



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
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WASHINGTON, DC 20350-1000

SECNAVINST 5730.13A

N2J

1 February 2006

SECNAV INSTRUCTION 5730.13A

From: Secretary of the Navy

Subj: CONGRESSIONAL NOTIFICATION OF INTELLIGENCE ACTIVITIES,
INTELLIGENCE-RELATED ACTIVITIES, SPECIAL ACCESS PROGRAMS,
AND COVERT ACTIONS WITHIN THE DEPARTMENT OF THE NAVY

Encl: (1) Record of Oral Notification of Significant
Intelligence Activity

Ref: (a) DOD Directive 5400.4 of 30 Jan 78
(b) OPNAVINST 5730.4E of 29 Jul 91
(c) SECNAVINST 5730.5G of 24 Aug 81
(d) OPNAVINST 3800.20 of 28 Nov 94
(e) Title 50, U.S. Code, Section 413
(f) Title 50, U.S. Code, Section 413a
(g) Title 50, U.S. Code, Section 415
(h) Title 10, U.S. Code, Section 2723
(i) Title 50, U.S. Code, Section 413b
(j) Title 10, U.S. Code, Section 437
(k) Title 10, U.S. Code, Section 119
(l) Title 50, U.S. Code, Section 414
(m) Title 10, U.S. Code, Section 421
(n) Title 10, U.S. Code, Section 127
(o) USD/I memo, "Revised Standards and Procedures for
Intelligence Community Reporting of Significant
Intelligence and Counterintelligence Activities," 4
Dec 03
(p) DCI memo, "Revised Standards and Procedures for
Intelligence Community Reporting of Significant
Intelligence Activities," 9 Sep 03
(q) USD/I memo, "Coordination of Defense Intelligence
Security Contacts with Congress," 3 Nov 03
(r) DUSD/CI&S memo, "Reporting DoD Counterintelligence
(CI) Information to Congress," 12 Jan 04
(s) DCI Directive 2/13, Communication with Congressional
Committees Regarding Intelligence Information Related
to Law Enforcement Matters
(t) DOD Directive 5240.12 of 2 Dec 99
(u) DOD Directive S-5105.61 of 3 May 97

- (v) "Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation" between the Attorney General and Secretary of Defense, 5 Apr 79
- (w) DOD Directive 5142.1, Assistant Secretary of Defense (Legislative Affairs), 14 Jun 00

1. Purpose

- a. To define responsibility within the Department of the Navy (DON) for determining when and which congressional committees should be informed of intelligence activities, intelligence-related activities, special access programs, and covert actions.
- b. To publish procedures for processing the recommendation to inform the Congress, to ensure coordination with the DON, Department of Defense (DoD), and intelligence community, and to ensure clear written documentation of the notification process.
- c. To identify in one DON instruction the various statutory and administrative authorities requiring congressional notification of intelligence activities, intelligence-related activities, special access programs, and covert actions.
- d. This instruction has been substantially revised and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 5730.13.

3. Scope and Applicability

- a. This instruction governs all intelligence activities, intelligence-related activities, special access programs, and covert actions within the DON. It applies to all components and activities and their personnel, supporting contractors and consultants. No program or activity shall be exempt from the requirements of this instruction, regardless of sensitivity, classification or degree of restriction on access.
- b. This instruction does not supersede or modify references (a), (b), or (c), which govern communications between personnel of the DON and the Congress. Release of classified information shall be in accordance with policies set forth in reference (a).
- c. This instruction does not supersede or modify intelligence oversight laws, regulations, and reporting requirements.

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d. This instruction does not supersede or modify reference (d), which concerns Navy Tactical Intelligence and Related Activities (TIARA) functions and responsibilities.

3. Background

a. By law, Congress requires the military departments to give notification of, or report on, certain types of activities. These notifications and reports are made to various congressional committees on both a periodic and ad hoc basis, as required. The following is a brief synopsis of the congressional notifications and reports that are currently required regarding intelligence activities, intelligence-related activities, special access programs, and covert actions:

(1) References (e) and (f) require that the congressional intelligence committees be kept "fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activities" and any "significant intelligence failures." Reference (e) further requires that the intelligence committees be promptly informed of any "illegal intelligence activity."

(2) Reference (g) establishes as a significant anticipated intelligence activity (and thus invokes the reporting requirements set forth in references (e) and (f)) the transfer of, or intent to transfer, defense articles or defense services from a military department that is "involved in intelligence or intelligence-related activities" to a recipient other than an "entity of the United States" in any fiscal year in excess of \$1,000,000.

(3) Reference (h) focuses on a subset of the requirements set forth in references (e) and (f) by providing a separate statutory requirement to notify "the Committees on Armed Services of the Senate and House of Representatives" of "each security or counterintelligence failure or compromise of classified information relating to any defense operation, system, or technology of the United States" that is "likely to cause significant harm or damage to the national security interests of the United States."

(4) Reference (i) requires the intelligence committees be "fully and currently informed of all covert actions" and "significant failures" of attempted covert actions "carried out by or on behalf of, any department, agency, or entity of the United States Government."

(5) Reference (j) requires prompt notification to "the appropriate committees of Congress whenever a corporation, partnership, or other legal entity is established" as security for intelligence collection activities. Reference (j) also requires the submission of an annual report to the congressional intelligence committees on all intelligence commercial activities (ICA) undertaken during the previous fiscal year. Reference (j) further requires that copies of regulations proposed to be prescribed under the statutory authorization to create ICAs (including any proposed revision to such regulations) shall be submitted to the intelligence committees not less than 30 days before they take effect.

(6) Reference (k) requires an annual report to Congress on special access programs. Reference (k) also requires notification to the defense committees 30 days before a new special access program can be initiated.

(7) Reference (l) requires notification of "the appropriate congressional committees" when a military department intends to use appropriated funds for intelligence or intelligence-related activity when those funds are not "specifically authorized by Congress for use of such activities." Reference (j) also requires prior notification of the appropriate congressional committees when there is intent to use non-appropriated funds for intelligence or intelligence-related activity.

(8) Reference (m) requires a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of House of Representatives when appropriated funds, or other than appropriated funds, are used to "pay for the expenses or arrangements with foreign countries for cryptologic support."

(9) Reference (n) requires notification to "the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives of the intent to obligate or expend" emergency and extraordinary expenses funds in excess of \$500,000. Such notification is to take place at least 5 days before the obligation or expenditure, unless the amount exceeds \$1,000,000, in which case notification is to take place at least 15 days before the obligation or expenditure.

b. Guidelines for these reports and notifications have been dictated through administrative authority, such as directives,

instructions and policy memoranda. To ensure DON compliance with all of the guidelines, including recent guidelines from the Under Secretary of Defense for Intelligence (USD/I) at reference (o), and the Director of Central Intelligence (DCI) at reference (p), this instruction provides a comprehensive reference of internal and external DON reporting requirements and procedures.

4. Definitions

a. Congressional Committees. Congressional committees or "committees" include, but are not limited to, all intelligence oversight committees, the Chairmen and Ranking Minority Members of the committees, Members of the committees, Staff Directors and Minority Staff Directors, and their designated and appropriately cleared staff.

b. Counterintelligence. Information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations 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.

c. Covert Action. Activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include:

(1) Activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;

(2) Traditional diplomatic or military activities or routine support to such activities;

(3) Traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

(4) Activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.

d. Intelligence Activities. The collection, production and dissemination of foreign intelligence and counterintelligence by DON intelligence components authorized by reference (a).

e. Intelligence-related Activity. Activities normally considered to be linked directly or indirectly to the intelligence field.

f. Special Access Program (SAP). Any program imposing need-to-know or access controls beyond those normally required for Confidential, Secret, Top Secret or ACCM information. Such a program includes but is not limited to a special clearance, more stringent adjudication or investigation requirements; special designation of officials authorized to determine need-to-know; or special lists of persons determined to have a need-to-know.

g. As noted in reference (p), determining whether a matter is "significant," and thus reportable to Congress pursuant to the foregoing requirements, is a matter of judgment based on all the facts and circumstances known to the decision maker and on the nature and extent of Congressional knowledge of the matter through prior notification or otherwise. However, reference (p) offers the following examples of significant matters ordinarily requiring notification:

(1) Significant Anticipated Intelligence Activities. Significant anticipated intelligence activities include:

(a) An intelligence activity that entails a significant risk of exposure or compromise, and is likely to result in the loss of human life;

(b) An intelligence activity that raises or is expected to have a major impact on important foreign policy or national security concerns;

(c) An intelligence elements transfer, to a recipient outside that IC element, of defense articles, personal services, or "controlled equipment" valued in excess of \$1,000,000 measured in accordance with Section 505 of the National Security Act of 1947;

(d) Extensive organizational changes in an IC element, or deployment of new collection techniques that represent a comprehensive departure from previous operations or activities or that result from evidence of significant foreign developments.

(e) A significant intelligence action, other than a covert action, undertaken pursuant to specific direction from the President or the National Security Council; or

(f) Major budgetary, acquisition, or reprogramming actions that are of significance or likely congressional concern not otherwise reportable under the National Foreign Intelligence Program Procedures for Reprogramming and Transfers.

(2) Significant Intelligence Failures. Significant intelligence failures are generally extensive in scope, continuing in nature, or likely to have a serious impact on U.S. national security interest, and may include:

(a) The loss or compromise of classified intelligence information on such a scale or over such an extended period as to indicate the possibility of a systemic compromise, or a loss or compromise that investigation indicates poses a substantial risk to U.S. national activities;

(b) A pervasive failure, interruption or compromise of a collection capability or collection system;

(c) An unanticipated loss of life in the performance of an intelligence activity; or

(d) A conclusion that an intelligence product is the result of foreign deception or denial activity, or otherwise contains major errors in analysis, with a significant impact on U.S. national security policies, programs, or activities.

(3) Significant Intelligence Matters Generally. Significant intelligence matters include:

(a) Important programmatic developments likely to be of congressional interest, such as major cost overruns or the termination of a significant contract;

(b) Important developments that affect intelligence programs, projects, or activities and that are likely to be of congressional concern because of their substantial impact on national security or foreign policy

(c) An intelligence activity believed to be a probable violation of U.S. law, including any corrective action taken or planned in connection with such activity, consistent with the requirement of Section 501 of the National Security Act of 1947 to report any illegal activity;

(d) Significant misconduct by an IC element employee or asset that is likely to seriously affect intelligence activities or otherwise be of congressional concern, including human rights violations;

(e) Updates on significant developments in, or the resolution of, matters previously reported under these procedures;

(f) Major intelligence activities that pose a substantial risk of appearing in the domestic or foreign public media other than as an official dissemination; or

(g) A substantial change in the capabilities or known vulnerabilities of U.S. intelligence operations or intelligence systems.

5. Action

a. When the Director of Naval Intelligence (DNI) becomes aware of a matter meeting the criteria set forth in this instruction requiring notification of Congress, the DNI shall recommend when and which relevant committees should be informed of the matter, or recommend other appropriate disposition. The DNI will forward this recommendation through the Vice Chief of Naval Operations, and the General Counsel of the Navy, to the Under Secretary of the Navy (UNSECNAV) for appropriate action.

b. When the Director of Intelligence, Headquarters U.S. Marine Corps (DIRINT) becomes aware of a matter meeting the criteria set forth in this instruction requiring notification of Congress, the DIRINT shall recommend when and which relevant committees should be informed of the matter, or recommend other appropriate disposition. The DIRINT will forward this recommendation through the Assistant Commandant of the Marine Corps, to the UNSECNAV for appropriate action.

c. When the Director, Naval Criminal Investigative Service (DIRNCIS) becomes aware of a matter meeting the criteria set forth in this instruction requiring notification of Congress, the DIRNCIS shall recommend when and which relevant committees should be informed of the matter or activity, or recommend other appropriate disposition. The DIRNCIS will forward this recommendation through the General Counsel of the Navy, to the UNSECNAV for appropriate action.

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d. When the DNI, DIRINT, or DIRNCIS make a recommendation to inform congressional committees, they will, in coordination with their Office of Legislative Affairs, and if appropriate, the Office of the Assistant Secretary of the Navy (FM&C) (Financial Management and Comptroller), suggest the timing of the notification and which specific committees or officials should be notified.

e. If the UNSECNAV determines notification is not warranted, or that other disposition is appropriate, the UNSECNAV shall notify the Secretary of the Navy in writing of that decision.

f. If the UNSECNAV determines that notification is warranted, prior to notifying Congress, the DNI, DIRINT or DIRNCIS, as appropriate, will ensure coordination with, or notification of, all appropriate Department of Defense and Intelligence Community officials. Which officials are notified or coordinated with, and the timing of those actions is dictated by references (o) through (s), which are discussed in detail below.

g. Notifying Congress of Significant Intelligence Activities, Significant Anticipated Intelligence Activities, and Significant Intelligence Failures

(1) Coordination with the USD(I)/DUSD(CI&S). When the disclosure is being made pursuant to the dictates of references (e) through (i), reference (o) requires reporting elements, such as the DNI, DIRINT, or DIRNCIS, to provide USD(I)'s Director of Congressional Activities written notification and documentation of any preliminary or final oral notification prior to the time notification is made to the intelligence or armed services committees. If, however, the information involves significant counterintelligence activity, reference (r) changes the reporting requirements by shifting the prior notification to the Director of Communications, Counterintelligence Field Activity (CIFA). CIFA will then notify the Office of the Deputy Under Secretary of Defense (Counterintelligence and Security) (DUSD(CI&S)), who will in turn notify USD(I)'s Director of Congressional Activities and the other appropriate elements of the Secretary of Defense's staff. Direct notification of USD(I)'s Director of Congressional Activities is not required with respect to reports involving significant counterintelligence activities.

(2) Coordination with the DCI. Reference (p) establishes the Director, Office of Congressional Affairs (OCA)

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as the DCI's point of contact for matters involving notifications to Congress. When the disclosure relates to an intelligence activity considered by the reporting element to be of exceptional import (defined by reference (p) as information that could jeopardize sensitive intelligence sources and methods, impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the constitutional duties, or is otherwise considered exceptionally significant), reference (p) requires notification of the matter to DCI's OCA prior to congressional notification to ensure appropriate DCI involvement in the notification decision, and to allow for DCI involvement regarding the immediate steps necessary to address the matter. When the matter to be reported is significant, but not of exceptional import, then reference (p) requires the reporting element to provide the OCA a copy of the written notification and documentation of any preliminary or final oral notification at the time notification is made to the intelligence committees.

h. Notifying Congress of Matters Involving Intelligence Commercial Activities. Reference (t) delegates to USD(I) the Secretary of Defense's statutory duties with respect to notifying Congress about Intelligence Commercial Activities (ICA) pursuant to reference (j). Reference (u) designates the Director, Defense Intelligence Agency (DIA), as the DoD Executive Agent for the Defense Cover Program, which includes ICAs. Accordingly, all matters regarding ICAs shall be coordinated with DIA's Defense Central Cover Staff and with USD(I)'s Director of Congressional Activities prior to Congressional notification to ensure appropriate DIA and USD(I) involvement in the notification process.

i. Notifying Congress of Other Matters Pursuant References (k) through (n). Although there are no formal coordination or notification requirements with respect to matters that must be reported to Congress pursuant to references (k) through (n), if the reporting element believes that the matter involves potential for public embarrassment or controversy, then USD(I)'s Director of Congressional Activities shall be provided notice of the matter prior to Congressional notification to ensure appropriate USD(I) involvement in the notification decision.

j. Additional Coordination. In addition to the foregoing, reference (w) requires all DoD components to coordinate all significant contacts with Congress with the Office of the Assistant Secretary of Defense for Legislative Affairs (OASD/LA). This coordination should be accomplished with the assistance of the Navy Office of Legislative Affairs or Marine Corps Office of Legislative Affairs, as appropriate. Also,

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matters relating to DoD's legislative program must be coordinated with the DoD General Counsel's Office of Legislative Counsel. This coordination should be accomplished with the assistance of the Navy's Office of General Counsel. Lastly, matters relating to budget and appropriations must be coordinated with the Office of the Under Secretary of Defense (Comptroller). This coordination should be accomplished with the assistance of the Office of the Assistant Secretary of the Navy (FM&C) (Financial Management and Comptroller).

k. Criminal Information. Per references (o) and (p), where any oral or written notification to Congress involves information related to a possible crime or relates to an ongoing criminal investigation or prosecution, reporting elements shall comply with requirements to notify and coordinate Congressional notification with the Department of Justice, as provided by applicable law, directive, and references (v) and (q).

l. Ensuring Adequate Notification. Once coordination with, or notification of, all appropriate Department of Defense and Intelligence Community officials has been completed, the DNI, DIRINT or DIRNCIS, as appropriate, will, in coordination with the appropriate Office of Legislative Affairs, ensure that all of the relevant congressional committees are properly notified.

m. Form of the Report. Reference (f) sets forth the proper form and contents for reports relating to significant anticipated intelligence activities or significant intelligence failures. Such reports must be in writing, and shall contain the following:

(1) A concise statement of any facts pertinent to such a report.

(2) An explanation of the significance of the intelligence activity or intelligence failure covered by such report.

n. Reference (p) requires, as a matter of DCI policy, that reports to the intelligence committees of other significant matters shall also generally be submitted in writing. However, reference (p) stresses that this requirement is not intended to preclude oral notification when deemed appropriate, in advance of written notification.

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o. When oral notifications are made to Congress, whether they are preliminary or designed to serve as the notification itself, reference (p) mandates that the notification must be documented with a brief synopsis of:

- (1) The pertinent facts;
- (2) The significance of the reported matters;
- (3) The date of the notification;
- (4) The office responsible for the subject of the notification; and
- (5) The congressional members and staff notified.

To standardize this process, reference (p) includes a form to be used for documenting oral notifications, whether preliminary or final. A copy of that form is attached to this instruction at enclosure (1).

p. Documentation. The DNI, DIRINT and DIRNCIS will maintain all documentation generated by this instruction and provided copies to the UNSECNAV Assistant for Special Programs. These documents will be subject to inspections, audits, or investigations by appropriately cleared individuals specifically authorized by UNSECNAV or UNSECNAV's designee.

Dionel M. Aviles
Under Secretary of the Navy

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