

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNITED STATES COAST GUARD
AND THE OFFICE OF THE INSPECTOR GENERAL
OF THE DEPARTMENT OF HOMELAND SECURITY**

I. PARTIES

The parties to this Memorandum of Understanding (MOU) are the United States Coast Guard (USCG) and the Office of Inspector General (OIG) of the Department of Homeland Security (DHS).

II. PURPOSE

This MOU's purpose is to describe the roles and relationship between the USCG and OIG relating to the conduct of investigations. To prevent duplication of effort and ensure the most effective, efficient and appropriate deployment of resources, the USCG and the OIG enter into this MOU.

III. AUTHORITY

a. Agreements between the USCG and the OIG are permitted under the authority of 14 U.S.C. 141.

b. The USCG derives its authority to perform the responsibilities described in this MOU from sections 103(c) and 888 of the Homeland Security Act of 2002, as amended, (the DHS Act), the Uniform Code of Military Justice (10 U.S.C. 801 *et. seq.*), 14 U.S.C. 2, 89, 93, 95 and 46 U.S.C. Chapter 63, among others.

c. The OIG exercises authorities and responsibilities specified in sections 103(b) and 811 of the DHS Act, as amended, and in the Inspector General Act of 1978, Pub.L. No. 95-452 (5 U.S.C. App. 3), as amended.

IV. COORDINATION AND COOPERATION

The USCG and the OIG shall implement the provisions of this MOU using their best efforts, in a spirit of cooperation, recognizing that maximum communication and coordination are essential for success. Such coordination is critical in those areas where investigative jurisdiction may overlap to ensure that a comprehensive DHS effort is made to address any instances of wrongdoing. Where combined resources can create efficiencies in the investigative process, these combined resources should be used whenever appropriate.

V. BACKGROUND AND PURPOSE

a. The USCG is the nation's primary law enforcer in the maritime arena. It enforces or assists in the enforcement of all applicable U.S. laws on, over, and under the

high seas and waters and vessels subject to U.S. jurisdiction. Under the above referenced authorities, the USCG has regulatory, investigative, and enforcement responsibilities in the following mission areas: counter-narcotics, illegal immigration, living marine resources (including fisheries), environmental crimes (including waterborne shipment of hazardous materials), recreational boating safety enforcement (including boating while intoxicated), enforcement of marine safety and navigation laws (including vessel documentation and merchant mariner licensing), firearms laws, and, to a lesser extent, investigation and enforcement of "common law" Federal crimes such as murder, assault, and rape committed in a maritime environment as well as the investigation of offenses under the Uniform Code of Military Justice (UCMJ) committed by persons who are subject to the Code.

b. USCG investigative authority includes all necessary authority to conduct inquiries and examinations leading to criminal, civil, and administrative actions. To carry out its diverse missions, the USCG may request assistance from any Federal or State agency having capabilities useful to the USCG. Further, Federal or State agencies may request USCG investigative or enforcement assistance when needed.

c. The OIG is responsible for conducting, supervising, coordinating, and providing policy guidance for the conduct of criminal, civil, and administrative investigations relating to DHS programs and operations, as specified in section 4(a)(1) of the Inspector General Act of 1978 ("the IG Act"), as amended.

d. Under section 3(a) of the IG Act and section 811 of the DHS Act, the Inspector General reports to, and is under the general supervision of the DHS Secretary and Deputy Secretary. Section 4 of the IG Act provides additional reporting requirements applicable to the Inspector General. Section 4(a)(5) requires that the Inspector General keep the Secretary and the Congress fully and currently informed concerning fraud and other serious problems relating to the administration of DHS programs. Section 4(d) of the IG Act requires that the Inspector General report expeditiously to the Attorney General whenever the Inspector General has reasonable ground to believe a violation of criminal law may have occurred.

e. Given the broad investigative authority and jurisdiction of both the USCG and the OIG, which may overlap to some extent, this MOU clarifies the distinct investigatory roles of the parties and provides guidance for cooperative investigations under 14 U.S.C. 141 and sections 6(a)(1), 6(a)(3), and 6(b)(1) of the IG Act.

VI. DEFINITIONS

For the purposes of this MOU:

a. "External field investigation" means an investigation that has as its subjects persons other than employees, military personnel, members of the Coast Guard Auxiliary, contractors, borrowers, grantees or others receiving DHS funds or otherwise

engaged in programs and operations of DHS. For OIG, an external field investigation may also be an investigation conducted on behalf of another agency.

b. "Internal investigation" means an investigation that has as one of its subjects employees, military personnel, members of the Coast Guard Auxiliary, contractors, borrowers, grantees or others receiving DHS funds or otherwise engaged in programs and operations of DHS.

c. "Military personnel" means members of the USCG subject to the UCMJ and Department of Defense or any other Federal agency personnel who are subject to the UCMJ and detailed to perform duties with the USCG.

VII. COORDINATION OF USCG EXTERNAL FIELD INVESTIGATIONS

a. Since the USCG has statutory responsibilities to conduct various investigations described in paragraph V-a above, the USCG shall assume the lead role in coordinating investigative functions in support of its mission area responsibilities. The USCG may request assistance from the OIG under 14 U.S.C. 141 in the conduct of its investigations if OIG expertise in a particular area would benefit the investigation or if OIG's investigatory resources are needed to supplement available USCG resources. In such cases, the USCG will retain the lead on such investigations.

b. In the event the OIG receives initial information from any source outside the USCG concerning allegations of wrongful conduct in areas of USCG mission area responsibilities, the OIG will forward the information to the Director, Coast Guard Investigative Service (CGIS), 4200 Wilson Boulevard, Suite 740, Arlington, VA 22203, Phone: (202) 493-6600 and Facsimile: (202) 493-6619. Director, CGIS shall review the information referred by the OIG and determine whether the issues or allegations warrant investigation by CGIS or referral to the appropriate Coast Guard command or staff element for action or investigation and disposition. CGIS shall review copies of all Coast Guard investigations conducted in response to an OIG referral prior to the submission of a Coast Guard report to OIG. Director, CGIS shall coordinate Coast Guard requests for any specialized or criminal investigative assistance related to such OIG referrals.

c. If the OIG desires to remain involved in an investigation after making a referral, Director, CGIS shall work with the OIG to coordinate OIG's continued participation.

d. This section does not limit OIG's authority to conduct audits, assessments or investigations involving its oversight responsibilities for USCG personnel, policies, or procedures.

e. If the Department of Justice or a multi-agency task force asks the OIG to conduct an external field investigation in a USCG mission area, as described in paragraph V-a above, the OIG shall promptly notify the CGIS under the procedures described in paragraph VII-b above, so that the investigative activities of the two parties may be

appropriately coordinated. The OIG shall cooperate with the CGIS in the conduct of the investigation in a manner that is mutually agreed upon by the parties. The OIG shall notify the Department of Justice or the task force that the USCG has already initiated an investigation.

VIII. COORDINATION OF OIG EXTERNAL FIELD INVESTIGATIONS

a. The OIG shall assume the lead role in coordinating investigative functions in support of its investigative responsibilities described in paragraph V-c above. The OIG may request assistance from the USCG under 14 U.S.C. 141 in conducting its investigations if USCG expertise in a particular area would benefit the investigation or if USCG investigatory resources are needed to supplement available OIG resources. If the OIG chooses, it will retain the lead on the investigation. It may also refer a matter of direct interest to the USCG as provided in paragraph VII-b.

b. In the event the USCG receives initial information from any source outside the OIG concerning allegations of wrongful conduct in areas of OIG investigative responsibilities, Director, CGIS will forward the information to the OIG for evaluation or investigation. Director, CGIS shall also refer to the OIG all allegations of suspected violations that constitute fraud, waste, mismanagement, or abuse relating to the programs and operations of the USCG or DHS, except as noted in paragraph IX-c below. The referral to the OIG shall be made immediately upon receipt of the allegation, and no USCG investigation shall be conducted prior to the referral. However, the USCG need not refer to OIG incidents such as false official statements made in the course of a USCG boarding or inspection, if the USCG will deal with such statements in the ordinary course of its own investigation. Examples of suspected violations generally within the range of activity that the USCG must refer to the OIG for evaluation or investigation are listed below. These examples are illustrative of the types of matters that the USCG must refer to the OIG. They are not intended to represent an exhaustive or all-inclusive identification of such matters:

- (1) False or fraudulent claims, statements, or certifications by employees, contractors, borrowers, grantees or others receiving DHS funds or otherwise engaged in the operation of DHS programs.
- (2) False or fraudulent claims for payment involving goods or services not delivered or involving the delivery of nonconforming goods.
- (3) Unlawful manipulation of the competitive bidding process.
- (4) Unauthorized concealment, removal, obliteration, alteration or destruction of official documents.
- (5) Misappropriation or embezzlement of Government funds or conversion of Government property or Government-funded property.

(6) Unauthorized use or fraud involving Government issued purchase or travel cards.

(7) Bribery or corruption of Government employees or officials.

(8) Conflicts of interest, including violations of Standards of Ethical Conduct.

(9) Allegations against individuals or entities who do not fit into the categories identified above if, in the judgment of the OIG, the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial or ethnic profiling; serious management problems within the Department, or otherwise represent a serious danger to public health and safety.

c. For the matters listed above, the Inspector General will determine within three business days of the referral whether to investigate the allegation itself or to refer the matter back to the CGIS for investigation.

d. In the event that an OIG external field investigation also involves areas of USCG mission area responsibilities, as described in paragraph V-a, the OIG and the CGIS shall coordinate investigative functions on a case-by-case basis.

IX. COORDINATION OF INTERNAL INVESTIGATIONS

a. The OIG shall lead internal investigations involving allegations of fraud, waste or abuse (including theft and corruption) committed by USCG civilian employees, members of the Coast Guard Auxiliary or non-affiliated civilians unless OIG elects to refer such matters to the USCG for appropriate action. Director, CGIS shall forward all such allegations to OIG.

b. The OIG shall lead internal investigations involving the alleged criminal misconduct of GS-15 or comparable level senior civilian employees, members of the Senior Executive Service, political appointees, and military personnel above the rank of Captain (O-6) unless the OIG elects to refer the matter to the USCG for appropriate action. Director, CGIS shall forward all such allegations to OIG.

c. CGIS may investigate and prosecute any incident or suspected incident of fraud, waste or abuse involving military personnel, provided that only military personnel are involved in such crimes as principals or accessories, and any principal victims are subject to the UCMJ. If the preceding conditions are not met, the CGIS shall promptly refer such offenses to the OIG for investigation.

d. If OIG elects to refer a DHS Hotline Complaint, the Director, CGIS, shall be the appropriate point of contact for such referrals.

X. REPORTING AND NOTIFICATION REQUIREMENTS

a. Director, CGIS shall provide a quarterly report to OIG describing the status of all open Hotline Complaint investigations conducted under paragraph IX-d above. The report, at a minimum, shall identify the subject, the case control number, the Hotline Complaint number, a brief description of the investigative results, and the projected completion date if the case is still on-going. Director, CGIS shall provide copies of all completed investigations, to include case disposition and prosecution action taken, for those Hotline Complaints referred to the USCG by the OIG for action. If the matter has been referred to the Department of Justice or to the United States Attorney's Office for civil or criminal proceedings, the report shall also describe the resolution of any such referrals.

b. Subject to the limitations in section 811 of the DHS Act, as amended, the OIG shall retain the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter, whether or not initially referred by the OIG to the USCG or presumptively within the USCG's jurisdictional authority.

XI. COORDINATION OF REFERRAL OF CRIMINAL CASES TO THE DEPARTMENT OF JUSTICE

a. In cases where a significant potential for criminal prosecution exists, early involvement of the Department of Justice (DOJ) and/or the cognizant United States Attorney's Office (USAO) is desirable to ensure timely, effective and efficient use of investigative resources. However, the formal criminal referral process described in 33 CFR 1.07-90 for the USCG and in 5 U.S.C. App. III 4(d) for the OIG is an important part of the decision making process, designed to ensure that the policy interests of the USCG and the OIG are protected. DOJ and/or the appropriate USAO remain the ultimate decision maker on whether to prosecute a case. If doubt exists, the parties to this MOU will refer the matter to DOJ and/or the USAO.

b. For cases where either the USCG or the OIG has the investigative lead, as determined by paragraph VII-IX above, that party shall also have the lead in determining whether a referral should be made. In cases where the party supporting the investigation does not concur with the referral decision, the parties shall follow the procedures in paragraph XI-c.

c. For cases where both the USCG and OIG are investigating concurrently, either the OIG or the USCG may make a referral. However, before such action every effort should be made to communicate and coordinate the decision to make a referral with the other concerned party. Consensus on the form of the referral should be reached whenever feasible. If consensus cannot be reached, a full explanation of the different views of each party should be described in the referral.

XII. OTHER PROVISIONS

This MOU is not intended to limit the jurisdiction of the parties, or to conflict with current law, regulations or directives of DHS, the USCG, or the OIG. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the MOU's remaining terms and conditions shall remain in full force and effect. Paragraph headings are for convenience only and shall not be used in construing this memorandum. This document represents the entire agreement between the parties.

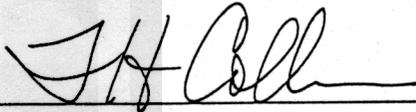
XIII. EFFECTIVE DATE

This MOU shall become effective when approved and signed by both parties and shall remain in effect until revoked by either party, upon thirty day's written notice to the other party.

XIV. MODIFICATION

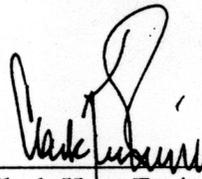
Either party may request modification of this MOU at any time, and it shall be modified upon mutual written consent of both parties.

XV. APPROVED BY



Admiral T. H. Collins
Commandant
United States Coast Guard

Date: 7/21/03



Clark Kent Ervin
Acting Inspector General
Department of Homeland Security

Date: 7/21/03