via TECS message or memorandum. In all matters involving props, the request shall contain a detailed outline as to why this technique must be used and an explanation of what attempts have been attempted or considered.

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attorney should be contacted before initiating this technique, and his or her policy on props should be covered in the request or notification. In addition, the U.S. attorney should be advised that, in some cases, it is preferable that the props not be detained in pending court action. Most U.S. attorneys will agree to accept photographs of the props and special agent testimony. The results of discussions with the U.S. attorney should also be covered in the request or notification.

- (3) No tangible property shall be used as a prop unless prior SAC approval is received. When items such as television sets, videocassette recorders, or other merchandise are used, the SAC may grant approval. The SAC should document the approval and notify special agents by memorandum. Verbal approval may be granted in emergency situations. The props must satisfy the requirement of this chapter.

- (4) The SAC may approve the following items as
undercover merchandise: **ATF**

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If the field division does not have such props available in its inventory, then the field division may request the assistance of the appropriate Headquarters division chief.

- * (5) If a specialized undercover prop is required from the Firearms Technology Branch, the SAC will issue a memorandum to the Chief, Firearms Programs Division, to request the prop from the Firearms Technology Branch's inventory. Likewise, requests for props from the Explosives Technology Branch will be submitted to the Chief, Arson and Explosives Programs Division. The SAC will be responsible for authorizing the use of the prop in the investigation prior to submitting a request to the appropriate Headquarters division. Certification and maintenance of all firearms undercover props and display weapons are the responsibility of the Firearms Technology Branch. *

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- (7) When conducting investigations in which consideration is being given to the use of narcotics (including synthetic narcotics or any substance that will be represented as narcotics) as props, the special agent shall place priority on establishing the elements of firearms violations under ATF

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- (a) Special agents shall forward requests to the SAC as described in subparagraph 42d(2). The SAC will review the request to ensure compliance with the requirements set forth in subparagraph 42d(7), above.
- (b) The SAC may give authorization for the use of narcotics as props, except for the following two instances where the appropriate DAD(FO) will be the authorizing official:

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- (c) The SAC shall report significant/sensitive investigations, incidents, or involvements in which narcotics are used as props by significant activity report (SAR) sent to the Chief, Intelligence Division (with a copy also forwarded to the affected Headquarters division chief).

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After receiving verbal approval, the SAC will submit a memorandum or TECS message within 24 hours or the next business day confirming the approval and providing the information described in subparagraph 42d(2).

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e. Refund/Merchandise Transfer Procedures. Special agents shall attempt to return any unneeded merchandise to the original vendor and obtain a refund. If possible, merchandise acquired from local, State, or Federal agencies will be returned and documented by memorandum. Receipts obtained for returned merchandise shall be maintained in the investigative file.

(1) Refunds. Cash refunds shall be returned to the agent cashier fund.

(2) Transfers. Undercover merchandise for which refunds cannot be obtained may be used in another investigation or the merchandise may be transferred to another office within the same field division for use provided such transfer is cost effective. Whenever undercover merchandise is transferred, the losing office shall obtain a signed receipt (ATF F 3400.23, Receipt for Property and Other Items (exhibit 10)) from the acquiring office. This receipt will be maintained in the investigative file. (Note: Property description on ATF F 3400.23 shall specify the item(s) as "undercover merchandise," a category of property that does not require attaching ATF F 3400.16.)

(3) Disposition. When undercover merchandise is no longer needed in a field division, the field division tactical operations officer will retain the merchandise for 1 year. The receipt from the field office to the tactical operations officer will require an ATF F 3400.23, which will show that all unused undercover merchandise has been closed out of the investigative case file and transferred to the division for maintenance. The field division should advise the Technical Operations Branch and the UCB of the availability of the merchandise. Any storage costs incurred will be paid by the field division in possession of the merchandise. If after 1 year there have been no requests to use the merchandise, the SAC may authorize its disposition.

* f. Annual Review of Undercover Merchandise. By the end of each fiscal year, each field division's firearms instructor coordinator (FIC) will conduct an annual review of undercover props and display weapons maintained by his or her respective field division and field offices. The review may be conducted during the Property and Fleet Management Section's annual inventory of all ATF-owned firearms, which is completed during the period May through July. During the review, the FIC should examine any firearm(s) that appear(s) to be damaged or not functioning properly. The FIC will forward the questionable firearm(s) to the Chief, Firearms Technology Branch, for recertification or removal from ATF's inventory, using proper procedures. During this review, the FIC will also ensure that the undercover props and display weapons in the field division and field offices have been certified by the Firearms Technology Branch. *

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a.

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(1) Title and case number of the investigation.

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(3) investigation background information, including justification to support the request and the specific plans for utilization.

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b. The Chief, SOB, will approve or disapprove the request after evaluating the submitted information. It should be noted that, if approved, the authorization will be for a SPECIFIC INVESTIGATION ONLY.

c. When an outside law enforcement agency requests an undercover operation, a supervisor of the field division where the undercover operation will occur:

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(1) A supervisor of the requesting agency will supply, in writing, the following information to the ATF SAC:

(a) **ATF**

(b)

(c) The anticipated duration of the investigation.

(d) All additional agencies involved in the investigation.

Name, address, date of birth, and trade name of the person to appear on the license.

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