

DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

Evaluation of the Federal Air Marshal Service



Notice: The Department of Homeland Security, Office of Counsel to the Inspector General, has reviewed this report and excised information according to the Freedom of Information Act, 5 U.S.C. section 552, as amended.

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Errata

Please note the heading for Appendix A should read “Disciplinary Actions February 2002 – October 2003.” In addition, the text at the bottom of page 21 should read, “These 753 actionable incidents represent disciplinary actions that were reported...between February 2002 and October 2003.”

While this correction alters the period from eight months to 20 months in which the 753 disciplinary actions occurred, it does not alter the OIG’s original assertion and response to BTS. Based on the misconduct list provided in TSA’s *Interim Policy on Addressing Performance and Conduct Problems*, air marshals could have been dismissed in many misconduct cases between February 2002 and October 2003.



**Homeland
Security**

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, investigative, and special reports prepared by the OIG as part of its DHS oversight responsibility to identify and prevent fraud, waste, abuse, and mismanagement.

This report assesses the strengths and weaknesses of the program or operation under review. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to the OIG, and have been discussed in draft with those responsible for implementation. It is my hope that this report will result in more effective, efficient, and economical operations. I express my appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "Clark Kent Ervin".

Clark Kent Ervin
Inspector General

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Abbreviations

| | |
|-------|---|
| ASAIC | Assistant Special Agent In Charge |
| ATPC | Aircraft Tactical Pistol Course |
| ATSA | Aviation and Transportation Security Act |
| BOP | Bureau of Prisons |
| CPO | TSA Credentialing Program Office |
| DHS | Department of Homeland Security |
| DOT | Department of Transportation |
| FAA | Federal Aviation Administration |
| FAMS | Federal Air Marshal Service |
| FLETC | Federal Law Enforcement Training Center |
| GOVs | Government-Owned Vehicles |
| ICE | U.S. Immigration and Customs Enforcement |
| OIA | Office of Internal Affairs |
| OIG | Office of the Inspector General |
| OPM | Office of Personnel Management |
| PPC | Practical Pistol Course |
| SAIC | Special Agent In Charge |
| SPB | Security Policy Board |
| SF86 | Questionnaire for National Security Positions |
| SOCD | System Operations Control Division |
| SUVs | Sport Utility Vehicles |
| TPC | Tactical Pistol Course |
| TSA | Transportation Security Administration |

OIG

Department of Homeland Security *Office of Inspector General*

Introduction

The Federal Air Marshal Service (FAMS) consists of thousands of trained law enforcement personnel who are responsible for protecting passengers and flight crews in the event of a hijacking or terrorist incident. Armed air marshals blend in with ordinary passengers to cover high-risk domestic and international flights on U.S. air carriers. Originally established as the Sky Marshals program in the 1970s as part of the Customs Service to counter hijackings to Cuba, the FAMS was expanded in response to the September 11, 2001, terrorist attacks. With the passage of the Aviation and Transportation Security Act (ATSA)¹ on November 19, 2001, it is currently the largest force of its type in the world.

Results in Brief

The FAMS, originally part of the Transportation Security Administration (TSA), achieved the goals and met the deadlines set by Congress to hire and train the required number of air marshals for the safety of the flying public. The FAMS has taken significant steps to establish organizational policies and procedures to fulfill its mission and support its increased workforce.

However, there were several deficiencies in the program. These deficiencies involve the FAMS policies governing background investigation and adjudication requirements, field office training, reservist selection, medical qualifications, disciplinary actions, and travel procedures. The level of our concern was heightened with the transfer of the FAMS within the Department of Homeland Security (DHS) to the U.S. Immigration and Customs Enforcement (ICE). The FAMS joined ICE on November 2, 2003, allowing approximately 5,000 ICE special agents to augment the current force of FAMS. This augmentation requires the Assistant Secretary of U.S. Immigration and Customs Enforcement to make several decisions regarding how ICE agents will be deployed as air marshals.

¹ Public Law No. 107-71.

We are recommending that the Assistant Secretary of U.S. Immigration and Customs Enforcement:

1. improve materials that guide background investigations adjudication decisions;
2. increase the scope of background investigations conducted for federal employees;
3. standardize field office training policies;
4. ensure that air marshals complete mandated quarterly training;
5. [redacted];²
6. develop criteria for the selection and training of ICE surge agents;
7. establish a personnel security appeals board to review denied clearances;
8. ensure that air marshals complete required annual medical examinations;
9. review current air marshal cases of administrative leave due to misconduct issues.

Also, we are recommending that the Under Secretary of Border and Transportation Security:

10. enforce administrative leave and disciplinary policies; and,
11. discontinue the practice of advancing funds for official travel.

Background

Passage of the ATSA initiated rapid and significant growth in the FAMS. This expansion program was launched by the Federal Aviation Administration (FAA) in October of 2001, and transferred to TSA in November 2001. The Deputy Secretary of Transportation ordered TSA to recruit, hire, and train enough air marshals to cover a significant percentage of high-risk flights across the nation by July 1, 2002.

The ATSA requires that air marshals undergo a thorough background investigation, including a review of governmental and international databases

² Appendix G contains the fifth recommendation of this report as it relates to flight coverage. This appendix is classified “secret” and is available to authorized readers.

to the extent determined practicable by the Under Secretary of Transportation for Transportation Security. TSA is responsible for ensuring that air marshals are United States citizens, have no convictions within the past ten years, and are otherwise suitable for employment. In addition, TSA requires applicants for the FAMS to pass psychological and medical screenings, and to complete law enforcement training that includes stringent firearms qualifications.

Between October 2001 and July 2002, TSA assessed approximately 10,000 air marshal applicants and forwarded qualified applications to the Office of Personnel Management (OPM) for background investigations leading to top secret clearances. While the investigations were pending, interim security clearances were granted to those applicants who successfully passed the FAMS medical entry standards, the Department of Transportation's (DOT) drug testing program, a credit and criminal history check, and a security interview with an investigator from FAA or OPM.

Congress allocated \$545 million to the FAMS in 2003, up from \$4.4 million in 2001. This increase allowed the FAMS to establish a national headquarters in Washington, DC, field offices across the nation, a central training facility, and a human resources center.

In the past three years the program has been transferred three different times.³ The FAMS' most recent transfer fused all investigative resources into ICE, the largest law enforcement component of DHS. DHS officials said that this move expanded the FAMS' ability to respond to air security threats by creating a large "surge" capacity of trained ICE agents who can respond during times of crisis or increased threat.

Purpose, Scope, and Methodology

The purpose of this evaluation was to determine the efficacy of the background investigations, training, and flight planning policies for the FAMS. Additionally, we completed a limited review of personnel and training issues relative to the

³ In November 2001, the authority over the FAMS shifted from the FAA to TSA within DOT; in March 2003, the FAMS was incorporated with TSA into DHS; and in November 2003, the FAMS was transferred within DHS from TSA to ICE.

transfer of the FAMS to ICE, and evaluated TSA and the FAMS' response to recommendations made by the DOT Inspector General.⁴

We conducted interviews with staff from the FAMS, TSA, and OPM. We examined the background investigation files of 332 current or potential air marshals to establish the adequacy of investigations and adjudications.⁵ We analyzed training files at the central training facility and field offices to determine the effectiveness of current training policies. We assessed workload and flight assignment procedures and statistics to determine whether the FAMS flight assignment methodologies were reasonable. Finally, we reviewed disciplinary and leave data to calculate cumulative administrative costs attributed to the program.

We conducted this evaluation between September 2003 and January 2004 at FAMS and TSA offices in the Washington, DC area; the FAMS Training and Human Resources centers in Atlantic City, NJ; and FAMS field offices in Chicago, IL, Los Angeles, CA, New York, NY, and Washington, DC. Our work was conducted under the authority of the Inspector General Act of 1978, as amended, and according to the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Findings

Background Investigations

The FAMS is integral to assuring the safety of the flying public by preventing hijackings and terrorist attacks on United States civilian aircraft. Since September 11, 2001, the FAMS has grown from a single office that only flew international missions to thousands of air marshals located in multiple field offices around the country. Today, air marshals fly both domestic and international flights and require access to classified information to perform their mission. Because air

⁴ *Federal Air Marshal Program*, (Rep. No. SC-2003-029), March 14, 2003.

⁵ This figure includes 161 air marshal applicants, 104 current air marshals previously employed by the Bureau of Prisons (BOP) and 67 current air marshals with security or misconduct issues.

marshals work undercover and select flights for coverage, many operational details of the FAMS activities are sensitive or classified.

National security positions can be designated at an appropriate sensitivity level by individual agencies. The FAA classified the air marshal position as “high risk” requiring a top-secret clearance.⁶ The DOT security designation and investigation requirements applied to TSA during fiscal years 2002 and 2003 defined high-risk positions as those “with the potential for exceptionally serious impact on the integrity and efficiency of the service... (including) positions with authority for independent action and positions with law enforcement, fiduciary, public contact, or other duties demanding the highest degree of public trust.”

Our evaluation identified two concerns regarding background investigations: (1) suitability standards are too lenient and adjudications are made without issuing warnings to people with questionable security backgrounds; and (2) background investigators failed to identify past employee misconduct.

Suitability Standards Need to Be Clarified

The passage of the ATSA required TSA to raise suitability standards for airport screeners. Neither Congress nor TSA, however, addressed the need for stringent air marshal suitability standards.

The OPM adjudicative guidelines were established to assist in the evaluation of background information of personnel, such as air marshals, who require access to classified information.⁷ According to these guidelines, adjudicators consider all available information about the person, and the employing agency is responsible for the final determination. Although adverse information concerning a single action may not be sufficient for an unfavorable determination, the applicant may be disqualified if the information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. In questionable cases, the adjudicating organization is in charge of initiating further investigation.

⁶ Personnel Security Program, DOT FAA, 1600.1D.

⁷ The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, approved by the President March 24, 1997.

In 2003, FAMS management began experiencing disciplinary problems with a number of active air marshals. In reviewing individual security files, FAMS management found documentation that some air marshals had committed similar incidents while previously employed, but were approved by TSA adjudicators without comment or warning. Therefore, to verify suitability, FAMS management decided to review 504 applicants who had been favorably adjudicated and were awaiting an offer of employment. Out of the 504, the FAMS management provided us with 161 air marshal applicants' personnel security files that had information suggesting adjudication was lenient or questionable. The 161 cases contained financial, employment, and criminal concerns.

- Forty-six applicants had filed for bankruptcy in the last seven years, and half of those were at least 90 days delinquent on one or more accounts at the time they were selected.
- Seven applicants had previously misused a government credit card or other government resources while employed by the federal government.
- Twenty applicants had been fired or resigned from previous places of employment, and more than a third of those falsified information relating to their termination on their Questionnaires for National Security Positions (SF86).
- Twenty-six applicants violated previous employer policies, resulting in suspensions from work or forfeiture of pay, and half received written letters of reprimand.
- Sixty-two applicants had been arrested or faced allegations of misconduct. Allegations of domestic violence or assault in the past ten years accounted for 58 percent, driving under the influence of alcohol for 27 percent, and complaints of sexual harassment for 11 percent. Furthermore, 50 percent had been arrested more than once for a similar offense in the past ten years.

When we brought these cases to TSA's attention, the Credentialing Program Office (CPO) reviewed all 161 files to determine whether the initial adjudication was appropriate. The CPO found that 159 adjudications had been made correctly. The CPO found only two cases in which additional information should have been required before completing the initial adjudication. These results lead us to believe that the adjudication standards for air marshals are too lenient.

Two of the 159 cases illustrating lenient adjudication standards were especially noteworthy:

- An applicant had been fired from the U.S. Customs Service in August 2001, for “sexual harassment and other sexual misconduct with impact on the job” and “disruptive or violent behavior, leading to termination or forced resignation.” The U.S. Customs Special Agent In Charge (SAIC) did not recommend the applicant for service as an air marshal because “he is very aggressive, confrontational, and he has the potential to get in trouble.” The Department of Treasury, U.S. Customs Service Personnel Record indicates this applicant is ineligible for rehire by the U.S. Customs Service.
- Another applicant had been denied a gun permit by the State of New York, but the reason for denial was not in the applicant’s background investigation. In neither of the CPO reviews did the adjudicator request additional information before making a positive clearance determination. After we highlighted the fact that an air marshal carries a weapon 24 hours a day, seven days a week, including in the State of New York, the adjudicator agreed to inquire further regarding the permit denial.

We disagree with the CPO’s conclusion regarding these two cases. In our judgment, they indicate faulty adjudications and should not have been cleared by the CPO’s second review.

More generally, an adjudicator has discretion in how derogatory information is evaluated. The age of an incident, whether the outcome of a criminal arrest is documented as a conviction, the weight to be given to an applicant’s financial difficulties, are matters that may influence an adjudicator’s decision whether to approve the applicant. However, there were a number of unresolved and potentially serious issues in the files.

Finally, after evaluating the security file, if an adjudicator decides that the information is not serious enough to warrant a denial, OPM policy provides the option of attaching a warning to a favorable determination. This warning grants a top secret security clearance to an applicant with the option for revocation should any future incidents of similar nature occur. The OPM policy also requires that a copy of the warning be sent to the office where the applicant will be stationed.

CPO management provided a draft copy of the adjudication guidelines it is developing to adjudicate the background investigations of TSA screeners.⁸ These guidelines supplement those provided by OPM. If TSA is creating additional suitability guidelines for screeners, the air marshals should be held to the same, if not higher, adjudication standards.

Recommendation 1: We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement revise the FAMS suitability guidelines to include: (1) disqualifying criminal, credit, employment, and other background issues; (2) setting time limits on the length of time required between derogatory incident and date of selection; and (3) providing for the use of warnings under the OPM policy.

Background Investigators Failed to Identify Misconduct

The Bureau of Prisons (BOP), Office of Internal Affairs determined that 104 current air marshals who had been granted a top secret clearance by TSA had been involved in 155 separate cases of misconduct prior to their transfer from BOP to the FAMS. These cases included offenses such as falling asleep on duty, verbally abusing a female prison official, breach of security, physical abuse of an inmate, inappropriate relationship with an inmate's wife, and misuse of government property and credit cards.

Of the 155 separate cases of misconduct, only 32 percent were discovered during the formal OPM background investigations of the former BOP employees. OPM learned of these violations only when the applicant admitted the violation or a colleague disclosed the disciplinary action in an interview. In only one of these cases did an OPM investigator query BOP Office of Internal Affairs (OIA) to obtain additional information regarding the reported misconduct. In another case, where the need for further inquiry would have seemed self-evident, the investigator noted in the report that the BOP employee was under grand jury investigation, but neither the investigator nor TSA sought additional information before granting a top secret clearance to the applicant.

⁸ TSA Draft *Screeners Adjudication and Standardization Guide*, October 30, 2003.

Sixty-eight percent of the cases documented by BOP were not detected by the OPM investigation. According to BOP, its OIA was only consulted once regarding the employment histories of air marshal applicants.

We brought the 104 cases to the attention of the TSA CPO, who conducted a second adjudication of the personnel involved in these misconduct violations. The TSA CPO sustained 103 adjudication determinations because the OPM background investigations did not contain the derogatory information we obtained from the BOP Office of Internal Affairs. TSA took action in the case involving the air marshal who was under a grand jury investigation at the time of his background investigation. After conducting further inquiry, TSA determined that the air marshal had recently been cleared of all allegations.⁹

Recommendation 2: We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement require that background investigations of current and former federal employees include a review of all available personnel, security, and conduct files held by the employing agency. This can be accomplished by placing a clause in the OPM investigation agreement requiring that internal affairs offices be checked for derogatory employment records on the applicant.

FAMS Training

The FAMS is a well-trained and professional workforce. Newly hired air marshals with no prior federal law enforcement experience attend a basic training course titled *Phase I* for seven weeks at the Federal Law Enforcement Training Center (FLETC) in Artesia, NM. When air marshals successfully complete *Phase I* training, they report to their respective field offices for the first of four weeks of advanced *Phase II* training. The final three weeks of *Phase II* training are conducted in Atlantic City, NJ, and include instruction in cockpit familiarization, emergency evacuation, and advanced marksmanship. Some air marshals with prior federal law enforcement training bypass *Phase I* and are scheduled immediately for *Phase II* training. In addition, 40 hours of mandatory training are

⁹ When we notified FAMS management of the ongoing criminal investigation, the air marshal was removed from mission status until the CPO could obtain additional information.

conducted quarterly in each field office, including a re-qualification of the basic marksmanship course called the “Practical Pistol Course (PPC).”

Instructors at the central training facility and field offices teach a curriculum designed to produce a cadre of air marshals with superior marksmanship and decision-making skills. However, there are delays in the training program, minor inconsistencies in marksmanship qualification procedures, and some air marshals do not meet mandatory quarterly training requirements.

Training Delays

During the rapid expansion of the FAMS between November 2001 and July 2002, all air marshals received at least one week of air marshal-specific training and varying amounts of initial training. In order to standardize the baseline skills of FAMS, the training division decided in August of 2002 that all air marshals, regardless of previous background or training, would be required to complete *Phase II* training in its entirety.

Initial plans called for all current air marshals to complete *Phase II* training by January 2004. FAMS management reported, however, that funding constraints and weather delays in the construction of a new training facility prevented the training staff from increasing class sizes and meeting the January 2004 milestone. We reviewed a revised training schedule that indicates all operational air marshals will complete *Phase II* training by June 2004.

Basic Marksmanship Training Policies

Marksmanship is one of the most important skills possessed by an air marshal. Currently, the FAMS boasts that it has the highest firearms qualification requirement of any federal law enforcement agency. Each quarter, all air marshals must obtain a score of at least 255 out of 300 during the PPC qualification. While visiting field offices throughout the nation, however, we encountered variations in PPC qualification practices.

In some field offices, air marshals are allowed to shoot as many as 30-35 rounds before starting the qualification course on the weapons range, while in other field offices air marshals are required to shoot the qualification course “cold,” as they

are not allowed any practice rounds of ammunition. Training instructors in offices where the air marshals shoot “cold” argued that this method of qualification best approximates the conditions an air marshal would encounter on board an aircraft. Our review of average field office qualification scores indicates that these offices do not score as well as offices that allow a warm up before qualification.

During visits to several field offices, we discovered there was no consistent service-wide policy regarding the treatment of air marshals who fail to qualify during the PPC. In some cases, remedial training is ordered on the first available day the air marshal is not in flight status, while in other offices an air marshal may be immediately removed from flight status until a passing score is achieved.

Recommendation 3: We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement develop a clear and consistent policy regarding the testing of the PPC in the field offices. This policy should address how the qualification is to be conducted and the treatment of air marshals who fail to qualify during a first attempt.

Quarterly Training Requirements Are Not Always Enforced

Field office training is designed to maintain and enhance the skills air marshals develop in *Phase I* and *Phase II*. The curriculum is standardized and consistent with both *Phase I* and *Phase II* training programs, and includes firearms qualification, surveillance detection, hand-to-hand combat, emergency medical treatment, and tactics. All air marshals are required to participate in five days of field office training per quarter, and each office has a designated team to provide this training on an ongoing basis.

We examined FAMS field office records to verify that air marshals were receiving the required training. While there was no evidence to support mandatory training took place, we noted that when operational air marshals are rotated into administrative positions for a temporary period, they generally fail to meet the mandated five days of quarterly training. In addition, SAICs and Assistant Special Agents in Charge (ASAIC) are not excluded from the quarterly training requirements, yet they, too, are not completing all elements of the recurrent training program. While it is unlikely that SAICs or ASAICs would be required to fly missions, they fly armed during personal and business travel.

Recommendation 4: We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement ensure that all air marshals complete mandated quarterly training requirements or clarify which personnel are exempt from this policy.

Flight Assignment

Before September 11, 2001, flight assignment activities for the FAMS could be carried out using “pen and paper” methods. When the FAMS significantly increased in numbers, however, those methods no longer sufficed. To accomplish the mammoth task of identifying and staffing flights for the increasingly large workforce, the FAMS established the System Operations Control Division (SOCD).

The SOCD has two primary missions. First, it functions as the scheduling center for all air marshal missions worldwide. In this role, the center identifies all flights requiring air marshal coverage, assigns flights, and ensures that seating is secured. Second, a subordinate division to the SOCD, the Mission Operations Command Center, serves as a 24-hour-a-day, 7-day-a-week command post to address problems that arise as air marshal missions are under way.

(The balance of this discussion is classified and located in Appendix G)

Recommendation 5: This recommendation is classified.

FAMS Transfer to ICE

On September 2, 2003, Secretary Ridge announced plans to reorganize DHS by transferring the FAMS from TSA to ICE, giving the FAMS the ability to supplement its workforce with ICE special agents during times of increased aviation terrorist threats. In this reorganization, ICE management must make several important decisions regarding which personnel will be selected to supplement the air marshal workforce and how they will be trained.

(b) (2) High

(b) (2) High

(b) (2) High

Recommendation 6: We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement develop criteria and a schedule for the selection and training of surge capacity ICE special agents.

DOT Report Recommendations

Our evaluation included the FAMS response to recommendations made by the DOT Inspector General in a report titled *Federal Air Marshal Program*. The report contained recommendations on the following items: (1) background checks; (2) *Phase II* training; (3) Aircraft Tactical Pistol Course (ATPC); (4) policy development; (5) firearms inventories; (6) government vehicles; (7) Bluetooth™ technology; and (8) job dissatisfaction.

- Background Checks – Complete background investigations on all current air marshals by September 1, 2003.

Representatives from the FAMS Human Resource Office said that all operational air marshals have a top secret clearance, with the exception of the air marshals noted in this report who were denied a clearance and placed on administrative leave. Our limited review of the security files supported their statements. We consider this recommendation to be resolved.

- *Phase II* Training – Implement a plan by June 1, 2003, to expeditiously and efficiently provide *Phase II* basic training to all air marshals, giving priority to those air marshals who only received the one week air marshal-specific training course.

Initial plans called for all current air marshals to complete the four week *Phase II* training by January 2004. While there was a delay, we reviewed a revised training schedule that shows all operational air marshals completing *Phase II* training by June 2004. We consider this recommendation to be resolved.

- ATPC – Develop and implement a firearms qualification/re-qualification standard that reflects the unique environment in which air marshals are required to perform their mission by June 1, 2003.

In March 2002, the FAMS made a controversial decision to remove the Tactical Pistol Course (TPC) as a qualification standard for incoming air marshals. The FAMS has included in *Phase II* a new course called the Aircraft Tactical Pistol Course (ATPC) that incorporates most of the elements taught in the previous TPC. Although the ATPC is not a qualifying course, it is scored when conducted and all scores become a part of the air marshal's permanent training record of firearms proficiency. In addition, the FAMS has added a final, comprehensive course to *Phase II* training that involves scored tactical scenarios and decision making exercises. Each air marshal must receive a passing score on this tactical course in order to graduate from *Phase II* training and remain on flight status.

At the time of our evaluation, 43 percent of operational air marshals had attended the *Phase II* training course. Of those who had completed the course, only three percent required a third attempt to achieve a satisfactory score on the ATPC during *Phase II* training. When we visited the FAMS field offices, we reviewed the local training records of the air marshals who had experienced difficulty with the ATPC course. In all but one case, we discovered the marksmanship

skills of these air marshals improved, and that additional remedial training and increased scrutiny of performance were no longer necessary. We consider this recommendation to be resolved.

- Policy Development – Immediately determine what policies still must be developed or modified, assign priorities to them, and then develop and implement them by September 1, 2003.

The FAMS has completed 30 directives, and has drafted an additional 12 for review. Though we commend the FAMS for this action, we consider this recommendation open and have included policy and procedural recommendations elsewhere in this evaluation.

- Firearms Inventories – Ensure that firearms inventories are performed quarterly.

As a result of the DOT OIG report, the FAMS initiated a requirement for conducting a Weapons Inventory Review on a quarterly basis, and completed its first inventory under this requirement on January 24, 2003. We inspected the firearms armory where weapons are stored, the new inventory system, and the facility where all firearms are cleaned and repaired. All were found to be satisfactory. We consider this recommendation to be resolved.

- Government Vehicles – Determine the quantity and type of Government-Owned Vehicles (GOVs) needed at each field office on a case-by-case basis and, by September 30, 2003, contract for only what is needed.

The DOT OIG report noted that TSA could save money if FAMS field offices leased sedans instead of a mixture of sport utility vehicles (SUVs) and passenger vans. DOT requested that the FAMS evaluate how many and what type of vehicles are necessary for each field office.

We conducted our own evaluation and determined that the combined cost to the government of FAMS field offices using a van and an SUV is less than that of four sedans. An air marshal squad and its equipment can fit in either one fifteen passenger van and one SUV, or four sedans. Current training requirements entail the transportation of an air marshal squad (b) (2) through

(b) (7) High and sufficient weapons, ammunition, and targets to an offsite firing range for firearms practice. Since the DOT report was published, the FAMS has added 178 GOVs to its fleet including 116 sedans, 27 fifteen-passenger vans, 23 sport utility vehicles (SUVs), and 12 minivans. The justification provided for the additional vehicles to field offices, the training facility, and headquarters is satisfactory and we consider this recommendation to be resolved.

➤ (b) (2) High

(b) (2) High

- Job Dissatisfaction – Implement a program, by June 1 2003, to identify and remediate indicators of job dissatisfaction.

The FAMS addressed the specific items of job dissatisfaction identified in the DOT OIG report but did not develop a separate program to assess indicators of job dissatisfaction. However, FAMS attrition rates, normally considered the primary indicator of job dissatisfaction, are within the normal range for federal law enforcement officers. Establishment of a separate program monitoring job dissatisfaction indicators in the FAMS may not be necessary and is of doubtful reliability as a morale indicator. We consider this recommendation to be resolved.

Other Findings

During our evaluation, we identified five additional areas requiring action by TSA or the FAMS. These problems were associated with TSA's failure to establish a personnel security appeals board and the FAMS' failure to follow established medical and physical fitness standards. In addition, a lack of prompt and appropriate disciplinary action regarding conduct violations and misuse of travel funds was evident.

TSA Failed to Establish a Personnel Security Appeals Panel

TSA made a negative suitability determination for 81 air marshals in 2003, and placed them on administrative leave. Between December 1, 2002, and September

21, 2003, TSA payroll system recorded 20,502 hours of administrative leave that had been approved at a cost of more than one-half million dollars. As of March 31, 2004, 45 air marshals are still on administrative leave, 13 of who have been on leave for ten months or longer. Under normal circumstances, an employee remains on administrative leave until a panel hearing.¹⁰

Some of the 81 clearances were denied because TSA did not receive a response to letters of inquiry that were sent to air marshals requesting additional information. Consequently, the FAMS created a liaison office to communicate with air marshals and field supervisors to ensure that all requested information was provided to TSA adjudicators in a timely manner. In some cases, the additional information enabled adjudicators to grant top secret clearances. However, air marshals appealing the denial of a top secret clearance were placed on administrative leave while waiting to appear before an appeals panel. Termination of the air marshal was not possible because TSA had not established an appeals board and, as a result, those air marshals denied top secret clearances remained on administrative leave for lengthy periods at significant cost to the government.

Recommendation 7: We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement establish a personnel security appeals board to review denied clearances.

Medical and Physical Fitness Requirements Are Not Always Being Met

At the time of application, each air marshal candidate is required to undergo a comprehensive medical examination equivalent to the second class airman medical exam, and current air marshals are to complete a medical exam on an annual basis. Since September 11, 2001, no operational air marshals have completed an annual medical examination.

¹⁰ According to Executive Order Number 12968, Access to Classified Information, Part 5, Section 5.2(a)(6)(7), applicants and employees who are denied clearances will be provided the opportunity to appeal in writing and appear personally before a high level panel.

To justify stringent medical standards, an FAA memorandum dated November 13, 1997, *Medical Standards for Federal Air Marshals (FG-1801)*, stipulates that air marshals must have the ability to:

- Absorb psychological punishment and stress;
- Possess sufficient upper body strength;
- Be able to restrain a person after running; and
- Use appropriate self-defense methods.

In addition, FAA's medical standards require that all air marshals participate in a rigorous field office physical fitness program. While individual field offices encourage air marshals to exercise on a regular basis to maintain the medical standard, FAMS management does not conduct a formal physical fitness program.

Recommendation 8: We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement ensure that air marshals complete required annual medical examinations, and clarify as well as enforce a structured physical fitness program.

Administrative Leave Policy Is Needed

Two air marshals were placed on administrative leave pending a fitness for duty evaluation. A fitness for duty examination includes an independent medical, psychological, and psychiatric evaluation.

- One air marshal was placed on leave January 13, 2003, but FAMS management never scheduled the fitness for duty evaluation. This air marshal was left on administrative leave for more than 25 weeks.
- Another air marshal was placed on administrative leave pending a fitness for duty examination. The field office requested the evaluation on January 30, 2003, but FAMS management did not authorize the evaluation until June 6, 2003. The results of the examination, finally reported on August 11, 2003, declared the air marshal fit for duty. However, the air marshal resigned on September 19, 2003, after having been paid for 1136 hours, or approximately 28 weeks, of administrative leave.

While we do not question the SAIC's judgment in requesting the evaluation, we do question the timeliness of the FAMS' administrative process for handling these requests.¹¹

Recommendation 9: We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement establish a policy addressing the FAMS' use of administrative leave.

Conduct and Disciplinary Policies Are Not Always Enforced

Though TSA developed clear and stringent disciplinary standards for airport screeners, the agency did not do so for the FAMS. TSA's *Interim Policy on Addressing Performance and Conduct Problems* includes a list of first time offenses for which screener removal is required, such as sleeping on duty, working under the influence of alcohol or illegal drugs at any time, and falsification of information. The interim policy applies to all employees of TSA and, though it specifically identifies screener offenses for which removal is required, states that non-screeners can be terminated for a first offense, too. According to TSA's interim policy, "agencies are permitted to hold certain employees such as supervisors or law enforcement officers to higher standards than other employees." Based on the misconduct list provided in the TSA interim policy, air marshals could have been dismissed in many cases, but were not. Since air marshals are weapon carrying law enforcement officers, they can and should be held to a standard of conduct at least as high as that of screeners.

In cases of misconduct by air marshals currently employed, there were 753 documented reports of sleeping on duty, falsifying information, testing positive for alcohol or illegal drugs while on duty, and stolen or lost weapons.¹² These 753 actionable incidents represent disciplinary actions that were reported to the FAMS Human Resource division between February 2002 and October 2002.¹³ In many cases, air marshals were placed on administrative leave for extended

¹¹ Failure by FAMS management to quickly determine a course of administrative action led to 72 air marshals placed on paid administrative leave for a combined total of 10,850 hours. The amount of administrative leave for the 72 air marshals ranged from 40 to 1136 hours.

¹² Appendix A - Disciplinary Actions. Corrected to "October 2003" in accordance with errata issued September 20, 2004.

¹³ Appendix A - Disciplinary Actions. Corrected to "October 2003" in accordance with errata issued September 20, 2004.

periods of time. In similar cases, a screener would have been placed on leave without pay or dismissed according to TSA policy. Therefore, several air marshals could have been terminated for violating first offenses listed on the TSA interim conduct policy.

The FAMS' failure to utilize TSA's interim disciplinary policy is evident in two cases involving criminal misconduct and use of illegal drugs.

- An air marshal charged with criminal misconduct and placed under a protection order was required by law to surrender his weapon, rendering him unable to perform his assigned duties. TSA's disciplinary policy clearly states that off-duty egregious misconduct could result in an indefinite suspension without pay. Yet, no disciplinary action was taken against the air marshal.
- Two air marshals were placed on administrative leave when marijuana usage was detected in a random drug test. TSA's interim policy mandates removal with the first drug offense.

Recommendation 10: We recommend that the Under Secretary of Border and Transportation Security establish a clear understanding of which disciplinary policies are applicable to the FAMS and ensure that those policies are implemented and enforced.

\$6.5 Million in Travel Advances Are Not Necessary

While conducting interviews at FAMS field offices across the nation, we discovered that approximately \$6.5 million had been dispersed as cash travel advances to air marshals upon initial employment. This policy dates to 1968 and the inception of the Sky Marshal program, when reimbursement delays and travel advances were common. Today, air marshals file a travel voucher every two weeks using a secure web-based system, and reimbursement is almost immediate. As we understand it from our interviews, the travel advance is never applied against the air marshal's travel voucher and is not recovered until the air marshal leaves employment with the FAMS.

Recommendation 11: We recommend that the Under Secretary of Border and Transportation Security discontinue the travel advance policy and recover all previously advanced travel funds.

Appendix A
Reported FAMS Disciplinary Action

| Disciplinary Actions February 2002 - October 2002* | TOTAL |
|---|--------------|
| Improper Flight Conduct | 249 |
| Lost/Stolen Government Equipment – Includes weapons | 143 |
| Miscellaneous Improper Conduct | 125 |
| Credit Card Abuse | 73 |
| Falsifying Information Reports & Misuse of Government Equipment | 53 |
| Failed Training | 41 |
| Sleeping on Duty | 27 |
| Alcohol & Drug | 24 |
| Unauthorized Use of Weapon | 18 |
| | 753 |


*Corrected to "October 2003" in accordance with errata issued September 20, 2004.

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

MEMORANDUM FOR: Clark Kent Ervin
Inspector General
Department of Homeland Security

FROM: Asa Hutchinson 
Under Secretary
Border and Transportation Security

SUBJECT: Response to the Draft Office of Inspector General (OIG) Inspection
Report: "Evaluation of the Federal Air Marshal Service"

Thank you for the opportunity to review and comment on the OIG Inspection Report related to the Federal Air Marshal Service. The accompanying attachment is the Border and Transportation Security (BTS) Directorate's official agency comment to the OIG's draft report entitled "Evaluation of the Federal Air Marshal Service".

Comments were solicited from the Transportation Security Administration and the Bureau of Immigration and Customs Enforcement. Their responses are incorporated herein as one BTS response. We concur with your Recommendations 2, 4, 7, 8, 9 and 11. In response to Recommendations 1, 3, 5, 6 and 10; we have provided some additional information for your consideration. BTS' response to all recommendations made by the OIG are enclosed

We look forward to continuing our partnership with your office as we work towards identifying vulnerabilities and improving our security infrastructure.

Attachment

**BTS Responses to DHSOIG Recommendations:
“Evaluation of the Federal Air Marshal Service”**

Recommendation 1: We recommend that the Assistant Secretary of the U. S. Immigration and Customs Enforcement revise the FAMS suitability guidelines to include: (1) disqualifying criminal, credit, employment, and other background issues; (2) setting time limits on the length of time required between derogatory incident and date of selection; and (3) providing for the use of warning under the OPM policy.

Response: BTS agrees that subsequent FAM adjudications conducted by ICE should be guided by published suitability standards developed by ICE and applicable standards and guidelines for security clearance adjudications. Since the transfer of the FAMS to ICE, ICE has developed and implemented guidelines which are currently in place that fully address all aspects of this recommendation.

ICE has always believed that sworn law enforcement officers must be held to a higher standard. This is evidenced by the FAMS taking the initiative to review the files of 504 applicants who had been favorably adjudicated by TSA and were awaiting an offer of employment (See page 7 of DHS-OIG draft report). This review of the files identified 161 files that contained significant issues that should have precluded the granting of a Top Secret Clearance. The DHS-OIG Inspectors agreed with each of the FAMS assessments. These 161 files are maintained by the FAMS Humans Resource Division located in Atlantic City, NJ and are available for review.

These cases were brought to TSA’s attention. All 161 cases were reviewed by an independent adjudicator (independent of the original adjudication) at TSA’s request and 159 of those were adjudicated favorably both in terms of suitability and the granting of Top Secret Clearances, which was consistent with the initial adjudications. In regards to the two outstanding cases specifically indemnified in the report, TSA will obtain those pertinent case files from the FAMS Human Resources Office to re-examine those cases.

Therefore, BTS disagrees with the conclusion that adjudication standards were too lenient based upon a review of the 161 identified cases.

Recommendation 2: We recommend that the Assistant Secretary of the U. S. Immigration and Customs Enforcement require that background investigations of current and former federal employees include a review of all available personnel, security, and conduct files held by the employing agency. This can be accomplished by placing a clause in the OPM investigation agreement requiring that internal affairs offices be checked for derogatory employment records on the applicant.

Response: BTS agrees that background investigations should review all available personnel, security, and conduct files held by previous employers, as determined appropriate by OPM investigators. OPM does inquire with the appropriate internal affairs offices should evidence present itself in the course of an investigation.

The FAMS have already identified the need to establish contact with an applicant's current/past employer at the initial applicant stage. This will enable the FAMS to eliminate those applicants from consideration who would not be eligible for a clearance at an earlier stage in the investigation.

This is the more cost effective method of disqualifying applicants prior to the more expensive Single Scope Background Investigation (SSBI). The FAMS will also address consequences in its contract with the SSBI vendor should the vendor fail to complete the SSBI in the prescribed timeframe.

Recommendation 3: We recommend that the Assistant Secretary of the U. S. Immigration and Customs Enforcement develop a clear and consistent policy regarding the testing of the PPC in the field offices. This policy should address how the qualification is to be conducted and the treatment of air marshals who fail to qualify during a first attempt.

Response: The FAMS has a clear and consistent firearms policy that has the Practical Pistol Course (PPC) as the qualification standard. FAMS must score 85% or higher to qualify. With the completion of Phase II training, the Office of Training and Development (OTD) has activated assessment teams to visit all field offices to ensure consistency in all aspects of training, including firearms. This policy will ensure standardization of warm up procedures, course of fire, and remedial action if qualification standards are not met. During firearms re-qualification, FAMS are required to shoot a minimum of two courses of fire and are encouraged to shoot additional courses as time allows. All scores will be recorded with the highest score being recorded for qualification.

BTS will ensure that all FAMS assigned to FAMS Headquarters and support functions will qualify with their issued firearms on a quarterly basis.

Recommendation 4: We recommend that the Assistant Secretary of the U. S. Immigration and Customs Enforcement ensure that Federal Air Marshals complete mandated quarterly training or clarify which personnel are exempt from this policy.

Response: BTS agrees with and ICE has taken steps to comply with this recommendation. During the initial stand up of the FAMS, records were maintained at the various field offices and headquarters locations. A centralized training database was not available. The main training emphasis was meeting Phase I and Phase II training requirements. Phase I and Phase II training for current FAMS was completed on July 2, 2004. Since January 2004 quarterly records have been kept in a centralized database maintained by the Office of Training and Development (OTD). Training data is entered directly into the training database from the responsible field office or headquarters unit. OTD is responsible for ensuring that mandatory training requirements are met for firearms qualification, physical fitness, surveillance detection, tactics and defensive measures. OTD also keeps records and tracks FAMS that do not meet quarterly training requirements due to injury, military active duty, etc. OTD is currently conducting interviews of field office training procedures and will be issuing additional standardized training requirements when the reviews are completed. OTD will ensure that quarterly training requirements for FAMS assigned to headquarters and other support elements outside the purview of the field offices are met. Supervisory FAMS, whose duties do not include flying missions, are not required to participate in quarterly physical fitness, surveillance detection, tactics and defensive measure; however, they are required to meet quarterly firearms qualifications standards.

Recommendation 5: See attached classified response.

Recommendation 6: We recommend that the Assistant Secretary of the U. S. Immigration and Customs Enforcement develop criteria for the selection and training of ICE surge agents.

Response: BTS strongly concurs with this recommendation and has supported ICE’s efforts on this issue. A 40-hour Surge training program was developed and implement by ICE in December 2003. This program is designed to expand the pool of trained ICE agents from which the FAMS can draw for increasing flight coverage during times of elevated risk to the security of the nation. In addition, the criteria for the selection and training of ICE special agents have been in place since that time. _

ICE is committed to the training of Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Special Agents, with the ultimate goal of potentially providing surge training to all OI Special Agents.

Subsequent to September 11, 2001, approximately (b)(6)(2)High from various agencies, were trained as augmentee FAMS to help secure the nations aviation system. They acted as a manpower “Stop Gap” while the FAMS began to select, hire, train, and deploy permanent FAMS. Many of those initial augmentees came from legacy BTS agencies.

In December 2003 the FAMS initiated Surge training for current ICE agents who had previously flown as augmentees following 9/11/01. The Surge training was conducted to update these augmentees on the FAMS operational concept, the skills and the methods used by FAMS in mission status.

The Surge training has been since expanded to include other experienced ICE agents. (b)(6)(2)High
(b)(6)(2)High

The 40-hour Surge training program is designed to provide those designated ICE agents with the rudimentary conceptual information and skills (b)(6)(2)High
(b)(6)(2)High

(b)(6)(2)High
(b)(2)High
(b)(2)High

The training of OI Special Agents in geographically co-located offices enables

DHS/ICE/FAMS to be more efficient and effective when deploying these agents during times of heightened alert and/or crisis, and provide recurrent training when required by the FAMS.

The increase in the numbers of Surge trained OI Special Agents provides the FAMS with the ability to provide increased security for the nation's civil aviation system for short durations on a rotational basis. This will increase the number of FAMS missions flown in response to actual or potential threats within the aviation domain and ultimately reduces America's overall vulnerability to current and future threats.

Recommendation 7: We recommend that the Assistant Secretary of the U. S. Immigration and Customs Enforcement establish a personnel security appeals board to review denied clearances.

Response: BTS concurs with this recommendation but notes that appeals of revocations or denials of security clearances are typically files with a security appeals panel at the departmental level. DHS has established a Security Appeals Panel to handle the appeals of all DHS employees, including those in DHS organizational elements. By memorandum dated April 28, 2004, DHS authorized the creation of a special temporary TSA/FAM Security Appeals Panel ("Panel") "to hear any security appeal of a FAMS employee whose security clearance has been denied/revoked by a deciding authority at TSA where such adjudication was pending on the date of the memorandum." The Panel is temporary in nature and will be dissolved upon completion of the identified appeals.

ICE has already advertised positions for additional FAMS Clearance Adjudicators with selections subject to hiring restrictions and availability of funds. The FAMS Office of Training will then begin to certify an additional number of Headquarters personnel to address the entire adjudication process to include an Appeal Panel for those instances of denied or revoked clearances. BTS will work with DHS to determine at what level in the department the Security Appeals Panel will reside.

Recommendation 8: We recommend that the Assistant Secretary of the U. S. Immigration and Customs Enforcement complete required annual medical examinations

Response: BTS agrees with this recommendation. In March 2004 the FAMS initiated a program to provide mandatory medical examinations for FAMS. Currently the FAMS is in the process of completing required periodic medical examinations for all FAMS. The FAMS' regulation for physical examinations is currently legacy FAA policy, 14 CFR, Part 67, Section 201-215. Following legacy policy, "a government physician" is responsible for certifying clearance for continued employment. The periodic examination and clearance requires the expertise of a physician familiar with Occupational Medicine, Aviation Medicine and possessing experience and familiarity with the FAM job position. Medical Programs Branch, Office of Mission Support staff, which includes two physicians, nurses

and other medical professionals, review and perform the certification of each FAM. Due to budget restrictions, the FAMS has only been able to provide annual physical examinations for those over 40 years of age. FAMS under 40 years of age receive physicals on a two year basis. If out year budgets allow, we will review this policy to try to ensure all FAMS receive physical examinations annually.

Recommendation 9: We recommend that the Assistant Secretary of the U. S. Immigration and Customs Enforcement establish a policy addressing the FAMS' use of Administrative Leave.

Response: BTS concurs with this recommendation and provides the following information for your consideration. Current Memorandum of Understandings (MOUs) require that the FAMS will adhere to existing TSA policy until such time that administrative support services are fully integrated into ICE. BTS will work with the DHS U/S for Management, ICE and TSA to quickly implement the necessary administrative support services for ICE in order to establish a sound policy for FAMS use of Administrative Leave.

The DHS-OIG Draft Report #6, under Recommendation 7 and 9 makes reference to the extended use of Administrative Leave by the FAMS. In Recommendation 7, the use of Administrative Leave is directly attributed to employees whose clearances have been denied/revoked. In Recommendation 9, the two examples cited deal specifically with cases involving fitness for duty exams. The accompanying Footnote #10 however uses a total of Administrative Leave hours that is a combination of clearance, disciplinary issues and cases involving fitness for duty exams. This response will address each of these three categories separately.

Denied/Revoked Clearances: The report is technically correct with its assertion that as a result of not having an Appeal Panel in place that the FAMS was not able to terminate any employee whose clearance was denied. For a matter of record, the FAMS, immediately following the placement of 81 FAMS on Administrative Leave (June '03), attempted to suspend without pay any employee whose clearance was denied.

To ensure compliance with all existing policies and procedures for such an adverse action, the FAMS coordinated this effort through TSA Chief Counsel (OCC). Working over the next several months the FAMS, OCC and TSA Human Resources (HR) attempted to resolve this issue. OCC expressed concerns over a specific TSA policy. This policy, MD 1100.75-1, Addressing Performance and Conduct Problems, could be interpreted as not permitting the indefinite suspension of an employee whose security clearance had been denied/revoked, but was pending appeal and final adjudication. The HR staff believed that the policy language addressing use of indefinite suspensions was broad enough to

encompass such situations, specifically the following provision stating that an indefinite suspension was appropriate when:

TSA is conducting an investigation of conduct that it reasonably believes was committed by the employee in question and is so serious that if it proves to be true, the employee's continued presence at the worksite would represent a threat to life, property, safety or the effective operation of workplace.

MD 1100.75-1, 6.E.4(A)(3).

To address the concerns expressed by OCC, HR issued a memorandum on April 20, 2004 clarifying the MD 1100.75-1 and the circumstances in which an employee could be indefinitely suspended, which included instances where an employee's security clearance has been denied/revoked and was pending final adjudication. Once that clarification was issued, the FAMS who were being carried on administrative leave were indefinitely suspended. TSA took a conservative approach to this issue, attempting to protect the employee's rights and prevent any decision being overturned by the Merit Systems Protection Board in the event of an appeal.

As noted, initially, there were 81 FAMS placed on Administrative Leave for issues concerning their clearances. During the past 12 months the average number of FAMS on Administrative Leave has been approximately 50. This has represented a cost (salaries) of over \$290,000 per month to the FAMS. Currently, there are 37 FAMS whose clearances have been denied and are awaiting review by the temporary TSA Appeal Panel. Of these, 14 were removed from Flight Status since June '03.

Disciplinary Issues: During the stand up phase of the FAMS, some employees were placed on administrative leave for severe conduct issues if management felt the employees could not perform their primary duties and he/she would be a danger to other employees or disruptive to the overall office operation. It should be emphasized that administrative leave was only employed after careful consideration of all the facts in the case and most likely, where termination was being recommended as a result of the misconduct.

However, it is noted that in some cases, the length of time an employee remained on administrative leave was not under the direct control of the FAMS. For example, if ICE OPR (formally TSA Internal Affairs) or DHS OIG accepts a FAMS misconduct case for investigation, the FAMS has no control over how long the investigation will take and we must wait for the final report of investigation (ROI) from the investigating entity before we can recommend discipline. It should also be noted that OPR and OIG

only accept for investigation the most serious allegations of misconduct, which often involves the use of administrative leave and the ROI often takes 6 months or more to reach the FAMS.

Another issue that slows down the disciplinary process for the FAMS is the requirement for legal review and assistance. When the recommended penalty is termination or a significant suspension, FAMS HR requests TSA Legal Counsel review the case including the draft letter proposing discipline, as legal counsel may have to defend the FAMS' position during an administrative hearing, such as MSPB. Many of these cases are the more serious allegations where the employee is placed on administrative leave. In some cases, it takes several months to render a final decision due to the complexity of the case.

Fitness for Duty: Prospective Fitness for Duty secondary to medical causes will follow the FAMS' policy for fitness for duty (currently pending). Administrative leave is to be used for up to 10 days, only in the period following the exam, when management is awaiting the outcome of the exam. If medical believes an employee is unfit for full duty prior to the scheduled examination, the employee is placed on restricted duty, with the specific restrictions handled on a case by case basis depending on the medical condition.

Recommendation 10: We recommend that the Under Secretary of Border and Transportation Security establish a clear understanding of which disciplinary policies are applicable to the FAMS and ensure that those policies are implemented and enforced.

Response: BTS agrees that Federal Air Marshals (FAMs), as weapon carrying law enforcement officers, should be held to the same higher standard as that of other federal law enforcement officers. This standard is a higher standard than that of screeners. The DHS-OIG "Evaluation of the Federal Air Marshal Service Draft Report # 6", page 20, paragraph 1 states that "Based on the misconduct list provided in the TSA interim policy, air marshals *could* have been dismissed in many cases, but were not." A review of the TSA Directive Addressing Performance and Conduct Problems (Directive 100.75-1) also discusses the use of progressive discipline and the use of the "Douglas Factors" in penalty determination. These 12 factors suggest the deciding official consider such things as past performance, the nature and seriousness of the offense, whether it was committed inadvertently or for gain, the adequacy and effectiveness of alternative actions to deter or improve performance in the future, etc. The FAMS also considered the cost and effort in hiring and training FAMs, which is considerably more expensive than screener positions.

The Aviation and Transportation Security Act (ATSA) gave TSA discretion to establish its own personnel policies for its workforce, subject to certain restrictions. ATSA gave even greater discretion with respect to the personnel policies governing its screening workforce. Based on certain statutory

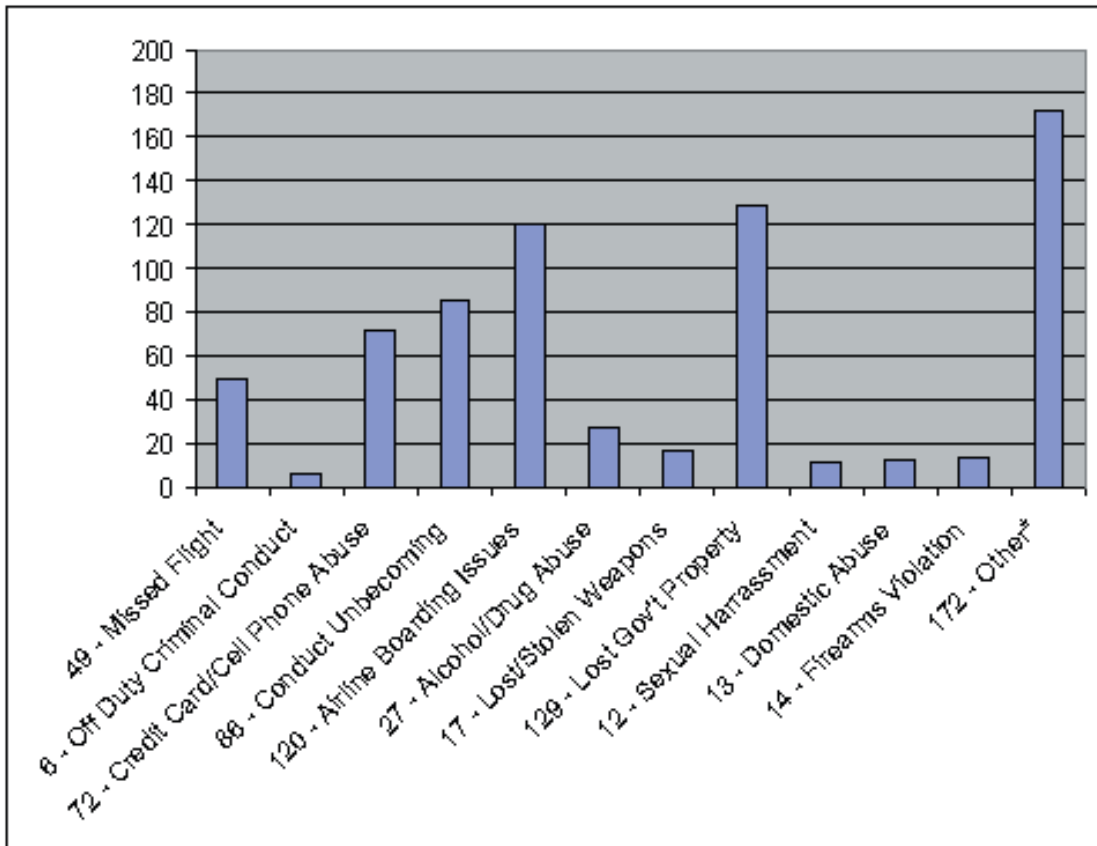
provisions, TSA developed a list of “Screener Offenses For Which Removal Is Required for the First Offense.” In its policy on Addressing Performance and Conduct Problems, TSA adopted a standard that disciplinary action would be taken for cause that “promotes the efficiency of the service.” Although TSA follows the principle of imposing progressively more severe disciplinary action for repeated misconduct, its policy recognizes that there are certain instances where removal is appropriate action, even for a first offense.

In cases where termination was appropriate, the FAMS acted swiftly and decisively. For example, the FAMS terminated 101 FAMS and 32 more resigned in lieu of termination between March 2002 and March 2004. BTS believes the actions taken by the FAMS were judicious, consistent and fair in administering penalties.

Paragraph 2 of page 20 of the referenced report states “In cases of misconduct by FAMS currently employed, there were 753 documented reports of sleeping on duty, falsifying information, testing positive for alcohol or drugs while on duty, and stolen or lost weapons. These 753 actionable incidents represent disciplinary actions that were reported to the FAMS HR division between February 2002 and October 2002”.

BTS does not agree to the above statement for several reasons. First, the dates are incorrect and may be misleading. An audit of the FAMS Operational Integrity Division database for the period June 2002 through March 2004 (*a 22 month period*) disclosed 717 cases, not the 753 stated in the report. Furthermore, the report cites only the most serious allegations of misconduct. It must be noted that a large portion of these cases includes the much less serious, but much more common allegations, such as those made by airline employees, like rude behavior by a FAM during the check-in process. We believe the below bar chart more accurately reflects the number and types of misconduct cases in the FAMS.

June 2002 - March 2004 / Total = 717



*Others to include: tardiness; failure to follow orders; failure to meet conditions of employment.

**Firearms Violation to include: mishandling of firearm during training and accidental discharges.

Another category noted in OIG's appendix A is 143 "Lost or stolen Government Property – Includes weapons". As the above chart illustrates, during the 22 month period noted, the FAMS had 17 lost/stolen weapons and 129 cases of other lost government equipment such as cell phones, PDAs, etc.

The last paragraph of this section, preceding recommendation 10, cites the cases of two FAMS that were placed on administrative leave when marijuana usage was detected in a random drug test. The report states the FAMS failed to effectively utilize TSA's interim disciplinary process, which calls for mandatory removal for the first offense.

As stated above, ATSA provided TSA greater discretion with respect to the personnel policies governing its screening workforce. TSA policy held screeners to a higher standard for first offenses. BTS is in absolute agreement that these FAMS should have been held to the same standard as other federal law enforcement officers and perhaps should have been terminated in a timelier manner. These two cases occurred in May and June 2003. Upon detection of the illegal substances, both FAMS were immediately relieved of their weapons and credentials and placed on administrative leave. The FAMS recommended termination; however, consistent with TSA policies, OCC could not support indefinite suspension without pay for these FAMS unless their security clearances were first revoked. Therefore, the FAMS requested TSA revoke their security clearances, which occurred on 1/22/04.

Recommendation 11: We recommend that the Under Secretary of Border and Transportation Security discontinue the practice of advancing funds for official travel.

Response: BTS concurs and shall direct the FAMS (through ICE) to immediately implement the discontinuation of future travel advances and shall initiate recovery of all previously advanced travel funds subsequent to the close out of fiscal year (FY) 2004.

As background, DHS OIG reported that interviews at FAMS field offices resulted in the discovery of approximately \$6.5 million in dispersed travel advances to Federal Air Marshals (FAMS). DHS OIG reported the policy was dated to 1968 and the inception of the Sky Marshal Program, when reimbursement delays and travel advances were common.

DHS OIG's recommendation to discontinue the travel advance policy and recover all previously advanced travel funds will be initiated by the Director of the FAMS. However, the FAMS requests clarification to the errors of fact in the DHS OIG report. While the FAMS does not argue against recommendation #11, it does request corrections as needed:

DHS OIG reported the air marshal position initiated with the US Customs Service (USCS) Sky Marshal Program of the 1970s. In fact, President John F. Kennedy issued a Presidential Directive in 1961 for the Federal Aviation Administration (FAA) to initiate a program to train personnel to deal with hijackers in flight. The FAA structured a small-scale program and eighteen (18) members of the FAA's Flight Standards Inspectors Program were chosen to attend specialized training at the U.S. Border Patrol Academy in Houston, Texas. This original group of "peace officers", deputized by Attorney General Robert Kennedy, flew on flights that were regarded as "high risk". The USCS Sky Marshal Program, jointly managed by the USCS/FAA, did not initiate until the 1970s.

DHS OIG reported the travel advance policy dated to 1968 when there were reimbursement delays and travel advances were common. In fact, the FAMS current travel reimbursement procedure was initiated in the late 1990s based on the Department of Transportation's (DOT) elimination of imprest funds. By using credit cards, new automated teller machine (ATM) services, travel checks and other payment methods, DOT and its organization elements (i.e. FAA) were able to close imprest funds thereby eliminating the ability of employees (i.e. FAMS) to secure cash travel advances. FAMS, at the time of this action, were deployed internationally for periods of eighteen to twenty-one days and due, in part, to the lack of participating ATM/bank services worldwide and the lack of reliability on timely processing of a hard copy vouchers within the FAA's regionalized hierarchy, the FAMS relied on a FAA travel advance. The travel advance was only maintained until the individual separated from performing FAMS duties and responsibilities. The legacy policy of FAA travel advances for FAMS was carried forward following the tragic events of September 11, 2001, and it has followed the FAMS as they transferred three different times in less than three years. *(In November 2001, the authority over the FAMS shifted from the FAA to TSA within DOT; in March 2003, the FAMS was incorporated with TSA into DHS; and in November 2003, the FAMS was transferred within DHS from TSA to ICE.)* The FAMS travel advance provided the FAMS with the ability to maintain operational readiness during the buildup of the FAMS, it permitted seamless transitions and migration to/from several different financial systems over the last three years, and it provided operational stability as they integrated into their current web-based travel reimbursement system.

We evaluated BTS' written comments and have made changes to the report where deemed appropriate. Below is a summary of BTS' written response to the report's recommendations and our analysis of the BTS response.

Recommendation 1: Clarify the FAMS suitability guidelines to include: (1) disqualifying criminal, credit, employment and other background issues; (2) setting time limits on the length of time required between derogatory incident and date of selection; and (3) providing for the use of warning under the OPM policy.

BTS Response: BTS agrees that subsequent FAM adjudications conducted by ICE should be guided by published suitability standards developed by ICE and applicable standards and guidelines for security clearance adjudications. Since the transfer of the FAMS to ICE, ICE has developed and implemented guidelines, which are currently in place that fully address all aspects of this recommendation. BTS, however, disagrees with our conclusion that adjudication standards were too lenient when 161 applicants were previously adjudicated successfully for access to classified information.

OIG Evaluation: BTS' development and implementation of suitability standards and adjudication guidelines upon the transfer of the FAMS from TSA to ICE is responsive to this recommendation. We reinforce, however, that the air marshal position is designated "high risk" and, as such, is a position that demands the highest degree of public trust. To that end, we maintain that previously applied adjudication standards were too lenient, as many FAMs were granted access to classified information after displaying questionable judgment, irresponsibility, and emotionally unstable behavior. As part of its action plan to resolve this recommendation, BTS should provide us with a copy of the ICE suitability standards and adjudication guidelines. Recommendation 1 is resolved – open.

Recommendation 2: Require that background investigations of current and former federal employees include a review of all available personnel, security, and conduct files held by the employing agency. This can be accomplished by placing a clause in the OPM investigation agreement requiring that internal affairs offices be checked for derogatory employment records on the applicant.

BTS Response: BTS agrees that background investigations should review all available personnel, security, and conduct files held by previous employers, as determined appropriate by OPM investigators. In addition, BTS states that OPM does inquire with the appropriate internal affairs offices should evidence present itself in the course of an investigation. Finally, ICE intends to contact an applicant's current/past employer at the initial applicant stage for Federal Air Marshal applicants.

OIG Evaluation: BTS' comment is not responsive to this recommendation. OPM does not always inquire with the appropriate internal affairs office should evidence present itself in the course of an investigation. In numerous instances during the course of a background investigation, an applicant's supervisor or colleague indicated an applicant was involved in misconduct, yet the OPM investigator did not inquire with the appropriate internal affairs office to obtain further details. In addition, supervisors and colleagues of applicants notified OPM investigators of applicant misconduct in only 32 percent of all cases of sustained misconduct. This leads us to conclude that a current or former supervisor or colleague does not always disclose derogatory information during an interview with an investigator. Therefore, we continue to maintain that BTS implement all aspects of this recommendation and include this item in its action plan. Recommendation 2 remains unresolved.

Recommendation 3: Develop a clear and consistent policy regarding the testing of the PPC in the field offices. This policy should address how the qualification is to be conducted and the treatment of air marshals who fail to qualify during a first attempt.

BTS Response: ICE/FAMS states that it has a clear and consistent firearms policy that has the Practical Pistol Course (PPC) as the qualification standard. In addition, ICE/FAMS has activated assessment teams to visit all field offices to ensure consistency in all aspects of training, including standardization of warm-up procedures, course of fire, and remedial action if qualification standards are not met.

OIG Evaluation: We agree that ICE/FAMS' use of the PPC as the qualification standard across the organization is consistent, but our recommendation is specifically directed at the inconsistent nature of the *testing* of the PPC across the

organization. BTS' and the ICE/FAMS' future action to ensure consistency in all aspects of training will be responsive to this recommendation. As part of its action plan to resolve this recommendation, BTS should provide us with policy documentation stating the specific PPC warm-up procedures and remedial action if qualification standards are not met, as well as the planned completion date for the assessment teams to visit all field offices. Recommendation 3 is resolved – open.

Recommendation 4: Ensure that Federal Air Marshals complete mandated quarterly training or clarify which personnel are exempt from this policy.

BTS Response: BTS agrees with and ICE has taken steps to comply with this recommendation. FAMS Office of Training and Development (OTD) will ensure that quarterly training requirements for Federal Air Marshals assigned to headquarters and other support elements outside the purview of the field offices are met.

OIG Evaluation: BTS' efforts to ensure quarterly training requirements for all applicable air marshals are met would be responsive to this recommendation. As part of its action plan to resolve this recommendation, BTS should provide us with policy documentation stating how the OTD will ensure quarterly training requirements are met, and stating that Supervisory Federal Air Marshals, whose duties do not include flying missions, are not required to participate in all elements of the quarterly training curriculum. Recommendation 4 is resolved – open.

Recommendation 5 and the BTS response are classified.

OIG Evaluation: BTS' explanation regarding this recommendation is not acceptable and misconstrues it. The purpose of the recommendation was to urge BTS to apply more resources to the subject or to refine its formulas to obtain a better application with the resources that are available, not to artificially change the number to look better. BTS asserts it will continue to improve this process "in the future" but stops short of promising to do so now. BTS should improve the formula or seek more resources. We await a further response from BTS. Recommendation 5 is unresolved.

Recommendation 6: Develop criteria for the selection and training of ICE surge agents.

BTS Response: BTS agrees with this recommendation and supports ICE's efforts on this issue. A 40-hour surge training program was developed and implemented by ICE in December 2003. In addition, the criteria for selection and training of ICE special agents have been in place since that time.

OIG Evaluation: When field work associated with this inspection was completed, the FAMS had not yet developed the criteria for selection and training of ICE special agents. BTS' statement that it has developed criteria and training for surge agents since that time is responsive to this recommendation. As part of its action plan to resolve this recommendation, BTS should provide us with a copy of the criteria and training program. Recommendation 6 is resolved – open.

Recommendation 7: Establish a personnel security appeals board to review denied clearances.

BTS Response: BTS agrees with this recommendation and notes that DHS established a Security Appeals Panel to handle the appeals of all DHS employees, including those in DHS organizational elements. In addition, BTS notes that a special temporary TSA/FAMS Security Appeals Panel was created on April 28, 2004, to hear any security appeal of a FAMS employee whose security clearance had been denied or revoked by a deciding authority at TSA.

OIG Evaluation: BTS' action to establish a temporary TSA/FAMS Security Appeals Panel is responsive to this recommendation. Recommendation 7 is resolved – open.

Recommendation 8: Complete required annual medical examinations.

BTS Response: BTS agrees with this recommendation. In March 2004, ICE/FAMS initiated a program to provide mandatory medical evaluations for FAMS, and currently the FAMS is in the process of completing required periodic medical examinations for all FAMS.

OIG Evaluation: BTS' implementation of a specific ICE/FAMS medical evaluation program is responsive to this recommendation. As part of its action plan to resolve this recommendation, BTS should provide us with a copy of the policy initiated in March 2004, and a timetable indicating when periodic medical examinations for all FAMS will be completed. Recommendation 8 is resolved – open.

Recommendation 9: Establish a policy addressing the FAMS' use of administrative leave.

BTS Response: BTS concurs with this recommendation. On April 20, 2004, TSA Human Resources issued a memorandum clarifying the circumstances in which an employee would not be placed on administrative leave and could be indefinitely suspended. These circumstances included instances where an employee's security clearance has been denied or revoked.

OIG Evaluation: BTS' and TSA's issuance of a memorandum clarifying the circumstances in which an employee could be indefinitely suspended is responsive to this recommendation. According to this memorandum, instances of a denied or revoked security clearance will result in an indefinite suspension. However, it is not clear if this memorandum also applies to employees under investigation for disciplinary action. As part of its action plan to resolve this recommendation, BTS should provide us with a copy of the TSA HR memorandum. Recommendation 9 is resolved – open.

Recommendation 10: Establish a clear understanding of which disciplinary policies are applicable to the FAMS and ensure that those policies are implemented and enforced.

BTS Response: BTS agrees that ICE and Federal Air Marshals, as weapon carrying law enforcement officers, should be held to the same standard as that of other federal law enforcement officers. This is a higher standard than that to which screeners are held. BTS believes, however, that disciplinary actions taken by the FAMS during the period noted in our inspection were judicious, consistent, and fair in administering penalties. In addition, BTS does not agree with our reporting that there were 753 documented reports of sleeping on duty, falsifying

information, testing positive for alcohol and drugs while on duty, and stolen or lost weapons during the period from February 2002 to October 2002.

OIG Evaluation: We maintain that based on the misconduct list provided in TSA's *Interim Policy on Addressing Performance and Conduct Problems*, air marshals could have been dismissed in many misconduct cases during the period from February 2002 to October 2002, but were not. In addition, though BTS disagrees with our reporting of the number of documented cases of misconduct from February 2002 to October 2002, its response provides alternative data from a different period and from a different source. As stated in the report, our information regarding cases of air marshal misconduct was obtained from the FAMS Human Resources Division. BTS' agreement to hold air marshals to the same standard as other federal law enforcement officers within ICE is responsive to Recommendation 10. As part of its action plan to resolve this recommendation, BTS should provide us with a copy of the disciplinary policy that applies to ICE federal law enforcement officers, and documentation stipulating (1) that this policy also applies to Federal Air Marshals and (2) that all air marshals are apprised of this disciplinary policy. Recommendation 10 is resolved – open.

Recommendation 11: Discontinue the practice of advancing funds for official travel.

BTS Response: BTS concurs and shall direct ICE to discontinue all future FAM travel advances and initiate recovery of all previously advanced travel funds subsequent to the close out of FY 2004.

OIG Evaluation: BTS' direction to discontinue future travel advances and initiate recovery of all previously advanced travel funds is responsive to this recommendation. As part of its action plan to resolve this recommendation, BTS should provide us with a status of the recovery effort. Recommendation 11 is resolved – open.

Recommendations

We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement:

Recommendation 1: Revise the FAMS suitability guidelines to include: (1) disqualifying criminal, credit, employment, and other background issues; (2) setting time limits on the length of time required between derogatory incident and date of selection; and (3) providing for the use of warnings under the OPM policy.

Recommendation 2: Require that background investigations of current and former federal employees include a review of all available personnel, security, and conduct files held by the employing agency. This can be accomplished by placing a clause in the OPM investigation agreement requiring that internal affairs offices are checked for derogatory employment records on the applicant.

Recommendation 3: Develop a clear and consistent policy regarding the testing of the PPC in the field offices. This policy should address how the qualification is to be conducted and the treatment of air marshals who fail to qualify during a first attempt.

Recommendation 4: Ensure that all air marshals complete mandated quarterly training requirements or clarify which personnel are exempt from this policy.

Recommendation 5: This recommendation is classified.

Recommendation 6: Develop criteria and a schedule for the selection and training of surge capacity ICE special agents.

Recommendation 7: Establish a personnel security appeals board to review denied clearances.

Recommendation 8: Ensure that air marshals complete required annual medical examinations, and clarify as well as enforce a structured physical fitness program.

Recommendation 9: Establish a policy addressing the FAMS' use of administrative leave.

We recommend that the Under Secretary of Border and Transportation Security:

Recommendation 10: Establish a clear understanding of which disciplinary policies are applicable to the FAMS and ensure that those policies are implemented and enforced.

Recommendation 11: Discontinue the travel advance policy and recover all previously advanced travel funds.

Appendix E
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Flight Assignment

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