



**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

**ORDER
1600.38G**

National Policy

Effective date:
06/21/2021

SUBJ: Office of Investigations (AXI) Duties and Investigative Responsibilities

1. Purpose of This Order. This order prescribes the duties and investigative responsibilities of the Federal Aviation Administration (FAA), Office of Security and Hazardous Materials Safety (ASH), Office of Investigations (AXI).

2. Audience. All FAA executives, managers, employees, and contractors.

3. Where Can I Find This Order. You can find this order on the Directives Management System (DMS) Website: http://employees.faa.gov/tool_resources/orders_notices

4. What This Order Cancels. FAA Order 1600.38F, Employee and Other Internal Security Investigations, dated March 15, 2010.

5. Explanation of Policy Changes. This revision reflects the reorganization of ASH and the establishment of AXI and outlines its investigative responsibilities for Internal, Advanced Threat Analysis and Mitigation, and Technical Investigations.

6. Policy. The Office of Security and Hazardous Materials Safety (ASH), Office of Investigations (AXI), conducts investigations and inquiries under this order, as well as, but not limited to, the orders listed below; and ensures ASH Special Agents carry out investigative processes correctly and consistently.

- a. FAA Order 1110.125, Accountability Board;
- b. SH Order 1600.20, Office of Investigations (AXI); and
- c. FAA Human Resource Policy Manual.

7. Investigative Responsibilities.

a. Associate Administrator for Security and Hazardous Materials Safety (ASH-1). Safeguards FAA's employees, facilities, equipment, systems, networks, operations, and information by managing a comprehensive investigations program; and

- (1) Oversees AXI.

(2) Approves and issues internal AXI guidelines regarding processes and procedures for inquiries and investigations that AXI conducts or in which AXI is otherwise involved.

(3) Ensures FAA managers use AXI Special Agents and investigative resources properly and not:

- (a) As a substitute for employee counseling or other appropriate personnel management actions;
- (b) In matters where managers have sufficient facts to take proper actions;
- (c) In matters susceptible to, or more properly dealt with by, administrative solutions, such as formal inquiry or investigation authorized by management;
- (d) On minor incidents or issues of on-the-job accidents, negligence, incompetence, routine personnel matters, improper supervision, failure to comply with general work regulations, and insubordination. These incidents and issues fall within the category of matters that a supervisor should normally handle and resolve internally; and
- (e) As a substitute where other investigative agencies takes precedent.

b. Executive Director for the Office of Investigations (AXI-1).

(1) Evaluates issues reported to ASH to decide whether they fall within the AXI's jurisdiction.

(2) Refers issues that are not within the AXI jurisdiction to agencies and/or FAA Line of Business (LOB) with jurisdiction.

(3) Ensures AXI Special Agents conduct only non-criminal investigations and refer criminal matters to the investigative agency with jurisdiction over the allegations.

(4) Carries out AXI's programs under this order, SH Order 1600.20, and all applicable FAA and Department of Transportation (DOT) orders.

(5) Provides direction on the use of available resources to conduct investigations covered by this order.

(6) Provides direction and guidance for four Divisions within AXI: Internal Investigations Division (AXI-100); Investigations Standards and Policy Division (AXI-200); Advanced Threat Analysis and Mitigation Division (AXI-300); and Technical Investigations Division (AXI-400).

(7) Serves as ASH Executive representative to the FAA Accountability Board.

(8) In coordination with other federal agencies, as necessary, liaises with law enforcement agencies at the international, federal, state, local, and tribal levels with respect to employee misconduct, counterintelligence, insider threats, and/or international travel security.

c. Manager, Internal Investigations Division (AXI-100).

- (1) Manages the internal investigations program, provides procedural guidance and oversight for assigned investigations.
- (2) Acts as the primary clearinghouse for all requests for internal investigations, evaluating and making appropriate assignments, and referrals.
- (3) Serves as the FAA national liaison with all federal, state, local, tribal, and international law enforcement agencies on all matters covered by this order, in coordination with other federal agencies, as necessary.
- (4) Evaluates all issues reported to AXI to determine if they fall within AXI jurisdiction, and refers issues not within AXI's jurisdiction to other DOT/FAA organizations or other agencies with jurisdiction, as appropriate.
- (5) Serves as the ASH focal point for receiving referrals from the Accountability Board in which AXI has an investigative interest.
- (6) Evaluates complaints and other information to determine whether they are within AXI's internal investigations jurisdiction and assigns to the appropriate investigative team or refers to the matter to other FAA or external organizations, as appropriate.
- (7) Ensures compliance with FAA and applicable labor union agreements.
- (8) Refers any potential counterintelligence matters identified to the Defensive Counterintelligence Program (DCIP).

d. Manager, Investigations Standards and Policy Division (AXI-200).

- (1) Develops, coordinates, and/or publishes AXI's program documentation, ensuring adherence to investigations standards and policies.
- (2) Ensures professional standards and policies are in alignment with AXI, ASH, and FAA mission requirements.
- (3) Reviews and assesses investigations programs from AXI-100, AXI-300, and AXI-400 to ensure quality and compliance with established investigations standards and policy.
- (4) Maintains and updates a library of applicable Orders, Policies, Notices, Procedures, Best Practices, Forms, and other items, for AXI program areas and investigative disciplines.
- (5) Identifies and implements appropriate investigative training, continuing education, and accreditation for AXI investigators.
- (6) Oversees investigations assigned by the Executive Director of AXI to AXI-200 investigators.

(7) Conducts analysis to identify trends affecting AXI investigative resources and makes recommendations on strategies to address those trends.

(8) Assists AXI-100, AXI-300, and AXI-400 Division Managers to implement change strategies involving investigative standards and policy.

(9) Serves as the Point of Contact for the Accountability Board in support of AXI-1

e. Manager, Advanced Threat Analysis and Mitigation Division (AXI-300).

(1) Serves as the central clearinghouse for requests for investigations and inquiries involving Defensive Counterintelligence and Insider Threat issues.

(2) Serves as the primary security information resource for FAA personnel traveling internationally on official business.

(3) Ensures AXI-300 policies and procedures are upheld and in alignment with relevant laws, partner agency policies, AXI, ASH, and FAA requirements.

(4) Maintains and updates governing program documentation for AXI-300 investigative branches.

(5) Ensures AXI-300 Special Agents work collaboratively with AXI-100, AXI-200, and AXI-400 on applicable investigations.

(6) Ensures AXI-300 personnel hold appropriate security clearances and have access to appropriate facilities and databases.

(7) Ensures controls on access to, and use of, classified information and information systems are followed.

(8) Identifies and implements appropriate training, continuing education, and accreditation for AXI-300 personnel.

(9) Directs investigations assigned to AXI-300 personnel.

(10) Ensures appropriate collaboration and liaison with the Intelligence Community and other non-Title 50 partners.

f. Manager, Technical Investigations Division (AXI-400).

(1) Serves as the central repository and clearinghouse for requests for cyber investigations and electronic discovery (e-Discovery) directly requested of AXI-400 through AXI-100. This does not conflict with the AGC e-Discovery Office as AXI-400 will support requests when not in scope for AGC. The FAA Security Operations Center (SOC) conducts incident response investigations while cyber investigations requiring involvement of any component of AXI falls under AXI-400.

(2) Upholds professional Technical Investigations policy and standards and ensures they are in alignment with AXI, ASH, and FAA mission requirements.

(3) Maintains and updates governing program documents for AXI-400 investigative disciplines.

(4) Identifies and implements appropriate investigative training, continuing education, and accreditation for AXI-400 personnel.

(5) Maintains the Contracting Officer Representative (COR) responsibilities and management of AXI's contracts.

(6) Reviews and approves technical investigations to ensure quality and compliance with established investigations policy and standards.

(7) AXI-400 Technical Investigations may conduct e-Discovery activities in support of an investigation, litigation, Congressional inquiry, Freedom of Information Act (FOIA), or other discovery-related matter directly requested of AXI-400. This does not conflict with the AGC e-Discovery Office as AXI-400 will support requests when not in scope for AGC.

g. ASH Special Agents/Investigations Specialists.

(1) Conduct investigations and other inquiries covered by this Order, SH Order 1600.20, and other applicable DOT and FAA Orders, and applicable legal standards.

(2) Collect and receive evidence, interview witnesses, subjects, and individuals with information relevant to their investigations, and administer oaths or affirmations, when appropriate.

(3) Obtain relevant facts available to support or refute allegations under investigation.

(4) Maintain and protect information in accordance with all applicable law and policy, including but not limited to the Privacy Act of 1974; Executive Order 13526, Classified National Security Information; and other FAA Orders related to safeguard information.

(5) Liaise with and serve as technical advisors to federal, state, local, and tribal law enforcement agencies for matters relevant to AXI investigations and inquiries.

(6) Comply with FAA and labor union agreements.

(7) Perform other duties imposed by laws and regulations and addressed in applicable DOT and FAA policies.

8. Reporting Suspected Violations.

a. FAA Employee Responsibilities. The FAA's Standards of Conduct found in the Human Resource Policy Manual (HRPM) advises that it is the duty of every employee to report any known or suspected violation of law, regulation, or policy to their manager, their Security

Servicing Element (SSE), the FAA Hotline, or the Inspector General. Employees are obligated to preserve information and evidentiary items that may relate to the suspected violation and to release such information as directed. When reporting a violation of sexual harassment, misconduct of a sexual nature, or other discriminatory behavior through the managerial chain is not feasible, the employee must notify the Accountability Board (See FAA Order 1110.125, Accountability Board).

(1) Referral to Next Level Manager. If the employee's manager is the one suspected of a violation, report the matter to the next managerial level or directly to AXI-100 when:

- (a) Suspect management's involvement in a violation;
- (b) Fear reprisal;
- (c) Concerned that management may not take action on the information; or
- (d) Otherwise uncomfortable reporting the matter to the next higher management level.

(2) Employees who become aware of any obvious violation should take reasonable efforts to preserve any evidence they have about the violation. Employees will not take any actions on their own initiative that may interfere with any investigation. Employees will comply with requests from appropriate officials to preserve or release evidence. AXI or the DOT/Office of Inspector General (OIG) will normally make such requests. It may be useful to write down as much information as you can recall about the suspected violation, such as date, time, people involved, and location.

(3) Use of Hotlines. Employees may also refer information about a suspected violation to the FAA Hotline via online submission at <https://hotline.faa.gov>; and DOT Inspector General Hotline on 800-424-9071, email hotline@oig.dot.gov, via online submission at <https://www.oig.dot.gov/hotline>; or by mail to one of the addresses below.

Federal Aviation Administration
ATTN: Administrator's Hotline
800 Independence Avenue S.W.
Washington, DC 20591

Department of Transportation
Inspector General
1200 New Jersey Avenue S.E.
West Bldg., 7th Floor
Washington, DC 20590

b. FAA Management Responsibilities. As an FAA manager, you will support the ASH Investigations program by:

- (1) Granting ASH Special Agents access to FAA records, information, and witnesses.
- (2) Reporting and confirming in writing to AXI-1:
 - (a) Any known or suspected violations of law, regulation, order, or policy;

(b) Any known or suspected employee misconduct; (see FAA Human Resources Operating Instructions – FAA Table of Disciplinary Offenses and Penalties); and

(c) Protect information in accordance with FAA Order 1600.2, Classified National Security Information and all other applicable law and policy.

(3) Under Human Resource Policy Manual, Standards of Conduct, ER-4.1, understanding your responsibilities and your employees' obligations for cooperating with official investigations. Ensure your employees know that:

(a) They have a duty to give complete and truthful information and testimony, oral or written, to any manager, Special Agent, or DOT official conducting an investigation or inquiry for the agency; and

(b) Their refusal or failure to give oral or written statements or testimony about any official inquiry or investigation could result in disciplinary action, including removal.

(4) Provide information to AXI on suspected criminal violations resulting from an inspection or investigation on an activity for which you have responsibility.

(5) Coordinate with AXI before making any contact with federal, state, local, and tribal law enforcement or investigative agencies on matters covered by this order. If urgent circumstances warrant immediate contact with such outside agencies, notify AXI as soon as possible after contact.

(6) Notify AXI as soon as possible if any federal, state, local, or tribal law enforcement or investigative agency contacts you directly on any matters covered by this order, including matters involving FAA employees, facilities, systems, and networks.

(7) Consult with AXI to find out if a situation warrants investigation.

(8) Upon receipt of a Report of Investigation (ROI), apply required protective measures as identified on the report cover.

(9) Refer requests for computer or digital forensic support on issues that fall under the Standards of Conduct, ER-4.1, to AXI.

9. Requesting and Initiating Investigations. Within the FAA, only Division Managers (or their equivalent, including a designee) or higher authority, may request an investigation. This applies to any future technology platforms allowing requests made via automated methods.

a. In Writing. Send a request to AXI via email at 9-ASH-AXI-InvestigationRequest@faa.gov, or via a dedicated investigations request link, except when matters fall within the jurisdiction of the Accountability Board.

b. Form of Request. The request must contain all the information that prompted the request, including the sources of the information. This includes electronic forms of submission, such as e-mail and scanned documents.

c. Time Sensitive Requests. Managers may request AXI investigative support verbally, when circumstances are time-sensitive, such as reporting illegal activity or to protect and preserve evidence and property. Managers must follow up a verbal request, in writing, within five business days.

d. Requests for Investigations Involving Matters that Fall Under the Scope of the Accountability Board. The Accountable Official or appropriate manager must submit requests for investigation, or forensic support regarding allegations that fall within the scope of the Accountability Board, directly to the Accountability Board. The Accountable Official or LOB/Staff Office (SO) will indicate to the Accountability Board whether the matter will be handled with an ASH investigation, or internally with a management inquiry. Those matters requiring an ASH investigation will be forwarded to AXI-100 by the Accountability Board for evaluation. If accepted for investigation, AXI-100 will assign the matter for investigation. Accountable Officials and LOBs/SOs may confer with AXI-100 during the reporting process to determine the appropriate course of action. When referrals are declined by AXI-100, written notice will be provided to both the Accountability Board and Accountable Official.

e. Other Sources of Investigative Requests. AXI may receive information through means other than formal requests from managers or the Accountability Board. When the information concerns suspected violations that fall within ASH jurisdiction, ASH may open a preliminary inquiry or investigation. Other means of receiving information may include, but are not limited to:

- (1) Employees who choose not to go through their managers because of fear of reprisal or suspected management involvement;
- (2) Various Department or FAA Hotlines;
- (3) Other Government agencies; and
- (4) Law Enforcement agencies.

10. Investigative Priority. Aviation safety and security-related matters will receive investigative priority. Matters that fall under the scope of the Accountability Board will receive priority after aviation safety and security-related matters.

11. Investigative Process.

a. Evaluation of Requests and Information.

(1) AXI-100 will evaluate all information to determine whether the matter falls within AXI jurisdiction and to assess its priority. AXI-100 will consult with AXI-200, AXI-300, and/or AXI-400, or the Office of Audit and Evaluation (AAE) as appropriate.

(2) AXI-100 will evaluate all information received from the Accountability Board, or provided by the LOB or SO, about allegations that fall within the scope of the Accountability Board.

b. Technical Review and Support. AXI managers will ensure that all investigations and inquiries have a defined objective and scope. It may become necessary to consult with other FAA elements for technical support and to get all facts and evidence needed to support or refute an allegation.

c. Declination of Requests. If a request does not contain enough information, AXI may decline the request or start a preliminary inquiry to clarify jurisdiction or find out if the request warrants investigation. When declining a request, AXI will provide written notice to the requesting official, explaining the basis for the declination.

d. Referrals to Other Agencies. When AXI receives information about a suspected violation that is outside FAA jurisdiction, it will refer the information, in writing, to the appropriate investigative agency. Criminal referrals to the DOT/OIG will include notification that AXI will not proceed with an employee or contractor investigation unless activities are coordinated with the appropriate DOT/OIG Special Agent-In-Charge. If an FAA Manager provided the information, AXI will advise the FAA Manager of the referral. If the DOT/OIG declines the referral, and AXI discovers more facts that may change the DOT/OIG's decision, AXI will send a new referral.

e. Protecting Information. Unless classified for reasons of national security, all information handled by ASH Special Agents that pertains to wrongdoing, irregularities, or suspected violations, and the sources of such information, is considered sensitive unclassified information. At a minimum, investigative information will be marked For Official Use Only (FOUO). ASH discloses such information under FAA Order 1600.75, Protecting Sensitive Unclassified Information (SUI), or as provided for by law.

12. FAA Special Agents or Other ASH Employees as Subjects of Investigation. When an investigation involves ASH Special Agents or employees, AXI-1, in coordination with ASH-2, and the appropriate Office Director or Division Manager, has the following options: assign the investigation to another operational Division; assign the investigation to another ASH office; assign the investigation to another FAA LOB or SO or refer the investigation to an external agency.

13. FAA Executives and Senior Managers as Subjects of Investigation. When allegations of wrongdoing by FAA Executives or senior managers (L-band or higher) are reported, these procedures apply:

a. For notifications of FAA Executives, as subjects, AXI-1 and ASH-1, in coordination with AGC, will make the determination.

b. AXI-1, in coordination with ASH-1, will make a case-by-case assessment of notification requirements for senior managers as subjects.

c. Where ASH involvement may create an appearance of a conflict of interest, ASH will make alternative investigative arrangements.

14. Forensics Support. Forensics applies science and technology to collecting and examining evidence for providing facts in a judicial or administrative proceeding.

a. **Digital Forensics.** AXI-400 Cyber Investigations may conduct computer or digital forensics in support of an investigation covered by this order, and management inquiries. The Division Manager for Technical Investigations (AXI-400) oversees these examiners to ensure they handle digital evidence in a forensically sound manner and to ensure the evidence is admissible in a judicial or administrative proceedings.

b. **Requesting Forensic Support.** AXI-400 is the FAA resource for digital forensic and cyber investigative support. AXI provides guidance and support to AXI investigators, and LOB and/or SO managers who are conducting inquiries into allegations of employee misconduct or other investigative matters. When managers need forensics support, they will request support using the same process as requesting an investigation. All support for management inquiries must be coordinated with AXI-100.

15. E-Discovery Support.

a. **E-Discovery.** AXI-400 Technical Investigations may conduct e-Discovery activities in support of an investigation, litigation, Congressional inquiry, FOIA, or other discovery-related matter directly requested of AXI-400. This does not conflict with the AGC e-Discovery Office as AXI-400 will support requests when not in scope for AGC.

b. **Requesting E-Discovery Support.** Submit e-Discovery support requests on the AXI e-Discovery Request Portal. In addition, AXI-400 e-Discovery can be contacted through email at 9-ASH-AXI-EDiscovery@faa.gov.

16. Preparation and Distribution of Reports of Investigation (ROI) or Other Investigative Reporting Documents.

a. **Preparation.** SH Order 1600.20 addresses ROI and other investigative reporting document preparation. For purposes of this Order, the term ROI and other investigative reporting documents are the same. Special Agents will mark ROIs, FOUO, at a minimum, and protect ROIs under FAA Order 1600.75, Protecting Sensitive Unclassified Information. For investigations, Special Agents will prepare the ROI, and the requestor may use some or all of the ROI as the material relied upon in support of a proposed disciplinary or adverse action.

b. **Retention and Distribution.**

(1) AXI maintains the original ROI, electronically stored in the ASH Investigations Tracking System (ITS). ITS is the system of record defined and published in the Federal Register, dated April 11, 2000, pursuant to the provisions of the Privacy Act of 1974 (5 *United States Code* (U.S.C.) 552a).

(2) Copies of ROIs will be provided to the requestor. ROIs may be provided to other concerned offices, such as servicing Labor/Employee Relations offices, Office of Chief Counsel, for employee misconduct cases, as needed. Once finished with the ROI, the receiving office is responsible for deleting or destroying their copy unless subject to a litigation hold issued by the Office of the Chief Counsel.

(3) For ROIs regarding Accountability Board allegations, a copy of the ROI is distributed to the LOB or SO with jurisdiction over the matter, and to the applicable Labor/Employee Relations office.

(4) ROIs containing suitability issues about contractor employees will not be distributed outside ASH. When a contractor employee is the subject of an ROI, AXI will notify the Office of Personnel Security (AXP), the contracting office, real estate contracting office, or logistics division, in writing of the adjudicative determination under FAA Order 1600.72, Contractor and Industrial Security Program. Where appropriate, the LOB will be notified of the referral to AXP.

(5) Any unauthorized disclosure, or loss, of the ROI, or information contained in it, to anyone inside or outside the agency, may constitute a violation of the Privacy Act, and applicable agency rules of conduct. Holders of ROIs must never leave them unattended where others may view them without authorization. AXI-1 must approve further release or transfer of an ROI or any part of it.

c. Record of Third-party Disclosures. The ROI is part of the FAA Investigative Record System. Except to those FAA employees who have a need for the record in the performance of their duties or as required in response to a FOIA request, the Privacy Act requires that individuals whose names are indexed in a system of records must be provided with information about third-party disclosures.

17. Release of Investigative Information. The FAA will make information available to members of the general public, other Government agencies, and the news media in accordance with applicable laws, Orders, Policies and/or Procedures. These types of releases include, but are not limited to, Privacy Act of 1974, Freedom of Information Act (FOIA), Equal Employment Opportunity (EEO), media inquiries, and AXI reports.

18. Administrative Information.

a. Delegation of Authority. ASH-1 has the authority to serve as the designated liaison official between the FAA and the DOT/OIG for ASH Investigative duties and responsibilities. ASH-1 and AXI-1 have the authority to develop and issue ASH-specific Investigative Orders, policies, and special investigative notices, for their respective areas of responsibility.

b. Definitions.

(1) **Accountable Official.** This person is responsible for ensuring appropriate and timely processing of allegations within his or her organization under FAA Order 1110.125, Accountability Board.

(2) **Investigation.** An investigation is a planned, systematic search for facts and evidence collected through interviews, record examinations, and by applying other approved investigative techniques, to support or refute allegations or issues.

(3) **Inquiries.** Inquiries are a wide-range of information gathering and activities supporting the ITDMP and DCIP's core mission to protect the FAA against insider threats, espionage, other intelligence activities, sabotage, or other activity conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

(4) **Preliminary Inquiry.** This is a series of logical steps taken to discover the reliability and credibility of information to determine if the information warrants a formal investigation. The findings of preliminary inquiries will be relayed back to the requesting entity.

(5) **Report of Investigation (ROI).** This is the official format ASH Special Agents use to document employee and other internal investigations. Depending on the circumstances, ROIs can include investigative information relayed by Memorandum or other documentation.

(6) **Cyber Investigations Report (CIR).** This is the official format ASH Special Agents and forensic examiners use to document a computer forensic examination in support of an allegation involving a computer or mobile devices.

(7) **Special Agent (SA).** An official title held by ASH employees who have the training and credentials to conduct, monitor, and coordinate, sensitive and complex investigations using specialized investigative techniques and methods.

(8) **Accreditation.** The process in which certification of competency, authority, or credibility is presented.

c. Related Publications.

- (1) Title 49 United States Code;
- (2) Office of Management and Budget Circular A-130, Management of Federal Information Resources;
- (3) Executive Order 10450, Security Requirements for Government Employment, as amended;
- (4) FAA Order 1110.125, Accountability Board;
- (5) FAA Order 1600.1, Personnel Security Program;
- (6) FAA Order 1600.2, Classified National Security Information;
- (7) FAA Order 1600.69, Facility Security Management Program;
- (8) FAA Order 1600.75, Protecting Sensitive Unclassified Information;

(9) DOT Order 8000.8A, Office of Inspector General Investigative Responsibilities;

(10) Human Resource Policy Manual (HRPM), Standards of Conduct ER-4.1; and

(11) HRPM EMP-1.24 Suitability, Volume 1.

A handwritten signature in black ink, appearing to read "Steve Dickson". The signature is fluid and cursive, with the first name "Steve" and last name "Dickson" clearly distinguishable.

Steve Dickson
Administrator