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

Ref: See enclosure (1)

Encl: (1) References
(2) Definitions
(3) Responsibilities
(4) Reporting Requirements
(5) Reporting Procedures

1. Purpose

   a. This instruction implements statutory reporting requirements in references (a) through (j) and congressional notification requirements issued by the Director of National Intelligence pursuant to reference (k) in reference (l).

   b. This instruction establishes policy and assigns responsibility within the Department of the Navy (DON) regarding notification of congressional committees regarding intelligence activities, intelligence-related activities, special access programs (SAP), and covert actions.

   c. This instruction has been substantially revised and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 5730.13A.

3. Definitions. See enclosure (2).

4. Applicability. This instruction applies to the Office of the Secretary of the Navy (SECNAV), the Chief of Naval Operations (CNO), the Commandant of the Marine Corps (CMC), and all DON activities, components, and personnel, including supporting contractors and consultants.
5. **Policy.** It is DON policy that all activities must comply with statutory and regulatory requirements for accountability and reports to Congress.

   a. Release of classified information to Congress shall be in accordance with all applicable law, regulations, policies and procedures.

   b. Routine reporting of counterintelligence activities for the Clandestine Quarterly Activities Report (CQ) under the auspices of reference (m) may be released by the DON Senior Official for Counterintelligence. The CQ will not be used to report counterintelligence failures, compromises, questionable intelligence activities or other matters that meet Congressional counterintelligence reporting requirements.

   c. This instruction does not supersede or modify any intelligence oversight laws, regulations, policies, procedures or reporting requirements.

   d. This instruction does not supersede or modify references (n), (o), or (p), which set forth specific requirements regarding special access programs. This instruction also does not supersede or modify reference (q), which sets forth responsibilities and authorities in the Office of the Secretary of the Navy.

6. **Responsibilities.** See enclosure (3).

7. **Reporting Requirements.** See enclosure (4).

8. **Records Management**

   a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records dispositioned schedules found on the Directives and Records Management Division (DRMD) portal page:


   b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager of the DRMD program office.
9. Reports. The reporting requirements contained in enclosures (4) and (5) of this instruction are exempt from internal reporting controls, per reference (r), Part IV, paragraph 7i.

THOMAS B. MODLY
Under Secretary of the Navy

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Electronic only, via the Department of Navy Issuances Web Site https://www.secnav.navy.mil/doni/. 
REFERENCES

(a) 50 U.S.C. §3091
(b) 50 U.S.C. §3092
(c) 50 U.S.C. §3095
(d) 10 U.S.C. §2723
(e) 50 U.S.C. §3093
(f) 10 U.S.C. §437
(g) 10 U.S.C. §119
(h) 50 U.S.C. §3094
(i) 10 U.S.C. §421
(j) 10 U.S.C. §127
(k) E.O. 12333
(l) Intelligence Community Directive 112, Congressional Notification of 29 June 2017
(m) DoD Instruction O-5100.94 of 15 October 2013
(n) DoD Directive 5205.07 of 31 August 2018
(o) DoD Instruction 5205.11 of 31 August 2018
(p) SECNAVINST S5460.3H
(q) SECNAVINST 5430.7R
(r) SECNAV M-5214.1
(s) UNSECNAV Memo of 17 September 2018, “Definition of Intelligence Related Activities”
DEFINITIONS

1. Congressional Committees. Congressional committees or “committees” include, but are not limited to, all intelligence and armed services, 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.

2. Counterintelligence. Per reference (k), information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or their agents, or international terrorist organizations or activities.

3. Covert Action. Per reference (e), an 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:

   a. 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;

   b. Traditional diplomatic or military activities or routine support to such activities;

   c. Traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or

   d. Activities to provide routine support to the overt activities (other than activities described above in paragraphs 3.a, 3.b, or 3.c) of other United States Government agencies abroad.

4. Foreign Intelligence (FI). Per reference (k), information relating to the capabilities, intentions or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.
5. **Intelligence Activities.** Per reference (k), all activities that elements of the intelligence community are authorized to conduct pursuant to E.O. 12333.

6. **Intelligence-related Activity.** See the definition promulgated via the most recent Under Secretary of the Navy memorandum that defines this term.

7. **Special Access Program (SAP).** Per reference (o), a program activity that has enhanced security measures and imposes safeguarding and access requirements that exceed those normally required for information at the same level. Information to be protected within the SAP is identified by a security classification guide. Department of Defense (DoD) SAPs are divided into three categories, as follows:

   a. **Acquisition SAP:** A SAP established to protect sensitive research, development, testing and evaluation, modification, and procurement activities.

   b. **Intelligence SAP:** A SAP established primarily to protect planning and execution of especially sensitive intelligence or CI operations or collection activities.

   c. **Operation and Support (O&S) SAP:** A SAP established to protect the planning for, execution of, and support to especially sensitive military operations.

8. **Significant Anticipated Intelligence Activities.** Per reference (l), significant anticipated intelligence activities include:

   a. Intelligence activities that entail, with reasonable foreseeability, significant risk of exposure, compromise, and loss of human life;

   b. Intelligence activities that are expected to have a major impact on important foreign policy or national security interests;

   c. An intelligence element’s transfer, to a recipient outside that IC element, of defense articles, personnel services, or “controlled equipment” valued in excess of $1 million as provided in Section 505 of the National Security Act;
d. Extensive organizational changes within an IC element;

e. Deployment of new collection techniques that represent a significant departure from previous operations or activities or that result from evidence of significant foreign deployments;

f. Significant activities undertaken pursuant to specific direction of the President or the National Security Council (this is not applicable to covert action, which is covered by section 503 of the National Security Act); or

g. Significant acquisition, reprogramming, or non-routine budgetary actions that are of Congressional concern and that are not otherwise reportable under the National Intelligence Program Procedures for Reprogramming and Transfers.

9. Significant Intelligence Failures. Per reference (l), significant intelligence failures are failures that are extensive in scope, continuing in nature, or likely to have a serious impact on U.S. national security interests, and include:

a. The loss or compromise of classified information on such a scale or over such an extended period as to indicate a systemic loss or compromise of such information that may poses a substantial risk to U.S. national security interests;

b. A significant unauthorized disclosure of classified intelligence information that may pose a substantial risk to U.S. national security interests;

c. A potentially pervasive failure, interruption, or compromise of a collection capability or collection system; 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 polices, programs, or activities.

10. Other Significant Intelligence Activities. Per reference (l):
a. A substantial change in the capabilities or known vulnerabilities of intelligence operations or intelligence systems or resources;

b. Programmatic developments likely to be of Congressional interest, such as major cost overruns, or a major modification or termination of a significant contract;

c. Developments that affect intelligence programs, projects, or activities that are likely to be of Congressional concern because of their substantial impact on national security or foreign policy;

d. The loss of life in the performance of an intelligence activity;

e. Significant developments in, or the resolution of, a matter previously reported under these procedures;

f. An intelligence activity believed to be in violation of U.S. law, including any corrective action taken or planned in connection with such activity;

g. Significant misconduct by an employee or contractor of an IC element that is likely to seriously affect intelligence activities or otherwise is of concern to the Congressional intelligence committees, including human rights violations;

h. Other serious violations of U.S. criminal law by an employee of an IC element or asset, which in the discretion of the head of an IC element warrants notification to the Congressional intelligence committees;

i. Significant activities with foreign governments and international organizations;

j. Those likely to have significant impacts on civil liberties or privacy interests of U.S. persons.
RESPONSIBILITIES

1. The Under Secretary of the Navy (UNSECNAV) is assigned responsibility for:

   a. Exercising oversight of all DON Congressional reporting conducted pursuant to this instruction, and in accordance with the references cited herein. The UNSECNAV shall be supported in these duties in accordance with references (q) and (r);

   b. Evaluating recommended notification forwarded to the UNSECNAV for action. UNSECNAV shall review each such recommendation and determine if a particular matter should be reported to Congress;

   c. Notifying the SECNAV, in writing, whenever the UNSECNAV determines that a recommended notification is not warranted, or that other disposition is appropriate.

2. The General Counsel of the Navy is assigned responsibility for:

   a. Advising the UNSECNAV on all aspects of the DON’s Congressional intelligence reporting in accordance with the references set forth in this instruction;

   b. Advising the UNSECNAV on each recommended notification that is forwarded to the UNSECNAV for action;

   c. Serving as a liaison between the DON and the Department of Justice with respect to those notifications that relate to a possible crime, or relate to an ongoing criminal investigation or prosecution.

3. The Deputy Under Secretary of the Navy (DUSN) is assigned responsibility for:

   a. Keeping the UNSECNAV fully and currently informed of all incidents and activities within the DUSN’s area of responsibility which might be viewed as reportable to Congress;

   b. Ensuring that policies regarding notification to Congress are integrated and coordinated;
c. Ensuring coordination by the appropriate officials with the Office of the Naval Inspector General and the DoD Senior Intelligence Oversight Official regarding Congressional notifications within DUSN’s area of responsibility that may also be subject to intelligence oversight reporting requirements;

d. Ensuring that reports on incidents and activities originating from elements under the cognizance of the DNI or DIRINT are forward to those official for appropriate comment prior to forwarding them to the GC or the UNSECNAV.

4. The Chief of Legislative Affairs (CLA) is assigned responsibility for coordinating and making arrangements for the presentation of all DON matters before Congress and delivery of classified and other sensitive information to Congress, including matters covered by this instruction, per prescribed policies, with the exception of liaison with Appropriations Committees, which is vested with the Assistant Secretary of the Navy (ASN) (Financial Management and Comptroller) (ASN (FM&C)), Appropriations Matters Office (FMBE) and with the exception of liaison with Congress as it relates to SAPs, which shall be conducted in coordination with the Director, DON Special Access Program Central Office (SAPCO), per references (n), (o), and (p).

5. The Director, DON SAPCO, in coordination with appropriately cleared members of the DON Office of Legislative Affairs (OLA), is assigned responsibility for:

   a. Keeping the UNSECNAV fully and currently informed of all incidents and activities within DON SAPCO’s area of responsibility which might be viewed as reportable to Congress;

   b. Providing a recommendation to the UNSECNAV regarding matters covered by this instruction when the potentially reportable incident or activity fell within DON SAPCO’s area of responsibility;

   c. Ensuring coordination by the appropriate officials with the Office of the Naval Inspector General and the DoD Senior Intelligence Oversight Official regarding Congressional notifications within DON SAPCO’s area of responsibility that may also be subject to intelligence oversight reporting requirements;
d. Making notification to Congress via DoD SAPCO when directed to do so by UNSECNAV;

    e. Conducting all required coordination and notifications before making notifications to Congress;

    f. Coordinating with DoD SAPCO for all DON interaction with Congress involving SAPs and SAP information;

    g. Overseeing and coordinating the preparation of DON reports to Congress and ensure delivery to Congress via DoD SAPCO, per references (n), (o), and (p).

6. The Director, NCIS is assigned responsibility for:

    a. Keeping the UNSECNAV fully and currently informed of all incidents and activities within NCIS which might be viewed as reportable to Congress;

    b. Providing a recommendation to the UNSECNAV regarding matters covered by this instruction when the potentially reportable incident or activity fell within DIRNCIS’ area of responsibility;

    c. Ensuring coordination by the appropriate officials with the Office of the Naval Inspector General and the DoD Senior Intelligence Oversight Official regarding Congressional notifications within DIRNCIS’ area of responsibility that may also be subject to intelligence oversight reporting requirements;

    d. Making notification to Congress when directed to do so by UNSECNAV;

    e. Conducting all required coordination and notifications before making notifications to Congress.

7. The Chief of Naval Operations and the Commandant of the Marine Corps are assigned responsibility for:

    a. Keeping the UNSECNAV fully and currently informed of all incidents and activities within their respective services which might be viewed as reportable to Congress;
b. Ensuring the reports of incidents covered under this instruction regarding matters under the cognizance of the DNI, or DIRINT, are sent to them, as appropriate, for actions as set forth in enclosure (5);

c. Forwarding all other reports of incidents and activities covered under this instruction to DUSN, along with a recommendation as to whether Congressional notification should be made;

d. Making notification to Congress when directed to do so by UNSECNAV.

8. The Deputy Chief of Naval Operations for Information Warfare (OPNAV N2N6)/Director of Naval Intelligence (DNI), and the Director of Intelligence, Headquarters, United States Marine Corps (DIRINT), are assigned responsibility for:

a. Keeping the UNSECNAV, through the appropriate chain of command, fully and currently informed of all incidents and activities under their cognizance which might be viewed as reportable to Congress;

b. Providing a recommendation to the UNSECNAV regarding matters covered by this instruction when the potentially reportable incident or activity fell within their area of responsibility;

c. Making notification to Congress when directed to do so by UNSECNAV;

d. Conducting all required coordination and notifications before making notifications to Congress.

9. The heads of all DON commands, organizations, and activities, are assigned responsibility for forwarding to UNSECNAV, through the appropriate chain of command, reports of all incidents and activities that may be reportable to Congress under this instruction and the references cited.
REPORTING REQUIREMENTS

1. Statutory Requirements. By law, Congress requires the military departments to give notification of, or report on, certain types of activities. These notifications and reports are imparted 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, SAPs, and covert actions:

   a. References (a) and (b) 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 activity” and any “significant intelligence failure.” Reference (a) further requires that the intelligence committees be promptly informed of any “illegal intelligence activity.”

   b. Reference (c) defines as a significant anticipated intelligence activity (and thus invokes the reporting requirements set forth in references (a) and (b)) is the transfer of a defense article or defense service or the anticipated transfer in any fiscal year of any aggregation of defense articles or defense services, exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency.” Exceptions are transfers being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or the transfer – (i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2301 et seq.], the Arms Export Control Act [22 U.S.C. 2751 et seq.], Title 10 (including a law enacted pursuant to section 7307(a) of that title), or chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of Title 41, and (ii) is not being made in conjunction with an intelligence or intelligence-related activity.

   c. Reference (d) focuses on a subset of the requirements set forth in references (a) and (b) 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."

d. Reference (e) 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.”

e. Reference (f) requires that the congressional defense committees, and congressional intelligence committees shall be “kept fully and currently informed” of all intelligence commercial activities (ICA) undertaken by the Department of Defense, to any component thereof. Reference (f) 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 both the defense and the intelligence committees not less than 30 days before they take effect.

f. Reference (g) includes requirements for an annual report to Congress on SAPs and notification to the defense committees 30 days before a SAP can be initiated.

g. Reference (h) requires notification to “the appropriate congressional committees” when an intelligence agency (defined as any department, agency or other entity of the United States involved in intelligence or intelligence related activities) intends to use appropriated funds for intelligence or intelligence-related activity that were not “specifically authorized by the Congress for use of such activities.” Reference (h) also requires prior notification to the appropriate congressional committees when there is intent to use non-appropriated funds for intelligence or intelligence-related activity.

h. Reference (i) requires a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives when appropriated funds, or other than appropriated funds, are used
i. Reference (j) 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 five 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.

2. Intelligence Community Requirements. Pursuant to reference (k), the Director of National Intelligence has established additional reporting requirements for elements of the intelligence community, including those within DoD. The following is a brief synopsis of those requirements:

a. Reference (l) requires the General Counsel of each IC element to notify Congressional intelligence committees, in writing, of any significant legal interpretation of the U.S. Constitution or Federal law affecting intelligence activities conducted by such element, no later than 30 days after the date of commencement of any intelligence activity pursuant to such interpretation.

b. Reference (l) requires annual written notification to the Congressional intelligence committees of the identities of individuals occupying senior-level positions within the IC element.

c. Reference (l) also requires written notification to the Congressional intelligence committees of "other significant intelligence activities," as defined in e
REPORTING PROCEDURES

1. Identification and Routing. When any command, organization, or activity within the Department of the Navy becomes aware of a matter meeting the criteria set forth in this instruction requiring notification of Congress, the head of that activity will forward a report, through their chain of command, to the UNSECNAV. Reports from the services will be forwarded to the DUSN for appropriate coordination on behalf of the UNSECNAV.

2. Special Handling. When the reporting command, organization, or activity falls under the cognizance of the Director of Naval Intelligence (DNI), the Director of Intelligence, Headquarters U.S. Marine Corps (DIRINT), the Director, Naval Criminal Investigative Service (DIRNCIS), or the Director, Department of the Navy Special Access Program Control Office (DON SAPCO), the report will be routed through those offices before being forwarded to UNSECNAV. If a report is inappropriately routed, it will be sent to those officials for appropriate actions before UNSECNAV reviews the report.

3. Recommendations. With respect to those reports that originate from activities under the cognizance of the DNI, DIRINT, DIRNCIS, or DON SAPCO, those officials will review the report, make a recommendation as to when and which Congressional committees should be informed of the matter, or recommend other appropriate disposition. That recommendation will be made 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), and shall be forwarded to DUSN through the applicable chain of command.

4. UNSECNAV Decision. Once a report, and any applicable recommendations, are received by DUSN, DON SAPCO, or DIRNCIS, those officials will forward the report to the UNSECNAV, through the General Counsel of the Navy, for a determination on where notification is warranted. If UNSECNAV determines that notification is not warranted the UNSECNAV shall notify the Secretary of the Navy in writing of that decision.

5. Notification Official. If the UNSECNAV determines that notification is warranted, the package will be returned to DUSN, DON SAPCO, or DIRNCIS, as appropriate, for determination of the appropriate official to make the notification. When the report
originated from activities under the cognizance of the DNI or DIRINT, those officials should normally be given the responsibility for making the notifications.

6. Coordination and Notification. Once a notification official has been assigned, that official 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, should be determined in consultation with the notifying official’s Office of Legislative Affairs and servicing legal office.

7. Form of the Report. Reference (l) sets forth the timing, form, and contents for reports relating to Significant Anticipated Intelligence activities, Significant Intelligence Failures, and Other Significant Intelligence Activities. Where practicable it should also be used as a guide regarding the form and content of other report.

8. Oral Notifications. When oral notifications are made to Congress, whether they are preliminary or designed to serve as the notification itself, they must be documented with a brief synopsis of:

   a. The pertinent facts;

   b. The significance of the reported matters;

   c. The date of the notification;

   d. The office responsible for the subject of the notification;

   e. The congressional members and staff notified.

9. Criminal Information. 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 coordinate Congressional notification with the Department of Justice, through their servicing legal office and the General Counsel of the Navy.