

UNCLASSIFIED//FOUO

Legal Review of Intelligence Information Reports Policy Implementation Guide

**(U//FOUO) Legal Review of Intelligence Information Reports
(U) Policy Implementation Guide**



(U) Federal Bureau of Investigation

(U) Office of the General Counsel

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(U) January 21, 2011

ACLU Sect. 215-1980

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

(U) FBIHQ/Office of the General Counsel (OGC), Division 09

(U) Division Point of Contact:

(U) NOTE: Document is a new publication; no previous versions available

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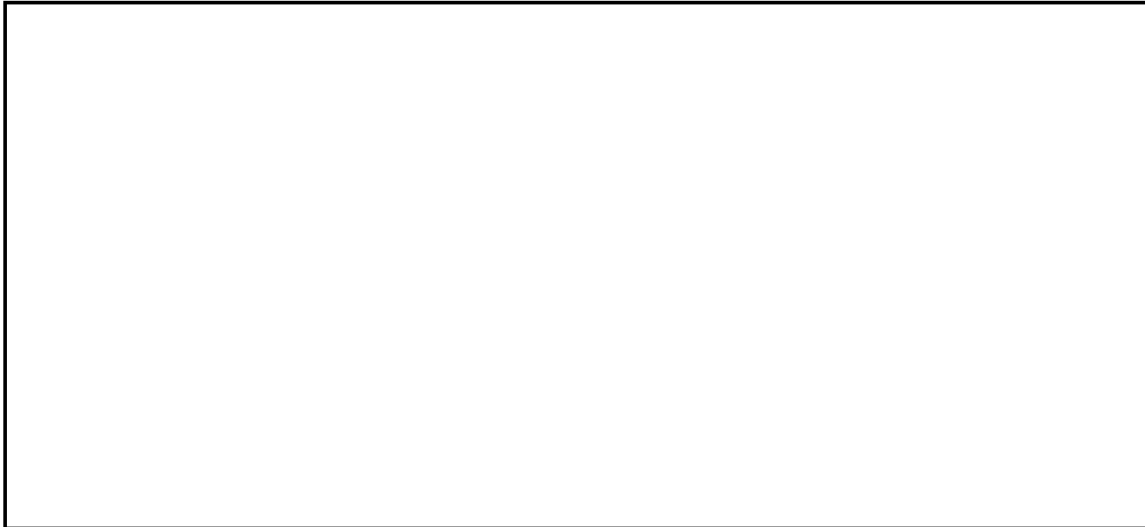
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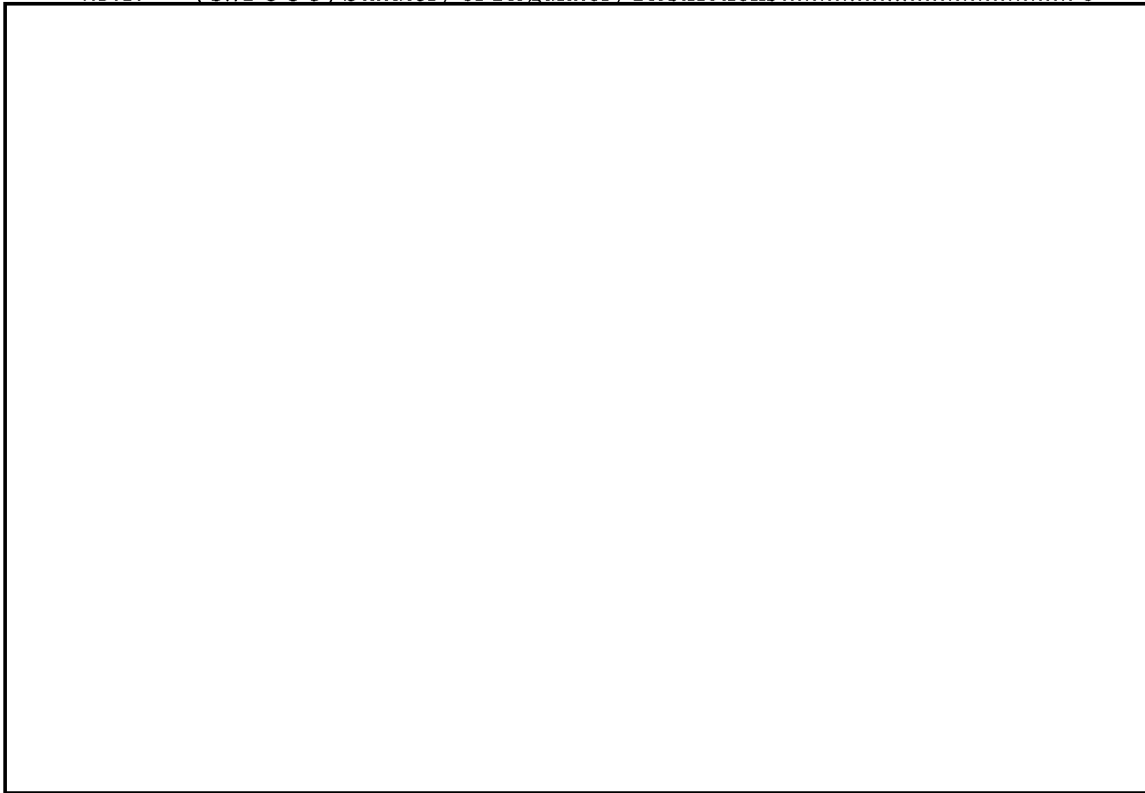
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4.3.1.4. (U//FOUO) FISA and FISA Derived (also review classified annex)

(U//FOUO) FISA provides that information acquired pursuant to FISA concerning any USPER may be used and disclosed by federal personnel without the USPER's consent only in accordance with the minimization procedures adopted by the AG. See 50 U.S.C. § 1806(a).

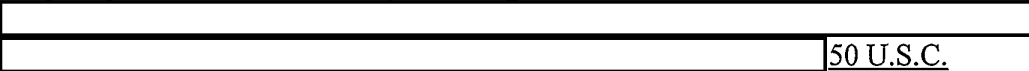
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(U//FOUO) Legal Review Requirements

(U//FOUO) In accordance with [redacted] FISA-derived foreign intelligence information may be disseminated if it relates to the responsibilities of the receiving agency. An IIR author must tailor the PLA to include only those agencies that could utilize the information to assist in their authorized functions. If the information is not directly related to the responsibilities of the receiving agency, it may still be disseminated if it is incidental to the dissemination of information that is directly related to the responsibilities of the agency. Therefore, an IIR on drug smuggling that identifies an USPER could be sent to the Drug Enforcement Agency, but not to the Department of Energy unless the drug smuggling information is incidental to information that is relevant to the Department of Energy. Additionally, the AGG-DOM and DIOG only permit the FBI to disseminate information to an agency outside the USIC if it relates to the agency's responsibilities.

(U//FOUO) 50 U.S.C. §§1806(b), 1825(c) and 1845(b) prohibit the disclosure of FISA-acquired information for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived from it, may only be used in a criminal proceeding with the advanced authorization of the AG.



50 U.S.C. §§1806(c), 1825(d), and 1845(c) require the government to notify an aggrieved person prior to the proceeding, or at a reasonable time before disclosing such information in a proceeding, when the government intends to use or disclose FISA information.



(U//FOUO) IIRs that contain FISA information must be labeled, as follows, if the caveat is to be unclassified⁹:

⁹ A more detailed classified caveat may be included in classified documents.

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FISA INFORMATION

THIS DOCUMENT CONTAINS INFORMATION FROM FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA) COLLECTION. PER 50 U.S.C. §§ 1806(b), 1825(c), AND/OR 1845(b), THIS INFORMATION, AND ANY INFORMATION DERIVED FROM IT, MAY NOT BE USED IN ANY LEGAL, ADMINISTRATIVE, OR OTHER PROCEEDING WITHOUT THE ADVANCE AUTHORIZATION OF THE ATTORNEY GENERAL. IF CONCERNING A U.S. PERSON(S), THIS INFORMATION MAY BE DISSEMINATED TO A FOREIGN GOVERNMENT ONLY IN COMPLIANCE WITH THE ATTORNEY GENERAL APPROVED FBI MINIMIZATION PROCEDURES AND APPLICABLE FBI POLICY. CONSULT FBIHQ PRIOR TO ANY DISSEMINATION.

(U//FOUO) If the FISA information being released is not foreign intelligence and is being released because it is evidence of a crime, the following caveat shall be used instead:

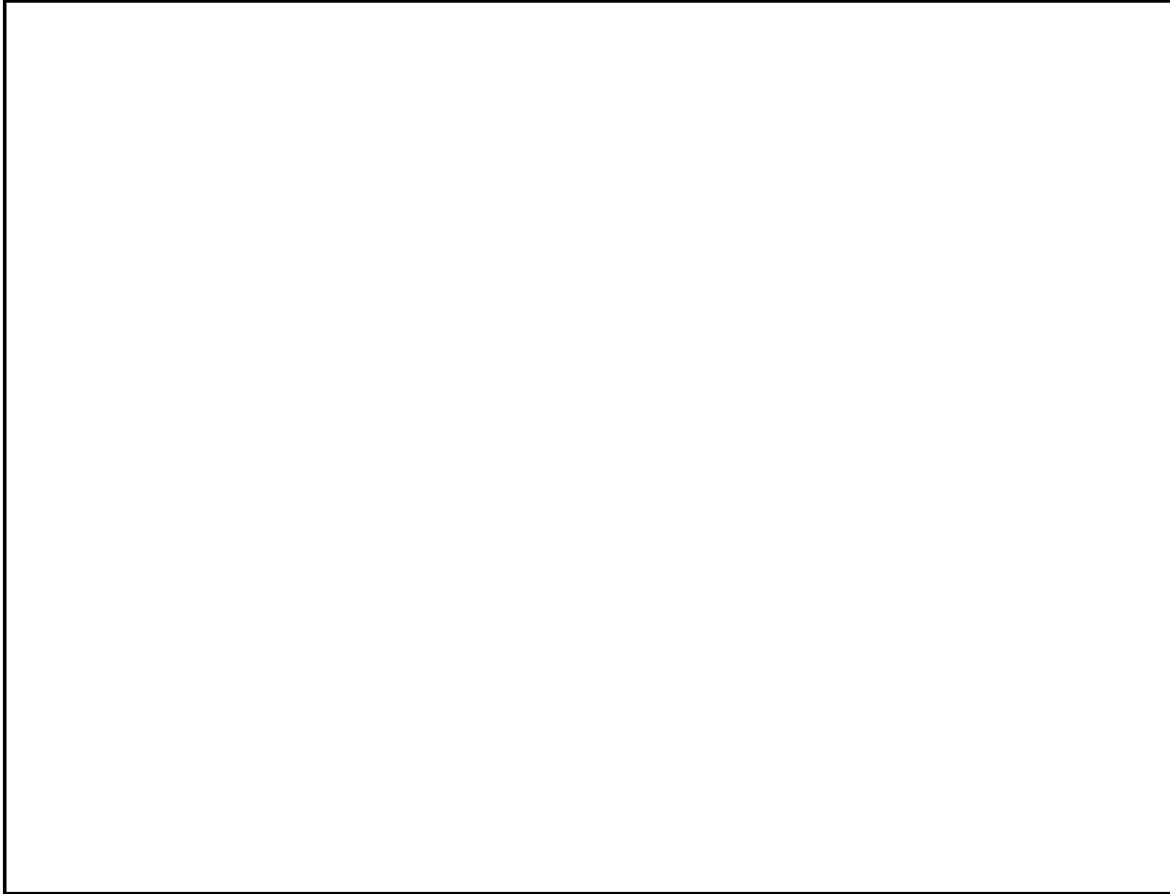
THIS DOCUMENT CONTAINS INFORMATION THAT WAS OBTAINED THROUGH FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA) TECHNIQUES. IT CONTAINS NON-PUBLICLY AVAILABLE U.S. PERSON INFORMATION, WHICH IS EVIDENCE OF A CRIME BUT IS NOT FOREIGN INTELLIGENCE INFORMATION AND MAY BE DISCLOSED FOR LAW ENFORCEMENT PURPOSES ONLY. THIS INFORMATION, AND ANY INFORMATION DERIVED THEREFROM, MAY ONLY BE USED IN A PROCEEDING WITH THE ADVANCE AUTHORIZATION OF THE ATTORNEY GENERAL. CONSULT WITH OGC NSLB AT FBIHQ PRIOR TO ANY FOREIGN DISSEMINATION.

(U//FOUO) Also refer to the Foreign Dissemination section in this PG if disseminating to a foreign government. There are additional considerations that apply when disseminating FISA-derived information to foreign governments.

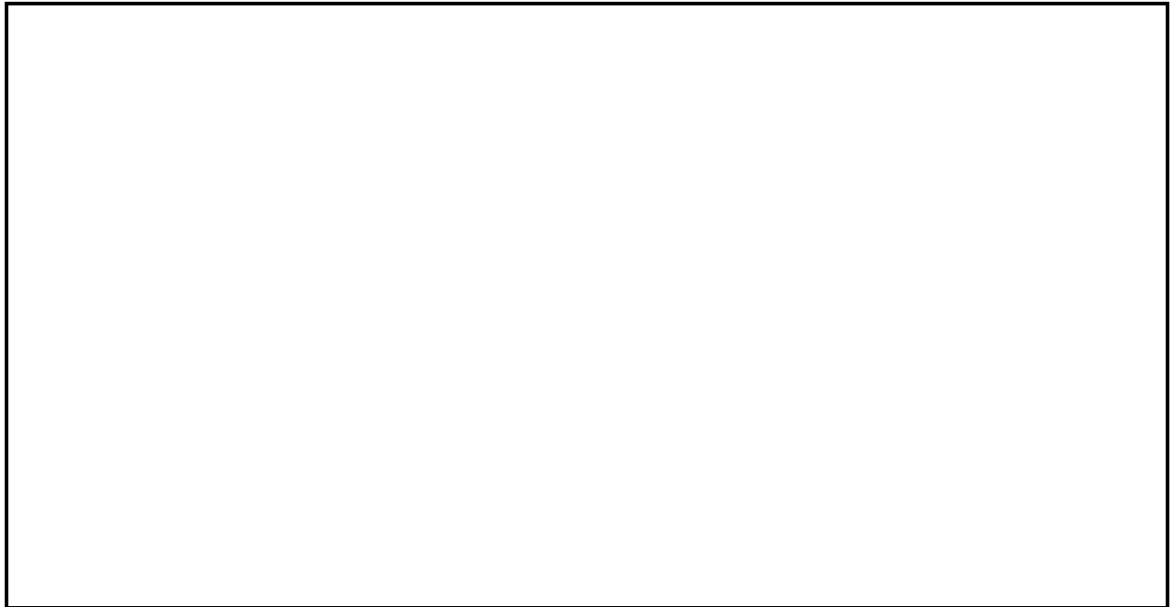
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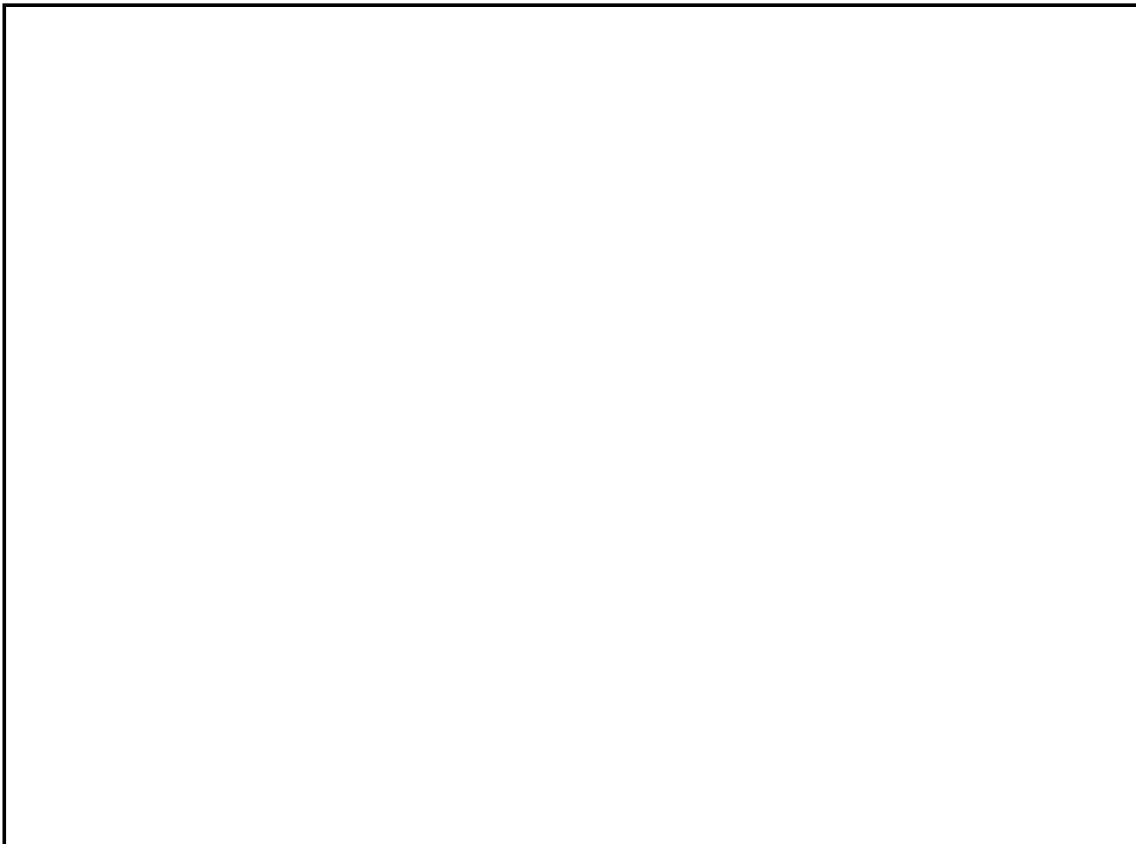


4.3.3. (U//FOUO) Dissemination to Foreign Governments (also review the classified annex)



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(U//FOUO) Dissemination of FISA and FISA-derived information to foreign governments carries with it additional requirements and approval levels, in certain circumstances. To comply with the statutory restrictions on FISA information, as described in the FISA section, a caveat must be included with the dissemination. Policy requires IIRs have two caveats: one above the tear line and one below the tear line. For a more detailed discussion of FISA-obtained information, review the FISA section and the classified annex of this PG.

(U//FOUO) The above-the-line caveat, which stays internal to FBI and is very similar to the FISA caveat, should be:¹²

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¹² There is a more specific classified caveat that may be substituted.

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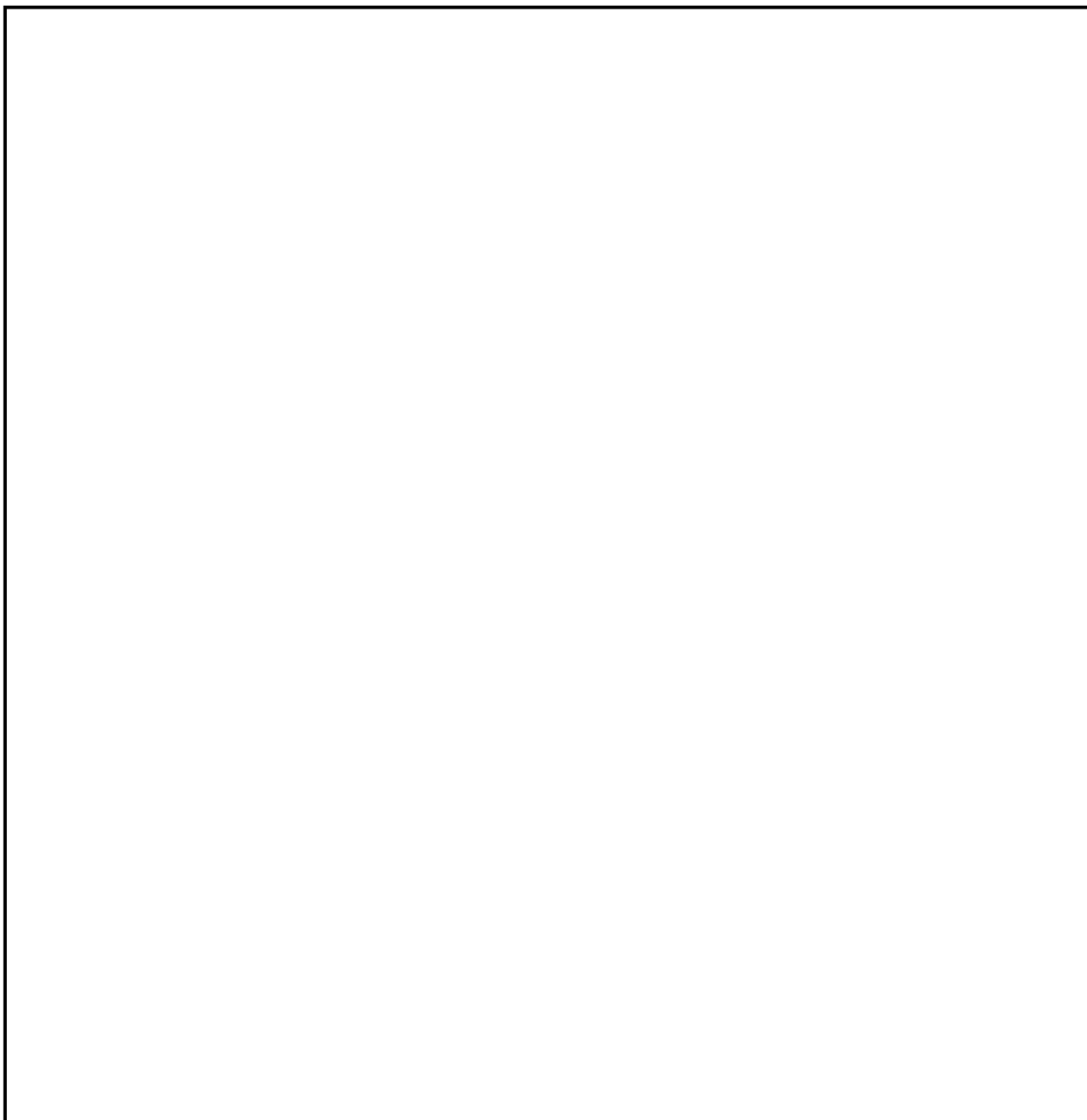
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MINIMIZATION PROCEDURES AND APPLICABLE FBI POLICY. CONSULT FBIHQ PRIOR TO ANY DISSEMINATION.

(U//FOUO) A similar caveat should be included below the tear line so that the receiving foreign governmental agency will know that restrictions exist on the use of the information. However, when protecting the source of the information as FISA or FISA-derived, the below-the-tear-line caveat should be:¹³

(U) THIS INFORMATION IS BEING RELEASED TO [COUNTRY]. IT MAY NOT BE SHARED WITH OTHER COUNTRIES OR USED IN ANY LEGAL OR OTHER PROCEEDINGS WITHOUT PRIOR WRITTEN CONSENT OF FBI HEADQUARTERS.

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¹³ Note that the caveat actually included may be longer to address other operational concerns.

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