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SEIZED DRUGS AND FIREARMS

FBI Needs to Improve Certain Physical Safeguards and Strengthen Accountability



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Accounting and Information
Management Division

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The Honorable Janet Reno
The Attorney General

Dear Madam Attorney General:

Since 1990, we have periodically reported on government operations that we have identified as “high risk” because of their greater vulnerabilities to waste, fraud, abuse, and mismanagement. One of these operations is the asset forfeiture program operated by the Department of Justice. As we reported in January 1999, although some improvements have been made to the program since we first designated it as a high risk program in 1990, significant problems remain and continued oversight is necessary to ensure that policies and procedures are followed and that adequate safeguards are in place.¹

Related to asset forfeiture, Justice operations often involve the seizure, custody, and disposition of evidence that is used by federal prosecutors. A critical support function is controlling evidence to help ensure that federal cases are not compromised or weakened by challenges made by the defense about the existence, completeness, or handling of evidence, or its ties to defendants. Seized property, including items such as drugs and firearms, are subject to forfeiture and typically remain in the custody of the seizing agency until they are approved for final disposition.

This report focuses on Justice’s Federal Bureau of Investigation’s (FBI) controls over seized drugs and firearms. There is an inherent risk of theft, misuse, and loss of drugs and firearms because such evidence typically has a market or “street” value. In addition, evidence can remain in the FBI’s custody for significant amounts of time due to the FBI’s long-term investigations. Another factor increasing this risk is changes in custody of the evidence as the FBI often conducts its operations with other law enforcement agencies, which can result in evidence being transferred from one agency to another.

¹Major Management Challenges and Program Risks: Department of Justice (GAO/OCG-99-10, January 1999).

Given this inherent risk, our audit objectives 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 over such evidence. To accomplish these objectives, we interviewed officials from FBI headquarters and four selected FBI field offices and reviewed pertinent policies and procedures provided by the FBI concerning the safeguarding and handling of drug and firearm evidence. Based on discussions with FBI headquarters officials and a review of staffing levels for the FBI's 56 field offices, we selected two of the largest field offices—New York, New York and Miami, Florida—and two smaller sized offices—Dallas, Texas and San Diego, California—at which to perform our work.

At each of these four selected FBI field offices, we observed the location and condition of storage facilities and physical safeguards over drug and firearm evidence; randomly sampled and tested recently acquired drug and firearm items; performed inventory procedures for judgmentally selected drug and firearm items; and observed FBI personnel weigh selected drug items and compared the observed weights to the weights recorded on evidence labels attached to the items. We also obtained and reviewed the results of recent FBI field office internal inspections to determine if issues we identified during our fieldwork were indicative of more systemic concerns at the FBI.² We performed our work in accordance with generally accepted government auditing standards from August 1998 through August 1999. See appendix I for a more detailed discussion of our scope and methodology.

We requested written comments on a draft of this report from the Attorney General or her designee. The Assistant Director for FBI's Office of Public and Congressional Affairs provided us with written comments, which are discussed in the "Agency Comments and Our Evaluation" section and are reprinted in appendix II.

²The FBI provided copies of (1) electronic communications sent to 41 field offices and (2) documentation that summarizes the inspection results for 3 other field offices that detail deficiencies, and associated instructions and recommendations, related to drugs and firearms that were identified by Evidence Program Audits conducted during recent internal inspections. According to the FBI Chief Inspector, there were no evidence findings resulting from the most recent inspections at the other 12 FBI field offices.

Results in Brief

Physical safeguards over drug and firearm evidence, which include adequate storage facilities and control procedures, are essential for guarding against theft, misuse, and loss of such evidence and securing it for federal prosecutors. Each of the four FBI field offices we reviewed established physical safeguards in accordance with key FBI policy provisions that, if operated effectively, would help control access to and use of drug and firearm evidence. However, overcrowding and inadequate packaging of drug evidence and improper maintenance of the night depository in the drug vault at one of the four FBI field offices we visited increased the potential for theft, misuse, and loss of evidence at that location. In addition, we found inadequate ventilation in the drug vault at one field office that could potentially negatively affect the health and safety of evidence control personnel. At the four field offices we reviewed, we also identified cases where firearms were not certified as rendered safe in accordance with FBI policy. Further, the most recent internal inspections for certain field offices identified similar findings involving the improper storage of drug evidence, inadequate ventilation in drug vaults, and the lack of documentation certifying that firearms were rendered safe, as well as weaknesses in physical access controls.

Drug and firearm evidence must also be accounted for completely and accurately to help ensure that such evidence is not compromised for federal prosecution purposes and is protected against the risk of theft, misuse, and loss. However, the FBI's ability to account for drug and firearm evidence was hampered at one or more of the four field offices we reviewed by incomplete and missing information on chain of custody documents, failure to promptly issue and reconcile reports that are used to verify the location of evidence, and/or inadequate documentation for certain bulk drug seizures. For example, with regard to inadequate documentation for certain bulk drug seizures, we identified two instances at one field office that involved a total of about 770 kilograms of cocaine for which there was no signed certification by any of the FBI personnel who purportedly witnessed the destructions of most of these drugs.³ Notwithstanding these problems, evidence control personnel at the four FBI field offices we visited were able to locate each item selected for our testing that was in storage at the field offices, and for those items not in

³One kilogram is the equivalent of approximately 2.2 pounds. About 453.6 grams is the equivalent of 1 pound.

storage, they provided documentation supporting the current location or status of the item.

Also, timely data entry and data verification are key control procedures that help ensure that data records are complete and accurate. We identified several instances at three of the field offices we reviewed where evidence control personnel or agents entered evidence into the FBI's Automated Case Support (ACS) system late without the required explanatory memoranda. For example, at one field office, 9 of the 50 selected drug items we reviewed were not entered into the ACS system in a timely manner and no required memoranda explaining the late data entries were provided. In addition, at the four field offices, we found discrepancies between information recorded in the ACS system and information on written documents associated with the evidence. The FBI's own internal inspection teams reached similar conclusions pertaining to accounting for seized drug and firearm evidence in a complete, accurate, and timely manner.

While reviewing selected drug items in storage at the four field offices, we noted numerous discrepancies between the actual weight of drug items observed during our testing and the weight of these items recorded on attached evidence labels, which should reflect the current weight of the item including packaging. Although many of the weight variances involved only several grams, larger discrepancies included a shortage of 269 grams of heroin and an overage of 3.9 kilograms of cocaine. The FBI's ability to account for drug evidence was hindered by the lack of policies and procedures on how to identify and address significant weight variances. We are making several recommendations to address the above issues.

In commenting on this report, the FBI stated that while the information contained in the draft was, for the most part, factually accurate, it did have some concerns about the report's focus and conclusions and recommendations. Nevertheless, the FBI stated that it plans or has already taken actions relating to four of our key recommendations, namely, our recommendations to modify existing policy related to the weighing of drug evidence, and our recommendation to review actions taken by the New York Field Office to address various internal control deficiencies. While the FBI neither concurred with nor took exception to our recommendation to modify existing policy to include guidance for updating records in the ACS system to reflect identified changes in the weight of drug evidence, it is important to note that, at the time of our review, there was no written requirement to update the ACS system for any such changes. Consequently,

the weight recorded in the ACS system may not represent the most current weight recorded on the item's evidence label, thus reducing the FBI's accountability over such drug evidence.

The FBI disagreed with our recommendation concerning the need to reinforce adherence to certain existing FBI policies, stating that recordkeeping issues we identified that were also found during its own internal inspections do not, in the aggregate or otherwise, suggest inadequate accountability over drug evidence given the overlapping internal control procedures in place. We disagree with the FBI and, as discussed in this report, identified several issues that we consider to be of a more severe nature at one or more of the locations we visited and for which we did not identify any redundant controls to compensate for the deficiencies.

In addition, FBI stated that we used the findings identified during its own internal inspections to extrapolate "systemic" inadequacies in the FBI's Evidence Program, regardless of the circumstance or materiality. The FBI also emphasized that maintaining appropriate physical safeguards and accountability is an ongoing process as new policies and procedures are continually implemented and new employees are continuously introduced to evidence procedures. However, the FBI's internal inspections are cited throughout our report to supplement our own findings and illustrate that they may be indicative of more systemic concerns. As such, and considering the continuous influx of new policies, procedures, and personnel, the need for reinforcement of adherence to the existing FBI policies listed in our recommendation is valid.

Further, the FBI stated that it does not concur with our recommendation to review existing policy to determine whether current procedures for verifying evidence information entered into the ACS system are adequate, or if the policy should be modified to enhance the FBI's ability to detect and prevent data entry errors. Based on the inaccuracies we found in the ACS system, combined with similar results identified during several of the FBI's own internal inspections, a review of existing policies and procedures concerning verifying information entered into the ACS system is justified.

Background

The FBI is the principal investigative arm of the United States Department of Justice. Title 28, United States Code, Section 533, which authorizes the Attorney General to appoint officials to detect crimes against the United States, and other federal statutes, gives the FBI the authority and

responsibility to investigate specific crimes. Currently, the FBI has investigative jurisdiction over more than 200 categories of federal crimes and will conduct an investigation if a possible violation of federal law under its jurisdiction has occurred. The FBI presents the information and evidence gathered in the course of its investigation to the appropriate U.S. Attorney or Department of Justice official who determines whether or not prosecution or further action is warranted. Prosecution is the responsibility of federal prosecutors employed by the U.S. Attorney's Offices or the Department of Justice.

The FBI is a field-oriented organization in which nine divisions and four offices at FBI headquarters in Washington, D.C., provide program direction and support services to field offices located in 56 major cities.⁴ The field office locations were selected based on crime trends, the need for regional geographic centralization, and the need to efficiently manage resources.⁵ Each field office is normally overseen by a special agent in charge (SAC), who is assisted by one or more assistant special agents in charge (ASAC), squad supervisors who are responsible for investigative work, and administrative officers who manage support operations including evidence control.

FBI field offices face significant challenges in controlling evidence where drugs and firearms are involved. Drug evidence can range from bulk seizures weighing hundreds of kilograms to residue on paraphernalia, such as clothing and pipes. Larger quantities of drugs typically have a substantial "street" value and, therefore, are inherently prone to theft. Regardless of quantity and form, drug evidence may change hands several times from seizure to disposition. For example, during a task force operation, local law enforcement personnel may give drug evidence to FBI agents, who then transfer it to FBI storage. This evidence will often be transferred to off-site testing facilities, such as those maintained by the Drug Enforcement Administration (DEA). After analysis, the testing facility will return the evidence to the FBI. Also, field office personnel destroy drugs that are no

⁴Fifty-five field offices are in the United States and one is in Puerto Rico.

⁵FBI field offices conduct their official business both directly from their headquarters facilities and through approximately 400 satellite offices, known as resident agencies. Resident agencies are located based on similar criteria as that used for field offices.

longer needed for prosecution.⁶ Drug disposal involves transporting the drugs from FBI storage facilities to off-site destruction areas for incineration.

Firearms seized by FBI agents during the course of their investigations can vary considerably. While some seizures may involve a single handgun, others may result in the confiscation of multiple weapons including shotguns, rifles, and automatic pistols. Similar to drugs, firearms involve an inherent risk of theft, misuse, and loss because they have market value and may change hands several times from seizure to disposition. They may be seized during joint operations with other law enforcement agencies, transferred to FBI storage, and subsequently sent to the FBI's Laboratory Division in Washington, D.C., or to local law enforcement facilities for forensic examinations. In addition, in cases in which the (1) firearms were confiscated from individuals who are convicted of felonies and (2) federal prosecutors are able to prove that the firearms were used to commit crimes, the FBI will typically send the firearms to their Laboratory Division to be destroyed. However, unlike illegal drugs, under certain circumstances seized firearms must be returned to their owners. For example, if the firearm was stolen from a legitimate owner or if it is the property of a suspect who is acquitted and will not waive ownership rights, attempts must be made to return the firearm to the owner or deliver it to a designated representative.⁷

Policies to help ensure that drugs and firearms are properly safeguarded and accounted for while in FBI custody are developed primarily by FBI headquarters personnel. Each field office is responsible for implementing the policies and supplementing them when the SAC determines that it is necessary. Such policies include the establishment and maintenance of evidence control rooms for the storage of evidence and chain of custody documents, which are used to show who has custody of specific evidence from the time it is acquired by the FBI until it is disposed. In addition, FBI field offices employ an evidence program manager and evidence control technicians who accept evidence from agents and are responsible for

⁶For bulk drug seizures, a certain amount of the drugs is retained and stored as evidence pending conclusion of trials and appeals, while most of the drugs may be destroyed in accordance with FBI policy.

⁷Return of the firearm to the owner, or delivery to a designated representative, can take place only if the party receiving the firearm may legally own a firearm and ownership of such type of firearm is not prohibited by law.

helping to ensure that the evidence is properly secured, protected, and recorded while it is in the FBI's custody.⁸

As an added control over field operations, each field office is supposed to receive an internal inspection every 3 years. These inspections are coordinated by the FBI's Inspection Division and include a comprehensive review of all field operations, including those pertaining to safeguarding and accounting for drug and firearm evidence. Internal inspections are performed by teams which include experienced evidence control personnel from other field offices who are knowledgeable about policies and procedures related to seizure, storage, and disposition of drug and firearm evidence. Each inspection typically involves a 100 percent inventory of drug evidence. According to the FBI's Chief Inspector, once an inspection is completed, significant findings are communicated to the field office SAC by an electronic communication, which contains the details of the findings and recommendations to correct noted deficiencies. Field offices are required to respond to all findings within 30 days. The response consists of the field office's written plan, or actions taken, to correct the deficiencies identified by the inspection team. Inspection team leaders review the field office responses for adequacy; however, typically no additional review or specific testing is performed by the inspection team until the next inspection.

Certain Physical Safeguards Need Improvement

Physical safeguards, which include adequate storage facilities and procedures, are needed to reduce the risk of theft, misuse, or loss of drug and firearm evidence and help ensure that such evidence is not compromised for federal prosecution purposes. In addition, physical safeguards can promote a safe working environment for FBI personnel. The four FBI field offices included in our review have physical safeguards in place that, if operated effectively, would help control access to and use of drug and firearm evidence. However, we identified storage problems involving drug evidence at one field office that increase the potential for theft, misuse, and loss of evidence. At another field office, we noted that the drug vault did not have adequate ventilation for odor control and the health and safety of evidence control personnel. We also identified several firearms involving the four field offices we reviewed that had not been certified as rendered safe in accordance with FBI policy. In addition, the

⁸According to an FBI official, all FBI employees are drug tested before they are hired and are subject to additional random drug testing during employment at the FBI.

most recent internal inspections for certain field offices identified similar findings involving the improper storage of drug evidence, inadequate ventilation in the drug vaults, and the lack of documentation certifying that firearms were rendered safe, as well as weaknesses in certain physical access controls.

Physical Safeguards

Evidence control rooms at each of the four FBI field offices we visited met key requirements set forth in FBI policy. In accordance with policy, evidence was kept in designated evidence control rooms used solely for the storage of seized, recovered, or contributed property.⁹ Doors to the evidence control rooms used to store general evidence, such as firearms, were secured with a combination lock, keypad access control device, or similar locking system. As required by FBI policy, drug evidence was stored in a separate evidence control room, or drug vault, which was also equipped with motion detectors and secured with a dual-entry locking system. According to evidence control or security personnel at each of the four field offices, the doors to the evidence control rooms and drug vaults are equipped with security alarms.

In addition, we observed various security devices, including cameras, motion detectors, and door alarms, which according to FBI personnel at the field offices, are operational and monitored by field office personnel 24 hours a day. Officials at each of the four field offices also stated that the alarms are routinely tested. However, due to the sensitive nature of the evidence, we did not perform any comprehensive tests to verify the operation of any of the security devices mentioned above because we did not want to risk compromising any of the evidence that may be needed for prosecution purposes.

FBI policy also requires restricted access to drug and general evidence control rooms to ensure that evidentiary property can withstand defense challenges concerning custody of the evidence. As required by the policy, we observed at each of the four field offices we visited that two FBI employees were needed to access the drug vault. Each field office we visited limited the number of personnel who had access to the drug vault and the general evidence control rooms, and we observed that the doors to

⁹FBI agents can collect evidence in various ways; for example, it can be seized from a suspected criminal, recovered from an abandoned crime scene, or contributed by a cooperating law enforcement agency.

these areas remained locked unless a specific need for entry arose. Further, in accordance with FBI policy, each of the four field offices maintained access logs for their drug vault and their general evidence control room and required every person entering and exiting the secured areas to sign the log, including their name, reason for entry, and the date and time of entry and exit.

Twenty-four of the 44 FBI field office internal inspection results we reviewed—including those for the Dallas and New York Field Offices—documented one or more physical safeguard concerns. For example, eight of the inspections for field offices not selected for our review found that evidence control rooms, either at the field office or an associated resident agency, did not have either a bureau-approved intrusion detection system, motion detector, or alarm. Seven of the inspections for field offices not selected for our review identified evidence control rooms or temporary storage areas with inadequate locking systems, such as no keyless entry or no dual locking system as required by FBI policy.

In addition, seven inspections, which included the Dallas and New York Field Offices, cited instances involving (1) improper access to evidence control rooms by FBI personnel, such as an unauthorized employee accessing the evidence control room unaccompanied by the evidence control technician, or (2) an evidence control technician having sole access to the drug and valuable evidence control room. At seven field offices not selected for our review, inspection teams also determined access logs were either not used or were not being properly completed by persons entering the evidence control rooms. For example, some entries did not include the reason for access, the date and time of entry, or the signatures of all persons accessing the area. Other physical safeguard concerns listed in one or more of the inspections included (1) congested conditions in storage areas and (2) an inadequate number of vault witnessing officials.

Storage of Drugs and Firearms

Overcrowded and cluttered evidence control rooms, and unsealed and damaged evidence packaging, increase the risk of theft, misuse, and loss of evidence and the risk that critical drug evidence can be compromised and subject to challenges by the defense. At the New York Field Office, we found that the drug vault was overcrowded and contained numerous items that were not stored in an orderly manner, and we observed drug items that were inadequately sealed or were kept in damaged packaging. In addition, FBI policy states that some drugs, including marijuana and cocaine, are highly odoriferous and require more than normal ventilation for odor

control and for health and safety reasons. At the Dallas Field Office, we noticed a strong odor emanating from the drug vault and were told by evidence control personnel that the drug vault did not have exterior ventilation as required by FBI policy. Also, at each of the four field offices we reviewed, we identified firearms that had not been certified as rendered safe in accordance with FBI policy. Firearms that are not rendered safe prior to storage can create unsafe conditions for FBI personnel as well as for others who may require access to the evidence.

At the New York Field Office, we observed that shelves in the storage area were overcrowded and drug evidence was stacked on the floor to an extent that made it difficult for evidence control personnel to walk through the room and readily retrieve items we selected for review. Further, the temporary storage bin for the night depository, which dropped directly into the drug vault, included a large pile of drug items that had not been moved and stored in an orderly manner on shelves within the vault. In addition, a drug evidence bag was leaking and some drug evidence was stored in crushed and open boxes. We also observed a bulk seizure comprised of approximately 50 kilograms of cocaine that had not been packaged and sealed in accordance with FBI policy. Although seized over 11 months prior to our visit, the drug evidence was stored in two large seed bags in the same state as it had been acquired—50 bricks of cocaine individually wrapped with brown tape or duct tape. Following our observation, evidence control personnel notified the case agent who scheduled a date to enter the vault and seal the evidence. According to the Evidence Program Manager, the evidence was sealed on March 11, 1999.

In addition, evidence control personnel stated that the night depository, which we observed, contained drug evidence held for periods ranging from about 2 weeks to over 2 months. Because FBI agents frequently make drug seizures outside normal business operating hours, FBI policy allows field offices to maintain night depositories. However, the policy requires the contents from the night depositories to be removed at the beginning of each workday by an evidence control technician, accompanied by the vault witnessing official, and drug evidence is to be properly stored in the drug vault. According to the Evidence Program Manager, although the New York Field Office has over 1,000 agents, it had only 2 designated vault witnessing officials at the time of our review. Because such a limited number of personnel had authorization to participate in opening and entering the vault, it was difficult to promptly transfer drugs from the night depository to a proper storage location within the vault.

Twenty-seven of the 44 FBI field office internal inspection results we reviewed—including those for the New York Field Office—identified drug items (or drug and valuable items)¹⁰ that had not been properly sealed, wrapped, labeled, or stored. For example, two of these inspections, for offices not involved in our review, specifically noted instances of damaged or open storage boxes that allowed access to drugs. In addition, at one field office not selected for our review, the inspection results state that a review of 19 drug and valuable items determined a 100 percent noncompliance of proper handling and sealing, and the inspection team at this office found that drugs and valuables, as well as items of general evidence were commingled and improperly stored. Further, the most recent internal inspection of the New York Field Office, which was completed on January 29, 1999, found that the physical condition and organization of the field office’s drug vault were inadequate.

According to the results of the New York Field Office internal inspection, the poor condition of the drug vault made it difficult to conduct the inventory audit or to locate evidence.¹¹ Similar to our observations, the inspection noted specific instances in which either the evidence was improperly sealed or evidence boxes appeared to have been broken open from the weight of other stacked evidence boxes. In addition, the inspection identified a grate, located about 1 foot off the ground that reportedly could easily be pried open and allow for direct entry into the vault. According to the inspection results, the drug vault should be reorganized and, as appropriate, old items destroyed to make room for new evidence. The inspection results also stated that the grate should be secured to avoid unauthorized entry.

¹⁰While some inspection teams report on drug and valuable evidence separately, other inspections combine the results of drug and valuable evidence reviews.

¹¹According to the results of the New York Field Office inspection, the inspection auditors discontinued efforts to complete a 100 percent physical inventory due to time constraints. At the time of discontinuance, 79 of 1,625 drug items could not be physically located or otherwise accounted for by evidence control personnel.

According to the New York Field Office's Administrative SAC and the Evidence Program Manager, responsibility for the maintenance, recordkeeping, and storage of drug evidence was transferred to New York's Administrative Division only about 1 month prior to our November 1998 visit.¹² These officials reported that subsequent to the January 1999 inspection, the drug vault has been relocated and any physical conditions or concerns that were issues have been alleviated by the move. In addition, according to these officials, numerous drug items have been resealed and documented for proper storage according to policy, and evidence control technicians in the New York Field Office will not accept any evidence into storage that is not properly sealed or documented.

In addition to the drug storage concerns discussed above, FBI policy requires that field office drug vaults which are used exclusively for drug and/or valuable evidence, have exterior ventilation for both the storage of such odoriferous substances and for the health and safety of evidence control personnel. At the Dallas Field Office, we were told by evidence control personnel that the drug vault did not have exterior ventilation as required by FBI policy. Four of the 44 internal inspection results we reviewed, which include the New York Field Office, also reported that these offices did not have adequate exterior ventilation in their drug vaults, and inspection teams instructed these four field offices to take steps to ensure such ventilation is established.

Regarding firearm evidence, FBI policy states that firearms are not to be accepted by evidence control personnel for storage until they have been examined by a field office firearms instructor and rendered safe. The policy requires the firearms instructor to sign and date the certification on the lower left-hand corner of a chain of custody document, designating that such examination has been performed.¹³

¹²According to the January 1999 internal inspection results, control and custody of the Drug Evidence Program was transferred from the Drug Branch of the Criminal Division to the Evidence Control Unit of the Administrative Division effective October 5, 1998.

¹³Although specific procedures for rendering a firearm safe are not described in the policies we were provided, according to the FBI Evidence Program Manager, the procedures used by FBI agents in rendering a weapon safe include inspecting firearms each time they are handled to ensure they are safe and unloaded.

In our sample of 113 firearms acquired by the four selected FBI field offices, we found 3 firearms in storage that lacked documentation certifying that the weapon had been rendered safe.¹⁴ We also identified four other firearms that were certified as rendered safe; however, the certifications for these firearms were dated between 1 and 39 days after the date they had been accepted for storage by evidence control personnel. In addition, we found 11 firearms that had been certified as rendered safe, but the certifications were not dated as required by policy.

Similarly, 11 of the 44 FBI field office internal inspection results we reviewed—including that for the New York Field Office—reported a lack of certification that the firearms were rendered safe. For example, inspection results for three field offices not selected for our review identified the following: At one field office, there was no documentation certifying that firearms had been rendered safe for 70 percent of the items tested by the inspection team; at a second field office, about 40 percent of the items reviewed lacked certifications that firearms had been rendered safe; and at a third field office, the inspection team found no certifications for any of the reviewed firearms stored in the evidence control room.

Accountability Over Drug and Firearm Evidence Needs Strengthening

Written policies covering documentation, record maintenance, and independent verification requirements are essential for maintaining adequate accountability for drug and firearm evidence. Such procedures lower the risk of theft, misuse, and loss of evidence, and the risk that evidence can be compromised for prosecution purposes while in FBI custody. According to FBI policy, the intrinsic value of drug evidence requires the establishment of strict, documented accountability. FBI policy requires drug and firearm evidence to be tracked from acquisition to disposition with documents including chain of custody forms, Charge-Out Reports, and disposition memoranda. The policy also requires drug and firearm evidence to be entered within established time frames into the FBI's ACS system.

¹⁴We also identified two firearms in storage at resident agencies that, according to the case agents who had custody of the firearms, had not been certified as rendered safe by a firearms instructor. According to the FBI Evidence Program Manager, firearms not submitted for storage are not required to be certified as rendered safe by a firearms instructor. However, according to this official, FBI agents are knowledgeable in the handling of weapons and, after acquiring a firearm, will remove the ammunition thereby rendering the weapon safe.

We identified incomplete or missing documentation for the custody and disposition of specific items selected for testing. In addition, certain field offices did not generate and reconcile reports—in accordance with FBI policy—that identify agents who maintain custody of drug and firearm evidence. We also found that FBI personnel did not always document the reason for late data entry of drug and firearm evidence into the ACS system, and we identified discrepancies between information recorded in the ACS system and the information found on written documents associated with the evidence. Recent internal inspections for certain field offices noted similar deficiencies. Further, we found that the FBI had no written policies or procedures to identify and address significant discrepancies between the actual weight of drug items at any time prior to destruction and the recorded weight of the items on attached evidence labels, which should reflect the current weight of the item including packaging.

However, at the four field offices we visited, evidence control personnel were able to locate each item selected for testing that was in storage during our review, and for items not in storage, they provided documentation supporting the current location or status of the items. For example, for drug items not in storage because they had been transferred to DEA for analysis, we were provided a copy of a DEA form showing signatures of FBI and DEA personnel confirming the laboratory's receipt of the evidence.

Chain of Custody Documentation

FBI policy requires its personnel to establish and maintain a chain of custody (a tracking document) for seized, recovered, and contributed drugs and firearms. This written chain of custody must include the signatures of the agent who initially seized or collected the drugs or firearms, the evidence control technician who placed the evidence in storage, and any other FBI personnel who assumed custody of the evidence for any purpose until the evidence is disposed of. It must also include the reason for the transfer of custody and the time and date of any custody change. In addition, it is important for the written chain of custody to include either the barcode number or the case number and exhibit number for the specific item in order to conclusively relate the document to a particular piece of evidence. The proper maintenance of chain of custody documents is a key internal control over seized drugs and firearms because custody of such evidence can change several times from seizure to disposition, and the document must be able to withstand defense challenges during judicial proceedings.

During our review, we identified various deficiencies in chain of custody documentation at the four field offices we visited. Specifically, of the 50 drug items reviewed at the New York Field Office, evidence control personnel were not able to provide a written chain of custody form for one drug item tested; and for three other drug items, the written chain of custody provided had neither a barcode nor a case number and exhibit number to conclusively relate it to a particular piece of evidence. In addition, of the total of 159 drug items reviewed at the four field offices, we identified six cases for which either the time or date of a custody change, or the reason for the change, was omitted from the written chain of custody. And for two other drug items, although we observed the evidence in the vault, the evidence control technician did not sign the written chain of custody when the evidence was accepted for storage.

Similarly, of the 24 firearm items reviewed at the Dallas Field Office, the written chain of custody form for two of the items had neither a barcode nor a case number and exhibit number to conclusively relate it to a particular piece of evidence. In addition, one of the 36 firearm items reviewed in New York did not have a reason for transfer of the evidence recorded on the written chain of custody.

Moreover, the chain of custody did not always adequately reflect the current status or location of the drug evidence. In the San Diego Field Office, we verified that 10 of the 23 drug items we reviewed involved drugs that were taken directly to the DEA laboratory for analysis rather than initially stored. Although transporting drug evidence for analysis prior to storage is an acceptable procedure, FBI policy requires the chain of custody to disclose that the evidence has been forwarded to the DEA laboratory. However, the chain of custody forms for 9 of these 10 cases did not show the item had been forwarded to the DEA laboratory. FBI officials at the San Diego Field Office acknowledged that the chain of custody should reflect evidence transported to DEA or picked up from DEA, and they stated that they would ensure this would be done in the future.

Thirteen of the 44 FBI field office internal inspection results we reviewed, which include the New York Field Office, identified deficiencies in the chain of custody. For example, the inspection team at the New York Field Office cited failure to properly document the chain of custody for 609, or over 44 percent, of the 1,377 drug items examined. In addition, other inspection results for three offices not involved in our review cited deficiencies found on chain of custody forms, including (1) 17 percent of drug and valuable items reviewed at one field office did not have

signatures, (2) forms for about 5 percent of drug and valuable items examined at another field office were incomplete, and (3) at a third field office, the final disposition was not recorded for 68 disposed drug and valuable items.

Reconciliation of Charge-Out Reports

FBI policy requires evidence control personnel to generate and reconcile Charge-Out Reports that identify agents who have had custody of drug or firearm evidence for more than 60 days. According to FBI policy, evidence may be charged out to FBI employees who have an official need. For example, a case agent may charge-out an item that is needed by the Assistant U.S. Attorney (AUSA) for trial. Even though the agent forwards the evidence to the AUSA, the chain of custody will continue to reflect that the agent has custody of the evidence. The Charge-Out Report procedure requires FBI personnel to routinely verify the location of evidence, thus ensuring appropriate custody and allowing for periodic review of the need to hold evidence or return it to storage. According to FBI policy, the reports must be run every week or every 2 weeks depending on the size of the field office. They must be distributed to supervisory officials, who in turn, forward them to the person who currently has custody of the evidence so that person can determine whether the evidence needs to remain in their custody or be returned to storage. The results of this reporting process, either the return to storage or the recharging-out of the evidence, must be recorded in the ACS system by the evidence control technician.

Based on inquiries of FBI personnel at each of the four field offices included in our review, during the 1997-1998 time frame, only the Miami Field Office typically generated the reports every 2 weeks as required. According to a Miami official, the reports are still run every 2 weeks and are routed to the appropriate supervisor and agent. Because Miami is a large office, it generally takes approximately 30 days to distribute the report and follow up on its return. According to the official, each time the report is sent out, a deadline is set for its return to the evidence control personnel.

According to an Intelligence Research Specialist who had been responsible for evidence at the New York Field Office, Charge-Out Reports were not routinely prepared and distributed because this was an extremely large task in New York due to the magnitude of evidence in custody. The official stated that it was very difficult and time consuming to reconcile the Charge-Out Report because the report was not a priority with many agents whose responses are necessary to complete the reconciliation. However,

according to the New York Field Office's Administrative SAC and the Evidence Program Manager, since the Administrative Division has taken responsibility for drug evidence, evidence control technicians have reinstated the dissemination of the Charge-Out Report in accordance with FBI policy.

An official at the Dallas Field Office stated that during the 1997-1998 time frame, the Charge-Out Reports were prepared every 60 days. However, currently, the reports are run every 2 weeks as required by policy, and it takes approximately 2 to 3 weeks to receive the report back from the agents and reconcile it. Finally, the evidence control technician at the San Diego Field Office stated that, as in the past, Charge-Out Reports are currently prepared once a month, and a 2-week deadline is set for reconciling the report.

Ten of the 44 FBI field office internal inspection results we reviewed, which include the New York Field Office, cited problems related to Charge-Out Reports. For example, the inspection team at an office not selected for our review identified a failure to send charge-out reminders and to recharge out evidence kept at one of the office's storage facilities. According to the inspection team, Charge-Out Reports for this facility had not been run for about a year and a half, and items had not been recharged out to the appropriate agents, which is necessary to maintain accountability for the items in the ACS system. At two other offices not selected for our review, inspection teams identified numerous items that had not been appropriately recharged out during the inspection period.

Documentation for Bulk Drug Seizures

FBI policy requires that written notification of a bulk drug seizure be sent to the U.S. Attorney with a copy directed to the AUSA no later than 5 workdays after the seizure, and the letter should provide the date after which the bulk of the evidence may be destroyed.¹⁵ The policy also requires FBI personnel to witness and certify the destruction of all drugs. Further, to facilitate accountability for drugs from seizure to disposition, the FBI requires that all drug evidence be labeled, and that bulk seizures be photographed in accordance with FBI policy. According to the policy

¹⁵The letter also informs the U.S. Attorney that a written request for an exception to the destruction process must be submitted to the SAC. If no request for an exception to the destruction is received, the bulk of the drug evidence may be disposed without further contact with the U. S. Attorney.

related to handling bulk seizures, the drugs must be photographed, and each photograph must display the case file number; names of the seizing agents; date, time, and place of seizure; the estimated weight of the total seizure; and the exhibit number of the seizure. In addition, a yardstick, ruler, or other measuring device must be positioned in each photograph to provide a true scale to the bulk seizure. These requirements, including initially establishing the date after which the bulk of the evidence can be destroyed, completing documents that certify the destruction of bulk drug evidence, and appropriately labeling and photographing such evidence, are valuable tools for promoting timely destruction of bulk evidence, safeguarding the evidence against the risk of loss or misuse, and ensuring adequate documentation of the type and volume of evidence for use by federal prosecutors.

We noted inadequate documentation for certain bulk drug seizures at two of the four selected field offices we visited.¹⁶ We identified two bulk seizures of cocaine that were made by FBI agents in the New York Field Office for which critical documentation related to disposition and destruction was missing.¹⁷ In one case, FBI records indicated that approximately 450 kilograms of cocaine were seized on November 25, 1997. In another case, the records indicated that about 320 kilograms of cocaine were seized on December 17, 1997. Although FBI policy requires that written notification of the seizures be sent to the U.S. Attorney within 5 workdays of the seizure, documenting the date after which the bulk of the evidence may be destroyed, notification letters for these bulk seizures were prepared only after we had brought this issue to the attention of FBI personnel, which was about a year after the seizures.

In addition, although the FBI obtained written approval from the AUSA to destroy these drugs prior to their disposal, there was no documentary evidence supporting the destruction of either bulk seizure, which according to FBI policy must include the witnessing of the destruction by FBI officials. According to written chain of custody documents, most of the

¹⁶Due to data entry procedures for recording evidence in the FBI's ACS system which provided our universe of items for sampling, 19 of the 50 drug items randomly selected for our review in New York involved different parts of 4 bulk drug seizures; and 8 of the 46 drug items randomly selected for our review in Miami involved different parts of 5 bulk seizures. In Dallas, our review included 2 bulk seizures, representing 2 of the 40 drug items reviewed; and in San Diego, none of the 23 drug items reviewed involved a bulk drug seizure.

¹⁷Seventeen of the 50 drug items randomly selected for our review in New York involved different parts of these two bulk drug seizures.

450 kilograms of cocaine was destroyed on December 19, 1997, and most of the 320 kilograms of cocaine was destroyed on April 21, 1998. In response to our inquiries regarding the missing documentation, FBI personnel prepared documents dated November 24, 1998, which described the circumstances of each destruction, including how, when, and where the destruction took place; persons witnessing the destruction; and which items were destroyed and which were retained as evidence. The documents, however, were not signed or initialed by any of the persons listed as having witnessed the destruction.

As discussed earlier in this report, we observed a bulk seizure of approximately 50 kilograms of cocaine in the New York Field Office that had not been packaged or sealed in accordance with FBI policy. This bulk seizure also did not have evidence labels containing signatures of the sealing and witnessing agents. Similar to the above cases, prior to our visit, there was no documentation that the U.S. Attorney had been notified in writing about the bulk seizure. Likewise, although FBI policy requires written notification of a bulk drug seizure be sent to the U.S. Attorney within 5 workdays of the seizure, for the five bulk seizures involving drug items selected for our review at the Miami Field Office, this written notification was sent to the U.S. Attorney after the time specified by policy for three of these seizures (21, 26, and 89 days, respectively), and notification letters for the other two seizures were not prepared or were not provided.

Further, for each of the four bulk seizures that contained drug items we reviewed in the New York Field Office, photographs of the evidence did not comply with FBI policy. Specifically, none of the photographs we were provided showed the (1) names of the seizing agents, (2) date, time, and place of seizure, and (3) estimated weight of the total seizure. Also, none of the photographs contained a measuring device to show a true scale of the evidence.

Internal inspection results provided by the FBI indicate similar problems have been identified at other field offices. For example, the inspection team at a field office not selected for our review reported that the documentation prepared for two drug destructions provided neither any description of the items destroyed, nor the initials of the persons who participated in the destruction. An internal inspection for another field office not selected for our review found that one exhibit consisting of 30 boxes, that had been entered into evidence in 1991, had no "identifying labels" on the boxes. In addition, the inspection results for another field office not included in our

review revealed that no bulk seizures held in evidence storage at the time of the inspection, which included about 250 kilograms of cocaine, had been photographed as required by FBI policy.

Data Entry of Drug and Firearm Evidence

Timely data entry and data verification are key control procedures that help ensure that data records are complete and accurate. FBI policy requires agents to submit documentation related to seized drugs and firearms to evidence control personnel for entry into the ACS system within 10 calendar days of seizure.¹⁸ Evidence control personnel have an additional 10 calendar days to actually enter the information into the system. In some field offices, agent personnel directly enter their own evidence into the ACS system. In such instances, FBI policy provides that the agent has 10 calendar days from the date the property is acquired to enter the information into the ACS system and send appropriate documentation to evidence control personnel. According to the policy, agents or evidence control personnel must prepare memoranda explaining the circumstances surrounding late submissions or entries, respectively, and copies of these documents must be maintained in the evidence control room.

We identified a total of 13 out of 229 drug or firearm items we reviewed at the New York, Dallas, and Miami Field Offices where evidence control personnel or agents entered evidence in the ACS system late without the required explanatory memoranda. Nine of these items were drug exhibits at the New York Field Office, which were left in the night depository for more than 10 days without being entered into the ACS system. Four of these nine items were not properly entered into the ACS system for over 2 months subsequent to the date they were acquired. The other four items entered late into the ACS system without the required memoranda explaining the late data entry involved firearm evidence that was not submitted for storage by the agent. For each of these four items, the initial data entry into the ACS system occurred over 40 days after the items were acquired.

Twelve of the 44 FBI field office internal inspection results we reviewed showed similar problems involving delinquent submission of evidence or

¹⁸When an acquiring agent maintains the evidence rather than submitting it for storage, the agent may submit a data loading form (draft FD-192) to communicate to the evidence control technician the information that is to be entered into the ACS system.

late data entry and failure to submit the required explanatory memoranda. At one field office not selected for our review, the inspection team determined that 77 percent of the drug items reviewed were submitted and/or processed after 10 days, and the required memoranda documenting the delinquent submission and/or processing was not found in the respective files. The inspection teams for New York and eight other field offices not selected for our review reported late submission of evidence, ranging from 6 drug and valuable items submitted late at one field office to 174 drug items submitted late at another office. Inspection teams for Dallas and one other field office not selected for our review reported that personnel failed to submit the required memoranda explaining the circumstances for late data entry of drug and valuable items into the ACS system. According to these inspection results, about 6 percent of the evidence examined at the Dallas office, and about 5 percent of the evidence examined at the other field office, was entered past the 10-day limit without the required memoranda explaining the late entries.

We also noted in performing our work at the four selected field offices that the FBI has procedures to verify information regarding evidence as it is initially recorded into the ACS system. Specifically, according to FBI policy, after entering evidence items into the ACS system, a copy of the automated record is submitted to the supervisory special agent, primary relief supervisor, ASAC, or SAC for initialing, and is then filed in the investigative case file. A Dallas Field Office official reported that, at this point, the case agent's supervisor is checking the printed copy for accuracy. In addition, according to the Dallas official, not only are the entries in the ACS system verified, but the manual system of storing evidence is also reviewed by periodic inventories and audits as well as by internal inspections performed by FBI headquarters about every 3 years. Further, according to a Miami official, verification of data input is done when evidence is entered into storage because the evidence control technician reviews all of the data entered into the ACS system and compares it to the physical evidence prior to placing the evidence into storage. Any errors noted at that time are modified by the evidence control technician.

Although the FBI has these procedures for verifying data input, we identified 15 out of 229 drug or firearm items we reviewed at the Dallas, New York, and Miami Field Offices that involved discrepancies between information recorded in the ACS system and information on the written chain of custody or the evidence label, which is attached to the evidence item. These discrepancies involved the acquisition date of the evidence and the names of acquiring, sealing, or witnessing agents handling the evidence.

Various reasons were provided for these discrepancies, including that multiple agents had participated in the seizure and packaging of the evidence, and the information entered into the ACS system was an error. In addition, we noted one drug item at the San Diego Field Office was recorded in the ACS system in 1992 with a weight of 47.3 grams; however, the weight on the item's evidence label was 473 grams. According to the evidence control technician, this was a typing error that has been corrected in the ACS system.

Thirteen of the 44 FBI field office internal inspection results we reviewed, which include the New York Field Office, also documented instances of incorrect information in the ACS system. For example, similar to our findings, the inspection results for one field office not selected for our review listed multiple deficiencies. The deficiencies identified included (1) the names of the sealing and witnessing officials listed on the evidence label not corresponding to the names listed in the ACS system, and (2) the acquired date and name of the acquiring agent listed on the written chain of custody form not matching the date and name listed in the ACS system. In addition, at another field office not selected for our review, certain information on 48 percent of the chain of custody forms for drug and valuable items reviewed by the inspection team did not match information recorded in the ACS system. Further, the inspection results for two other field offices not selected for our review each noted one of the following deficiencies related to this area: (1) inaccurate disposition records in the ACS system reflecting destruction of evidence that was found in storage and (2) no record in the ACS system of final disposition for drugs and valuable items no longer in storage.

Accounting for Drug Quantities

Quantity is a key factor for describing and fully accounting for a drug item. Thus, it is important for the FBI's inventory records to clearly show the quantity of each item in storage or custody. In addition, established thresholds for weight discrepancies and systematic internal validations of drug amounts can help ensure that significant unexplained changes in the quantity of a drug item do not go undetected and unaddressed while in FBI custody. FBI policy recognizes the importance of documenting the amount of drugs seized. It requires that two agents be responsible for ensuring that all drug evidence is initially weighed using scales capable of weighing in gram increments, or counted, and recorded on evidence labels before the evidence is sealed and transmitted to a lab for analysis or placed in storage.¹⁹ However, we found that the FBI written policies we were provided had no procedures to identify and address significant discrepancies between the weight of items recorded on attached evidence labels, which should reflect the current weight of the item including packaging, and the actual weight of the drug item at any time prior to destruction.²⁰

¹⁹FBI requires drug evidence, except for certain bulk seizures, to be weighed when it is initially acquired and submitted as evidence, as well as each time it is removed, opened, and repackaged. DEA also weighs drug items sent by FBI for analysis. After DEA completes a drug analysis, the drugs are repackaged, sealed, and marked with a DEA gross weight after analysis. Both the FBI and the DEA weights are placed on the drug item's evidence label and should include the weight of the drug and packaging.

²⁰DEA has set 2 grams or 0.2 percent (whichever is greater) as a threshold for a significant weight variance for drugs in its custody.

Federal financial accounting standards and related supplemental guidance have highlighted the importance of accurately accounting for nonvalued seized and forfeited property, including seized drugs. Specifically, the Statement of Federal Financial Accounting Standard (SFFAS) No. 3, *Accounting for Inventory and Related Property*, issued in October 1993, requires the disclosure of all material forfeited property, including those items with no financial value. One such disclosure is an analysis of changes in seized property, that would include the amount of seized property, including drugs, (1) on hand at the beginning of the year, (2) acquired during the year, (3) disposed of during the year, and (4) on hand at the end of the year.²¹

Recently issued supplemental guidance for SFFAS No. 3 states that amounts for certain drugs, including cocaine and heroin, should be based on weight.²² For example, the standard unit of measurement for such illegal drugs should be kilograms. In addition, according to the guidance, material amounts of other seized drugs should be separately reported by liquid weight, dry weight, number of tablets, or other appropriate measures.

²¹The Joint Financial Management Improvement Program (JFMIP) has recently issued an exposure draft, *Seized Property and Forfeited Assets Systems Requirements* (JFMIP-SR-99-7, June 1999), that covers systems requirements for seized property and forfeited assets. According to the exposure draft, a system component that covers the custody of seized and forfeited property must have the capability to provide information to allow the independent verification that each item of seized property is in the physical or constructive custody of the government and that the recorded quantity is accurate.

²²*Reporting on Non-Valued Seized and Forfeited Property, Federal Financial Accounting and Auditing Technical Release Number 4*, July 31, 1999, issued by the Accounting and Auditing Policy Committee (AAPC), which is a permanent committee sponsored by the Federal Accounting Standards Advisory Board (FASAB).

Ninety of the 140 drug items we reviewed for weight variances at the four selected field offices had differences between weights recorded on evidence labels and weights we observed when the items were reweighed by evidence control personnel.²³ The variances we observed ranged from about 1 gram to 269 grams for the 24 items that were lighter when reweighed, and ranged from about 1 gram to 3.9 kilograms for the 66 items that were heavier. Although many of the variances involved only several grams, we identified at least one item in each field office where the observed weight was substantially less than the recorded weight.²⁴ For example, the weight recorded by DEA on the evidence label for seized heroin, which was in the custody of the Miami Field Office, was 541.8 grams. However, the weight we observed was 273 grams, a shortage of close to 50 percent from the DEA-recorded weight. While field office personnel attributed this weight discrepancy to weight approximations and packaging material, it did not appear that any packaging had been added or taken away after DEA sealed the drug item, listed the gross weight after analysis on the label, and returned it to the Miami Field Office.

FBI personnel experienced difficulty in attempting to explain weight discrepancies for certain drug items we reviewed. For such items, a single obvious cause of the weight variance was not evident, but multiple factors that could influence the weight of an item were cited to explain the difference. For example, the explanation for an observed shortage of about 13 grams of one drug item in the Miami Field Office included (1) the agent inadvertently recorded the weight in error, (2) scales used by the agent may not have been properly calibrated, and (3) the observed weight did not include the packaging. While we could not validate or determine the extent agent error or scale calibration affected the shortage, all of the items we observed being weighed included packaging.

²³Fourteen of the 140 drug items we observed being weighed did not have a weight recorded on the item's evidence label. Therefore, we could not determine whether there was a weight variance between the observed weight and the recorded weight on the label for these 14 items.

²⁴For each of these items, the observed shortage was over 50 grams, and these discrepancies ranged from about 3 percent to about 50 percent of the recorded weight.

Regarding packaging material, FBI policy requires drugs, along with the original container, to be initially weighed after being placed in a plastic evidence pouch. However, evidence control personnel stated that, in many instances, this may not have been done. Rather, according to these personnel, in such instances, the evidence was initially weighed without the evidence pouch.²⁵ Although there were cases where it appeared that the weight discrepancy could have been caused by the weight of packaging material, there were other cases for which all of the discrepancy could not be explained by the weight of such material. In such cases, scale calibration and/or dehydration or deterioration of the drug was often cited as a partial explanation of the weight variance.

As mentioned earlier, many of the weight variances we identified involved only several grams and these differences were often attributed by FBI officials to scale calibration. FBI field office officials acknowledged that the FBI does not have a policy regarding the calibration of scales, and according to these officials, scales used to weigh drug evidence are not frequently calibrated.²⁶

²⁵Evidence pouches are of different sizes and weights but typically weigh about 22 grams.

²⁶DEA requires DEA field office management to ensure that scales used to weigh drugs are calibrated at least annually.

In addition, one drug item at the Miami Field Office had an observed weight of 3.9 kilograms more than the FBI-recorded weight on the box.²⁷ According to the description of the evidence, this item involved approximately 11 kilograms of cocaine; however, the observed weight of the box including the evidence was 14.9 kilograms. A Miami FBI official told us that agents often record the amount of bulk drugs as the number of kilo-sized bricks. By counting bricks rather than weighing the evidence, the weight recorded is an estimate, that does not include the weight of packaging materials, such as the wrappings on the individual bricks of the drug and the box and tape used to seal the evidence.²⁸ When seized drugs are controlled based on estimated rather than actual weights, the FBI cannot be assured that the entire quantity of drugs has been placed under prescribed safeguards.

At the time of our review, FBI policy provided to us did not define a weight variance threshold covering drug items in FBI custody. FBI policy requires squad supervisors to prepare a memorandum of explanation when DEA reports a variance of 1 percent or more between the initial weight of a drug item submitted for testing by FBI personnel and the weight observed by DEA upon receipt. However, we noted that once drug evidence was packaged and the weight or amount was recorded on the evidence label, there was no additional FBI requirement to validate the item's weight subsequent to initial weighing and prior to destruction.

In addition, prior to our review, there was no requirement for the weight of a drug item to be recorded in the ACS system. However, as of November 1998, the ACS system was modified to include a mandatory data entry field to capture drug weight. According to the FBI Evidence Program Manager, the FBI had been developing this modification for about 9 months prior to its implementation. Further, according to other FBI personnel, no official policy for recording the weight of drug exhibits in the ACS system has been written yet; however, FBI field offices have been informally advised to

²⁷We did not observe a weight recorded on this drug item's evidence label.

²⁸FBI policy provides that bulk drug seizures, except those consisting of marijuana, must be packaged in boxes or cartons and each box should be marked with the number of packages it contains. According to the policy, entire bulk drug seizures, excluding marijuana, will be submitted to the DEA laboratory, which will determine the exact weight of the drugs. For bulk marijuana seizures, however, only a representative sample is submitted to the DEA laboratory for weighing and analysis. The policy states that it is imperative that precise weighing procedures are conducted and documented in bulk marijuana seizures because enhanced penalties and mandatory minimum sentencing guidelines are weight-based.

enter the weight in the new drug field while formal policies on this point are being completed.

Although the weight of drug items are now to be recorded in the ACS system when the item is initially entered as evidence, there are no procedures in place to systematically validate the weight of these items while they are in FBI custody. For example, there is no requirement to validate the weight of a drug item returned from DEA following analysis. Further, there is no written requirement to update the ACS system with the newly established DEA weight. In addition, drug evidence is not weighed as part of typical FBI inventory or internal inspection procedures. Consequently, although the weight of the drug item will be recorded in the ACS system, it may not represent the most current weight recorded on the item's evidence label, which reduces the FBI's accountability over such drug evidence.

Conclusion

The FBI has established numerous policies and procedures to control and safeguard drug and firearm evidence in its custody. However, based on our work at the four FBI field offices and results of the FBI's most recent internal inspections of its field offices, specific actions are needed to address concerns with certain physical safeguards over drugs and firearms and strengthen accountability over such evidence. Such actions will help reduce the potential for theft, misuse, or loss of drug and firearm evidence and, therefore, the risk of evidence being compromised for federal prosecution purposes while in FBI custody. Further, certain actions pertaining to providing adequate ventilation for drug vaults and certifying that firearms are rendered safe prior to storage will help ensure a safe and healthy environment for FBI personnel.

Recommendations

We recommend that the Attorney General require that the Director of the FBI take the appropriate steps to reinforce FBI field offices' adherence to existing FBI policies regarding

- handling and storage of drug evidence, including sealing drug items in accordance with FBI policy using appropriate labeling procedures and storing evidence in an orderly manner to avoid damage to stored items;
- adequate exterior ventilation being afforded to all drug vaults;

- rendering firearms safe, including having a firearms instructor sign and date the certification on the chain of custody prior to evidence control personnel accepting the firearm for storage;
- written chain of custody forms always including a barcode number or case number and exhibit number; a signature; and the date, time, and reason for custody transfer of evidence from one party to another;
- Charge-Out Reports being prepared and reconciled at intervals required by policy;
- field office personnel, in accordance with requirements set forth in policy, preparing and sending written notification of bulk drug seizures to the U.S. Attorney within 5 workdays of the seizure, preparing and maintaining documentary evidence supporting the destruction of drug evidence, and taking adequate photographs of bulk seizures;
- drug and firearm evidence being entered into the ACS system within established time frames or, for evidence entered after the time frame allowed by FBI policy, proper documentation explaining that the late data entry was completed by evidence control personnel or agents and was reviewed by appropriate supervisory officials; and
- field office personnel weighing seized drugs in accordance with FBI policy, with the weight to include the original container and any packaging material used to seal the evidence.

We also recommend that the Attorney General require that the Director of the FBI review actions taken by the New York Field Office to determine if such actions will adequately alleviate the overcrowded conditions in the drug vault; ensure that all drug items in storage are properly packaged, sealed, and labeled; and ensure that the contents of the night depository are routinely removed in accordance with FBI policy.

In addition, we recommend that the Attorney General require that the Director of the FBI review existing policy to determine whether current procedures for verifying evidence information entered into the ACS system are adequate, or if the policy should be modified to include additional procedures to enhance the FBI's ability to detect and prevent data entry errors.

Further, we recommend that the Attorney General require that the Director of the FBI modify existing FBI policy to include

- a requirement to weigh all seized drugs, including bulk seizures, on properly calibrated scales;

- guidance establishing thresholds for defining significant weight discrepancies of drug evidence;
- procedures for identifying and addressing such discrepancies; and
- guidance for updating records in the ACS system to reflect identified changes in the weight of drug evidence.

Agency Comments and Our Evaluation

In commenting on a draft of this report, the FBI stated that while the information contained in the draft was, for the most part, factually accurate, it did have some concerns about the report's conclusions and recommendations. The FBI also had concerns about the report's focus that are discussed in further detail in appendix II. Nevertheless, the FBI stated that it plans or has already taken actions relating to four of our key recommendations, namely, our recommendations to modify existing policy related to the weighing of drug evidence, and our recommendation to review actions taken by the New York Field Office to address various internal control deficiencies.

The FBI stated that our recommendations to modify existing policy related to the weighing of drug evidence were well-founded and discussed actions that will be taken. Specifically, agents will be required to check the recorded weight of all drug evidence retrieved from any laboratory to identify any significant weight discrepancies from the original weight, and that any discrepancies in weights that fall outside a normal expected range resulting from testing procedures will be investigated and the results documented in an investigative file. The FBI also concurred with our recommendation regarding the calibration of scales and stated that it is currently revising policy to require that all seized drugs, including bulk seizures, be weighed on properly calibrated scales. While the FBI neither concurred with or took exception to our recommendation to modify existing policy to include guidance for updating records in the ACS system to reflect identified changes in the weight of drug evidence, it is important to note that, at the time of our review, there was no written requirement to update the ACS system for any such changes. Consequently, the weight recorded in the ACS system may not represent the most current weight recorded on the item's evidence label, thus reducing the FBI's accountability over such drug evidence.

The FBI stated that it has already taken action regarding our recommendation to review steps performed by the New York Field Office to address various internal control deficiencies. On September 2, 1999, we provided our draft report, including recommendations, to the Department

of Justice for comment. According to the comments we received from the FBI, the New York Field Office's Evidence Program was reinspected in September 1999, and that inspection found that the New York Field Office had appropriately addressed the issues identified in the FBI's previous inspection. However, the FBI also stated that the inspectors issued additional instructions to the New York Field Office to further assist the office in ensuring full compliance with all evidence policies and procedures. We were not provided specifics as to the results of the September inspection; however, the FBI noted in its comments that the field office had relocated the drug control room to a larger facility, had resealed and repackaged every drug item, and addressed issues regarding the night depository, all of which were included in our recommendation.

The FBI disagreed with our recommendation concerning the need to reinforce adherence to certain existing FBI policies. The FBI stated that recordkeeping issues we identified which were also found during its own internal inspections do not, in the aggregate or otherwise, suggest inadequate accountability over drug evidence given the overlapping internal control procedures in place. The FBI also stated that it believes that we used the findings identified during its own internal inspections to extrapolate "systemic" inadequacies in the FBI's Evidence Program, regardless of the circumstance or materiality. The FBI emphasized that maintaining appropriate physical safeguards and ensuring accountability is an ongoing process as new policies and procedures are continually implemented and new employees are continuously introduced to evidence procedures.

We believe that our recommendation to reinforce FBI field offices' adherence to certain existing FBI policies is valid. As stated in our report, FBI policy requires the establishment of strict, documented accountability for drug evidence because of the intrinsic value of such evidence. Several of the issues discussed in this report, which we consider to be of a more severe nature, involved deficiencies in accountability controls for drug items at one or more of the locations we visited where we did not identify overlapping controls that compensated for the deficiencies. For example, during our review, we identified various deficiencies in required chain of custody documentation at the four field offices, including the omission of either the time or date of a custody change, the reason for the change, or the current location or status of the drug evidence. Strict documentation on the chain of custody is a key internal control over seized drugs and firearms because custody of such evidence can change several times from seizure to disposition and the document must be able to withstand defense challenges

during judicial proceedings. In another example, we found that only one of the four selected field offices had typically generated Charge-Out Reports every 2 weeks as required by policy. Charge-Out reporting is an important internal control procedure the FBI uses to routinely verify whether agents who have custody of specific drug or firearm evidence need to continue to hold the evidence or return it to storage. No overlapping control was evident to us at any of the four selected field offices that could routinely detect and/or prevent drug or firearm evidence from being inappropriately maintained outside FBI storage facilities.

Further, as stated in our report, 13 of 44, and 10 of 44 FBI field office internal inspection results we reviewed identified deficiencies in the chain of custody and problems related to Charge-Out Reports, respectively. Consequently, such deficiencies and problems are not isolated concerns involving only a few field offices. The above noted findings along with the fact that FBI, as stated in its comments to our report, is continuously implementing new policies and introducing new employees to evidence procedures and that such changes undoubtedly will cause some confusion and noncompliance with operating standards, supports the need for reinforcement of the existing FBI policies listed in our recommendation.

The FBI also stated that it does not concur with our recommendation to review existing policy to determine whether current procedures for verifying evidence information entered into the ACS system are adequate, or if the policy should be modified to include additional procedures to enhance the FBI's ability to detect and prevent data entry errors. As noted in the report, during our review, we identified 15 out of 229 drug or firearm items at three FBI field offices that involved discrepancies between information recorded in the ACS system and information on the written chain of custody or the evidence label. In addition, 13 of the 44 internal inspection results we reviewed also documented instances of incorrect information in the ACS system. As such, a review of existing policies and procedures concerning verifying information entered into the ACS system is justified.

This report contains recommendations 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 these recommendations. You should submit your statement to the Senate Committee on Governmental Affairs and the House Committee on Government Reform within 60 days of the date of this report. 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 report.

We are sending copies of this report 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 report 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. Copies will be made available to others upon request.

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

Sincerely yours,



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

Scope and Methodology

To accomplish our objectives, we interviewed officials from FBI headquarters and four selected field offices concerning the processes and procedures that are used to physically safeguard seized drugs and firearms and to account for such evidence completely and promptly. We requested all pertinent FBI policies and procedures and were provided and reviewed various sections from the FBI's *Manual of Administrative Operations and Procedures* and *Manual of Investigative Operations and Guidelines* related to handling drug and firearm evidence. Based on discussions with FBI headquarters officials and a review of staffing levels for the 56 field offices, we selected two of the largest field offices—New York, New York and Miami, Florida—and two smaller sized offices—Dallas, Texas and San Diego, California—as locations to perform our work. According to FBI officials, due to the location and size of the field offices, each of them typically involves a significant volume of drug and firearm seizures.

At each of the four field offices, we observed the location and condition of storage facilities and other physical safeguards including cameras, motion detectors, combination locks, and video monitors that the field offices had put into place to control access to and use of drug and firearm evidence. We also asked FBI personnel about the operation of the physical safeguards. However, due to the sensitive nature of the evidence, we did not perform any comprehensive tests to verify the operation of specific physical safeguards because we did not want to risk compromising any of the evidence that may be needed for prosecution purposes. Also, we did not perform security assessments of the interior of the drug vaults because FBI policy prohibits non-FBI personnel from entering the vaults beyond designated thresholds. However, we were able to accomplish our objectives because we could see most of the contents of the vaults from these thresholds.

In addition, we performed specific tests on selected drug and firearm evidence items. To determine whether the four selected FBI field offices maintained adequate accountability for recently acquired drug and firearm evidence and properly safeguarded the evidence subsequent to seizure, we selected a random sample of drug and firearm items that each office entered into the FBI's ACS system between October 1, 1997, and August 31, 1998. Based on the size of the universe of drug and firearm items entered into the ACS system during this period, we statistically sampled the following number of cases at each location: New York—50 drug items and 36 firearm items; Miami—46 drug items and 33 firearm items; Dallas—40 drug items and 24 firearm items; and San Diego—23 drug items and 20 firearm items. For selected items, our tests included determining whether (1) the

ACS system accurately recorded the description and location of the item, (2) the chain of custody document was complete, and (3) for those items in storage at the field office, the item was properly packaged, sealed, and labeled. In addition, we judgmentally selected 10 of the drug items at each location, observed evidence control personnel weigh each of the 10 items, and compared the observed weight to the weight recorded by FBI or DEA personnel on each item's evidence label. For this procedure, we judgmentally selected items that involved various types and amounts of drugs.

To further test the field offices' accountability for acquired drug and firearm evidence, we obtained for each office a list of drugs and a list of firearms in inventory as of or near the date of our visit. We selected 10 items from each drug and firearm inventory list and for each item verified that it was in storage. We also selected 15 items from each of the drug vaults and firearm storage areas and traced the items to the appropriate inventory lists to verify that the items were recorded in a complete manner. For each of these 25 drug items selected at each location, we also observed FBI personnel weigh the item and compared the observed weight to the weight recorded on the item's evidence label. Each of the drug and firearm items was judgmentally selected based on one or more of the following: the length of time in storage, the type of evidence, and the specific location of the evidence in the drug vault or evidence control room. We selected items that had been in storage for long periods of time because of the inherent risk associated with long-term storage. We also selected different types of drug and firearm evidence, such as marijuana and cocaine, and handguns and rifles, respectively. In addition, we selected drug and firearm items from a variety of locations within each drug vault or evidence control room.

To determine if issues we identified at the four selected field offices are indicative of more systemic concerns, we requested a copy of the section of the most recent FBI Internal Inspection Report for each FBI field office that covers procedures and internal controls over seized drugs and firearms. FBI provided the results of Evidence Program Audits for 44 FBI field offices. We reviewed these documents which detail deficiencies identified during those offices' most recent internal inspections.¹ These 44 inspections were performed between June 1996 and June 1999. Because we received the documents near the end of our fieldwork, we did not follow-up with each of the field offices to determine the extent actions had been taken to correct noted deficiencies.

We performed our work in accordance with generally accepted government auditing standards from August 1998 through August 1999.

We requested written comments on a draft of this report from the Attorney General or her designee. The Assistant Director for FBI's Office of Public and Congressional Affairs provided us with written comments, which are discussed in the "Agency Comments and Our Evaluation" section and are reprinted in appendix II.

¹The FBI provided copies of (1) electronic communications sent to 41 field offices, and (2) documentation that summarizes the inspection results for 3 other field offices which detail deficiencies, and associated instructions and recommendations, related to drugs and firearms that were identified by Evidence Program Audits conducted during recent internal inspections. According to the FBI Chief Inspector, there were no evidence findings resulting from the most recent inspections at the other 12 FBI field offices.

Comments From the Federal Bureau of Investigation

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

November 22, 1999

Mr. Gary Engel
Assistant Director
United States General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Engel:

See comment 1.

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and comment on GAO's draft report entitled "Seized Drugs and Firearms: FBI Needs to Improve Certain Physical Safeguards and Strengthen Accountability." While the information contained in the draft is, for the most part, factually accurate, the FBI would like to express some concerns about the focus of the report, as well as the conclusions and recommendations made therein.

See comment 2.

Regarding the focus of the report, when GAO first approached the FBI in August 1998, it was the FBI's understanding that GAO's goal was to determine whether the Department of Justice's (DOJ) Asset Forfeiture Program warranted continuing classification as a "high risk" program. In 1990, GAO designated that program a "high risk" operation because of a perceived greater vulnerability to waste, fraud, abuse, and mismanagement. In the course of the first meeting with GAO, however, representatives of the FBI found it necessary to explain the differences between the Asset Forfeiture Program and the Evidence Program. Upon clarification, GAO advised they would focus their work on the Evidence Program and, more specifically, on the handling of firearms and narcotics evidence. Whether, or how, GAO's review of the FBI's Evidence Program fits into the initial goal of evaluating DOJ's Asset Forfeiture Program does not seem to be addressed in the draft. Further, the question as to whether DOJ's Asset Forfeiture Program continues to be a "high risk" operation is not addressed in the draft.

See comment 3.

GAO auditors visited four field offices and Headquarters, and reviewed all internal inspection findings issued by the FBI's Office of Inspections affecting drugs and firearms since June 1996. GAO's review did not include an evaluation of the extensive internal review of the Evidence Program routinely conducted by the FBI's Office of Inspections, nor was there any review of the FBI's follow-up procedures to determine whether deficiencies identified during these

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inspections had been fully addressed. There was also no documentation of any analysis conducted on actions initiated by the Evidence Program Manager at FBI Headquarters to address deficiencies identified in the field.

See comment 1.

While GAO did examine the Inspection Division's findings, the FBI takes issue with the way those findings were interpreted in the report. The FBI feels GAO utilized the findings to extrapolate "systemic" inadequacies in the FBI's Evidence Program, regardless of the circumstance or materiality. There was no discernible effort made to distinguish between inspection findings which addressed weaknesses in internal controls affecting the risk of theft, misuse, or loss of drugs and firearms, and those findings addressing lapses in record keeping, which had no impact on the adequacy of the FBI's Evidence Program to safeguard drugs and firearms. Consequently, the FBI feels the draft report materially overstates potential weaknesses in internal controls over drug and firearms evidence, and inappropriately concludes that there are risk factors affecting access to and accountability of drugs and firearms which simply do not exist. It is the FBI's position that the findings of internal inspection reports, repeatedly cited in the GAO draft to support the contention that safeguards and accountability are lacking, instead reveal the strength of the FBI's determination and ability to identify and correct deficiencies in its own Evidence Program.

See comment 4.

See comment 5.

The FBI places great emphasis on its Evidence Program as demonstrated by its close review during routine inspections in each field office. In fact, a 100% review of all drug and valuable evidence is conducted by a team of experienced professionals utilizing a comprehensive set of written protocols as a part of each on-site inspection. All policies, procedures, and guidelines are closely reviewed for any deviation or non-compliance, and then reported in inspection findings. There are myriad rules and regulations concerning the acceptance, retention, and disposal of such evidence, to ensure that there are always overlapping internal controls in place at every critical step to protect against the loss or inadmissibility of this evidence. These inspections are conducted every three years. Instructions and recommendations are issued to assist management in correcting any deficiencies noted. Appropriate follow-up action is conducted to ensure compliance with these instructions and recommendations. Whenever material deficiencies are detected in the Evidence Program of any field office, or in any other program, a reinspection of the questioned area is conducted within six to twelve months to ensure the effectiveness of the corrective action. Responsible management is subject to

See comment 5.

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appropriate administrative action up to and including removal from their position for the failure to properly respond to previously cited deficiencies with the proper corrective action. Aside from issues of incompetence or neglect, which may be identified during inspections, referrals are made to the Office of Professional Responsibility (OPR) whenever there is any indication of possible serious misconduct or theft, misuse, or loss of evidence. In accordance with current policy, evidence is subject to inventory biannually, whenever responsible personnel change positions, or when evidence control rooms are relocated. In 1999, policy was implemented to require self-inspections by the field offices every 18 months, utilizing protocols devised by the Office of Inspections. This new review process was designed as an additional detection system whereby field office management could more effectively and timely identify and resolve problems within their own areas of responsibility. The Evidence Program is one of those areas to receive additional scrutiny. These ongoing activities and new initiatives serve to reinforce FBI requirements to safeguard evidence.

See comment 6.

It is the FBI's feeling that including all of the FBI's internal inspection findings, which form the basis for the bulk of GAO's recommendations, overstates the significance of some of the deficiencies noted. For example, in eight of the field offices inspected, it was found that at least one evidence control room did not have either a Bureau approved intrusion detection system, motion detector, or alarm. In seven offices the issue was inadequate locking systems. In another office, the concern was congested conditions in storage areas. The practical reality of the cited findings is that in the FBI, overlapping controls and procedures have been established to ensure adequate safeguards even if one or more of the internal controls are lacking. Our goal is to have all safeguards operational at optimum levels at all times; however, the absence of certain of these safeguards does not suggest an overall inadequacy of the physical safeguards in place. In those cases cited, there was no indication that any evidence had been lost, stolen, or misused, or that any case was jeopardized because of chain of custody issues. There was no indication that any of the evidence control rooms were without a locking system, monitored by at least one surveillance camera, and/or entry was controlled by dual access. Due to the fluctuating and time-sensitive needs of field offices, it often becomes necessary to convert facilities for evidence storage without the immediate availability of all of the security equipment necessary to fully meet all Bureau standards.

See comment 7.

See comment 8.

Another area of concern was the cited failure to use access logs or the improper use of access logs in seven offices. The failure to use access logs is clearly a physical safeguard

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concern in the particular evidence control room where no access log existed. It is only a program-wide concern, however, if there is a pattern of failure to utilize access logs in a number of offices. That is not what the auditors reported. Permanent and temporary storage facilities throughout the FBI number in the thousands. All of these facilities require an evidence log. The focus of GAO's review should have been the total number of evidence facilities in comparison to those without access logs.

See comment 8.

Given the number of access logs maintained by the FBI and the number of entries made during any inspection period, it quickly becomes apparent that by the sheer numbers, errors will be made. Every entry into an evidence control facility should be correctly logged, but if some information is missing from the log, the item being admitted into or removed from evidence is not tainted nor are other items remaining in the evidence control room in jeopardy. Overlapping controls and procedures enable responsible officials to maintain accountability and obviates any suggestion that the failure to accurately and completely execute the access log in a limited number of instances should suggest physical safeguards at risk. It should be emphasized that the more internal safeguards are employed by the FBI, this will logically result in more procedural errors occurring. However, these errors do not automatically equate to serious evidence handling issues for the Evidence Program.

See comment 9.

The draft report cites internal inspection findings that some drug items had not been properly sealed, wrapped, labeled, or stored in 27 of the 44 offices inspected. To illustrate this issue, it was reported that in two of the 44 offices, instances were detected wherein damaged or open storage boxes allowed access to drugs. What is not stated is that each drug item is sealed in a separate exhibit with bar codes, file numbers and attached chain of custody logs to protect against unauthorized access and to ensure proper identification. The placement of these separately sealed exhibits in damaged or open storage boxes is accessible only to those persons with authorized access. Of course these items should be relocated in a timely manner in accordance with FBI Policy. The placement of drug items in storage boxes within the evidence control room is but another layer of protection against loss and serves as a better means of housing numerous items of various weights and sizes. However, the absence of this additional level of protection in some instances for a limited period of time hardly suggests weaknesses in the internal controls of the FBI's Evidence Program.

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See comment 1.

The draft report includes several references to the New York Office. That office was one of the four offices visited by the GAO auditors. It was identified by the FBI's internal inspection process in January 1999 as having material deficiencies in its Evidence Program. Mismanagement and inadequate training produced a litany of serious deficiencies. The inspection determined that existing internal controls were inadequate to safeguard drug evidence, thus raising the risks of loss, theft or misuse of drugs and other items. Accordingly, a number of instructions and recommendations were issued to the Assistant Director in Charge of the New York Office. The Evidence Program was reinspected in September 1999 and found to have appropriately addressed the issues identified by the prior inspection. It was noteworthy that the office had relocated the drug control room to a larger facility, had resealed and repackaged every drug item, and instituted an effective charge out system. Issues regarding the night depository were also addressed. Additional instructions were issued to further assist that office in ensuring full compliance with all evidence policies and procedures. In view of these latest actions by the Office of Inspections, the draft report's recommendation that the Director be required to review the actions taken by the New York Office, is unnecessary. It should also be noted that the deficiencies in the New York Office are not indicative of the Evidence Program Bureau-wide. It should be emphasized, however, that the FBI's internal scrutiny and reinspection of the New York Office, coupled with that division's professional corrective response to cited deficiencies, represents this Bureau's total commitment to continued excellence within its Evidence Program.

See comment 10.

FBI policy, revised in October, 1996, required firearms accepted into evidence control rooms to be examined and rendered safe by a firearms instructor. Previously, firearms had been examined by the admitting Special Agents who may or may not be firearms instructors. This additional layer of review to render firearms safe was not established because weapons were being retained in evidence in an unsafe condition, but to provide yet another independent internal control over firearms. The internal inspection process identified a number of instances when the new policy had not been fully implemented or sufficiently documented and issued corrective instructions. The draft report did not document a single instance when a firearm had been admitted into evidence in an unsafe condition. The GAO auditors sampled 113 firearms and found three firearms lacked documentation that they had been rendered safe by a firearms instructor. Four other cited exhibits had been independently examined by a firearms instructor, but between one and 39 days late. The draft report also cited FBI internal inspection findings of similar occurrences in 11 of the 44 field offices

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inspected since June 1996, however, the GAO auditors did not conduct any follow-up to those inspection findings to determine if the deficiencies in the new policy had been corrected. The basis for concluding inadequate accountability of firearms appears to come from GAO auditors' findings in two offices. Two of 24 weapons in the Dallas Field Office lacked identifying numbers on the chain of custody form to "conclusively" relate them to particular pieces of evidence. In the New York Office, one of the 36 firearm items reviewed did not have a reason for the transfer of the evidence recorded on the written chain of custody. Based on the results of the GAO auditors' review, it is unclear why this issue was even addressed in the draft report. There is clearly no basis to conclude that any weapons in FBI evidence control rooms were stored in an unsafe condition or that accountability was in question.

See comment 1.

Aside from the particular findings cited in the report, the FBI takes issue with some of the recommendations made by GAO. The FBI does not concur with the recommendations made by GAO concerning the need to reinforce adherence to existing FBI policies, to review actions taken by the New York Field Office, and to review procedures for verifying evidence information entered into the ACS system are not on point and seem to demonstrate a misunderstanding of what the FBI is already doing to ensure adherence to critical policies and procedures affecting evidence.

There are, however, some GAO recommendations with which the FBI concurs. The recommendation concerning the modification of existing policy toward the weighing of drug evidence is well-founded; a change to the Manual of Administrative Operations and Procedures (MAOP) will be drafted requiring that all Agents check the recorded weight of all drug evidence retrieved from any laboratory to identify any significant weight discrepancies from the original weight. If a discrepancy is identified, which appears to be outside a normal expected discrepancy range resulting from testing procedures, the Special Agent in Charge (SAC) or his/her designee will be notified and the Agent and his/her Supervisor will determine the cause for the discrepancy and document their findings in the investigative file.

See comment 11.

Now on p. 26.

On this point, GAO stated on page 40 of its draft that it had found a significant discrepancy with regard to a heroin seizure made by the Miami Field Office. GAO indicated that the DEA recorded weight of the seizure was 541.8 grams, but when weighed by GAO during their review the observed weight was 273 grams. The Miami drug program Assistant Special Agent in Charge asked that the evidence be retrieved from the drug vault and returned to DEA in an attempt to account for this nearly 50%

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discrepancy. Upon reweighing by DEA, the Forensic Chemist at DEA who originally weighed the seizure stated that the recorded weight of 541.8 grams wrongfully included the weight of the weighing tray, which had been inadvertently included in her first measurement. The Forensic Chemist altered her original recorded weight to accurately reflect the weight of the seizure without the weighing tray, which was 373.4 grams including the packaging put on by the local police department, the FBI, and the DEA. This still left a discrepancy between the corrected weight and the weight observed by GAO. The discrepancy between the corrected weight of 373.4 grams and GAO's observed weight of 273 grams is attributable, the FBI believes, to errors made by GAO in either weighing the evidence or recording the observed weight.

Another issue regarding the weighing of drug evidence in the Miami office was raised on page 41 of GAO's draft, where GAO identified an overage of 3.9 kilograms of cocaine. The box containing the seizure at issue indicated there were 11 kilo-sized packages of cocaine weighing, in total, 14.9 kilograms. The FBI realized that to the untrained observer, it would appear that there was a discrepancy of 3.9 kilograms. However, it is common among FBI drug agents to describe a package of a particular design and size as a "kilo" even if the actual weight, upon closer inspection, is not exactly a kilogram. The 11 kilo-sized packages in this case weighed 14.9 kilograms including the box and all wrapping materials. The FBI recognizes that this method of referring to the size rather than the actual weight of a kilo-sized package may be problematic, so seizing Agents and ECTs will be advised to use the term "package" in lieu of "kilogram" unless referring specifically to the item's weight. The perceived discrepancy in this case, however, was neither an error resulting from careless handling or weighing nor from inadequate policy guidance.

The recommendation made by GAO regarding the calibration of drug scales is valid, and MAOP revisions are currently being drafted to require that all seized drugs, including bulk seizures, are weighed on properly calibrated scales.

Aside from these recommendations on which the FBI and GAO are in agreement, the FBI takes general exception to the overall conclusion and tone of the report. The GAO draft report acknowledged that "at the four field offices we visited, evidence control personnel were able to locate each item selected for testing that was in storage during our review, and for items not in storage, they provided documentation supporting the current location or status of the item." The record keeping issues identified by the GAO evaluators and also found during routine

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See comment 12.

Now on p. 28.

See comment 4.

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See comment 1.

internal inspections do not, in the aggregate or otherwise, suggest inadequate accountability over drug evidence, given the overlapping internal control procedures in place.

See comment 1.

The FBI takes great pride in its Evidence Program. The need for continuing periodic internal reviews of the FBI's Evidence Program is clear; maintaining appropriate physical safeguards and ensuring accountability are ongoing processes. New policies and procedures are continually implemented and new employees are continuously introduced to evidence procedures. Such changes undoubtedly will cause some confusion or noncompliance with optimum operating standards. This is especially true given that the FBI Evidence Program encompasses 70 Evidence Control Centers (ECCs) in 56 Field Offices and 300 Resident Agencies, staffed by 285 Evidence Control Technicians (ECTs).

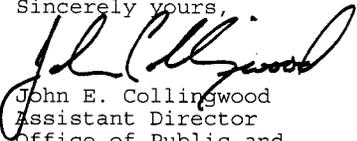
See comment 6.

However, even given the challenges presented by maintaining such a program and the admitted need for continual reevaluation, it is important to note that the draft report did not identify any serious lapses in the internal controls of the Evidence Program which had not already been identified via the FBI's internal inspection process. The report noticeably did not cite any instance where evidence was lost, stolen, or misused. It also failed to cite any instance where exhibits were ruled inadmissible in any prosecutorial proceeding or successfully challenged in court as a result of mishandling by the FBI's Evidence Program. The conclusion that physical safeguards need improvement and accountability needs to be strengthened is, in the FBI's opinion, not justified.

See comment 1.

The FBI would be happy to provide further documentation or information at any time. If you have questions, please feel free to contact me.

Sincerely yours,


John E. Collingwood
Assistant Director
Office of Public and
Congressional Affairs

The following are GAO's comments on the Federal Bureau of Investigation's letter dated November 22, 1999.

GAO Comments

1. See "Agency Comments and Our Evaluation" section.
2. In our notification letter to the Assistant Attorney General for Administration, dated July 31, 1998, informing him of our work, we stated that as part of our review of the status of Justice's Asset Forfeiture Program, we were initiating a review of seized drugs and weapons at the FBI. We stated in the letter that the focus of the effort would be on controls over the seizure, storage, and disposition of drugs and weapons.

During our initial meetings at FBI headquarters, FBI officials questioned the purpose and focus of our review, expressing the concern that the control of seized drugs and firearms at the FBI was a function of the Evidence Program rather than the Asset Forfeiture Program. At each of these meetings, we explained to FBI officials that seized property, including items such as drugs and firearms, is subject to forfeiture and we therefore would be considering such activity when updating our assessment of the Asset Forfeiture Program high-risk area. Recognizing this fact and that seized drugs and firearms typically remain in the custody of the seizing agency until approved for final disposition, effective controls over such evidence are needed to help ensure that such items are not compromised. Because the Evidence Program at the FBI is responsible for safeguarding and accounting for such evidence, it became the focal point of our work instead of the Asset Forfeiture Program.

As stated in our report, Justice operations, including those at the FBI, often involve the seizure, custody, and disposition of evidence that (1) may be subject to forfeiture and (2) can remain in the seizing agency's custody for significant amounts of time due to long-term investigations. We also state in our report that, as we reported in January 1999, although some improvements have been made to the Asset Forfeiture Program operated by Justice, significant problems remain and continued oversight is necessary to ensure that policies and procedures are followed and that adequate safeguards are in place.¹ Our High-Risk Series of reports, which is updated every 2 years and was most recently issued in January 1999, noted that the federal government faces difficult problems managing a reported \$1.8 billion in property seized by Justice and the Department of the Treasury as of September 30, 1997.² We specifically stated that Justice had reported that its asset forfeiture information systems had been inadequate for tracking the life cycle of an asset from its seizure through its ultimate disposition. We also noted that, in September 1998, the Justice Inspector General reported that at most of the Immigration and Naturalization Service Border Patrol stations his staff visited, they found problems with the management of seized drugs. The High-Risk Series report, however, did not include the specific issues concerning FBI seized drugs and firearms identified in this report because we had not completed our fieldwork at the time the High-Risk Series report was issued.

3. The FBI correctly noted that our review did not include an evaluation of the internal review of the Evidence Program routinely conducted by the FBI's Office of Inspections, nor was there any review of the FBI's follow-up procedures to determine whether deficiencies identified during these inspections had been fully addressed. The purpose of our review was to identify and assess the FBI's internal controls related to seized drugs and firearms. As noted in our report, we used the results of the FBI's internal inspections to supplement our own findings and further illustrate that they may be indicative of more systemic concerns.

In addition, we did not receive the internal inspection results for the majority of the 56 FBI field offices until August 1999, which was near the end of our fieldwork. Therefore, we did not follow-up with each of the field

¹*Major Management Challenges and Program Risks: Department of Justice* (GAO/OCG-99-10, January 1999).

²*High-Risk Series: An Update* (GAO/HR-99-1, January 1999).

offices to determine the extent to which actions had been taken to correct noted deficiencies.

4. The FBI stated that it feels our draft report materially overstates potential weaknesses in internal controls over drug and firearm evidence, and inappropriately concludes that there are risk factors affecting access and accountability of drugs and firearms which simply do not exist. We disagree. Our report does not address “potential” weaknesses in internal controls, but rather reports on internal control deficiencies we found during our review. Our conclusions are based on our observations and findings as documented throughout this report.

The FBI’s statement that risk factors affecting access and accountability of drugs and firearms simply do not exist at the FBI is not consistent with other statements in its comments on this report as well as with the results and its own characterization of its ongoing internal inspections. Specifically, the FBI stated that in 1999, a policy was implemented to require self-inspections by the field offices every 18 months, and the Evidence Program is one of the areas to receive this additional scrutiny. The FBI also states that this new review process was designed as an additional detection system whereby field office management could more effectively and promptly identify and resolve problems within their own areas of responsibility.

In addition, the FBI states that it takes general exception to the overall conclusion and tone of the report. We believe that our overall conclusion is balanced and adequately supported by our findings that are documented throughout the report. Our conclusion acknowledges that the FBI has established numerous policies and procedures to control and safeguard drug and firearm evidence, and we state that based on our work at the four FBI field offices and the results of the FBI’s most recent internal inspections of its field offices, specific actions are needed to address concerns with certain physical safeguards over drugs and firearms and to strengthen accountability over such evidence. The tone of the report is neutral and objective, and in fact, we believe that some of the FBI’s comments present a more negative picture of the control environment than can be found in our report. For example, FBI’s comments state that the New York Field Office was found to have material deficiencies in its Evidence Program, and that mismanagement and inadequate training produced a litany of serious deficiencies. Our report does not characterize the deficiencies we identified as serious or material. Instead, our report provides the observations we made during our visit to the New York Field

Office, states the reasons for the deficiencies noted and the corrective actions taken according to New York Field Office officials, and recommends that the FBI review these corrective actions.

5. We agree that the FBI shows determination to identify and correct deficiencies in its own Evidence Program. As stated in the report, the FBI has established numerous policies and procedures to control and safeguard drug and firearm evidence in its custody, and as an added control over field operations, each field office is supposed to receive an internal inspection every 3 years. However, field office internal inspections performed on a rotating basis every 3 years are not a substitute for ongoing initiatives to keep accountability records current and accurate. Instead, inspections serve as a barometer of the success of the FBI's efforts to carry out its policies and procedures on an ongoing basis. Therefore, in order to strengthen physical safeguards and improve accountability, it is necessary to reinforce adherence to the existing policy requirements we included in our recommendation.

6. The FBI's internal inspection findings are cited throughout our report to supplement our own findings and illustrate that they may be indicative of more systemic concerns. Although we did not identify any similar problems at the four FBI field offices we visited, we thought it significant that 24 of the 44 internal inspection results we reviewed documented one or more physical safeguard concerns, including evidence control rooms with no bureau-approved intrusion detection system, motion detector, or alarm; inadequate locking systems; and instances of improper access including an unauthorized employee accessing the evidence control room or an evidence control technician having sole access to the evidence control room. However, we did not include in our report any specific recommendation to address these internal control deficiencies as identified by the FBI's internal inspections because these circumstances were not evident at any of the four FBI field offices we visited. Further, the scope of our review was designed primarily to determine whether weaknesses in controls existed that increase the risk that evidence could be lost, stolen, or misused or compromised for federal prosecution purposes. It was not our intent to specifically determine whether the evidence had in fact been lost, stolen, or misused or compromised.

7. The FBI states that overlapping controls and procedures have been established to ensure adequate safeguards even if one or more of the internal controls are lacking. We disagree. Although multiple controls have been designed to safeguard the evidence, if one or more controls are not

effectively implemented, the FBI's ability to safeguard evidence will be diminished. As such, the FBI's own internal inspection process requires all identified deficiencies to be corrected. Each of the internal controls play an important role in safeguarding evidence from inappropriate access, and we did not identify any redundant controls to fully compensate for deficiencies we cited in this report.

The FBI further states that in the cases cited from the internal inspection findings, there was no indication that (1) evidence had been lost, stolen, or misused; (2) any case was jeopardized because of chain of custody issues; or (3) any evidence control rooms were without a locking system, monitored by at least one surveillance camera, and/or entry was controlled by dual access. We believe these statements are not accurate or are misleading. First, as stated in our report, inspection auditors at the New York Field Office had to discontinue efforts to complete a 100 percent physical inventory of drug items due to time constraints, and at the time of discontinuance, 79 of 1,625 drug items could not be physically located or otherwise accounted for by evidence control personnel. Second, while we agree that the internal inspection results we were provided did not mention any case that was jeopardized because of chain of custody issues, we were also not provided any documentation showing that this was an issue considered or evaluated during the internal inspections. And third, although no internal inspection findings cited instances of evidence control rooms that had no locking system, seven inspections found inadequate locking systems for evidence storage areas, including no keyless entry or no dual locking system as required by FBI policy. In addition, as stated in our report, seven inspections cited instances involving improper access to evidence control rooms by FBI personnel, such as an unauthorized employee accessing the evidence control room unaccompanied by the evidence control technician, or an evidence control technician having sole access to the drug and valuable evidence control room.

8. Our report states that at seven field offices not selected for our review, inspection teams determined that access logs were either not used or were not being properly completed by persons entering the evidence control rooms. We did not report this as a programwide concern and, because we did not identify this as an internal control deficiency at any of the four field offices we visited, did not make a specific recommendation to address this issue.

The FBI states that given the number of access logs that it maintains and the sheer number of entries made into the logs, errors will be made. The

comments also note that there is no basis for suggesting that evidence is tainted or that other items in the evidence control room are in jeopardy merely because information is missing from access logs. They said that the FBI compensates for such administrative lapses through overlapping controls and procedures that enable responsible officials to maintain accountability. We disagree. Complete and accurate information on access logs is necessary to track persons entering evidence control areas to ensure only those persons approved for access and with valid reason for access are allowed to enter the secured areas and handle evidence. Not using or properly completing access logs decreases the FBI's ability to safeguard evidence in its custody, and we did not identify any overlapping controls to substitute for or diminish the importance of this internal control.

9. We recognize that the placement of drug items in storage boxes within the evidence control room serves as a layer of protection against loss; however, improperly sealed, wrapped, labeled, or stored drug items diminish the FBI's ability to protect the evidence against unauthorized access. Similar to the two internal inspections that cited instances of damaged or open storage boxes which allowed access to drugs, during our review at one field office, we observed one drug evidence package that was leaking and one bulk drug seizure comprised of approximately 50 kilograms of cocaine that had not been packaged or sealed in accordance with FBI policy. Although the FBI purports that the absence of this protection in some instances for a limited period of time hardly suggests weaknesses in internal controls, this bulk drug seizure that we observed was stored in two large seed bags in the same state in which it had been acquired for over 1 year. A strict adherence to existing FBI policies regarding sealing, labeling, and storing drug evidence will strengthen the FBI's ability to guard against the risk of loss, theft, or misuse of the evidence.

10. Our primary objective in testing the controls over the safeguarding of firearms was to determine whether control procedures existed and were being followed. The scope of our testing did not include determining if the firearms themselves were rendered safe. FBI policy requires firearms to be examined and rendered safe by a firearms instructor prior to being accepted for storage by evidence control personnel, with the firearms instructor signing and dating a certification that this examination was performed. During our review at the four FBI field offices, 18 of the 113 firearms selected for our sample did not fully comply with this policy.

Areas of noncompliance involved 3 firearms in storage that lacked certification that the weapons had been rendered safe; 4 firearms that were certified as rendered safe, but the certifications were dated after the date the firearms had been accepted for storage; and 11 other firearms that had been certified as rendered safe, but the certifications were not dated. These examples of noncompliance form the basis for our recommendation that the FBI reinforce adherence to existing FBI policies regarding rendering firearms safe, including having a firearms instructor sign and date the certification on the chain of custody prior to evidence control personnel accepting the firearm for storage. The FBI's comment that the basis for our recommendation appears to stem from our findings in two offices related to a total of three firearms that lacked required information on associated chain of custody documents is incorrect. The particular examples cited in the FBI's comments are found in the report to document various deficiencies in chain of custody documentation, not as examples of the inadequate documentation certifying the examination and rendering safe of firearms.

11. We do not agree that our recorded weight of a drug item at the Miami Field Office was incorrect. We did not weigh the drug items ourselves. Instead, we observed FBI personnel weigh the evidence and recorded the results of their weighing activity. This process included two GAO personnel observing an FBI official placing each drug item on a scale, repeating the observed weight to the FBI official to obtain agreement, and one GAO member recording the weight on a data collection instrument while the other GAO member present reviewed the recorded information.

For one drug item at the Miami Field Office, the DEA recorded weight on the evidence package was 541.8 grams, while the weight we observed was 273 grams. During our visit, we asked the field office officials to explain this discrepancy. Their written response included that the weight variance was the difference of the weight of the drug item sealed and the weight of the item without packaging as recorded by DEA. However, during a subsequent meeting involving these officials, we pointed out that the DEA recorded weight on the drug item included packaging, so the explanation provided was not reasonable. We were then told by an FBI official that the weight of 541.8 grams may have been recorded in error by DEA. However, other than the statement in the FBI's comments to the report, we had not been provided any additional explanation or documentation pertaining to this weight discrepancy, and at no time was there any discussion that we may have recorded the weight in error.

12. Another drug item we observed at the Miami Field Office consisted of a sealed box that was marked as 11 kilograms and was described in the ACS system as 11 kilograms. Our observed weight of this drug item was 14.9 kilograms; however, this weight was not recorded on the box or in the description of the item found in the ACS system. As stated in our report, according to a Miami FBI official, agents often record the amount of bulk drugs as the number of kilo-sized bricks. By counting bricks rather than weighing the evidence, the weight recorded is an estimate that also does not include the weight of packaging materials, such as the wrappings on the individual bricks of the drug and the box and tape used to seal the evidence.

The FBI recognizes that referring to the size of a drug item rather than the actual weight of the item may be problematic and that the term “package” should be used in lieu of “kilogram” unless referring specifically to the item’s weight, and we agree. However, we continue to believe that recording estimated package sizes rather than actual weights diminishes the FBI’s assurance that entire quantities of drugs are placed under prescribed safeguards. The FBI’s concurrence with our recommendation to modify existing policy to require that all seized drugs, including bulk seizures, be weighed on properly calibrated scales will help to alleviate potential problems associated with recording the number of packages comprising a drug item rather than the actual weight of the evidence including packaging.

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