

## Department of the Interior Departmental Manual

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### 446 DM 26

**26.1 Purpose.** This chapter sets forth policy for the establishment of Internal Affairs (IA) units to investigate specific categories of alleged criminal acts or misconduct among specified Department of the Interior (Department / DOI) personnel.

**26.2 Scope.** This policy applies to all bureaus and offices with responsibility for Departmental law enforcement personnel.

**26.3 Definitions.** For the purpose of this chapter, the terms below are defined as follows:

A. Administrative Investigation: An investigation related to the non-criminal conduct, actions, or performance of an employee to determine whether such conduct, actions, or performance is in compliance with Departmental, bureau or office policies or codes of conduct.

B. Bureau Director of Law Enforcement (BDLE): The designated official who administers the law enforcement program for a bureau or office and is a member of the Law Enforcement Board of Advisors.

C. Complaint: An allegation of specific wrongful acts or omissions by an employee.

D. Departmental Law Enforcement Personnel: DOI personnel charged with carrying out various law enforcement functions to include sworn DOI law enforcement officers, security guard, and detention personnel. Contract personnel are not included within this category.

E. Early Intervention System: A system designed to track complaints for purposes of identifying potentially problematic patterns of behavior among Departmental law enforcement personnel. The system is intended to provide supervisors with the information necessary to take preemptive non-disciplinary action to correct performance problems.

F. Misconduct: An act or omission by an employee which serves as the basis for taking corrective action when it is determined that such action will promote the efficiency and integrity of the Department consistent with Departmental Manual, 370 DM 752.1, "Discipline and Adverse Actions".

G. Racial Profiling: The practice of relying, to any degree, on race, ethnicity, or national origin in identifying individuals subject to routine investigatory activities, or in determining the scope and substance of law enforcement actions following a routine investigatory activity.

H. Supervisor: Any law enforcement or non-law enforcement employee of the Department who has direct operational authority over Departmental law enforcement personnel.

26.4 **Policy.** Each bureau and office with responsibility for Departmental law enforcement personnel will establish an IA unit to investigate alleged criminal acts or misconduct in accordance with the minimum requirements set forth herein.

#### 26.5 **Responsibilities.**

A. Deputy Assistant Secretary - Law Enforcement, Security, and Emergency Management is responsible for policy development and provides program guidance and oversight of the Department's law enforcement, security and emergency management programs.

B. Heads of Bureaus and Offices are responsible for establishing bureau or office IA units and promulgating any counterpart policy and procedure required to implement IA procedures in conformance with this chapter.

C. Bureau / Office Managers, Supervisors and Employees are responsible for complying with established IA policy and procedure.

26.6 **Requirements.** Bureau and office IA policy and procedure will meet the following minimum requirements:

#### A. IA Unit Staffing.

(1) Each IA unit will have a minimum of one supervisory criminal investigator exclusively assigned to manage or conduct IA investigations.

(2) Full-time IA unit investigative and support staffing levels will be commensurate with unit caseload.

(3) Bureau and office sworn law enforcement personnel may, as a collateral duty, be assigned to conduct IA investigations on behalf of an IA unit.

#### B. IA Training.

(1) Within one year of being assigned to an IA unit, all full-time IA investigators will successfully complete:

(a) the Federal Law Enforcement Training Center Criminal Investigator Training Program or an equivalent training program approved by the Director - Office of Law Enforcement and Security (OLES); and,

(b) a specialized IA investigations training course approved by the Director - OLES.

(2) All sworn law enforcement personnel assigned to conduct IA investigations as a collateral duty will successfully complete a specialized IA investigations training course approved by the Director - OLES. This training requirement does not apply to law enforcement personnel or supervisors responsible for occasionally conducting administrative investigations referred by IA units.

C. Bureau / Office IA Unit Responsibilities.

(1) The primary focus of bureau and office IA units will be the investigation of alleged criminal acts or misconduct by Departmental law enforcement personnel or supervisors with operational authority over Departmental law enforcement personnel.

(a) A bureau or office head may direct an IA unit to investigate alleged criminal acts or misconduct by non-law enforcement personnel or supervisors without operational authority of law enforcement personnel. Any such investigation will be conducted in accordance with bureau or office policy and coordinated, as appropriate, with the Office of Inspector General (OIG).

(b) The Bureau of Indian Affairs (BIA) IA unit will investigate allegations of misconduct among law enforcement personnel receiving funding or authority from the BIA.

(2) Bureau and office IA units will review all complaints received and investigate those categories of incident and complaint outlined in Appendix 1 or refer the complaint for investigation by a supervisor or other legal authority as appropriate.

(a) When a determination is made to refer a complaint to a supervisor for investigation, the bureau or office IA unit will maintain oversight of the investigation until it is completed.

(b) If it is determined a category of complaint exceeds the investigative jurisdiction of the bureau or office IA unit (see Appendix 2), the complaint will be referred to the appropriate investigating party.

(3) The BDLE of each bureau will when feasible, remotely house their Internal Affairs Units. This provides the subjects, complainants and witnesses a measure of anonymity when dealing with internal investigations.

D. OLES Responsibilities.

(1) IA Case Tracking and Oversight.

(a) The OLES will maintain a secure, centralized, computer-based Internal Affairs Case Tracking System (IACTS) which bureau and office IA units will utilize to report complaints and associated investigative dispositions.

(b) The OLES will utilize the IACTS to facilitate referral of complaints to the appropriate investigative authority; aid in the tracking of IA investigations; produce statistical reports for the OIG; identify potential issues effecting procedure, training, or policy on a Department-wide basis; etc.

(c) The OLES will periodically inspect bureau and office IA units to evaluate compliance with policy requirements related to complaints, investigations, reporting, records management, staffing, training, etc.

(2) IA Investigations. The OLES may assume or participate in IA investigations:

(a) when requested by a BDLE, or

(b) when the Deputy Assistant Secretary – Law Enforcement, Security, and Emergency Management (DAS - LESEM), in consultation with the Director - OLES, the OIG, or the BDLE, as appropriate, determines such assumption or participation to be in the best interest of the Department.

E. General Procedures.

(1) Complaint Filing Procedures. Each bureau and office will establish a process for filing complaints. Information regarding this process will be made readily available to employees and the public and may be disseminated via public websites, informational literature, internal instructional memoranda, annual all-employee training, etc. Information disseminated will include:

(a) Procedures for filing a complaint.

(b) Confidential reporting system with no supervisory review required.

(c) An overview of the complaint review process.

(d) Contact information for the bureau or office IA unit and the OIG.

(2) Complaint Processing and Tracking.

(a) All complaints will be accepted and reviewed regardless of complainant status (i.e., identified or anonymous) or submission method (e.g., in person, written, telephonic, electronic).

(b) All complaints documented by supervisors will be forwarded to bureau or office IA units no later than seven days from receipt.

(c) Upon receipt of a complaint, the bureau or office will provide written notification of receipt of the complaint to the complainant in a timely manner.

(d) All bureau and office IA units will utilize the IACTS to report complaints.

(i) Bureau and office IA units will input complaints into the IACTS within 5 days of receipt.

(ii) IACTS reporting is not required for complaints of criminal acts or misconduct among non-law enforcement personnel or supervisors without operational authority of law enforcement personnel.

(e) Bureau and office IA units will complete investigations within 90 days of receipt of a complaint.

(i) For OIG referred complaints, requests for investigative extensions beyond 90 days will be made directly to the OIG.

(ii) For non-OIG referred complaints, requests for investigative extensions beyond 90 days will be made through the IACTS and will include a case status report and justification for the extension.

(f) All bureau and office IA units will utilize an early intervention system to track complaints for purposes of identifying potentially problematic patterns of behavior among Departmental law enforcement personnel. The system is intended to provide supervisors with the information necessary to take preemptive non-disciplinary action (e.g., counseling, training, etc.) to correct performance problems.

(3) Complaint Adjudication.

(a) All bureau and office IA units will utilize the IACTS to report complaint investigative dispositions.

(b) The following disposition classifications will be used to adjudicate all complaints.

(i) Sustained. There is sufficient evidence to justify a reasonable conclusion of misconduct.

(ii) Not Sustained. There is insufficient evidence to either prove or disprove the allegations.

(iii) Exonerated. The incident occurred but was lawful and within policy.

(iv) Unfounded. The allegation was false or not factual.

(v) Other. There is administrative or legal justification for the incident.

(4) Disciplinary Actions.

(a) Bureau and office IA units will utilize the IACTS to report disciplinary actions taken in response to sustained IA complaints.

(b) Bureaus and offices will notify the Director - OLES when they suspend or revoke a law enforcement officer's commission as a result of disciplinary action.

(c) Bureaus and offices will ensure the Bureau Security Officer is notified of sustained IA complaints with potential to affect the security clearance of Departmental law enforcement personnel or supervisors of law enforcement personnel, in accordance with the requirements outlined in Departmental Manual, 441 DM 2, "Personnel Security and Suitability Requirements".

(d) Bureaus and offices will coordinate disciplinary actions related to sustained IA complaints with their respective Human Resources Office and apply the policies and procedures set forth in the DOI "Handbook on Charges and Penalty Selection for Disciplinary and Adverse Actions", 370 DM 752. This resource can be accessed at the Office of Human Resources Policy Guidance section of the DOI.gov web site at <http://www.doi.gov/hrm/guidance/curronly.htm>.

F. Investigative Considerations.

(1) IA investigations will adhere to the "Quality Standards for Investigations" (December, 2003) issued by the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency. This resource can be accessed at the Federal Inspectors General *IGnet* web site at <http://www.ignet.gov/pande/standards1.html>.

(2) The investigation of all complaints will be conducted in a diligent and thorough manner to ensure pertinent issues are resolved and all appropriate criminal, civil, or administrative remedies are considered.

(3) If during an administrative investigation, evidence of criminal misconduct is uncovered, investigators will stop the administrative investigation and consult with the U. S. Attorney's Office.

(4) Where an allegation of officer misconduct involves a possible violation of criminal law under investigation by another entity, the IA investigator will consult with

prosecutorial offices at federal, state, local, and tribal levels as applicable to determine if an administrative investigation can or should be conducted simultaneously.

(5) In cases where an employee is interviewed, they will be advised of the nature of the investigation prior to any questioning.

(6) Prior to questioning, an employee has the right to be informed of their status as it relates to the investigation.

(7) As appropriate, investigators will communicate applicable legal warnings to persons being questioned. See Appendix 3.

(8) An employee may have access to specific information concerning an investigation via the “Freedom of Information Act”, 5 U.S.C. §552, the “Privacy Act of 1974”, 5 U.S.C. §552a, employer-employee contact, or grievance procedures. Any disclosure of information should be consistent with these statutes and procedures.

(9) Certain groups of employees may be represented by collective bargaining units. Labor-management agreements between these groups and the Department may afford certain rights and privileges to employees that IA investigators should be aware of prior to initiating employee interviews.

(10) In addition to rights and privileges afforded via labor-management agreements, some groups may have rights and privileges conferred by statute. For example, the “Weingarten Act” (5 U.S.C. §7114(a) provides the right to have “an exclusive representative of an appropriate unit in an agency ... be given the opportunity to be represented at...any examination of an employee in the unit by a representative of the agency in connection with an investigation if... the employee reasonably believes that the examination may result in disciplinary action against the employee, [or] the employee requests representation.”.

#### G. Reporting.

(1) Investigative reports and files will contain appropriate documentation sufficient to support report findings, conclusions, and investigative accomplishments.

(2) The report will consist of a description of the alleged criminal acts or misconduct, other misconduct identified if necessary, and a summary analysis of all relevant evidence and investigative findings.

(3) Upon completion of investigations referred to supervisors, all files, documents, and evidence related to the investigation will be forwarded to and maintained by the bureau or office IA unit in accordance with applicable records retention policy.

(4) All investigative files will be forwarded by the bureau or office IA unit through the appropriate chain of command for review.

H. Records Management.

(1) IA files and related information will be physically separated from other investigative records. Information in these files is considered confidential and will be retained in a secured area under the control of the bureau or office IA unit with access limited for official purposes, and consistent with applicable laws and procedure.

## Appendix 1

### Bureau / Office IA Compliant Investigation Categories

- Intentional or unintentional discharge of a firearm (excluding non-injury discharges during training, recreational shooting activities, and authorized administrative uses such as the dispatch of wildlife).
- Death or serious injury to persons in the custody or control of Departmental law enforcement personnel.
- Alleged illegal use of controlled substances.
- Willful or negligent making of an untruthful statement of any kind in any written or oral report pertaining to a Departmental law enforcement officer's official duties, or making any untruthful statement before any court or to any authorized Government official.
- Arrest of Departmental law enforcement personnel.
- Acceptance of money, gratuities, or other considerations contrary to Department or bureau rules and regulations.
- Failure of Departmental law enforcement personnel to report misconduct by any other employee.
- Interference with the case of another Departmental law enforcement officer without proper authority.
- Neglect of duty (excluding general activities subject to direct supervisor oversight and discipline under that authority).
- Any use of force complaint.
- Misuse of a government vehicle.
- Any violation of Department or bureau ethics policy.
- Racial profiling allegations.
- Intoxication or consumption of alcohol or drugs while on duty.
- Disclosure of information that may adversely impact any civil or criminal litigation.
- Misuse of government equipment, including computers.
- Any complaint deemed appropriate by the bureau head or BDLE.

## Appendix 2

### Other Investigating Authorities

There are specific categories of complaint which may exceed the investigative jurisdiction of a bureau or office IA unit, or for which investigative responsibilities are vested in part with other parties internal and external to the Department. These categories of complaint include the following:

- Violations of the Hatch Act, the Whistleblower Protection Act (5 U.S.C. §1212), and specific prohibited personnel practices (5 U.S.C. §2302 (b)), are investigated and prosecuted by the Office of Special Counsel;
- Complaints of employment discrimination are investigated by the Department's Equal Employment Opportunity Office and adjudicated by the Equal Employment Opportunity Commission;
- Grievances and appeals of adverse personnel actions may be handled by bureau human resource offices and are adjudicated by the Merit Systems Protection Board;
- Health and safety violations at the workplace are investigated by the Occupational Safety and Health Administration; and,
- Complaints alleging civil rights violations are investigated by the Federal Bureau of Investigation and the United States Attorney's Office, Civil Rights Division.

The OIG is responsible for investigating or arranging for the investigation of complaints concerning potential fraud, waste, abuse, or mismanagement in Department programs or operations, to include serious matters capable of compromising the Department's mission or otherwise threatening the integrity of Department programs. These categories of complaint include the following:

- Allegations of fraud, waste, and abuse or mismanagement resulting in a significant monetary loss to the Government;
- Misconduct by employees with access to or responsibility for monies or financial systems, regardless of dollar amount and grade level;
- Allegations involving contractors, grantees, or any other parties doing business with, making payments to, or receiving funding from the Department;
- Any information, allegation, or complaint that gives the appearance of fraud, waste, and abuse or inefficiency in Department programs or operations;
- Allegations involving misconduct by supervisory personnel, regardless of grade.

- Allegations against employees at grade GS-15 and above;
- Allegations of felony criminal misconduct or domestic abuse by Departmental law enforcement personnel; and,
- Serious complaints against Departmental law enforcement personnel and supervisors with oversight of law enforcement programs.

Appendix 3

Internal Affairs Investigations – Legal Warnings

- Garrity Warning (Voluntary Warning). For the purpose of Departmental policy and in conjunction with DOJ guidelines, the Garrity warning is given when an employee is not in custody but is being questioned about matters that could result in criminal prosecution. In a memorandum from Assistant Attorney General Christopher A. Wray to all Federal Prosecutors, dated May 6, 2005, “the agents should provide the employee with an advice of rights form that is designed to preserve the government’s ability to use the employee’s statements by advising the employee that the interview is voluntary and that the employee will not be disciplined solely for refusing to answer questions.” Although this is not the true nature of Garrity, DOJ wishes to preserve statements and evidence until such time they deem “use immunity” may be given in the form of Kalkines Warnings or Compelled Warnings.

Suggested Garrity or Voluntary warning:

Warnings and Assurances to Employee requested to provide information on a voluntary Basis

You are being asked to provide information as part of an investigation being conducted by Office/Unit/Bureau name into alleged misconduct or improper performance of official duties concerning [description of relevant incident].

This is a voluntary interview. Accordingly, you do not have to answer questions. No disciplinary action will be taken against you solely for refusing to answer questions.

Any statement you furnish may be used as evidence in any future criminal proceeding or bureau/agency disciplinary proceeding, or both.

Acknowledgement

I understand the warnings and assurances stated above and I am willing to make a statement and answer questions. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

\_\_\_\_\_  
Office/Unit/Bureau Investigator

\_\_\_\_\_  
Employee

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

- Kalkines Warning (Compelled Warnings). The Kalkines warning is given when an employee is compelled to provide information during an administrative investigation with existing or potential criminal and administrative consequences. (*Kalkines v. United States*, 200 Ct.Cl. 570 (1973)). This warning amounts to a “use immunity” for any act or omission revealed in the interview. Because the authority to grant use immunity lies with the Department of Justice, no IA investigator may give an interviewee a Kalkines warning, formal or informal, written or verbal, without first receiving a verbal or written declination from the appropriate U.S. Attorney’s Office. Not all employee interviews warrant a Kalkines warning. This type of warning is only necessary when the investigator wishes to compel the interviewee to make a statement and failure to make a statement may result in disciplinary action. It is important to note that if even if Kalkines warnings are given, an individual may be subject to criminal prosecution for making false statements pursuant to 18 U.S.C. §1001.

Suggested Kalkines or Compelled Warning:

Warnings and Assurances to Employee required to provide information

You are being asked to provide information as part of an investigation being conducted by the Office/Unit/Bureau name into alleged misconduct or improper performance of your official duties. The investigation involves the following: [description of relevant incident]

The purpose of this interview is to obtain information which will assist in the determination of whether administrative action is warranted.

You are going to be asked a number of specific questions concerning the performance of your official duties.

You have a duty to reply to these questions, and agency disciplinary action, including dismissal, may be undertaken if you refuse to answer, or fail to reply fully and truthfully.

The answers you furnish and any information or evidence resulting there from may be used in the course of civil or administrative proceedings.

Neither your answers nor any information or evidence which is gained by reason of such statements can be used against you in any criminal proceedings, except that if you knowingly and willfully provide false statements or information in your answers, you may be criminally prosecuted for that action.

#### ACKNOWLEDGEMENT

\_\_\_\_\_  
Office/Unit/Bureau Investigator’s  
Signature

\_\_\_\_\_  
Employee's Signature

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

Miranda Warning. The Miranda warning is given prior to questioning an individual in custody concerning alleged criminal conduct. (Miranda v. Arizona, 384 U.S. 436 (1966)).

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to consult with an attorney and to have them present with you during questioning.

If you cannot afford an attorney and want one, one will be appointed to represent you prior to any questioning.

If you wish to answer questions now, you will still have the right to stop answering at any time.

Waiver

Do you understand your rights? YES \_\_\_\_\_

Signature

Are you willing to waive these rights and answer questions? YES \_\_\_\_\_

Signature

\_\_\_\_\_  
Office/Unit/Bureau Investigator

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_