



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

**DOT Operating Administrations Can
Better Enable Referral of Potentially
Criminal Activity to OIG**

OST

Report No. ST2018076

August 22, 2018





DOT Operating Administrations Can Better Enable Referral of Potentially Criminal Activity to OIG

Self-Initiated

Office of the Secretary of Transportation | ST2018076 | August 22, 2018

What We Looked At

The Department of Transportation's (DOT) mission depends on proper stewardship of funds and effective enforcement of laws and regulations. The Office of Inspector General (OIG) plays a crucial role in supporting DOT's mission by detecting and preventing waste, fraud, abuse, and mismanagement, as well as providing criminal enforcement for violations of law. In order for the Department and our office to fulfill these roles, Operating Administrations must notify us whenever circumstances appear to indicate a potential criminal violation. We initiated this audit to assess DOT's policies and procedures for prompt referral of potential criminal violations to our office.

What We Found

DOT's criminal referral policies are not up to date and were unavailable in a central location to DOT employees for almost 2 years. While DOT does not require Operating Administrations to have their own policies or prohibit management involvement, four Operating Administrations have developed policies outlining their internal referral review processes. However, internal processes used by two of the four Operating Administrations may hinder prompt referrals to OIG. Finally, the number of referrals varies across Operating Administrations, and our survey results point to training needs.

Our Recommendations

We made three recommendations to help the Department and its Operating Administrations put policies, procedures, and training in place to enable prompt referral of fraud, waste, abuse, or other potential criminal violations to our office. The Office of the Secretary concurred with two recommendations and partially concurred with one.

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Memorandum

Date: August 22, 2018

Subject: DOT Operating Administrations Can Better Enable Referral of Potentially Criminal Activity to OIG | Report No. ST2018076

From: Calvin L. Scovel III 
Inspector General

To: Deputy Secretary

The Department of Transportation's (DOT) mission to ensure our Nation has the safest, most efficient and modern transportation system in the world depends on proper stewardship of funds and effective enforcement of laws and regulations. The Office of Inspector General (OIG) plays a crucial role in fulfilling DOT's mission by detecting and preventing waste, fraud, abuse, and mismanagement, as well as providing criminal enforcement for violations of law to complement the Department's broader civil and administrative efforts. In order for the Department and our office to fulfill these roles, it is necessary that Operating Administrations notify us whenever circumstances appear to indicate a potential criminal violation.

For example, in our 2016 report¹ on the Federal Railroad Administration's (FRA) transportation of hazardous materials by rail, we recommended FRA amend agency policy and procedures to require all staff, including inspectors, to directly report to OIG all suspected criminal violations and instances of fraud, waste, and abuse. FRA implemented the recommendation and is now making referrals to our office. During the prior 10 years, FRA made only one referral of a potential criminal violation to our office. Given possible similar weaknesses at other Operating Administrations, we initiated this audit to assess DOT's policies and procedures for prompt referral of potential criminal violations to our office.

We conducted this audit in accordance with generally accepted Government auditing standards. We focused on policies and procedures for reporting fraud, waste, or abuse and/or other potentially criminal activity to OIG and the number

¹ *FRA's Oversight of Hazardous Materials Shipments Lacks Comprehensive Risk Evaluation and Focus on Deterrence* (OIG Report Number ST-2016-020), February 24, 2016.

of referrals from all nine Operating Administrations over 5 fiscal years from October 2011 to June 2017. We did not examine the details of specific referrals. We selected six Operating Administrations—Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Transit Administration (FTA), National Highway Traffic Safety Administration (NHTSA), and Pipeline and Hazardous Materials Safety Administration (PHMSA)—for further assessment based on the scale of their operations and potential for encountering criminal activity in the course of routine duties. Further assessment included interviews with personnel responsible for making referrals or implementing related policies and procedures and a survey of 1,879 frontline enforcement and oversight staff (see table A-1 for survey response rates). Exhibit A details our scope and methodology. Exhibit B lists the entities we visited or contacted.

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-1959, or Barry J. DeWeese, Assistant Inspector General for Surface Transportation Audits, at (202) 366-5630.

cc: The Secretary
DOT Audit Liaison, M-1

Results in Brief

DOT's criminal referral policies are not up to date, and some Operating Administrations' policies require initial internal reviews that may hinder prompt referrals to OIG.

The Department's requirements for making referrals of fraud, waste, abuse, or suspected criminal activity to OIG are contained in DOT Orders 8000.8 and 8000.5A, released in 2001 and 1989, respectively. However, the Orders contain out of date OIG contact information, an example of a matter that should be referred that is no longer fully accurate, and guidelines for an agency that is no longer part of DOT. Also, the Orders were unavailable in a central location to DOT employees between mid-2015 and 2017 because they were not posted in DOT's Directives Inventory. These Orders set out requirements for direct referrals by DOT employees as well as referrals through Operating Administration leadership but emphasize the need for prompt referral of criminal matters. While DOT does not require Operating Administrations to have their own policies or prohibit management involvement, four Operating Administrations have developed policies outlining their internal referral review processes. However, internal processes used by two of the four Operating Administrations include multiple layers of review and/or preparation of formal referral memoranda. Although we did not identify any specific instances, these additional layers of review, by their nature, may hinder prompt referrals. Conversely, FRA's revised 2016 policy instructs FRA staff to refer matters directly with no internal review process. While Federal employees are required to disclose waste, fraud, abuse, and corruption to appropriate authorities,² and all but one of the Operating Administrations we reviewed are making referrals, approximately 30 percent of respondents to our employee survey indicated they did not know if their agencies had a criminal referral policy. Staff from two Operating Administrations we interviewed noted limited internal training on the criminal referral process. In addition, several survey respondents identified common barriers to the referral process; these included Operating Administration management controls or restricted referrals, fear of retaliation or other negative stigma for making a referral, and the perception that OIG does not accept referred cases.

We made three recommendations to help DOT and its Operating Administrations put policies, procedures, and training in place to enable prompt referral of fraud, waste, abuse, or other potential criminal violations to our office.

² *Standards of Ethical Conduct for Employees of the Executive Branch*, 5 CFR § 2635.101(b)(11).

Background

At DOT, OIG is the only mode with the authority to investigate criminal activities, except for a few circumstances.³ As part of its responsibility to administer programs, the Department can also engage in proceedings to address violations civilly and/or administratively at the same time as OIG. The Inspector General Act of 1978⁴ established the Department of Transportation Office of Inspector General to create an independent and objective unit to conduct audits and investigations relating to DOT programs. An Inspector General (IG) carrying out provisions of the act is authorized to have access to all records, reports, documents, papers, or other material requested from each of the DOT operating administrations. OIG's Special Agents are authorized by the Attorney General to carry firearms while engaged in their official duties, to seek and execute arrest and search warrants, and to make arrests with or without a warrant for any felony committed in their presence. The Inspector General Empowerment Act of 2016⁵ provides additional authority for IGs, including a stipulation that access to all Operating Administration documents must be provided to the IG in a timely manner.

OIG's authority to conduct investigations extends not only to the programs of the Department's Operating Administrations but also to any person or entity regulated by those administrations as well, such as airlines, railroad companies, pipeline operators, or motor carriers. This authority⁶ exists whether or not the entity receives DOT funds.

DOT Orders provide Operating Administrations with examples of matters to be referred to OIG, which include a wide range of activities, and require the referrals to the OIG be made without delay and without change. Some of these activities include false or fraudulent claims, statements or certifications by employees, contractors, regulated entities or grantees in connection with DOT programs, bid rigging, misappropriation or embezzlement of Government funds, and bribery of Government employees. Likewise, if an Operating Administration suspects a regulated entity of possible criminal activity, it is required to promptly refer the matter to OIG for evaluation of the allegation.

OIG's Special Agents receive allegations of wrongdoing from a number of different sources. In addition to Operating Administrations, information may come to our agents from the public, industry, prosecutors, and other law

³ For example, NHTSA has the authority to investigate odometer fraud.

⁴ Inspector General Act of 1978, Pub. Law No. 95-452.

⁵ Inspector General Empowerment Act of 2016, Pub. Law No. 114-317.

⁶ 49 U.S.C. § 354.

enforcement agencies. OIG operates a 24-hour, 7-day-a-week hotline through which anyone—a member of the public or a DOT Operating Administration employee—may directly report fraud, waste, or abuse. In carrying out their official duties, Federal employees have a duty to disclose waste, fraud, abuse, and corruption to the appropriate authorities and OIG’s hotline is one method by which they may do so.

See exhibit D for an illustration of the general process an allegation goes through from the time it is received by our Agency to the time the matter is closed.

DOT’s Criminal Referral Policies Are Not Up to Date, and Some Operating Administration Policies Include Internal Reviews That May Hinder Prompt Referrals to OIG

DOT Orders 8000.5A and 8000.8 require DOT employees to refer potentially criminal activities to proper agency officials or directly to OIG, but these Orders are not up to date and were unavailable in a central location to DOT employees for almost 2 years. The Orders provide processes that may be used for both direct referrals by DOT employees and referrals through Operating Administration leadership to OIG. In addition to the Orders, four of the nine Operating Administrations have internal criminal referral policies outlining their internal referral review processes. However, some of these Operating Administration processes include multiple layers of review and/or preparation of formal referral memoranda that may hinder prompt referral of potentially criminal matters. Finally, the number of referrals varies across Operating Administrations and survey results point to training needs.

DOT Orders on Criminal Referrals Are Not Up to Date and Were Not Easily Accessible to Employees for Nearly 2 Years

The Department’s key criteria for criminal referral processes are two DOT Orders. DOT Order 8000.5A provides investigative procedures and was released in 1989. DOT Order 8000.8 delineates responsibilities for criminal investigations and was released in 2001. Information in these orders, such as examples of potentially criminal activities and OIG contact information, has not been updated since the

Orders were issued. DOT Order 8000.5A lists an old mailing address for OIG's Hotline. This Order also predates modern communication methods so it does not include the OIG Hotline email address or mention of the Hotline's web-based form for submitting referrals anonymously.

In addition, the examples of potentially criminal activity for referral are not fully accurate. For example, DOT Order 8000.8 uses willful violations of hazardous materials transportation by air regulations as an example of a violation that should be referred, but hazardous material transportation law was changed in 2005 to include criminal penalties for reckless violations in addition to willful ones. DOT Order 8000.8 also includes several provisions related to the Coast Guard, which was transferred from DOT to the Department of Homeland Security in 2003.

These two Orders were also unavailable in a central, electronic location to DOT employees for almost 2 years, between mid-2015 and 2017, because they were not uploaded to DOT's Directives Inventory when the DOT Orders were no longer available on the DOT Library website. The Department's ability to document and communicate policies and procedures establishing internal controls as required by the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*⁷ is inhibited by this lack of a storage location that contains all active DOT Orders and is accessible to all DOT employees. DOT's Orders are currently officially available on DOT's Directives Inventory,⁸ which is an internal SharePoint site.

After we alerted the Department that the two Orders within the scope of this audit were missing from DOT's Directives Inventory, the designated staff member we were working with in the Office of the Secretary (OST) asked OIG External Affairs for copies to post. During this period when DOT Orders 8000.5A and 8000.8 were not electronically available at a central location, DOT employees seeking the Department's criminal referral requirements or guidance would have needed to find copies on their own or through unofficial channels.

Two of Four Operating Administrations' Criminal Referral Procedures Call for Internal Reviews Prior to Referral to OIG

Among DOT's nine operating administrations, five—FHWA, FMCSA, FTA, the Maritime Administration (MARAD), and the Saint Lawrence Seaway Development

⁷ GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (2014).

⁸ Seventy-three of 353 active DOT Orders listed in DOT's Directives Inventory were missing attachments when we last reviewed the inventory in September 2017.

Corporation (SLSDC)—did not have internal referral processes, while four—FRA, FAA, NHTSA, and PHMSA—did, in addition to the Orders (see table 1). DOT Order 8000.5A allows for either direct referrals by DOT employees or referrals through Operating Administration leadership or counsel to OIG but emphasizes that referrals must be prompt. Specifically, DOT Order 8000.5A instructs agency officials to refer information to OIG without delay and without change.

Table 1. Operating Administrations’ Criminal Referral Policies

Operating Administration	Has internal policy/procedure? (Y/N)	Requires internal review prior to submission to OIG? (Y/N/NA)	Includes regulated entities? (Y/N/NA)	Policy allows for direct referrals by employees? (Y/N/NA)
FAA AAE	Y (FAA Order 1070.1A)	Y	Y	N
FAA ASH	Y (FAA Order SH 1600.20C)	N*	Y	Y
FAA AIR/AFS	Y (FAA Order 2150.3B)	Y	Y	N
FHWA	N	NA	NA	NA
FMCSA	N	NA	NA	NA
FRA	Y	N	Y	Y
FTA	N	NA	NA	NA
MARAD	N	NA	NA	NA
NHTSA	Y	N	N	Y
PHMSA OHMS	Y	Y	Y	N
PHMSA OPS	Y	Y	Y	N
SLSDC	N	NA	NA	NA

*The Office of Security and Hazardous Materials Safety Investigations Handbook (FAA Order SH 1600.20C) instructs employees to make referrals to OIG in accordance with FAA Order 1600.38 and DOT Order 8000.8. FAA Order 1600.38F allows for direct referrals to OIG and applies to all FAA employees, but it was not mentioned in the internal referral policy and procedure documents provided by the Office of Audit and Evaluation and Aircraft Certification Service/Flight Standards Service.

Source: OIG analysis

FRA's revised 2016 policy instructs FRA staff to refer matters directly to OIG with no internal review process. Following this revision, FRA went from making one referral in 10 years to nine referrals in the roughly 14 months from when the new policy was instituted in 2016 through June 2017.

NHTSA's policy emphasizes the need to refer matters directly or through the Agency's internal review process without delay. NHTSA's referral policy also outlines an internal process that appears to limit the risk of delay or modification of potential referrals, while also expressly stating that all NHTSA employees have the option of making a direct referral to OIG through the OIG Hotline. Despite this clearly written policy, about one-third of the 93 NHTSA respondents to the survey hotline question said they were not aware of OIG's Hotline. If referring through the Agency, NHTSA employees are held responsible for referring information related to matters under OIG jurisdiction through management or directly to the Associate Administrator for Administration. In turn, NHTSA leadership is expected to bring any such information to the Associate Administrator for his or her attention without delay and without change, closely mirroring language in 8000.5A. The Associate Administrator, in turn, is expected to refer the matter to OIG. However, the policy only notes that such matters include "all instances of direct or suspected violations of law, waste, abuse, mismanagement, or irregular activities by a NHTSA employee, contractor, or grantee affecting programs or activities" and does not speak to the need to refer matters concerning regulated entities.

FAA Order 1600.38F applies to all FAA employees and allows for direct referral of matters to the OIG Hotline in addition to following agency procedures. FAA also provided specific internal Orders for its different program offices in response to our request for referral policies. For example, FAA's Order SH 1600.20C is an Investigations Handbook for the Office of Security and Hazardous Materials Safety (ASH). The Handbook directs ASH employees to refer any information which constitutes fraud, waste, or abuse to the OIG in accordance with FAA Order 1600.38 and DOT Order 8000.8. FAA Order 1070.1A applies to the Office of Audit and Evaluation (AAE), and calls received through the FAA hotline. FAA Order 1070.1A requires that reports alleging fraud, waste, and abuse within FAA as well as reports of criminal activity received through the hotline be sent to ASH for review. FAA's Flight Standards Service (AFS) and Aircraft Certification Service (AIR) are guided in part by FAA Order 2150.3B. This Order says that when FAA investigative personnel believe there may be a violation of any Federal criminal statute, they coordinate with their supervisor, the affected program office, ASH, and FAA legal counsel. After coordination, if it is agreed criminal conduct possibly occurred, Security will refer the matter to OIG. The option to make referrals directly to OIG is not mentioned in FAA Order 1070.1A or FAA Order 2150.2B.

Despite having several policies on making referrals, FAA staff described their efforts to send some information that could result in referrals to OIG without

delay and without change. For instance, an ASH supervisor has requested that FAA's Washington Operations Center Complex send reports of drone or laser incidents directly to OIG, so the incident reports are received simultaneously by both ASH and OIG. Likewise, an AAE supervisory staff member said AAE began sending matters directly to OIG while simultaneously notifying ASH because AAE found ASH was not involving OIG.

At PHMSA, both the Office of Pipeline Safety (OPS) and Office of Hazardous Materials Safety (OHMS) require that all referrals arising from enforcement activities of a regulated entity go through their Office of Chief Counsel, while internal agency complaints may be reported directly to OIG. For example, OPS's Pipeline Safety Enforcement Procedures manual details at least four different parties that must be notified of the suspected criminal activity in a multi-step process in which evidence is documented, legal research is conducted, relevant records are gathered, and a memorandum is prepared. This prescribed process is by nature contrary to the DOT Order's requirement that the referral be made without delay. Additionally, this manual includes information about the OIG Hotline but says that it is to receive complaints from the general public. About 55 percent of PHMSA's 238 survey respondents who answered the hotline survey question said they were aware of OIG's Hotline. In fact, the OIG Hotline is set up to receive complaints from anyone, including PHMSA employees, about any possible waste, fraud, abuse, or potentially criminal activity—including that of regulated entities.

Referral Data Vary Across Operating Administrations, and Survey Results Point to Training Needs

The number of referrals varies across Operating Administrations, and results from our survey of frontline staff point to training needs. Operating Administrations are not required to track the referrals made to OIG and would not necessarily be aware of direct referrals by employees. When we asked for referral data, the Operating Administrations and OST reported making anywhere from 0 to 382 referrals to OIG over a 5-year period. Two Operating Administrations, FAA and FMCSA, accounted for 86 percent of these referrals, while 6 of 9 Operating Administrations reported 16 or fewer referrals for this entire 5-year period. Some Operating Administrations, such as FHWA, specifically noted the referrals they reported were only from one office rather than the whole organization.

Since these data provided an incomplete picture of Operating Administration referrals, we asked our investigations office to provide data from its complaint and investigation tracking system. The numbers of referrals reported by the Operating Administrations did not match the numbers from our investigations

office's tracking system because, in part, agents in OIG's Office of Investigations were not required to record referrals determined to be no action complaints until mid-2015 (see table 2 for details on these data). The data from the Operating Administrations are in the middle column, and data from our investigations office's tracking system are in the right column.

Table 2. Number of Referrals by DOT Operating Administration

Operating Administration	Operating Administration Reported Referrals to OIG (FY 2012 to June 6, 2017)	OIG ALERTS Data on Referrals Reported (FY2012-May 26, 2017)*
FAA AAE	26	204
FAA ASH	351	
FAA AIR/AFS	5	
FHWA	4	28
FMCSA	192	115
FRA	11	12
FTA	50	14
MARAD	8	9
NHTSA	2	6
PHMSA OHMS	10	30
PHMSA OPS	6	
SLSDC	0	1
TOTAL	665	419

* End of data timeframe based on when information was provided by sources.
Source: OIG analysis

Within these referral data, we found that in some Operating Administrations, a few subcomponents, such as specific field offices, were responsible for most referrals. For example, at FTA, one regional office made over half the Agency's referrals for the period. When we interviewed staff in this office, they noted their

longstanding relationship and co-location with the OIG regional investigations office as the reason for their large number of referrals as compared to other FTA regions. FMCSA reported making 192 referrals while carrying out its enforcement mission, but the number of referrals varied greatly among regions. One FMCSA State office provided approximately a quarter of all referrals reported to OIG by the Operating Administration, and all but two of the referrals were made in one 4-month span and were related to reincarnated carriers. A FMCSA executive said this may be influenced by the cultivation of a relationship with the OIG field office or specific enforcement initiatives from OIG in these areas.

There was also variation in the types of referrals Operating Administrations made to OIG. Operating Administrations with enforcement missions overseeing regulated entities appear to generate more referrals in the course of their work, but Operating Administrations and their employees overseeing grants also have a responsibility to report fraud, waste, and abuse. PHMSA, which oversees both regulated entities and grants, made referrals of matters pertaining only to regulated entities except for one item.

FHWA, an agency responsible for overseeing about \$40 billion annually in Federal funding reported its Office of Chief Counsel made four referrals over the 5-year period we reviewed. FHWA officials explained that the Agency does not track criminal referrals made by its employees because they may directly refer issues to OIG and tracking referrals would not align well with FHWA's program administration processes and responsibilities. OIG recorded 28 referrals from FHWA during this same time period. About 31 percent of the FHWA-related cases OIG opened during this period were referred by State and local public agencies that receive and administer FHWA funding, and other law enforcement agencies. OIG opened a total of 261 FHWA-related cases from referrals made by non-FHWA sources (see table 3). The size of FHWA's funding programs potentially creates incentive and opportunities for criminal activity. FHWA takes action to remove people or companies who have committed fraud through an active suspension and debarment program. According to data from our investigations office, FHWA performed 226 of these actions during the 5-year timeframe we examined.

Table 3. OIG Investigative Cases Opened from All Sources (October 2011 through June 2017)

Operating Administration	Citizen	Hotline	Other Law Enforcement Agency	State or Local Public Agency (% Total)	US DOJ Prosecutor	DOT Operating Administration (% Total)	Total (includes other categories)
FAA	37	30	52	3 (1%)	17	209* (45%)	460
FHWA	22	29	24	56 (21%)	29	28 (11%)	261
FMCSA	16	26	38	8 (3%)	11	115 (42%)	274
FRA	0	2	5	1 (3%)	3	12 (38%)	32
FTA	18	16	25	12 (9%)	18	14 (11%)	132
MARAD	2	2	2	0	0	9 (36%)	25
NHTSA	4	2	8	4 (10%)	8	6 (14%)	42
PHMSA	5	5	28	3 (3%)	6	30 (32%)	93
SLSDC	0	0	0	0	0	1 (100%)	1

*The FAA number of referrals from DOT Operating Administration sources is higher in this table than in table 2 because the reporting timeframe is slightly different for the underlying data.

Source: OIG analysis

Variation in the number of referrals from Operating Administrations and, in some cases, among their subcomponents may be due to limited training on making criminal referrals. Approximately 42 percent⁹ of the frontline DOT staff who responded to our survey said they could refer matters directly to OIG. The DOT Orders alone provide sufficient guidance to allow employees to make prompt referrals directly or through their Operating Administrations, but our interviews and survey results indicate employee awareness and training on the reporting requirements is limited. Roughly 27 percent of respondents¹⁰ said they had

⁹ This percentage does not include FHWA respondents, who held different positions than surveyed personnel from other Operating Administrations. FHWA front-line employees were interviewed separately.

¹⁰ This total does not include FHWA responses because FHWA respondents were Division Administrators in supervisory positions. The purpose of this survey was to collect responses from frontline DOT employees responsible for enforcement and/or grant oversight.

encountered fraud, waste, or abuse in the course of their duties, but only about 41 percent of these respondents indicated that they had referred a case to OIG in the past, either directly or through their agency’s process. This suggests that Department personnel may not be fully carrying out their obligations to keep OIG informed of matters within its jurisdiction even when they encounter them. We reviewed all 208 comments¹¹ provided by respondents to our survey of frontline staff from the 6 Operating Administrations selected for further assessment. We sorted them into categories of the most common barriers to making referrals or concerns about the referral process (see table 4).

Table 4. Survey Respondents’ Perceived Barriers to Making Referrals (Comment Counts by Operating Administration)

Operating Administration	Lack of training/not aware of referral process/belief there is no policy	Operating Administration management is a barrier/controls or restricts referrals	OIG does not accept or prosecutors do not pursue cases/inadequate OIG response	Fear of retaliation or stigma
FAA	3	1	8	1
FHWA	1	1	4	0
FMCSA	35	27	17	16
FTA	4	2	1	4
NHTSA	3	4	5	4
PHMSA	22	15	8	15
TOTAL	68	50	43	40

Source: OIG analysis

Examples of comments from each category included the following:

- Lack of training or no awareness of a process for referring criminal matters to OIG (68)

¹¹ Comments often included multiple statements, but some comments could not be classified into these top four categories; therefore, comment category totals do not match the total number of comments.

- For example: "Knowledge of the process...in my office everything is a secret. Local supervision provides no guidance about the OIG process or who to contact."
- For example: "Biggest barrier would have to be general lack of awareness about ability to do so and process for doing so."
- Operating Administration management controls or restricts referrals (50)
 - For example: "It is a very long process with multiple levels of approval, and it does not allow for direct contact below the upper management level."
 - For example: "The senior management team does not prefer for staff to even engage in conversation with OIG without them knowing. So if you needed to make a report or had an issue that you wanted to discuss, it would be somewhat difficult unless you used the hotline."
- OIG does not accept or prosecutors do not pursue cases (43)
 - For example: "The relationship we have with our local OIG office is great; however, they are limited by what the Assistant US Attorney (AUSA) will accept or pursue."
 - For example: "Interest in the case on the part of the regional AUSA's office. If there is an appearance that they may not be interested, the matter is not pursued beyond the referral."
- Fear of retaliation or negative stigma (40)
 - For example: "Reporting of any kind is punished, the reporter ostracized, marginalized and often pushed to quit the Agency through various forms of harassment and questionable disciplinary actions."
 - For example: "ANY type of referral OUTSIDE this agency opens you up to retaliation by immediate supervisors and lack of attention by...all Executives at this agency....complaints and issues go unresolved and ignored! Employees are targeted and resented. So, yes I would have to say that there are barriers if criminal matters or ANY matters are referred to the OIG."

The first barrier—lack of training or no awareness of criminal referral processes—was echoed by overall survey results and by officials we interviewed at Operating Administration offices in the field. Approximately 30 percent of survey respondents did not know if their agency had a process for referring waste fraud

and abuse to OIG. Further, roughly 35 percent of survey respondents were not aware of OIG's hotline. This demonstrates a lack of adequate training on the Department's referral requirements provided in Orders 8000.5A and 8000.8, which apply to all DOT employees regardless of Operating Administration.

During interviews, FHWA and FTA officials indicated that organization-wide internal training on reporting fraud, waste, and abuse was limited to ethics training. FHWA officials said OIG's investigative staff has provided training as part of National Highway Institute courses when asked, but this training is not routine. Among FTA and FHWA field offices we interviewed, staff cited training and outreach by OIG's investigative field staff as an important mechanism for learning what and how to report fraud, waste, and abuse. It also supports collaborative relationships between field staff and OIG when it comes to evaluating information that could potentially lead to a referral.

Conclusion

All Federal employees are required to disclose fraud, waste, and abuse to appropriate authorities, and DOT employees are specifically required to report potentially criminal activities to OIG either directly or through their agencies. However, DOT's referral policies are not up to date and some Operating Administration policies may hinder referrals to OIG, underscoring the need for further action. Better procedures and awareness could improve reporting of potentially criminal activities to OIG. Without a robust referral process, DOT lessens its ability to pursue fraud, waste, and abuse and enforce criminal and civil penalties.

Recommendations

To ensure DOT and its Operating Administrations have policies and procedures to promptly refer potential criminal violations to our office, we recommend that the Deputy Secretary:

1. Update DOT Orders 8000.8 and 8000.5A and make them available to DOT employees.
2. Require that Operating Administrations align any criminal referral procedures with updated DOT Orders.
3. Implement an annual mandatory training requirement on DOT employees' responsibility to report fraud, waste, and abuse to the OIG and requirements in DOT Orders 8000.8 and 8000.5A.

Agency Comments and OIG Response

We provided OST with our draft report on June 7, 2018, and received its response August 15, 2018, which is included as an appendix to this report. OST concurred with recommendations 1 and 3, and partially concurred with recommendation 2.

For recommendation 1, OST fully concurred and provided an appropriate planned action and completion date. We consider this recommendation resolved but open pending completion of the planned action.

For recommendation 2, OST partially concurred and provided an appropriate planned action and completion date. OST stated that it will review all Operating Administrations' orders to ensure that they all align with DOT Orders 8000.8 and 8000.5A by July 2019. OST does not agree that developing facts, documenting evidence, and preparing a memorandum are by nature contrary to the requirements of the DOT Orders. OST does acknowledge that when these steps are taken by Operating Administrations, they should be done expeditiously and that DOT's policies should reflect the need for expeditious action. OST's planned action meets the intent of our recommendation, and we consider the recommendation resolved but open pending completion of the planned action.

For recommendation 3, OST fully concurred, but proposed an alternative action. Rather than implementing an annual mandatory training requirement, OST proposed providing (1) a one-time training for current employees and (2) training for all new entrants on employees' responsibility to report fraud, waste, and abuse to the appropriate authorities and the requirements of DOT Orders 8000.8 and 8000.5A as well as OIG contact information. OST's planned action meets the intent of our recommendation, and we consider the recommendation resolved but open pending completion of the planned action.

Action Required

We consider all three recommendations resolved but open pending completion of the planned actions.

Exhibit A. Scope and Methodology

We conducted this performance audit between April 2017 and June 2018 in accordance with generally accepted Government auditing standards as prescribed by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of this audit was to assess whether DOT and its Operating Administrations have policies and procedures to ensure that potential criminal violations are promptly referred to our office. We identified criteria pertaining to the Department referring potentially criminal matters to the Office of Inspector General. Criteria documents we reviewed included DOT Order 8000.8, DOT Order 8000.5A, the Inspector General Act of 1978, The Inspector General Empowerment Act of 2016, GAO's *Standards for Internal Control in the Federal Government*, and the Standards of Ethical Conduct for Employees of the Executive Branch, as well as related laws and regulations.

We requested that each DOT Operating Administration provide OIG with all records of criminal referrals made between FY 2012 and June 2017, as well as policies or procedures for making referrals, contact information for agency personnel responsible for making referrals, and where referral data is stored. One limitation of the Operating Administration referral data is that Operating Administrations are not required to track referrals to OIG or other law enforcement agencies, so some of the counts contained referrals only from a single office rather than the Operating Administration as a whole. A second limitation of the referral data provided by the Operating Administrations was that it did not indicate when the information was received by the Operating Administration, so the promptness of referrals could not be quantified.

We assembled criminal referral and case data from the DOT OIG Office of Investigations. We received data on all referrals related to a DOT Operating Administration to the OIG Hotline between fiscal year 2012 and May 26, 2017. A limitation in the OIG Hotline's referral data is that the database does not indicate which referrals were made by Operating Administration officials. Also, agents were not required to record referrals in ALERTS that were evaluated and determined to require no action until mid-2015. We received data on all cases the Office of Investigations opened between fiscal year 2012 and June 2017. We received data on all suspensions and debarments relating to FHWA and FTA for the last 5 years.

Based on an evaluation of each Operating Administrations policies, referral data, and mission, we found that six Operating Administrations warranted additional assessment. These Operating Administrations were FTA, FHWA, PHMSA, FMCSA, FAA, and NHTSA. We conducted interviews at headquarters of staff knowledgeable about referral procedures as well as surveyed frontline employees identified by these Operating Administrations. We also conducted interviews at field offices of some Operating Administrations.

We conducted interviews with 3 of the 10 FTA regions, as well as Headquarters officials. We visited Region 1 because Region 1 made over half of FTA's total referrals. We conducted telephone interviews with FTA Regions 3 and 8, both of which did not make any referrals. Additionally, we interviewed the FTA Assistant Chief Counsel, who was cited as the point of contact for investigative matters.

We conducted an interview at Headquarters with FHWA officials. We visited the Rhode Island Division and Massachusetts Division offices for interviews to gain an understanding of frontline employees' understanding of criminal referral procedures.

We conducted in person interviews with four FAA offices, because they each provided referrals and have different oversight areas. These were the Office of Security and Hazardous Materials, the Office of Audit and Evaluation, the Aircraft Certification Service (AIR), and the Flight Standards Service (both services handle suspected unapproved parts).

We also conducted in person interviews with NHTSA Headquarters Officials, FMCSA Headquarters Officials, PHMSA Office of Hazmat Safety Officials, and PHMSA Office of Pipeline Safety Officials.

To gather information on DOT employees' experience with making referrals and familiarity with related policies and procedures, we developed a survey for frontline¹² DOT employees of the six Operating Administrations selected for additional assessment. The survey consisted of nine questions, two of which allowed for additional open-ended responses. These questions were created in coordination with OIG's statistician, legal counsel, and a Special Agent. We pre-tested the survey internally on employees that are subject to the same reporting requirements as the intended audience. Response percentages are based on the respondents who chose to answer the questions. The percentages may not be generalizable to the population. To identify frontline employees as survey recipients, we asked Operating Administration audit liaisons to identify position titles from DOT's DataMart that had an enforcement role or regularly interact with regulated entities or grantees. The survey was sent to the email addresses of those employees with the identified titles. One Operating Administration

¹² Those with an enforcement role or those who regularly interact with regulated entities or grantees.

provided the names of specific individuals instead of position titles, and these names were added to the list of survey recipients. The survey was sent to all employees identified as frontline.

The survey reached 1,879 DOT employees identified by the 6 Operating Administrations (FTA, FHWA, PHMSA, FMCSA, FAA, and NHTSA) as frontline. The survey was open for a period of 14 days. After the survey closed, the audit team reviewed the response data to remove duplicates and identify any other response errors. Our analysis is based on the resulting 1,192 responses (see table A-1 for response rates and number of respondents by Operating Administration).

Table A-1. Survey Response Rates

Operating Administration	Overall Response Rate to Survey	Number of Respondents
FAA	45%	161
FHWA	96% (Not frontline staff)	49
FMCSA	66%	502
FTA	79%	144
NHTSA	62%	94
PHMSA	65%	242
TOTAL	63%	1192

Source: OIG analysis

In response to OIG's request for the names or positions of the Operating Administrations' frontline staff, FHWA provided only the names of their Division Administrators to be surveyed because FHWA felt they are the "front line" of field offices. This approach, however, was contrary to what we requested and what the other Operating Administrations provided—the position titles in each administrative office that indicate an enforcement role, or an employee who regularly interacts with regulated entities and grantees. For this reason, FHWA survey results were from a different employee population than survey results from other Operating Administrations' personnel. To address this issue, we interviewed personnel at FHWA's Rhode Island Division and Massachusetts Division offices to assess non-supervisory employees' understanding of criminal referral procedures.

The survey included two open-ended questions. Some respondents provided comments to one or both open-ended questions. The 165 respondents provided 208 comments. We reviewed all of the comments and sorted them into categories of common barriers to making referrals (see table 4).

Exhibit B. Organizations Visited or Contacted

DOT

Office of the Secretary of Transportation

Federal Aviation Administration

Office of Security and Hazardous Materials Safety

Office of Audit and Evaluation

Aircraft Certification Service

Flight Standards Service

Federal Highway Administration

Massachusetts Division Office

Rhode Island Division Office

Federal Motor Carrier Safety Administration

Federal Railroad Administration

Federal Transit Administration

Region 1

Region 3

Region 8

Maritime Administration

National Highway Traffic Safety Administration

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety

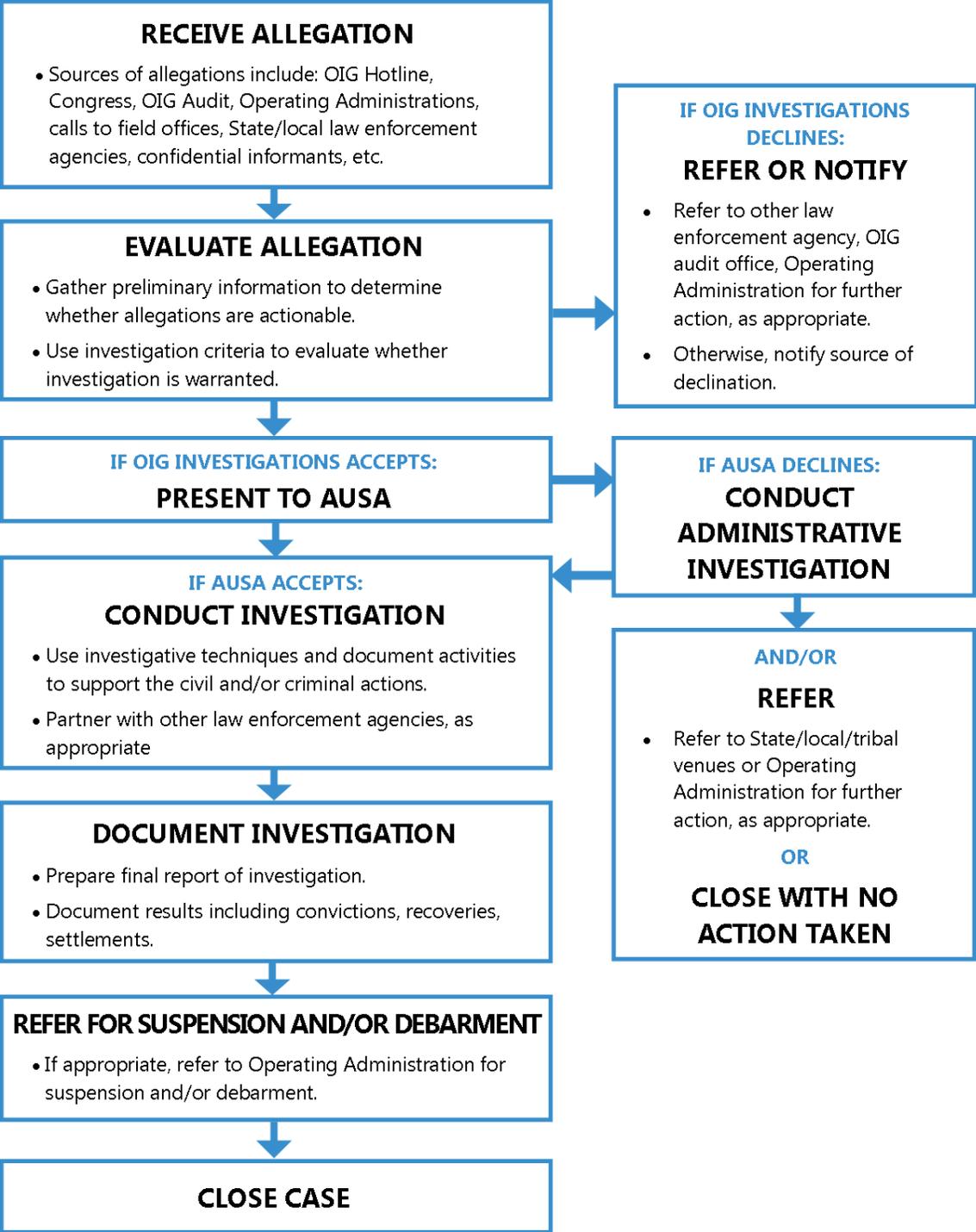
Office of Pipeline Safety

Saint Lawrence Seaway Development Corporation

Exhibit C. List of Acronyms

AAE	Office of Audit and Evaluation
AFS	Flight Standards Service
AIR	Aircraft Certification Service
ALERTS	Automated Law Enforcement Reporting Tracking System
ASH	Office of Security and Hazardous Materials Safety
AUSA	Assistant US Attorney
DOJ	Department of Justice
DOT	Department of Transportation
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
GAO	Government Accountability Office
IG	Inspector General
MARAD	Maritime Administration
NHTSA	National Highway Traffic Safety Administration
OHMS	Office of Hazardous Materials Safety
OIG	Office of Inspector General
OPS	Office of Pipeline Safety
OST	Office of the Secretary of Transportation
PHMSA	Pipeline and Hazardous Materials Safety Administration
SLSDC	Saint Lawrence Seaway Development Corporation

Exhibit D. OIG Investigative Process Flow Chart



Source: OIG analysis

Exhibit E. Major Contributors to This Report

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Appendix. Agency Comments



**U.S. Department of
Transportation**

**Office of the Secretary
of Transportation**

GENERAL COUNSEL

1200 New Jersey Avenue, S.E.
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AUG 15 2018

Memorandum

Subject: INFORMATION: Management Response to the Office of Inspector General (OIG) Draft Report on DOT's Criminal Referral Procedures and Compliance

From: Steven G. Bradbury
General Counsel

A handwritten signature in blue ink, appearing to read "Steven G. Bradbury", written over the printed name.

To: Barry J. DeWeese
Assistant Inspector General for
Surface Transportation Audits

The Department of Transportation (DOT) is committed to taking prompt action on potential criminal violations and detecting and preventing waste, fraud, and abuse. The fact that DOT has orders requiring prompt referral of potentially criminal matters to the Office of Inspector General (OIG), which goes above and beyond the statutory requirements of the Inspector General Act of 1978, demonstrates DOT's commitment to referring matters to OIG.

The concerns of the draft report are speculative, and the draft report documents no examples where matters were not promptly referred to the OIG. In the draft report, OIG acknowledges that it did not identify specific examples where implementing DOT policies delayed referrals. Similarly, although the OIG cites that the variation in the number of referrals by Operating Administrations (OAs) "may be due to limited training on making criminal referrals," it did not address other reasons that could account for the varied number of OA criminal referrals. Despite OIG's lack of evidence, the draft report cites that Operating Administration (OA) policies incorporating steps prior to referral of a matter to OIG may prevent prompt referrals. DOT disagrees with this assertion. OAs may need to complete preliminary work to develop the facts and provide additional background before referring a matter to OIG, and in some instances, to determine whether the matter is potentially criminal in nature or warrants other action by the agency. Through this method, the OAs can provide additional information and documents to OIG to help OIG decide whether to investigate. Moreover, DOT does not have evidence that OAs are not quickly completing these steps.

DOT concurs with recommendation 1. We will conduct a review and plan to update DOT Orders 8000.8 and 8000.5A by January 2019, subject to all internal reviews. In this review, DOT will update OIG contact information, remove outdated references to the Coast Guard, and ensure that more current, appropriate examples exist for matters for potential referral to the OIG.

DOT concurs, in part, with recommendation 2. DOT will review all OA orders to ensure that they align with DOT Orders 8000.8 and 8000.5A by July 2019. However, we do not agree that actions such as developing facts, documenting evidence, and preparing a memorandum are by nature contrary to the requirements of DOT Orders. We do acknowledge that when these steps are taken by the OAs, they should be done expeditiously, and moreover that DOT's policies should reflect the need for expeditious action.

DOT concurs with recommendation 3 and proposes an alternative action. The Office of the Secretary and many of the OAs already include training on reporting waste, fraud, and abuse in annual ethics training, which reaches all senior officials and those whose duties involve the exercise of discretion in sensitive areas such as contracting, procurement, administration of grants and licenses, and regulating or auditing non-Federal entities. DOT can take additional steps to raise awareness of employees' responsibilities; however, to that end, we would propose a one-time training for current employees and training for all new entrants on employees' responsibility to report fraud, waste, and abuse to the appropriate authorities and the requirements in DOT Orders 8000.8 and 8000.5A, along with OIG contact information. Such training will also ensure consistency in communicating to employees the requirements of the updated orders. DOT will develop the training by July 2019.

U.S. DOT IG Fraud & Safety Hotline

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<https://www.oig.dot.gov/hotline>

Our Mission

OIG conducts audits and investigations on behalf of the American public to improve the performance and integrity of DOT's programs to ensure a safe, efficient, and effective national transportation system.

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