



Department of Defense
INSTRUCTION
AD-A271 941



July 16, 1990
NUMBER 5505.2

IG, DoD

SUBJECT: Criminal Investigations of Fraud Offenses

- References:
- (a) DoD Instruction 5505.2, "Criminal Investigations of Fraud Offenses," November 6, 1987 (hereby canceled)
 - (b) Public Law 95-452, Inspector General Act of 1978, October 1, 1978, as amended by Public Law 97-252, "Department of Defense Authorization Act," September 8, 1982
 - (c) DoD Directive 5106.1, "Inspector General of the Department of Defense," March 14, 1983
 - (d) "The Posse Comitatus Act" (Title 18, United States Code, Section 1385) Public Law 86-70, June 25, 1959
 - (e) through (g), see enclosure 1

A. REISSUANCE AND PURPOSE

This Instruction:

1. Reissues reference (a). References (b) and (c) provide that the Inspector General, Department of Defense (IG, DoD), has the responsibility to conduct, supervise, monitor, and initiate investigations relating to fraud within the Department of Defense and those other investigations deemed appropriate by the IG, DoD.
2. Implements reference (c) to establish policies, responsibilities, and procedure for determining which of the DoD criminal investigative organizations (DCIOs) will conduct investigations of fraud offenses under both the United States Code (U.S.C.) and the Uniform Code of Military Justice (UCMJ).

B. APPLICABILITY AND SCOPE

This Instruction:

1. Applies to the Office of the Secretary of Defense (OSD); the Office of the Inspector General, Department of Defense (OIG, DoD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; the Defense Agencies; and DoD Field Activities.
2. Applies to all activities of the DoD entities in subsection B.1. above.
3. Applies to investigations involving both persons and organizations affiliated with the Department of Defense.

C. DEFINITIONS

1. Affiliated with the Department of Defense.

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a. When referring to "persons" include: applicants for employment with the Department of Defense; current and former employees of the Department of Defense (including Active and Reserve duty members of the Military Services and civilians); current, prospective, former, suspended, and debarred contractors of the Department of Defense, or their subcontractors; current, prospective, former, suspended, and debarred employees of the categories of contractors and subcontractors referred to in the preceding phrase; consultants and other persons paid by the Department of Defense or by any of the above categories of contractors of the Department of Defense or their subcontractors; persons residing on DoD installations and facilities; dependents of both DoD civilian employees and active duty Military Service members; and persons who legally or illegally enter or are present on any DoD property, installation or facility.

b. When referring to "organizations," it includes organizations sponsored by the Department of Defense or composed entirely of current DoD employees, and other organizations that have offices located on DoD installations and facilities.

c. This term also includes persons and organizations engaged in sales to foreign governments, when the funds are provided or administered by the Department of Defense.

2. DoD Criminal Investigative Organizations (DCIOs). The United States Army Criminal Investigation Command (USACIDC), Naval Investigative Service (NIS), United States Air Force Office of Special Investigations (AFOSI), and Defense Criminal Investigative Service (DCIS).

3. Fraud. This term includes theft and/or embezzlement from the Government, bribery, gratuities, conflicts of interest, and violations of antitrust laws, as well as fraud (e.g., false statements and false claims) in the following areas: pay and allowances, procurement, labor and material mischarging, defective pricing, product substitution, progress payment fraud, property disposal, commissary and/or subsistence, nonappropriated funds, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), foreign military sales, and personnel matters.

4. Military Criminal Investigative Organizations (MCIOs). The USACIDC, NIS, and AFOSI.

5. OSD Component Heads. The Under Secretaries of Defense, Assistant Secretaries of Defense; Chairman, Joint Chiefs of Staff (CJCS); General Counsel, Department of Defense (GC, DoD); and Assistants to the Secretary of Defense.

D. POLICY

1. Under the authority provided to the IG, DoD, by the "Inspector General Act of 1978", and DoD Directive 5106.1 "Inspector General of the Department of Defense" (reference (b), and (c)), the four DCIOs shall substantially share the responsibility of conducting investigations of fraud offenses affecting the Department of Defense. The DCIS, consistent with the policies stated herein, is accorded responsibility for all fraud investigations involving the OSD, the CJCS, the Defense Agencies (except the Defense Logistics Agency (DLA), as outlined in enclosure 2) and any other fraud investigation deemed appropriate by the IG, DoD, or designated representative. The MCIOs, consistent with the policies stated herein, are accorded responsibility by the IG, DoD, for the conduct of fraud investigations within their Military Departments. It is the policy of the Department of Defense

that the investigation of allegations of fraud relating to DoD programs and personnel shall be conducted by the appropriate DCIOs as shown at enclosure 2.

2. In conducting fraud investigations, the DCIOs shall give due consideration to conducting joint investigations of fraud allegations when appropriate. Such consideration may be appropriate when the DCIS conducts a significant investigation involving a Military Department, or when a MCIO conducts an investigation involving the Unified and Specified Commands. Such consideration may also be appropriate between MCIOs when more than one Military Department is the victim of a fraud.

3. When the IG, DoD, or a designated representative, refers any investigative matter to a Military Department for investigation, the referral shall be considered a formal request by the IG, DoD, for investigation by that organization, as provided for in the "Inspector General Act of 1978" and DoD Directive 5106.1 (references (b) and (c)). Any IG, DoD, referral to the Secretary of a Military Department that does not result in the opening of an investigation shall be reported promptly to the IG, DoD, by the Secretary of the affected Military Department.

4. Fraud investigations conducted by the MCIOs are undertaken for the primary purpose of furthering a function of the Department of Defense. Accordingly, such investigations are not restricted under 18 U.S.C. 1385, "The Posse Comitatus Act" (reference (d)). Additionally, the "Posse Comitatus Act" does not apply to investigations conducted by, under the direction of, or at the request of the IG, DoD, (reference (b)).

5. All allegations of fraud are to be reported promptly to, and all significant allegations promptly investigated by, the appropriate DCIO as designated by this Instruction.

E. RESPONSIBILITIES

1. The Inspector General, Department of Defense (IG, DoD), shall.

a. Ensure that the Office of the Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO) monitors and gives particular regard to the activities of all DCIOs with a view toward avoiding duplication while providing effective coverage, coordination, and cooperation, as provided by this Instruction and other IG, DoD, policies. The AIG-CIPO shall serve as the exclusive oversight authority on behalf of the IG, DoD.

b. Ensure that the AIG-CIPO acts as the primary decision authority for resolving disagreements on the jurisdictional responsibilities outlined in enclosure 2 of this Instruction. Disagreements on jurisdictional issues should first be addressed at the field levels of the DCIOs. Disagreements that cannot be resolved at the field level shall be elevated through the appropriate chain of command to the Headquarters elements of the DCIOs for resolution. When the Headquarters elements of the concerned DCIOs cannot achieve a resolution of the disagreement, the issues shall be raised to the AIG-CIPO for a decision. In exceptional circumstances, the Commanders and Directors of the DCIOs may elevate decisions made by the AIG-CIPO to the IG, DoD, for final review and determination.

c. Ensure that the DCIS carries out the investigative responsibilities and notification requirements enumerated for it in this Instruction and conducts any investigation deemed appropriate by the IG, DoD.

d. Ensure that the OIG, DoD, refers to the appropriate MCIO any fraud allegations designated to be investigated by them in this Instruction, unless the IG, DoD, or a designated representative, deems it appropriate for the OIG, DoD, to conduct the investigation and advises the affected MCIO of that decision. This provision does not apply to referrals to the Federal Bureau of Investigation (FBI) required by paragraph C.1.a. of DoD Directive 5525.7 (reference (e)).

e. Ensure that the OIG, DoD, expeditiously informs the Secretary of the concerned Military Department (through the appropriate MCIO) when it discovers, or otherwise becomes aware of, any suspected or alleged violations of the UCMJ. Where the DCIS conducts any investigation of violations of the UCMJ, the DCIS shall provide appropriate support to the concerned Military Department to undertake any prosecutions or administrative actions of such violations under the UCMJ.

f. Ensure that the DCIS promptly notifies the concerned Military Department (through the appropriate MCIO) when it initiates an investigation affecting its personnel, activities, or contracts (including those administered by the DLA. The DCIS also should provide, in accordance with the requirements of DoD Directive 7050.5 (reference (f)), copies of completed reports of investigation and any other interim reports or documents necessary to support appropriate action by the Military Departments

2. The Secretaries of the Military Departments shall:

a. Ensure that allegations of significant fraud involving their respective Military Departments are referred promptly for investigation to the appropriate DCIO as designated by this Instruction. Referrals of allegations of significant fraud shall not be made outside of the Department of Defense unless required by reference (e) and when so required shall be done through or with advance notice to the DCIO which primarily supports the referring activity.

b. Ensure that the MCIOs promptly initiate investigations and comply with notification requirements assigned to them in this Instruction

c. Ensure that the MCIOs refer to the DCIS those investigations assigned to DCIS in this Instruction.

d. Ensure that the MCIOs provide timely investigative support to the Unified and Specified Commands, as required in this Instruction.

e. Require that the MCIOs refer or return to the DCIS, before referral to a non DCIO, any significant allegations of fraud that they do not investigate or for which they do not have adequate resources. This provision does not apply to referrals to the FBI required by paragraph C.1.a. of DoD Directive 5525.7 (reference (e)).

f. Establish procedures providing for the investigation of less significant fraud allegations when the MCIOs neither investigate the matter nor refer the allegations elsewhere for investigation (Example of alternative investigative

resources include military or security police elements, other designated DoD investigators, or command authorities.)

g. Ensure that the MCIOs notify the DCIS when they initiate an investigation affecting the personnel, activities, or contracts of the OSD, the CJCS, and the Defense Agencies. The MCIOs also should provide, in accordance with the requirements of DoD Directive 7050.5 (reference (f)), copies of completed reports of investigation and any other interim reports or documents necessary to support appropriate action by the OSD, the CJCS, or a Defense Agency.

3. The OSD Component Heads and the Heads of Defense Agencies shall:

a. Establish procedures in accordance with the provision of section F., below, to ensure that all allegations of fraud involving persons affiliated with the Department of Defense and any property or programs under their control or authority are referred promptly to the DCIS, except those allegations relating to Defense Reutilization and Marketing Service offices where investigative responsibility has been assigned to a MCIO by enclosure 2.

b. Establish procedures providing for the investigation of less significant fraud allegations when the DCIOs neither investigate the matter nor refer it elsewhere for investigation. (Examples of alternative investigative resources include military or security police elements, other designated DoD investigators or command authorities.)

4. The Director, Defense Contract Audit Agency (DCAA) shall establish procedures to ensure that suspicion of irregularity reports or referrals of suspected fraud arising from DCAA audit activities are referred to the DCIO to which investigative responsibility for the matter has been assigned by enclosure 2.

5. The Unified and Specified Commands shall establish procedures to ensure that all allegations of fraud involving persons affiliated with the Department of Defense or any property or programs under their control or authority are referred to the appropriate MCIO

F. PROCEDURES

1. The OSD, the CJCS, and the Defense Agencies (except the DLA, as outlined in enclosure 2) shall refer, at the local level when possible, all fraud allegations to the DCIS, except DCAA suspicion of irregularity and/or suspicion of fraud referrals as provided for in subsection E.4., above, and those allegations relating to Defense Reutilization and Marketing Service offices where investigative responsibility has been assigned to a MCIO by enclosure 2. On allegations referred to the DCIS, the DCIS expeditiously shall, either assume responsibility for the investigation or refer it to a MCIO.

2. The MCIOs shall promptly notify the DCIS whenever they do not intend to investigate a matter referred to them by the DCIS for investigation. The MCIOs also shall notify the DCIS when an investigation started by a DCIS referral is terminated for any reason before completion. The MCIOs shall provide to the DCIS a copy of the complete report of any investigation started as a result of a DCIS referral. The DCIS shall follow these same procedures for referrals to the DCIS from any MCIO.

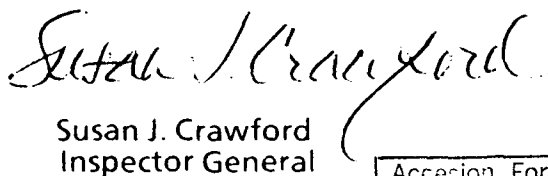
3. The DCIOs shall expeditiously notify other DCIOs when a matter being investigated affects an activity normally under the jurisdiction of, or assigned by

this Instruction to, the other organization, or when the interests of any DoD Component otherwise warrant such notification. In such circumstances, the investigating organization shall provide the allegations and later furnish completed reports of investigation, to the appropriate DCIO.

4. The MCIOs shall provide a notice of all investigations opened by those organizations that in any way affects or involves a function or service being provided by the DLA, or contracts awarded or administered by the DLA. This notice shall be given to the DCIS at the field office level and the responsible DLA fraud counsel with a copy to the Staff Director, Office of Command Security, DLA Headquarters (ATTN: DLA-I). This notice should be provided as soon as the DLA interest is identified and in a manner that shall not compromise the success of the investigation. A copy of the completed report of investigation also shall be provided to the DCIS and the Staff Director, Office of Command Security, DLA Headquarters (ATTN: DLA-I).

G. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately. Forward one copy of implementing documents to the Inspector General, Department of Defense, within 120 days.


Susan J. Crawford
Inspector General

Enclosures - 2

1. References
2. Chart of Investigative Responsibility for Allegations of Fraud

Accession For	
NTIS	CRA&I ☒
DTIC	TAB ☐
Unannounced ☐	
Justification <i>per form 50</i>	
By _____	
Distribution / _____	
Availability Codes	
Dist	Availability or Special
<i>A-1</i>	

EX-100-100-100-100

REFERENCES, continued

- (e) DoD Directive 5525.7, "Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes," January 22, 1985
- (f) DoD Directive 7050.5, "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," June 7, 1989
- (g) Public Law 86-695, September 2, 1960, amended by Public Law 99-634, November 7, 1986, "The Anti-Kickback Enforcement Act of 1986" (Title 41, United States Code, Sections 51 through 58)

CHART OF INVESTIGATIVE RESPONSIBILITY FOR ALLEGATIONS OF FRAUD

<u>Allegations of Fraud Relating to</u>	<u>Investigative Responsibility of:</u>	<u>Comment:</u>
1. OSD, CJCS, and Defense Agencies other than the DLA	DCIS	The MCIOs shall conduct such investigations when the IG, DoD, or a designated or a designated representative deems it appropriate to refer such matters to them
a. Strategic Defense Initiative Organization (SDIO)	DCIS	When allegations of fraud involving the SDIO are received by, or arise during an ongoing investigation being conducted by, any MCIO, the DCIS shall be notified promptly and, absent unusual circumstances, a joint investigation shall be conducted
b. Department of Defense Dependent Schools (DoDDs)	MCIO providing support to host or primary supported military installation	
2. Unified and Specified Commands	MCIO providing support to parent military installation	When a Unified or Specified Command directs the deployment of military units for exercises or combat missions, the deployment plan shall specify the MCIO that shall have investigative responsibility for the deployment. The investigative responsibility jurisdictional limits applicable to each MCIO shall be specified, if more than one MCIO is assigned. The designated MCIO(s) shall deploy adequate investigative resources to support all such deployments. The deployment plan shall also provide for logistical and administrative support for the investigative resources being deployed
a. Special Operations Forces Low Intensity Conflicts (SOFLIC)	MCIO	The DCIS shall be notified promptly of all allegations of fraud relating to SOFLIC received by or disclosed during investigations conducted by any MCIO. The DCIS then shall determine promptly the extent of OIG, DoD, involvement in investigating such allegations

<u>Allegations of Fraud Relating to</u>	<u>Investigative Responsibility of:</u>	<u>Comments:</u>
3 DLA		
a All allegations of fraud on contracts awarded AND administered by the DLA	DCIS	Any activity or DoD Component reporting allegations of suspected fraud shall send simultaneous joint notification to the DCIS and the affected MCIO. The DCIS and the MCIO shall immediately notify each other of any allegations of fraud covered by this instruction when such allegations arise during any activities being conducted by the respective investigative organizations.
b All allegations of fraud on contracts awarded by a Military Department and administered by the DLA	Joint DCIS and/or MCIO	
c Defense Reutilization and Marketing Service offices on military installations, including off-site branches of such offices	MCIO providing support to the host-military installation	The composition of the joint investigative team shall be determined by the DCIS and the MCIO. Factors for consideration in making that determination to include: available investigative resources; proximity of investigative offices to the investigative activities anticipated; contracts affected; expertise; and decision of an investigative organization not to participate.
d Defense Reutilization Marketing Service offices not located on military installations	DCIS	The MCIO shall provide the DCIS with notice of planned initiative operations and with results thereof. The IG, DoD, or a designated representative may designate Defense Reutilization Marketing Service offices, not located on military installations, for which investigative responsibilities shall be assumed by the appropriate MCIO.

<u>Investigations of Fraud Relating to</u>	<u>Investigative Responsibility of:</u>	<u>Comments</u>
c Defense fuel Supply in European Pacific Commands	DCIS	The DCIS shall be notified promptly of all allegations of fraud relating to fuels supplied by the DLA, received by, or disclosed during investigations conducted by, any MCIO. The DCIS then shall determine promptly the extent of OIG, DoD, involvement in investigating such allegations and notify the cognizant MCIO
4 Allegations of fraud on contracts awarded AND administered by Military Departments	Appropriate MCIO(s)	
5 Military construction or civil works projects by the U S Army Corps of Engineers (USACE) or the Naval Facilities Engineering Command (NAVFAC)		
a CRIMINAL CASES involving		The NAVFAC or the USACE shall give simultaneous joint notification directly to the DCIS and the affected MCIO of all allegations of fraud meeting those criteria. The DCIS and the MCIO shall immediately notify each other of any allegations of fraud covered by this instruction when they arise during any activities being conducted by the respective investigative organizations
1 Allegations of fraud or theft (a) With a potential loss to the Government of \$100,000, or more, or	Joint DCIS and/or MCIO	
(b) When the subject		The composition of the joint investigative team shall be determined by the DCIS and the MCIO. Factors for consideration in making that determination include available investigative resources, proximity of investigative offices to the investigative activities anticipated, contracts affected, expertise, and decision of an investigative organization not to participate
1 "District Engineer," "Resident Officer in Charge of Construction," or "Public Works Officer," or		
2 In, or retired from, the military, grade O-6, and above, or civilian General Schedule or General Manager (GS or GM), grade 15, and above, and the potential loss to the Government is \$5,000, or more		

<u>Allegations of fraud relating to</u>	<u>Investigative Responsibility of:</u>	<u>Comments</u>
2. Any criminal corruption case related to procurement involving current or retired DoD military or civilian personnel		The notification required by this instruction must be made BEFORE any referral of the allegations outside of the Department of Defense (DOD) or investigation, other than those referrals to the FBI REQUIRED under DoD Directive 5525.7 (reference (e)).
3. Any investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated, regardless of loss value		
4. Any criminal case, regardless of the allegation, which has received, is expected to receive, or which if disclosed could reasonably be expected to receive SIGNIFICANT media coverage		
b. All other criminal cases	Appropriate MCI(s)	See paragraph E.2.e of this instruction
c. Contractions to Treaty Organization (NATO)	DCIS and/or MCI	Where the DCIS conducts investigations of fraud relating to NATO projects on military installations, joint investigations with the originating MCI(s) for the affected installation(s) shall be considered
7. Antitrust Act, Enforcement Act of 1986 (reference (g))		
d. Contractor disclosures	DCIS	The DCIS shall be the OIG DoD representative for receiving and statutorily required notifications from contractors of suspected violations of the Act (reference (g)). Joint investigations by the DCIS and the MCI for the affected Military Department shall be considered when such notifications by contractors pertain to contracts awarded and administered by a Military Department
e. Other	MCI	The MCI shall notify promptly the DCIS of all allegations of violations of the statute received by or disclosed during investigations conducted by them