



Rochester Police Department Administrative Order



EFFECTIVE DATE: June 11, 2012	SUBJECT: TECHNICAL SURVEILLANCE EQUIPMENT & OPERATIONS	ORDER# 30
RESCINDS: A.O. 30 (05/24/05) A.O. 31 (12/18/96)	REFERENCE STANDARD(S): CALEA: NYS:	PAGE 1 of 21
ATTACHMENT(S): SIS/SESU Authorization for Consensual Monitoring, Electronic Video Waiver, Tracking Equipment Utilization Form Parts A, B, C, D and E.		

I. DEFINITIONS

- A. Technical Surveillance Equipment is equipment owned or used by the Rochester Police Department (RPD) for surveillance purposes, capable of intercepting and/or recording the communications, actions, movements, or location of persons, either overtly or covertly, including, but not limited to, audio, video, photographic, telephone, and tracking equipment.

Note: this does not include video or audio systems used to record interviews in RPD interview rooms. See GO 405, Video recording or Interviews.

- B. Non-Consensual Intrusive Electronic Surveillance consists of wiretapping, mechanical overhearing, or videotaping of persons and their private conversations and actions *without* their consent in a place where they would reasonably have an expectation of privacy. Proper consent may negate the need for court authorization (see Attachments A and B).
- C. Eavesdropping is the wiretapping, mechanical overhearing of conversation, or the interception or accessing of an electronic communication (as defined by Section 250.00 of the Penal Law), but *does not* include the use of a pen register when authorized pursuant to Article 705 of the Criminal Procedure Law (CPL).
- D. Video Surveillance is the intentional visual observation by law enforcement of a person by means of a television camera or other digital or electronic device that is part of a television transmitting apparatus, whether or not such observation is recorded digitally, on film or videotape.

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ROCHESTER POLICE DEPARTMENT
NYSLEAP Accredited Agency

Note: this does not include video or audio systems used to record interviews in RPD interview rooms. See GO 405, Video recording or Interviews.

- E. Title III refers to a court order to intercept call data and call information (audio), commonly referred to as a wiretap. The **Omnibus Crime Control and Safe Streets Act of 1968** is legislation passed by the Congress of the United States that established the Law Enforcement Assistance Administration (LEAA). Title III of this Act set rules for obtaining wiretap orders in the United States
- F. Dialed Number Recorder (DNR) and Pen Register (PEN) are devices, which record or decode electronic or other impulses that identify the numbers dialed or otherwise transmitted on a telephone line to which such device is attached. It records call data only and is not capable of audio intercept. Both terms, DNR and PEN identify the same device.
- G. Pen Room is a physically secure location with restricted access housing the computer workstation which is dedicated to the operation of PEN's and Title III's, and the storage of related documents.
- H. Tracking Equipment is technical surveillance equipment used to track the movements of and/or locate vehicles or other items utilizing Global Positioning Satellites (GPS) or other technology. Data regarding the movements is accessible via a computer or radio direction finding equipment.

II. POLICY

- A. The technical surveillance equipment employed by the RPD will only be used for legitimate Department purposes, and will be governed by the requirements of New York State and/or Federal laws. Deviation from this policy may result in criminal prosecution and/or departmental charges.
- B. The operation of the technical surveillance equipment will be strictly controlled and accountable.
- C. When technical surveillance equipment is loaned to personnel assigned outside of the Special Investigations Section (SIS), it is the responsibility of the borrowing member to ensure compliance with this order and proper use and care of the equipment.

- D. A reasonable expectation of privacy will be assumed in all cases unless a reason to the contrary can be clearly identified.
- E. RPD employees will not use technical surveillance equipment made available through any source other than the Department without permission of the Chief of Police, Deputy Chief of Police, Commanding Officer of the Special Operations Division or their designees.

III. PROCEDURES REGARDING THE SURVEILLANCE PLATFORM

- A. The surveillance platform will be used only by members assigned to SIS, or working with the SIS, to gather evidence for the furtherance of SIS investigations.
- B. The surveillance platform will be used to gather evidence through the use of photo surveillance, video surveillance recording and monitoring, as well as audio transmitter recording and monitoring.
- C. Personnel assigned to the surveillance platform for the purpose of utilizing technical equipment therein will not be expected to respond to operational assignments and will not be considered as part of the operational component.
- D. Personnel assigned to a technical capacity within the surveillance platform will not exit /expose their identity under any circumstances other than an imminent threat of injury to officers or civilians.
- E. To minimize exposure, efforts will be made as soon as possible to detach the surveillance platform at the conclusion of any operation.
- F. The surveillance platform will be used only in covert operations as approved by the Commanding Officer of SIS or his designee.
- G. Only those members assigned to SESU may operate the surveillance platform. SESU members will be trained on the use of technical equipment assigned to SESU.
- H. Members assigned to the SESU are responsible for the maintenance of the surveillance platform, all on-board equipment, and all other equipment utilized in conjunction with the platform.

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- I. The Commanding Officer of SESU, or his designee, will be responsible to maintain a list of equipment, if any, to be kept in the surveillance platform.

IV. SESU EQUIPMENT CONTROL

The purchase, storage, record keeping, issuance and maintenance of technical surveillance equipment will be conducted by the SESU under the direction of the Commanding Officer of the SIS. **See note below regarding specific regulations for PEN and Title III storage.**

- A. Purchase - Equipment will be purchased per current City and Departmental procedures, and in accordance with operational needs as determined by the Chief of Police or his designee. Technical surveillance equipment purchased by the RPD, which is regulated by the FCC, will meet FCC type compliance and acceptance.
- B. Storage - Equipment will be stored in the facilities of the SESU. Equipment that is not currently in use will be returned to the SESU.
- C. Record Keeping - All documentation relating to technical surveillance equipment (such as purchasing invoices, instruction manuals, maintenance contracts and repair orders, inventory, sign-out logs, etc.) will be maintained under the direction of the SESU.
- D. Issuance - Requests for equipment issuance will be made through the Commanding Officer of the SESU or his designee. Equipment will be issued per the procedures documented in Section VII.B. of this order.
- E. Maintenance - All maintenance or repair of technical surveillance equipment will be the responsibility of the SESU.

NOTE: The storage, operation and maintenance of the computer work station controlling the PEN's and Title III's shall be conducted **in the PEN ROOM**. The only exception to this policy will occur when said equipment is utilized in another location pursuant to a court authorized eavesdropping warrant. Pen Room entry shall be restricted to members of the SESU for the purpose of

operation and maintenance of the equipment files.

No other person will be allowed access to the Pen Room unless accompanied by a member of the SESU. A log shall be maintained documenting pen room entries by persons other than members of the SESU. The log will document the name of the person entering the Pen Room as well as the date, time of entry, time of departure, purpose of entry, and the name of the escorting SESU member.

V. PROCEDURE FOR TECHNICAL SURVEILLANCE EQUIPMENT OTHER THAN PENS OR TITLE III.

- A. To ensure compliance with all laws, members will:
1. Obtain court authorization in those instances where technical surveillance equipment is to be used in a non-consensual setting and is required by Article 700 or 705 of the CPL, or by applicable Federal law.
 2. Coordinate their attempts to gain court authorization with the Commanding Officer of the SESU and with the applicant prosecuting attorney when applicable.
 3. Assist and supply proper testimony, either oral or through a written sworn affidavit, to establish and support probable cause, exhausted investigative technique, and facilities used by the target.
 4. Verify the accuracy of the signed warrant prior to its execution.
- B. If requested and authorized by the warrant, members will make surreptitious entry upon a private place or premise to install the technical surveillance equipment pursuant to the authorized court order.
- C. Members will record the contents of any authorized communication intercepted or any observation made by any means authorized by the warrant digitally, on tape, wire or comparable device.
- D. Members will periodically communicate with the applicant attorney to apprise him of developments.
- E. Members will submit all reports requested or required by the

issuing judge within the designated time intervals showing any progress made toward achievement of the authorized objective and need for continued surveillance.

- F. Upon termination of the authorization on the warrant, members will immediately cease the eavesdropping or video surveillance and enter any private place or premise in which eavesdropping or video surveillance devices were installed, for the purpose of removing or making the devices inactive.
- G. All recordings of communications or observations made pursuant to the warrant shall be delivered to the custody of the authorized applicant attorney, or directly to the issuing judge if directed by him or the applicant district attorney.
- H. Members will retain custody of the recordings made pursuant to the warrant if the judge so directs. If retained, they must be maintained for a minimum period of ten years.
- I. Members will only disclose information obtained pursuant to either type of warrant to:
 - 1. Other law enforcement personnel to the extent appropriate for the proper performance of the official duties of the member making or receiving the disclosed information, or
 - 2. The courts/grand jury as authorized by CPL 700.65.3.
- J. The information obtained will be used pursuant to either type of warrant to the extent such use is appropriate to the proper performance of his official duties.

VI. PROCEDURES FOR PEN AND TITLE III INSTALLATIONS

A. COURT ORDER

Use of these devices requires a court order. These orders are issued by a court of competent jurisdiction upon application of the U.S. Attorney, N.Y. Attorney General, Monroe County District Attorney, or any of their sworn assistants.

- 1. Members involved in requesting or assisting the applicant attorney to obtain a Pen Register or Title III, will supply information on a sworn affidavit as outlined in CPL §705.15, or, if appropriate, as outlined in applicable Federal law.

2. The SESU Commanding Officer will cause the order to be executed by directing the installation of the appropriate devices as ordered by the Court, carefully adhering to the time constraints governing the period in which they may be installed. Should technical difficulties make it impossible to install the device within the court ordered time constraints, the SESU shall notify the investigating member, and it shall be the responsibility of the investigating member to obtain a new court order. There can be no deviation from this procedure without the express written approval of the Court.

B. EVIDENCE COLLECTION AND DISSEMINATION

Evidence collected from PEN and Title III devices shall only be turned over to the investigating members who obtained the Court Order or their immediate supervisor. Any deviation from this policy must be authorized by the Commanding Officer of SIS or his designee.

C. DEACTIVATION/TERMINATION OF DEVICE

SESU personnel shall deactivate or terminate a PEN or Title III on or prior to the date of expiration as delineated in the Order authorizing such device.

1. PEN installations may be extended as provided for in CPL §705. The investigating member will provide the SESU two (2) copies of the court authorized extension order prior to the date of termination of the original order. Throughout the portion of the investigation requiring the use of a PEN or Title III, and prior to the extension of an order for these devices, the investigating member will ensure that the telephone number for the target telephone device has not changed. In the event that the target telephone device's number is changed the investigating member will immediately notify the SESU to deactivate the PEN or Title III relating to the target telephone. It shall be necessary for the investigating member to make application before the Court for an amended order. SESU personnel will immediately deactivate a PEN or Title III when they have

knowledge that said installation is contrary to the Court Order in any manner.

2. PENs or Title III's may be terminated by the investigating member prior to the court ordered date upon written request to the SESU.

VII. EQUIPMENT ISSUANCE

A. Policy

The SESU may temporarily issue technical surveillance equipment to other components of the Department including the Tactical Unit, Central Investigations Division, or Patrol at the discretion of its Commanding Officer when the requesting persons have satisfied the following requirements:

1. Legal Issues - In applications requiring a court order, the requesting person will produce a court-ordered authorization for the use of technical surveillance equipment prior to equipment issuance. In general, where there is a reasonable expectation of privacy, there must either be a waiver of consent signed by one of the parties to be surveilled, or a court order to utilize technical surveillance equipment. Any questions regarding lawful use of technical surveillance equipment will be addressed to the District Attorney or the US Attorney with jurisdiction in the case's prosecution. The lawful use of technical surveillance equipment becomes the responsibility of the person to whom it is issued. This responsibility can never be waived.
2. Training/Familiarity - At the direction of the Commanding Officer of the SESU, the requesting/receiving member(s) may require specialized training or familiarization in the use of the requested technical surveillance equipment prior to its issuance.

B. Guidelines/Requirements for Technical Surveillance Equipment

NOTE: Custom-made or disguised equipment will NOT be used with confidential sources nor will they be made aware of the existence of such equipment without prior approval of the Commanding Officer of the SESU.

1. This surveillance equipment may require a court order:
 - Photographic/Video Equipment
 - Night Vision Equipment
 - Microphones and Audio Tape Recorders
 - Transmitters (Kel-Kits)
 - Tracking Transmitters (Bumper Beepers, trackers utilizing GPS technology)
 - a) Court orders are required for applications when a consenting party is not present and there is a reasonable expectation of privacy. There is no reasonable expectation of privacy in a "public place". A public place means a place to which the public or a substantial group of persons has access. Refer to Section 240.00 (1) of the Penal Law for examples. If it is not clearly a "public place" as described, officers will obtain a court order.
 - b) With one-party consent, all authorized activity/conversations may be recorded/monitored if any party gives consent and a waiver indicating same is signed. The person who signs the waiver must be present for all such recorded activity/conversations. A waiver is mandatory.
 - c) An undercover officer must sign a waiver and be present for all such recorded or monitored activity/conversations.
 2. A court order is required and members of SESU will apply to the courts as outlined in Article 705 of the CPL in all instances prior to a unit being issued for the following types of surveillance equipment:
 - Dialed Number Recorders (DNR)/ Pen Registers
 - Title III Cellular Intercept Equipment
 - FAX/Modem Intercept Equipment
- C. When technical surveillance equipment is utilized by other components of the Department, unless otherwise directed by the

Commanding Officer of SIS, the role of SESU is to provide technical advice, guidance and assistance, as well as perform technical functions such as installations, maintenance, repair and the removal of the equipment. The investigating member(s) are responsible to receive, monitor or review the data, make arrangements for the installations and removal of the equipment, and to provide personnel for the security of the SESU members during technical operations where applicable.

D. Procedures

1. The investigating component wishing to use technical surveillance equipment will contact the SESU to discuss investigative needs and goals, as well as technical, logistical and legal issues. In the case of tracking equipment/bumper beepers the requesting member will also:
 - a. Complete the SIS Tracking Equipment Utilization Form, Part A and submit it to the SESU.
 - b. Designate a Command Officer of the rank of Lieutenant or higher who will oversee the investigation.
 - c. Designate a Lead Sergeant, Investigator, or Officer to have primary responsibility to conduct the operation and who will be responsible for the security and use of the equipment.
 - d. Obtain the appropriate court order and provide SESU with a copy of the signed order or a completed "Authorization for Consensual Monitoring" form which authorizes the tracking operation.
2. When a request is received by SESU for the utilization of technical surveillance equipment, the commanding officer will review the request, confirm the availability of suitable equipment to accomplish the investigative objectives and work with the requesting component to resolve any issues. In the case of tracking equipment, once all issues are resolved, the commanding officer of SESU will complete Part B of the Tracking Equipment Utilization Form and forward it to an SIS Command Officer (Captain or Lieutenant) or higher authority for final approval. If

approved, SESU will complete Part C of the form upon installation.

3. Once legal and departmental approvals are received, the investigating member will work with SESU to plan for installation of the technical surveillance equipment as well as any future maintenance. SESU will provide all equipment and instruction on its use. While SESU will continue to provide technical support throughout the investigation, it is the investigating member's responsibility to review, receive or monitor all data and any related investigative or enforcement work.
- E. Unless extended issue is authorized by the Chief of Police, the Commanding Officer of the SIS or their designee, the technical surveillance equipment will be issued for a specific length of time and will be returned to the SESU on or before the return date specified.

VIII. SPECIFIC REGULATIONS FOR TRACKING EQUIPMENT

- A. Authorization under Exigent Circumstances
1. Exigent circumstances may arise in which the authorization procedures set forth in VII.D.1.a-d cannot be completed. For the purposes of this order, exigent circumstances are those involving an imminent threat to the life or safety of any person or a significant unanticipated enforcement or investigative opportunity that must be acted on quickly.
 2. The Commanding Officer of SIS, or a higher ranking departmental authority may verbally approve a request to use tracking equipment, provided legal requirements are met.
 3. The requesting member and the SESU shall complete the Tracking Equipment Utilization Form the next business day (Monday through Friday).
- B. Terminating or Extending the Tracking Operation Procedures
1. No later than one week prior to the expiration date of the court order, the investigating component must contact SESU to plan for an extension of the order or the end of the

operation and retrieval of the equipment.

2. If the order is to be extended, it is the responsibility of the investigating component to receive court authorization for the extension and to provide SESU with a copy of such order prior to the expiration of the current order. If SESU does not receive the extension order prior to the expiration, SESU will shut down capability to receive or monitor data on SESU equipment and any equipment being utilized by the investigating component at the order's expiration. Upon receipt of a valid court-ordered extension, SESU will complete Part D of the Tracking Equipment Utilization Form.
3. If the tracking operation is to be ended with the expiration of the order, the investigating component will work with SESU to plan for the cessation of capabilities to receive and monitor data and for the retrieval of all equipment. It is the responsibility of the investigating component to provide personnel to accomplish the retrieval.

NOTE: if difficulty is anticipated in locating or obtaining the vehicle or object for equipment removal prior to the order's expiration, the investigating component will obtain an extension order authorizing use of the tracking equipment to locate the object or vehicle and/or seize the vehicle for the purpose of removing the tracking equipment.

4. The investigating component will return to SESU, or give access to SESU, any equipment being used to receive or monitor data by noon on the last business day (Monday-Friday) prior to the expiration of the order.
5. If SESU is *not* given access to the equipment or for any reason is not able to stop receipt of the data prior to the expiration of the order authorizing the equipment, SESU will immediately notify the Commanding Officer of SIS. Arrangements will be made to immediately obtain the equipment or otherwise take steps to ensure compliance with legal requirements.
6. If the vehicle or object cannot be located or obtained to retrieve the tracking equipment, or for any reason the tracking equipment is not removed prior to the expiration of

the order authorizing such equipment:

- a. SESU will take steps to prevent the receipt or monitoring of any data while the order is not in effect.
 - b. The investigating component will obtain a court order, or extension of the expired order to authorize use of the tracking equipment to locate and seize the vehicle for the purpose of removing the tracking device.
7. If the tracking operation is based on consent rather than a court order, the investigating component will cease receiving data and immediately notify SESU if the consenting party withdraws consent. Arrangements will then be made to retrieve any equipment.
8. In the event that the RPD receives any tracking data outside the scope of the court order or consent, the following procedure will be adhered to:
- a. RPD personnel will not use any data obtained outside the scope of the court order or consent for any enforcement or investigative purpose, nor will such data be provided to any other law enforcement or investigative agency.
 - b. The SIS Commanding Officer will notify their Commanding Officer.
 - c. All such data will be secured on SESU equipment.
 - d. The investigating component and SESU will coordinate with the District Attorney's Office to obtain a court order to seal and/or destroy the data.
 - e. The SIS Commanding Officer will submit an IDC to their Commanding Officer explaining the circumstances and steps taken to remedy the situation.
9. At the completion of a tracking operation, SESU personnel will complete part E of the Tracking Device Utilization Form.

C. Deviation From This Order

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The Commanding Officer of the SIS may authorize deviation from this order provided he or she ensures that all legal requirements are satisfied and any RPD policies and procedures are followed. In such cases, within twenty-four hours of approving the deviation from this order, the SIS Commanding Officer must submit an IDC to their Commanding Officer notifying him/her of the deviation and explaining the justification for this. This IDC will be submitted the next business day (Monday through Friday).

**ROCHESTER POLICE DEPARTMENT
 SPECIAL INVESTIGATION SECTION'S
 SURVEILLANCE & ELECTRONIC SUPPORT UNIT**

AUTHORIZATION FOR CONSENSUAL MONITORING

I, _____, do hereby give consent and authorization to _____ or other members of the Rochester Police Department, to overhear and / or record conversations and discussions to which I am a party, between the hours of:

_____ and _____

Month Day Year Time Month Day Year Time

I further consent to the placement and / or monitoring, and / or installation of audio and / or video recording or transmitting equipment:

1. Upon my body or person to include carried items (purse, luggage, package, etc.) and / or
2. Within my residence or attached to any residential wire or electronic communication equipment to include but not limited to: telephones, pagers, computers and facsimiles, etc., and / or
3. Within my place of business or attached to any business wire or electronic communication equipment to include but not limited to: telephones, pagers, computers and facsimiles, etc., and / or
4. Within my vehicle(s) of any description, either personally owned or leased by me, and / or
5. On public telephones when used by me, and / or
6. On any other telephone that I have authorization to use even though I am not the subscriber.

I understand that I have the right to refuse such consent and authorization and affirm under penalty of perjury that I give my consent and authorization voluntarily.

NOTICE: False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the New York State Penal Law.

Date	Time	Consenting Party Signature
Witnessing Member's Signature	Witnessing Member's Signature	

**ROCHESTER POLICE DEPARTMENT
SPECIAL INVESTIGATION SECTION'S
SURVEILLANCE & ELECTRONIC SUPPORT UNIT**

ELECTRONIC VIDEO WAIVER

PROJECT _____

I, _____, do hereby give consent
and authorization to _____, or other members of the

Rochester Police Department, to install video equipment including but not
limited to, electronic device(s), camera(s), videotape recorder(s), and necessary
wiring to complete said installation in my home, located at _____

_____ phone number _____

and to maintain and monitor such equipment for a period of thirty (30) days
from the date of this authorization.

Signed: _____

Date: _____

Time: _____

Witness: _____

Witness: _____

Rochester Police Department
Special Investigations Section
Tracking Equipment Utilization Form

PART A Request (To be completed by investigating/requesting member)

1. Date _____
2. Requesting Member/ Unit or Division _____
3. Responsible Command Officer _____
4. Lead Officer/ Investigator _____
5. Item to be tracked
 - Vehicle Year _____ Make _____ Model _____ Plate _____
 - Other item- describe _____
 - Best date/time for installation _____
 - Best location for installation _____
 - Type of location (e.g., residence, school, driveway, street, etc) _____
 - _____
 - Potential hazards/ difficulties (e.g., dogs, lighting, fences, video surveillance, weapons, etc) _____
 - _____
6. Legal Basis
 - Court Order
 - Consent by _____
7. Crimes being investigated _____
8. CR# _____
9. Investigative Target (include name, MoRis#, criminal history regarding violence or weapons.
 - _____
 - _____
 - _____
 - _____
10. Purpose of tracking _____
11. Expected length of tracking operation _____

PART B SESU/SIS Review (To be completed by SESU supervisor or designee)

1. SESU personnel reviewing request _____

2. Equipment available: YES NO

3. SESU Comments or special issues: _____

4. SESU Recommendation: Approval Denial

5. SIS Decision: Approved Denied

6. Approving Authority _____

Print name

Approving Authority _____

Signature

Date

PART C Implementation (To be completed by SESU)

1. Date Court Order or Consent Form received by SESU _____
 Copy attached
2. Court Order/ Consent Form reviewed by _____
3. Date Court Order/ Consent Form expires _____
4. Date for plan to extend/ end tracking (at least one week prior to expiration)

5. Date of installation _____
6. Location vehicle/ object obtained _____
7. Location installation performed _____
8. Tracking device used _____
9. SESU personnel performing installation _____

10. SESU equipment provided to investigating member (include ID/serial #)

11. List name and phone number of person receiving SESU equipment.

Name Phone number
12. Installation notes/comments.

PART D Extensions (To be completed by SESU)

Extension 1

Date extension order received by SESU _____ Copy Attached
Date extension order expires _____
SESU personnel that reviewed extension order _____
Date for plan to extend/end tracking operation (at least one week prior to expiration date) _____

Extension 2

Date extension order received by SESU _____ Copy Attached
Date extension order expires _____
SESU personnel that reviewed extension order _____
Date for plan to extend/end tracking operation (at least one week prior to expiration date) _____

Extension 3

Date extension order received by SESU _____ Copy Attached
Date extension order expires _____
SESU personnel that reviewed extension order _____
Date for plan to extend/end tracking operation (at least one week prior to expiration date) _____

Extension 4

Date extension order received by SESU _____ Copy Attached
Date extension order expires _____
SESU personnel that reviewed extension order _____
Date for plan to extend/end tracking operation (at least one week prior to expiration date) _____

Extension 5

Date extension order received by SESU _____ Copy Attached
Date extension order expires _____
SESU personnel that reviewed extension order _____
Date for plan to extend/end tracking operation (at least one week prior to expiration date) _____

Attach additional sheets if necessary.

PART E Completion (To be completed by SESU)

1. Date court order/extension expires _____ **OR**
Date SESU notified of consent withdrawal _____
2. Date/time receipt capability stopped _____
3. SESU personnel ending receipt capability _____
4. SESU personnel retrieving tracking device _____
5. All SESU equipment returned? YES NO
6. All software installed on non-SIS computers removed? YES NO
7. SESU equipment not returned or software not removed and explanation if applicable.

8. Composite CD/DVD made? YES NO
If yes, name of person CD/DVD turned over to _____

9. Completion notes/comments:

10. SESU personnel completing Part E _____