



Department of Defense INSTRUCTION

NUMBER 5505.2

February 6, 2003

IG, DoD

SUBJECT: Criminal Investigations of Fraud Offenses

- References:
- (a) DoD Instruction 5505.2, subject as above, July 16, 1990 (hereby canceled)
 - (b) Inspector General, Department of Defense, Memorandum, "Revised Interim Guidance for Criminal Investigations," November 30, 2000 (hereby canceled)
 - (c) Appendix 3 of title 5, United States Code
 - (d) [DoD Directive 5106.1](#), "Inspector General of the Department of Defense," January 4, 2001
 - (e) through (j), see enclosure 1

1. REISSUANCE AND PURPOSE

This Instruction:

1.1. Reissues and updates reference (a) and cancels reference (b). References (c) and (d) provide the Inspector General of the Department of Defense (IG DoD), the authority to initiate, conduct, and supervise investigations relating to fraud within the Department of Defense (including the Military Departments) and other investigations as the IG DoD deems appropriate. Reference (c) also requires that the IG DoD give particular regard to the activities of the Military Departments with a view toward avoiding duplication and ensuring efficient and effective coordination and cooperation.

1.2. Implements reference (d) to establish policies, responsibilities, and procedure for determining which of the DoD Criminal Investigative Organizations (DCIOs) shall conduct investigations of fraud offenses under both the United States Code and Uniform Code of Military Justice.

2. APPLICABILITY AND SCOPE

This Instruction applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

4. POLICY

It is DoD policy that:

4.1. All allegations of fraud involving programs, persons, and organizations affiliated with the Department of Defense shall be thoroughly and timely evaluated and, when indicated, investigated, according to references (c) and (d).

4.2. Allegations of serious misconduct against senior DoD officials shall be reported promptly to the IG DoD at the time any DoD Component receives them per DoD Directive 5505.6 (reference (e)).

4.3. DCIOs shall substantially share the responsibility of conducting fraud offense investigations affecting the Department of Defense. The appropriate DCIO shall conduct investigations of fraud allegations relating to DoD programs and personnel as shown and according to guidance in enclosure 3. Although one DCIO may assume primary jurisdiction, this does not preclude another DCIO from joining the investigation, provided the DCIO has a Service-connected interest in the case and can contribute the necessary resources to actively and constructively participate in the investigation. In the event investigative responsibility cannot be resolved pursuant to guidance outlined in enclosure 3, the IG DoD shall determine which agency shall investigate a specific procurement fraud matter. All allegations of fraud shall be reported promptly to the DCIO designated in enclosure 3.

4.4. Fraud investigations conducted by the Military Criminal Investigative Organizations (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 (f)). 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 (c)).

4.5. A referral for investigation by the IG DoD or a designated representative to a Military Department shall be considered a formal request as provided for in references (c) and (d). If the referral does not result in opening of an investigation, the Secretary of the Military Department shall notify the IG DoD immediately.

5. RESPONSIBILITIES

5.1. The Inspector General, Department of Defense shall:

5.1.1. Monitor DCIO investigative activities to avoid duplication while providing effective and timely investigative support to the Department of Defense and its entities, as provided by this Instruction and other IG DoD policies.

5.1.2. Resolve disagreements concerning DCIO jurisdictional responsibilities as outlined in enclosure 3.

5.1.3. Ensure DCIOs provide timely investigative support to the Department of Defense and its entities.

5.1.4. Ensure the Defense Criminal Investigative Service (DCIS) follows the guidance and procedures outlined in enclosure 3.

5.2. The Secretaries of the Military Departments shall:

5.2.1. Ensure that allegations of fraud involving their respective Military Departments are referred promptly for investigation to the appropriate DCIO as designated in enclosure 3.

5.2.2. Ensure MCIOs follow the guidance and procedures outlined in enclosure 3.

5.2.3. Establish procedures for the investigation of fraud allegations when MCIOs neither investigate the matter nor refer the allegations elsewhere for investigation. (Examples of alternative investigative resources include, but are not limited to, military or security police elements, other DoD investigators, or command authorities.)

5.2.4. Ensure MCIOs provide copies of completed reports of investigation and other interim reports or documents necessary to support appropriate action by OSD, the Chairman of the Joint Chiefs of Staff, or a Defense Agency per DoD Directive 5505.6 (reference (g)).

5.3. The Heads of the DoD Components and the Directors of the Defense Agencies shall:

5.3.1. 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 DCIO designated in enclosure 3.

5.3.2. Establish procedures for the investigation of fraud allegations when DCIOs neither investigate the matter nor refer the allegations elsewhere for investigation. (Examples of alternative investigative resources include, but are not limited to, military or security police elements, other DoD investigators, or command authorities.)

5.4. The Director, Defense Contract Audit Agency (DCAA) shall establish procedures to ensure that suspicions of irregularity reports or referrals of suspected fraud arising from DCAA audit activities are referred to the DCIO specified in enclosure 3.

5.5. The Commanders of the Combatant 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 DCIO specified in enclosure 3.

6. PROCEDURES

Investigative areas of responsibility and procedures are outlined in enclosure 3.

7. EFFECTIVE DATE

This Instruction is effective immediately.



Joseph E. Schmitz
Inspector General

Enclosures - 3

- E1. References, continued
- E2. Definitions
- E3. Investigative Responsibility and Procedures

E1. ENCLOSURE 1

REFERENCES, continued

- (e) [DoD Directive 5505.6](#), "Investigations of Allegations Against Senior Officials of the Department of Defense," July 12, 1991
- (f) Section 1385 of title 18, United States Code
- (g) [DoD Directive 7050.5](#), "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," June 7, 1989
- (h) Sections 51-58 of title 41, United States Code
- (i) DoD Directive O-5205.7, "Special Access Program (SAP) Policy," January 13, 1997
- (j) [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

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Defense Criminal Investigative Organizations (DCIOs). They include the United States Army Criminal Investigation Command (USACIDC), Naval Criminal Investigative Service (NCIS), United States Air Force Office of Special Investigations (AFOSI), and the Defense Criminal Investigative Service (DCIS).

E2.1.2. Fraud. Any intentional deception designed to deprive the United States unlawfully of something of value or to secure from the United States a benefit, privilege, allowance, or consideration to which he or she is not entitled. Such practices include:

E2.1.2.1. Offering payment or accepting bribes or gratuities.

E2.1.2.2. Making false statements.

E2.1.2.3. Submitting false claims.

E2.1.2.4. Using false weights or measures.

E2.1.2.5. Evading or corrupting inspectors or other officials.

E2.1.2.6. Deceiving either by suppressing the truth or misrepresenting material fact.

E2.1.2.7. Adulterating or substituting materials.

E2.1.2.8. Falsifying records and books of accounts.

E2.1.2.9. Arranging for secret profits, kickbacks, or commissions.

E2.1.2.10. Conspiring to use any of these devices.

E2.1.2.11. Conflict of interest cases, criminal irregularities, and the unauthorized disclosure of official information relating to procurement and disposal matters.

E2.1.3. Military Criminal Investigative Organizations (MCIOs). The USACIDC, NCIS, and AFOSI.

E2.1.4. Senior Official. Active duty, retired, Reserve, or National Guard military officers in grades O-7 and above, current and former civilians in the grade of GS or GM-16 or above, current or former members of the Senior Executive Service, and current and former DoD civilian Presidential appointees.

E3. ENCLOSURE 3

INVESTIGATIVE RESPONSIBILITY AND PROCEDURES

E3.1. DCIS PRIMARY JURISDICTIONAL RESPONSIBILITY

DCIS has primary responsibility for investigating all allegations of fraud involving:

E3.1.1. The OSD and its field activities.

E3.1.2. The Chairman of the Joint Chiefs of Staff.

E3.1.3. All contract and procurement actions awarded by Defense Agencies, their DoD Components and field activities, with the exception of those specified under section E3.2.

E3.1.4. All Defense Reutilization and Marketing Service (DRMS) and Defense Distribution Depot activities, with the exception of those specified by paragraph E3.2.3. DCIS shall, except under exigent circumstances, notify, within 72 hours, the cognizant MCIO office of the initiation of an investigation conducted under this provision regarding a DRMS or Defense Depot activity on any installation covered under paragraph E3.2.3. Any notice to or briefing of the installation commander shall then only be accomplished by DCIS with the participation of the cognizant MCIO.

E3.1.5. All allegations of fraud committed by healthcare providers, to include "partnership agreement" situations, under TRICARE and fiscal intermediaries thereto. If the allegations concern a provider on a specific military installation or activity, the appropriate MCIO shall be notified.

E3.1.6. Allegations of suspected violations of 41 U.S.C. 51-58 (reference (h)) that contractors are required to report under that statute, whether or not they do so. If allegations concern a specific Military Department, the appropriate MCIO shall be notified.

E3.1.7. All kickbacks or bribery involving civilian employees of the OSD, the Chairman of the Joint Chiefs of Staff, and Defense Agencies and their field activities.

E3.1.8. Any allegations that the IG DoD considers appropriate for investigation by DCIS.

E3.2. MCIO AREAS OF PRIMARY JURISDICTIONAL RESPONSIBILITY

MCIOs have primary responsibility for investigating all allegations of fraud involving:

E3.2.1. Contract and procurement actions that a Military Department awards, regardless of what organization administers the contract except for those specified in section E3.3.

E3.2.2. Allegations of fraud involving the Defense Finance and Accounting Service (DFAS) where they pertain to the DFAS providing services for a:

E3.2.2.1. Single post.

E3.2.2.2. Camp.

E3.2.2.3. Base.

E3.2.2.4. Facility.

E3.2.2.5. Installation-level activity of a Military Department.

E3.2.2.6. Pay and allowance or travel fraud by a civilian employee or Service member in a Military Department.

E3.2.3. Activities of the DRMS and Defense Distribution Depots outside the United States (MCIO providing support to the host installation). Additionally, for any allegations resulting from a compromise of physical security of the DRMS, depot, or the host installation (e.g., break-ins, theft of property).

E3.2.4. The activities of or at an individual installation or facility, especially those that are under an installation commander's contracting authority. They also involve activities that affect the health, welfare, and morale of Military Service personnel (or their dependents) assigned to that specific installation or facility, including circumstances where the allegations pertain to the activities of or at a military installation or facility supported by another installation or facility.

E3.2.5. All matters regarding the Army and Air Force Exchange Service, the Navy Exchange Services Command, the Marine Corps Exchange, and all nonappropriated fund activities within the Military Departments.

E3.2.6. Allegations of fraud perpetrated against TRICARE, a fiscal intermediary or other health care providers or insurers by Military Service members, military retirees, and dependents who have received, made claims for, or requested benefits or services under such programs or operations.

E3.2.7. Construction contracts that a single Military Department funds.

E3.2.8. All DoD dependent schools outside the Continental United States.

E3.2.9. The Combatant Commands, including special operations forces low-intensity conflicts organizations.

E3.2.10. All Defense Energy Support Center activities outside of the United States.

E3.2.11. All NATO projects and expenditures by the Department of Defense in connection with NATO projects or activities.

E3.2.12. Allegations of bribery of a Military Service member or civilian employee of a Military Department, except those provided in sections E3.1. and E3.3.

E3.3. OTHER JURISDICTIONAL RESPONSIBILITY

DCIOs are responsible for investigating allegations of fraud not otherwise specified in sections E3.1. and E3.2., involving:

E3.3.1. Contracts that a single Military Department awards and where a contractor or subcontractor that has contracts with more than one DoD Component is alleged to have committed wrongdoing. The determination of whether the contractor has contracts with more than one DoD Component relates to the overall status of the contractor rather than to either the specific allegation(s) or contract(s) to which the allegations pertain.

E3.3.2. Top 100 contractors. Since the IG DoD has a continuing and substantial interest in investigations in which the subject is a Top 100 contractor or a subcontractor that is an affiliate of or owned by a Top 100 contractor, DCIS will determine whether to participate in any investigation of a Top 100 contractor.

E3.3.3. Violations of the antitrust laws.

E3.3.4. All allegations of fraud connected to contracts that are funded by other than military construction budget monies and that the U.S. Army Corps of Engineers awards or administers.

E3.4. SPECIAL REPORTING RESPONSIBILITIES REGARDING SENIOR OFFICIALS

DCIOs have responsibility for reporting all allegations of serious misconduct, including fraud, by senior officials to the IG DoD according to reference (e).

E3.5. AGENCY MANAGEMENT TEAM (AMT)

DCIOs shall establish, at the Headquarters level, an AMT to resolve jurisdictional issues that section E3.6. does not resolve. The members of this group shall be managers with co-equal authority to make binding decisions. The AMT representatives will resolve disputes according to paragraph E3.7.1. and section E3.10.

E3.6. JURISDICTIONAL RESPONSIBILITY-REGIONAL MANAGEMENT TEAMS (RMTS)

The determination of how the responsibilities in section E3.3. will be carried out shall be made according to the following:

E3.6.1. Except as noted in section E3.7., DCIOs shall establish RMTs at no higher than regional levels to address and resolve jurisdictional responsibility issues that may arise.

E3.6.2. The members of each RMT shall be managers or supervisors with co-equal authority to make binding decisions regarding which organization(s) shall conduct each investigation covered by enclosure 3.

E3.6.3. All allegations of contract or procurement fraud covered by section E3.3. that any DCIO receives or develops shall be forwarded within 72 hours of receipt to the appropriate RMT so they can determine which organization(s) shall conduct the investigation. In addition, copies of all case initiation forms related to investigations covered by this guidance shall be provided to RMT members within 72 hours of initiation.

E3.6.4. DCIOs shall not open inquiries, preliminary investigations, or criminal intelligence files or make presentations to any prosecutive authorities regarding these

allegations before they have forwarded them to the appropriate RMT for determination of which DCIO(s) shall investigate the allegations. Under exigent circumstances, a prosecutor may be consulted prior to referral to the RMT; however, the circumstances shall be explained in detail and documented for the RMT should such action be taken.

E3.6.5. The RMT will use the provisions of sections E3.8 and E3.9. to determine which DCIO(s) shall conduct the investigation.

E3.6.6. The RMT shall reach decisions by consensus in applying the criteria provided in this guidance and not by a majority rule "vote."

E3.6.7. A good faith effort shall be made to resolve disputes at the local level. Disputes that cannot be resolved at that level shall be resolved according to section E3.10.

E3.6.8. The RMTs shall hold, as a minimum, quarterly meetings in person to discuss issues of mutual interest.

E3.7. SENSITIVE COMPARTMENTED INFORMATION (SCI) AND SPECIAL ACCESS PROGRAM (SAP) FRAUD INVESTIGATIONS

Investigations of fraud allegations involving SCI and SAPs shall be coordinated as follows:

E3.7.1. The AMT shall resolve jurisdictional issues for any investigation under section E3.3. involving SCI. Each DCIO's AMT representative shall possess the necessary level of clearances to participate in SCI matters.

E3.7.2. DoD Directive O-5205.7 (reference (i)) requires all instances of suspected fraud or corruption to be reported through appropriately cleared channels to the designated investigative organization and instances of suspected fraud to the IG DoD. The DCIO responsible for providing investigative support to any SAP shall conduct such fraud investigations without referral to any RMT. However, the IG DoD, must be advised, through DCIS Special Operations Program, of the initiation of any fraud investigation related to a SAP. As previously provided, the IG DoD may join any such investigation.

E3.8. JOINT INVESTIGATION FACTORS

Joint investigations may be considered under the following circumstances:

E3.8.1. The alleged fraud involves and impacts substantially on the funding, programs, property, or personnel (as subjects) of more than one DoD Component.

E3.8.2. The nature of the investigation requires the commitment of more resources than a single DCIO can reasonably provide to the investigation.

E3.8.3. The DCIO desiring to join the investigation has and shall provide sufficient resources to actively contribute to the investigative team.

E3.8.4. Participation by more than one DCIO is required by DoD-level policy or memorandum of understanding applicable to the circumstances of the case.

E3.8.5. The investigation involves a TRICARE provider on a military installation and raises quality of care issues.

E3.8.6. The matter being investigated is considered to be of such importance to a Military Department that participation by more than one DCIO may avoid any appearance of lack of independence or possible command influence.

E3.8.7. The IG DoD determines that an investigation will be conducted jointly or that the DCIS shall be a joint participant in an investigation with another DCIO(s).

E3.9. JOINT INVESTIGATION OPERATIONAL GUIDELINES

When a joint investigation is appropriate under section E3.8., the following guidelines shall apply:

E3.9.1. Substantive Activities Required. All DCIOs participating in the joint investigation shall supply personnel to perform substantive and regular investigative activities in furtherance of the case. If they don't, their further joint participation shall be terminated. Every effort shall be made at the local RMT level to resolve the resource issue. If the resource issue cannot be resolved at the local level, the procedures in section E3.10. shall be followed.

E3.9.2. Management of Joint Investigations. Agents participating in a joint investigation shall form an Investigative Management Team (IMT). The IMT and respective field managers shall mutually agree on and be responsible for managing and directing investigations, including case administration, reporting, and liaison with prospective prosecutors. The IMT is responsible for identifying investigative requirements and coordinating completion of investigative tasks, which may include the following:

E3.9.2.1. Notifying the centralized points of coordination for the affected DoD Components and ensuring the centralized point of coordination is provided timely information needed to implement, update, or revise a remedies plan.

E3.9.2.2. Originating and processing requests for electronic surveillance, search warrants, and similar investigative techniques requiring approval outside the DCIO.

E3.9.2.3. Establishing the format for preparing reports of investigation, memoranda for record, memoranda of interview, witness statements, and other related documentation.

E3.9.2.4. Efficiently and accurately reporting investigative outcomes for the IG DoD Semiannual Report, as well as any other required reports (e.g., under National or Defense Incident Based Reporting Systems).

E3.9.2.5. Formally and informally presenting the case for civil and criminal prosecutive determinations.

E3.9.2.6. Preparing and submitting any referrals to the IG DoD for application of the Program Fraud Civil Remedies Act.

E3.10. RESOLVING DISPUTES

E3.10.1. Any questions about or conflicts arising from the interpretation of this guidance should be addressed initially by the appropriate RMT established under section E3.6. Every effort should be made by the RMTs and senior field managers to resolve issues at the lowest level possible. Disputes shall be handled by the AMT only after exhaustive efforts to resolve the issues at the local level.

E3.10.2. The headquarters-level AMT shall be responsible for resolving jurisdictional issues that cannot be resolved by the senior field managers.

E3.10.3. Issues unresolved by the AMT shall be brought to the attention of DCIO commanders and/or directors. If the commanders and/or directors cannot resolve the dispute, the matter shall be referred to the IG DoD, for resolution.

E3.11. NOTICE FOR REFERRALS OUTSIDE THE DEPARTMENT OF DEFENSE

Allegations of fraud involving any DoD programs, operations, or personnel shall not be referred to an investigative organization outside the Department of Defense without prior notice to the IG DoD, unless the referral is required by DoD Directive 5525.7 (reference (j)), or is otherwise specifically required by statute or regulation.

E3.12. DELEGATION OF AUTHORITY

With the exception of decisions regarding appeals to the IG DoD, under paragraph E3.10.3., all authorities reserved to the IG DoD in this guidance may be delegated to such officials, as the IG DoD deems appropriate.