

ORDER

U.S. Department of Transportation
Federal Aviation Administration

1600.38B

10/27/87

Initiated

by: ACS-300

SUBJECT: FAA INVESTIGATIONS PROGRAM

1. PURPOSE. This order prescribes the general policy, standards, and guidelines for the FAA Investigations Program and the implementation of this program by the Office of Civil Aviation Security and the regional center security elements. Further, it implements and transmits as appendix 1, Order DOT 8000.5, Office of the Inspector General Investigative Procedures; implements and transmits as appendix 2, Chapter II, Investigations, Order DOT 8000.4, Office of the Inspector General Audit and Investigation Responsibilities; and implements and transmits as appendix 3, Chapter II, Investigations, Order DOT 8000.1B, Office of Inspector General Audit and Investigation Report Findings, Recommendations, and Followup Action. The portions of Order DOT 8000.1B and Order DOT 8000.4 not addressed by this order are being implemented by separate FAA orders.

2. DISTRIBUTION. This order is distributed to the division level in Washington, regions, and centers and a limited distribution to all field offices and facilities.

3. CANCELLATION. Order 1600.38A, FAA Investigations Program, dated June 21, 1977, is cancelled.

4. EXPLANATION OF CHANGES.

a. Implementation of several Department of Transportation/Office of Inspector General orders have been added.

b. Distribution of this order changed to include division level managers in Washington headquarters, and sets limited distribution to field offices and facilities.

c. A statement of policy has been added.

d. Clarification of responsibility for all security elements and OIG have been added, also OIG liaison positions have been identified.

e. New terms have been added to the definition section as well as a clarification of the Report of Investigation.

f. New information regarding the function and relationship with the Office of Inspector General.

- g. Clarification of the basis for investigation.
- h. Added, authority to initiate investigation given to the Director of Civil Aviation Security.
- i. New material indicating inappropriate subject matters for investigation.
- j. New information on defined objectives and scope between a requester, of an investigation, and the security element handling the case.
- k. Clarification of interagency coordination and liaison with Department of Justice and U.S. Attorneys.
- l. Distribution of Report of Investigations more explicit.
- m. Clarification on Report of Investigation regarding its use in adverse actions.
- n. Clarifies the need for correspondence, to be included in file, from requestor of investigation indicating any action taken as a result of investigation.
- o. Inclusion of DOT orders involving the Office of Inspector General investigative responsibilities and procedures.

5. DEFINITIONS.

a. Investigation. An investigation is a planned, systematic search for facts and evidence through interviews, record examinations, and the application of other approved investigative techniques. The purpose is to collect all necessary evidence to substantiate or refute allegations/issues that could result in administrative, civil, or criminal action. The investigations referred to in this order are those conducted by investigators of the DOT/OIG or by FAA special agents.

b. Special Agent. Special agents are those selected FAA personnel to whom credentials have been issued which designate the holder as a duly accredited special agent. Each credential is authenticated and signed by the Associate Administrator for Aviation Standards based on qualifications, standards, and training requirements determined by ACS for all special agents. No agency employee, except those issued credentials by ACS, shall use the title "special agent." A special agent is authorized by the Administrator to perform investigations, receive evidence, examine witnesses, and administer, but not compel, oaths or affirmations at any place within the jurisdiction of the United States and to perform other duties imposed by law and regulations. This authority is derived from the Federal Aviation Act of 1958, sections 301, 313(a) through 313(c), and 1002(b). During the course of an official investigation, special agents shall be granted access to agency records, information, and witnesses as required. Request for access to classified information shall be governed by existing directives.

c. DOT/OIG Liaison Official. Pursuant to Order DOT 8000.5, DOT/OIG liaison officials are those individuals who are appointed to act as interface between FAA and the DOT/OIG on matters involving the FAA investigations program. As noted in paragraphs 7a and 7b above, these individuals are, for the agency as a whole, ACS-1, and for the individual regions and centers, the manager of each security element.

d. Management Official. A management official is the operating official to whom the Report of Investigation is addressed. Generally, the management official is the one who requested the investigation or who is required to take appropriate action as a result of the investigation.

e. Report of Investigation. The term Report of Investigation (ROI) refers to the official signed document which contains the results of an investigation. ROI's are prepared by both DOT/OIG and FAA investigators and are provided to management officials for review and appropriate action.

6. POLICY. Through the direction of the Office of Civil Aviation Security, FAA will operate an investigations program in support of the FAA Act, DOT regulations, and other applicable Federal laws and regulations. This program with its resources will provide optimum support to FAA management and the Department of Transportation/Office of Inspector General in execution of their responsibilities.

7. RESPONSIBILITIES. Each agency employee, manager, or supervisor has a duty and a responsibility to safeguard national security, agency property and personnel, and the integrity of FAA operations. By statute and departmental and agency directives, each official and employee of the agency is responsible for promptly reporting to appropriate authority, as explained in this order, any actual or suspected offenses, wrongdoings, violations, or irregularities in connection with any FAA or Department of Transportation contract, program, operation or activity, or any known or suspected violation of criminal law or regulation governing employee conduct or any matters affecting the national security.

a. The Office of Civil Aviation Security (ACS). ACS plans, develops, oversees, and conducts investigations integral to the agency's programs. This responsibility includes providing an interface with the Department of Transportation/Office of Inspector General on investigative matters and for assisting agency employees and officials in properly reporting those matters described above. With respect to Order DOT 8000.5, paragraph 2b, Agency Officials, and paragraph 2e, Requests for Investigation, the Director of Civil Aviation Security shall serve as the agency's liaison official for investigations, and the OIG has been so notified.

b. Regions and Centers. The security element of each region and center is responsible for implementing the Investigations Program and for providing investigative services to FAA facilities in its respective areas of responsibility and for conducting these and other assigned programs in accordance

with nationally established policies, standards, systems, and procedures promulgated by ACS. With respect to Order DOT 8000.5, paragraph 2b, Agency Officials, and paragraph 2e, Requests for Investigations, the security element manager of each region and center should be appointed the liaison official. The respective DOT/OIG officials should be notified of these appointments.

c. DOT/OIG. The DOT/OIG derives its criminal jurisdiction from the Inspector General Act of 1978 (5 USC app.) which provides the Inspector General broad authority to conduct and supervise investigations relating to the programs and operations of the Department and to prevent and detect fraud and abuse in such programs and operations. The Act further requires the Inspector General to report expeditiously to the Attorney General (United States) whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law. The DOT/OIG can and may defer responsibility to investigate a specific matter to the FAA. Appendix 2, Chapter II, Investigations, Order DOT 8000.4, contains summary of the DOT/OIG's investigative responsibilities.

8. OIG INVESTIGATIONS.

a. Types of Complaints. As noted above, the DOT/OIG has a responsibility for investigating a variety of FAA activities. Examples include fraudulent claims by employees, vendors, and/or contractors; misappropriation or embezzlement of Government funds or conversion of Government property; and conflicts of interest, including violations of DOT Regulations 49 CFR 99. These are only illustrative of the DOT/OIG's areas of prime responsibility. A more detailed summary is set out in appendix 2.

b. Reporting/Referring Matters to the DOT/OIG. As stated in paragraph 8a, all agency employees and officials have a responsibility to report/refer to appropriate authority any actual or suspected offenses, violations, or irregularities. Special procedures for reporting/referring to the OIG where the matter (i.e., suspected offense, etc.) falls within the office's area of responsibility are set out in Order DOT 8000.5. This order is printed in full in appendix 1. FAA employees are encouraged to report matters directly and openly to the nearest DOT/OIG office, openly and/or anonymously to the DOT/OIG Hotline (800-424-9071 National, 366-1461 Metropolitan DC) or by mail to the OIG, P.O. Box 23178, Washington, DC 20026-0178. Should an employee report such a matter to a supervisor or to an FAA security element, supervisors and security personnel will assure that it is referred to the servicing DOT/OIG office without undue delay. Early telephone contacts with OIG investigative representatives are encouraged to resolve any jurisdictional questions or to determine Inspector General audit or investigative interest in any matter. When the DOT/OIG defers an investigation to the FAA, the FAA Report of Investigation will record the date of declination and identify the OIG representative who made that decision.

(1) The DOT/OIG should acknowledge receipt of the referral through the designated liaison official; keep that

official informed as to the progress of the investigation; and, upon completion, furnish the results of investigation to the FAA regional director, center director, or Director of Civil Aviation Security, as appropriate. When an FAA regional or center director is the primary addressee, the DOT/OIG will provide the Director of Civil Aviation Security an informational copy of the transmittal memorandum and a copy of the DOT/OIG report minus any attachments to the report.

(2) Agency employees and officials must not take any action prejudicial to a DOT/OIG investigation and must cooperate with the DOT/OIG in the conduct of that investigation to include testifying and providing information relating to the issue(s) under investigation.

(3) Certain complaints or suspected offenses, although falling within the DOT/OIG's authority, may be more suitable for investigation by another Government agency or by FAA. The DOT/OIG, when making that determination, will forward the matter to that Government agency or return it to the FAA for appropriate action.

c. Followup Action. Appendix 3, Chapter II, Investigations Order DOT 8000.1B, contains DOT policy and procedures for the review by modal agencies, such as the FAA, of DOT/OIG Reports of Investigation and the reporting to the DOT/OIG of corrective actions taken as a result of the investigation. The following is a brief summary of the requirements as they apply to FAA.

(1) The DOT/OIG is committed to initiating and conducting investigations and reporting to the appropriate Department official the results of the investigation as expeditiously as possible. The reports will be furnished for information purposes and/or for corrective action. Occasionally, they will be accompanied by recommendations.

(2) In those cases where corrective action is necessary, the action taken must be timely, constructive, based on cause, and be consistent with laws and regulations governing such actions. The DOT/OIG must be advised of the results within 30 days.

9. FAA INVESTIGATIONS. Investigations conducted by the FAA, within the scope of this program, fall into four categories: (a) criminal violations of provisions of the Federal Aviation Act of 1958 or the Hazardous Materials Act; (b) request by a responsible FAA office or service indicating violations of Codes of Federal Regulations not under the jurisdiction of the DOT/OIG; (c) matters of concern to management, such as employee conduct, tort claims, etc., and in support of the agency's Personnel Security Program; and (d) matters otherwise the responsibility of the DOT/OIG, or another agency, which have been deferred to the FAA by the DOT/OIG or the other agency.

a. Criminal Violations. There are two statutes that establish programs within the FAA which entail enforcement of criminal provisions. The Federal Aviation Act of 1958 (FAAct),

as amended, and the Hazardous Materials Transportation Act (HazMat Act) (Title I of the Transportation Safety Act of 1974), as amended.

(1) The Federal Aviation Act of 1958

(a) TITLE IX of the FAAct provides in section 902 criminal sanctions for a series of acts or activities inimical to aviation safety. Section 902(o), provides that violations of sections 902(i) through (n) inclusive shall be investigated by the FBI. The remaining violations are the responsibility of the FAA. Following is a brief description of these subsections:

1 Section 902(a). Any person who knowingly and willfully violates any provisions of the FAAct (except Titles III, V, VI, VII, and XII) not otherwise provided for shall be deemed guilty of a misdemeanor.

2 Section 902(b). Forgery of certificates and false marking of aircraft.

3 Section 902(c). Interference with air navigation.

4 Section 902(d). Granting or receiving rebates.

5 Section 902(e). Failure to file reports; falsification of records.

6 Section 902(f). Divulging information.

7 Section 902(g). Refusal to testify.

8 Section 902(h). Hazardous materials.

9 Section 902(p). Interference with aircraft accident investigation.

10 Section 902(q). Transporting controlled substances while holding a valid airman's certificate.

(b) Criminal Fraud/Regulatory Violations. Several of these criminal violations may, under certain conditions, involve violations of regulatory provisions of the FAAct; for example, section 902(b) and/or section 902(e). These regulatory violations are the responsibility of the FAA because of the criticality to air safety. The DOT/OIG has the responsibility for investigating Title 18, US Code violations. Some of the above-listed violations may also be prosecutable under Title 18. In these cases, the DOT/OIG should be advised and the issues discussed with the U.S. Attorney to determine if criminal prosecution of the fraud under Title 18 (as opposed to Title 49) is appropriate. If prosecution under Title 18 is the conclusion, then consideration should be given to the conduct of a joint DOT/OIG-FAA investigation. When the joint investigation substantiates both prosecutable criminal violations and actionable Federal aviation regulatory violations, a request

shall be made to the Office of the U.S. Attorney of jurisdiction for permission to conduct parallel criminal and regulatory proceedings in order to expedite resolution of the air safety issue while the criminal prosecution is also proceeding or pending. Whenever possible, in joint DOT/OIG-FAA investigations involving air safety, the Office of the U.S. Attorney should be advised at the outset of the issues and the possibility of the need to take expeditious regulatory action on the alleged violation(s) in addition to the criminal prosecution.

(c) Title XII of the FAA Act. Section 1202 of the FAA Act directs that the Administrator shall establish such zones or areas of airspace as he may find necessary in the interests of national defense, and by order or regulation restrict or prohibit flight within the zones. Section 1203 continues that in addition to the penalties otherwise provided for by the FAA Act (i.e., certificate actions or civil penalties), "... any person who knowingly or willfully violates any provision of this title, or any rule, regulation or order issued thereunder shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not exceeding \$10,000 or to imprisonment not exceeding one year, or to both such fine and imprisonment."

(2) The Hazardous Materials Transportation Act (HazMat Act). Section 110 of the HazMat Act provides for both civil and criminal sanctions. Section 113(c) amends the FAA Act to enable the enforcement of these criminal sanction provisions of the HazMat Act under the authority of the FAA Act. Matters which could be expected to lead to a civil penalty may be investigated as are other regulatory enforcement actions (see paragraph 9b). Matters which could be expected to lead to criminal sanctions will be investigated under the provisions of this order.

b. Regulatory Violations. Several different offices and services within the FAA have responsibility for developing, issuing, and then enforcing provisions of the Federal Aviation Regulations. These offices and services carry out these enforcement actions to include the investigation of suspected violations, under the guidance and policy set out in Order 2150.3, Compliance and Enforcement Program. However, under the provisions of this order, ACS may be requested by the responsible office or service to provide investigative assistance to them. Although any regulation may be the basis for this request for service, the most common has been in connection with the violation by airmen of the several regulations concerning the transportation of drugs.

c. Matters of Concern to Management to Include Personnel Security. There are situations where an investigation is needed to assist FAA management to take appropriate actions. The following are examples:

(1) The Office of Personnel Management (OPM) conducts all needed preemployment, loyalty, or suitability investigations. However, the results of OPM investigations may require supplemental inquiry. A particular requirement is the interview of employees, or applicants for employment, to clarify

unfavorable information that may have been developed by OPM and to offer the interviewee the opportunity to explain or refute that information.

(2) The compromise of certain classified, Privacy Act, proprietary, or other sensitive information not constituting Title 18 US Code violations.

(3) Inquiries to obtain information that will aid in locating airmen, in making medical determinations for airmen or employees (to include allegations of the misuse of drugs by employees), to aid in resolving tort or personnel claims, and locating former employees indebted to the Federal Government.

d. Matters Under the Jurisdiction of Other Agencies. By law, other agencies may have investigative jurisdiction over criminal acts in which the FAA has an interest; e.g., theft of FAA property and embezzlement of imprest funds. Following FAA referral to the agency having primary jurisdiction, the investigating agency may request investigative assistance from FAA, authorize a joint investigation, or choose to defer entire investigative responsibility to the FAA.

10. REPORTING VIOLATIONS.

a. Procedures. All violations described in paragraphs 8 and 9 must be reported. Violations of matters under OIG jurisdiction should be reported as noted in paragraph 8. FAA matters, described in paragraph 9, may be reported through supervisory channels to the servicing security elements. Supervisors shall not delay an employee's report of complaint to the servicing security element. In cases of extreme urgency or where there is a concern of supervisor reprisal or inaction, employees may directly report the matter to the security element or the OIG. The employee also has the option of referring the matter to the Administrator's Hotline, the Safety Hotline, the security element, or the OIG. The FAA or OIG element that receives the complaint will evaluate the information, determine jurisdiction, and investigate, refer, or close the matter as the facts warrant.

b. Special Reporting Requirements. Malicious damage to Government property shall be reported to the servicing FAA security element and the local law enforcement authorities by the facility manager. Theft of Government property shall be reported by the facility manager to the servicing FAA security element and the local law enforcement authority. In addition, the incident shall be reported by the facility manager to the servicing office of the DOT/OIG. The servicing FAA security element shall maintain liaison with the investigating agency/office to obtain and report the results of their investigation and prosecutive action, if any.

c. Confidentiality of Information. Individuals should be able to provide information with confidence that it will not be made public unnecessarily, whether or not he or she requests anonymity. To avoid compromising a pending investigation and to

protect the reputations of the FAA and all individuals who may be involved, employees and officials shall exercise special care not to disclose to unauthorized persons information concerning a suspected offense or investigative matter.

d. Preservation of Evidence. Individuals who become aware of any apparent violations should preserve any evidence they possess which bears on the alleged violation. Further, such individuals shall not take any investigative actions on their own initiative. As earlier specified in OIG Investigations, paragraph 8b(3), all supervisors and employees shall comply with requests from the investigating agency to preserve evidence.

11. INITIATING THE FAA INVESTIGATION.

a. Transmittal of Requests. Investigations may be requested by division level or higher authority only and shall be communicated to the servicing security element at the regional or center level in writing. Facility or field office managers shall route requests through their division office to the servicing security element. If time is critical, the request may be made orally but should be confirmed in writing without delay. The letter should serve to document the matter and contain all information which prompted the request.

b. Authority to Initiate Investigations. The Director of Civil Aviation Security (ACS-1), the Manager, Investigations and Security Division (ACS-300), and managers of security elements in the regions and centers are authorized to initiate investigations or to refer matters to another agency for investigation. All requests from proper authorities shall be evaluated promptly and the management official involved advised if an investigation will be initiated, either by FAA or by the referred agency. The authority to initiate investigations described in this paragraph may not be delegated.

c. Coordination. Generally, no investigation shall be initiated without a request from or coordination with the management official involved; however, notwithstanding the lack of a specific request, or the desired coordination, ACS-1 and the several security division managers may initiate investigations of those matters that fall within the scope of paragraph 9a. Investigations of other matters coming to their attention, other than those covered by paragraph 9a, may also be initiated under this same authority when prior coordination with the management official involved is not practical or there is a time-critical situation. In such cases, coordination with that management official shall be completed as soon as possible. Once a matter has been accepted or referred for investigation, no action may be taken on the matter by the requester without prior coordination with the manager of the responsible security division. This manager is responsible for promptly advising other concerned FAA elements of facts relating to the investigation to ensure air safety and efficiency of agency operations.

12. INVESTIGATIVE CRITERIA. Officials responsible for initiating an investigation shall consider the following in

making a decision.

a. Inappropriate Subject Matters. Investigations shall not be initiated under the scope of this program, nor will special agents be used:

(1) As a substitute for employee counseling or other appropriate personnel management actions.

(2) For matters where sufficient facts are already known, and adequately documented, to take needed actions.

(3) For matters susceptible to and/or more appropriately dealt with by the administrative solutions; i.e., formal inquiry, survey, or audit. Minor incidents, such as on-the-job accidents, negligence, incompetency, most small personnel claims, improper supervision, failure to comply with work regulations, intoxication, insubordination, etc., are examples which fall within the category of matters that should normally be handled by the supervisor and frequently can be resolved onsite with minimal inquiry.

b. Defined Objective and Scope. Prior to initiating any investigation, there should be an understanding and agreement between the requester and the initiating official as to an anticipated objective. In other words, if certain facts are proved, what actions would be taken? In this connection, there should be consultation and coordination with technical authorities and other elements that may have an interest or responsibility; e.g., Regional Counsel, Labor Relations, etc., to assure that those facts, and supportive evidence, needed to take the appropriate action(s) are obtained during the course of the investigation. Reviewing these considerations at the time the case is initiated will aid in determining that an investigation is needed. Continuing to review them during the investigation will help assure that investigators focus their efforts to obtain the information needed to support the indicated action.

13. INTERAGENCY COORDINATION AND LIAISON. The FAA Investigations Program shall be enhanced by an effective liaison with other Federal, state, or local agencies. Such liaison ensures the free exchange of information between the concerned agencies and serves to assist the FAA, its employees, and the interests of both national security and the aviation community.

a. Local Liaison. Special agents of the concerned security element shall, on behalf of the FAA, establish and maintain effective liaison and close working relationships with responsible Federal, state, local law enforcement, investigative, or intelligence agencies on those matters falling within the purview of this order. This assignment of responsibility does not preclude local FAA facility managers from establishing supplemental contact with the police or investigative agencies serving their facility. Contact with these agencies on matters covered by this order must be coordinated with the servicing security element.

b. National Liaison. ACS-1 is responsible for liaison at the national level with Federal departments and agencies and with international law enforcement organizations on all matters covered by this order. ACS-300 will coordinate FAA's participation in the national efforts to combat organized crime, drug trafficking, and criminal violations involving U.S.-registered aircraft and airmen.

c. Liaison with the U.S. Attorney's Office. The OIG will coordinate with the U.S. Attorney's Office in joint FAA/OIG investigations. In those criminal investigations within the purview of the FAA, the investigating special agent will establish early contact with the U.S. Attorney's Office and shall coordinate all investigative activities pertaining to the instant case. Upon conclusion of the investigation, the case will, in coordination with the appropriate agency counsel, promptly be presented to the U.S. Attorney's Office through the participating assistant.

14. PREPARATION, DISTRIBUTION, AND USE OF THE REPORT OF INVESTIGATION (ROI).

a. Preparation. An ROI will be prepared to reflect results of any investigation initiated pursuant to this order.

b. Distribution. The original ROI will be retained by the office of origin. A copy of the ROI will be provided to the requesting office and/or office of jurisdiction, other concerned offices, and to ACS-300. Additional copies will not be made without the knowledge and consent of the office of origin.

c. Adverse Actions. Every attempt shall be made to collect evidence which can be used without restriction in an adverse action. Whenever possible, the ROI will be prepared so that it can be used as a whole document in support of the adverse action. If substantive information is obtained through the investigation, but is restricted relative to use in an adverse action, that information must be included in the ROI to make that document a complete and accurate account of the investigation findings. When the ROI is provided to management to support an adverse action, the restricted information shall be deleted to ensure the prevention of its use. When an ROI has been furnished to a requestor, whether intended for use in an adverse action or not, there must be close coordination between the requester, other involved officials, and the security element to avoid any compromise of confidential or sensitive investigative material or sources.

d. Press Releases. Press releases or responses to inquiries from the press concerning investigations covered by this order shall be accomplished by the FAA Public Affairs Office only. Releases shall be coordinated with the investigating security element and the management official(s) involved. Inquiries concerning an OIG audit or investigation shall be referred to DOT, Office of Public Information (ATTN: A-30).

e. Privacy Act. The ROI is maintained in the files of FAA

as a part of the FAA Investigative Record System (DOT/FAA 815). Investigative data compiled for law enforcement purposes may be exempt from the access provisions of the Privacy Act pursuant to 5 USC 552a(k)(2) and (k)(5). Classified ROI's may be exempt under section 552(k)(1).

f. Freedom of Information Act (FOIA). Certain investigatory records which are compiled for civil or criminal law enforcement purposes, or which contain personal and privacy information about individuals, may be withheld from disclosure under 5 USC 552(b)(6) and (b)(7). These statutory provisions have been implemented for the Department of Transportation by 49 CFR 7.73 and 7.75. Other FOIA exemptions may also apply to particular investigatory materials.

15. POST INVESTIGATIVE ACTIONS. To be effective, timely administrative, disciplinary, or other appropriate action must be taken by management officials on completion of an FAA or, when appropriate, DOT/OIG investigation. A copy of the correspondence indicating the action taken will be furnished to the servicing Civil Aviation Security (CAS) element and made a part of the complete investigative file. A copy of the corresponding indicating the action taken will also be provided to ACS-300 by the servicing CAS element.

16. AUTHORITY TO CHANGE THIS ORDER. The Director of Civil Aviation Security is authorized to issue changes to this order except changes in policy or in assignment/responsibility.

\s\ T. Allan McArtor
Administrator