

EVALUATION OF CRIMINAL INVESTIGATIVE ACTIVITIES PERFORMED BY THE DEFENSE LOGISTICS AGENCY

EXECUTIVE SUMMARY

Introduction

Within the Department of Defense (DoD), the Defense Criminal Investigative Organizations (DCIOs) are primarily responsible for investigating crimes that involve DoD property, programs, or personnel.¹ The Defense Logistics Agency (DLA), like a number of other DoD components, also has a criminal investigative program and has assembled a criminal investigative staff to conduct investigations.

We undertook this evaluation to determine whether DLA criminal investigations are authorized, performed in accordance with acceptable standards, and produce appropriate results. To obtain factual information necessary to these determinations, we researched the statutory and regulatory authorities under which DLA conducts investigations. We also had DLA provide data for investigative cases closed between January 1, 1996, and February 28, 1999, a 38-month period. We then selected a statistically-valid, random sample from the closed cases that permitted us to draw conclusions at an acceptable (± 10 percent) reliability level. Finally, we evaluated the sample cases in detail to determine:

- the specific criminal violations/offenses that DLA investigators investigate;
- the extent to which DLA investigators use generally recognized criminal investigative techniques;
- the extent to which DLA investigators present their cases to Federal, state and local prosecutors;
- the extent to which DLA investigations are conducted jointly with other agencies; and
- the criminal, civil, and administrative results that stem from DLA investigations, including:
 - the estimated Government losses resulting from the crimes and the amounts recovered through investigation; and

¹ The DCIOs are the U.S. Army Criminal Investigation Command (USACIDC), the Naval Criminal Investigative Service (NCIS), the Air Force Office of Special Investigations (AFOSI), and the Defense Criminal Investigative Service (DCIS). DCIS is the criminal investigative arm of the IG, DoD. Excluding DCIS, these organizations are generally known as the Military Criminal Investigative Organizations (MCIOs).

- the administrative actions, including employee disciplinary actions, taken against DLA investigative subjects.

Evaluation Results

Overall, we determined that DLA has capable investigators who conduct thorough investigations. However, we identified a significant mismatch between the investigator staffing that DLA utilizes and the type of investigations that DLA generally conducts. We also identified needs for improvement in (1) investigative program management, and (2) compliance with criminal investigative policy. Our findings in these areas are summarized below.

Staffing vs. Investigations. DLA is authorized to conduct criminal investigations that the DCIOs decline and has assembled a senior criminal investigative staff for this purpose. The agency's investigations, however, are primarily administrative in nature --cases are presented to criminal prosecutors only rarely (8 percent of investigative subjects). Commonly, cases result in either agency administrative action (60 percent of investigative subjects), or no action (12 percent of investigative subjects). In addition, the investigations do not generally involve a full range of criminal investigative techniques. As a result, there is a significant mismatch between actual DLA investigator duties and those prescribed for a criminal investigator. Although DLA has organized its investigative activities cost-effectively by employing noncovered criminal investigators, the agency has not ensured that its criminal investigator skills and abilities are used to the fullest extent possible as required in Office of Personnel Management (OPM) standards for classifying investigator positions.

Program Management. Although required in DoD Instruction 5505.2, "Criminal Investigation of Fraud Offenses," July 16, 1990, DLA has not established specific procedures for investigating matters that the DCIOs decline. DLA also does not have memoranda of understanding or other agreements with the DCIOs to guide referrals to them, or to specify investigations that DLA may conduct without first referring the matters to a DCIO. The DLA Criminal Investigations Activity (DCIA) either does not attempt to refer matters to the DCIOs or does not record its attempts. As a result, DLA investigators may conduct some investigations directly that the responsible DCIO should investigate. In addition, DLA investigators would benefit from standard policy to guide the criminal investigations actually conducted. In this regard, we support the DCIA decision to use an existing DCIO Special Agents Manual when its agents need detailed guidance. The DCIA, however, should formalize this decision in standard operating policy.

Compliance With Policy. Even though DLA investigations are more administrative than criminal in nature, the agency is obligated to comply with DoD policy governing criminal investigations when it conducts criminal investigations. DLA

does not always comply with the DoD policy requirements that govern:

- intercepting wire, oral and electronic communications;
- titling and indexing investigative subjects;
- fingerprinting investigative subjects that are Armed Forces members and reporting their criminal histories and final case dispositions to the Federal Bureau of Investigation; and
- assisting crime victims and witnesses.

Summary of Recommendations

We recommend the following corrective or improvement actions:

- The Director, Defense Logistics Agency, reclassify current GS-1811 Criminal Investigator positions to GS-1810 General Investigator positions, except for five GS-1811 Criminal Investigator positions, including the Director, DLA Criminal Investigations Activity. To avoid operating and perception problems related to the reclassifications, the Director, Defense Logistics Agency, may make the reclassifications over time in filling current criminal investigator positions as they become vacant.
- The Director, Defense Logistics Agency, take action to ensure that the GS-1810 General Investigator employed at the Defense Supply Center, Richmond, Virginia, is operating under a proper Employee Position Description for a GS-1810 General Investigator.
- The Director, DLA Criminal Investigations Activity, enter into a Memorandum of Understanding or other agreement with each Defense Criminal Investigative Organization formalizing working arrangements between the organizations and identifying the types of investigation that DCIA may conduct without prior referral to the Defense Criminal Investigative Organizations.
- The Director, DLA Criminal Investigations Activity, formally adopt the Defense Criminal Investigative Service Special Agents Manual as detailed guidance for its investigators to use in conducting criminal investigations.
- The Director, DLA Criminal Investigations Activity, arrange needed training or take other action as necessary to ensure that DCIA investigators are familiar with, and adhere to requirements in, the following DoD policy:
 - DoD Directive 5505.9, “Interception of Wire, Electronic, and Oral Communications for Law Enforcement,” April 20, 1995;
 - DoD Instruction 5505.7, “Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense,” May 14, 1992;
 - DoD Instruction 5505.11, “Fingerprint Card and Final Disposition Report Submission Requirements,” December 1, 1998; and
 - DoD Directive 1030.1, “Victim and Witness Assistance,” November 23, 1994, and DoD Instruction 1030.2, “Victim and Witness Assistance

Management Comments

On June 9, 2000, we distributed this report in draft form for management comments. On September 13, 2000, we received comments from DLA concurring with the draft report, except for our recommendation that DLA reclassify some criminal investigator positions as general investigators. DLA presented multiple reasons for its nonconcurrence and advised that its current staffing classifications meet its current mission requirements. DLA also advised that it reserved the right to adjust its criminal and general investigator position mixture should its mission requirements change. (See Appendix F)

We generally agree with each rationale that DLA presents to justify maintaining its criminal investigator positions. For example, DLA is clearly correct that it is not possible to know, at the outset of an investigation, whether alleged misconduct will constitute criminal behavior or meet thresholds for criminal prosecution. DLA is also correct that an investigator who does not know criminal law and Federal Rules of Criminal Procedure might handle evidence in a fashion affecting its admissibility in a criminal case. DLA’s rationale, however, does not consider several important factors. First, we did not recommend that DLA reclassify all criminal investigator positions. The five criminal investigators remaining after the reclassification we recommended should be more than adequate for DLA to:

- conduct criminal investigations that the DCIOS decline; and
- guide general investigator actions as necessary to preclude evidence and other difficulties related to specialized criminal investigator knowledge and skill needs.

Second, nothing precludes DLA from filling general investigator positions with former criminal investigators already possessing specialized criminal investigator knowledge. In fact, as discussed in the report, DLA currently has general investigators who were formerly criminal investigators. Third, DLA currently has general investigators who conduct criminal investigations, present cases to prosecutors, and participate in the resulting court proceedings. Finally, although not detailed in our report, DLA could save substantial investigator time and avoid the travel, training and other costs associated with firearm qualification and other specialized training for criminal investigators if the agency adopted our recommendation.