JUL 17 2008

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF ENERGY
THE SECRETARY OF HOMELAND SECURITY
DIRECTOR, CENTRAL INTELLIGENCE AGENCY

SUBJECT: Intelligence Oversight Reporting Criteria

Executive Order (EO) 13462 tasks the Intelligence Oversight Board (IOB) with issuing criteria on the thresholds for reporting intelligence oversight matters to the IOB and to the Director of National Intelligence (DNI). It also tasks the DNI with issuing instructions relating to the format and scheduling of such reporting. The attached guidance provides those criteria and instructions.

EO 13462 and these criteria acknowledge the establishment of the DNI and seek to infuse a fresh awareness of the importance of intelligence oversight reporting. The criteria also provide guidance on what information the President and the DNI need to execute their respective duties to see that the laws are faithfully executed and that intelligence activities comply with the Constitution and laws of the United States.

To implement EO 13462, the DNI will execute day-to-day intelligence oversight responsibilities. Among other things, this will include reviewing the guidelines by which Intelligence Community (IC) components report intelligence activities to ensure they are consistent with Part 1.7(d) of EO 12333 and with EO 13462, reviewing reports submitted to the IOB, and providing the IOB with a quarterly assessment of the content, quality, and timeliness of reporting by the IC.

The IOB continues to act as an independent entity appointed by the President to ensure that the Constitution and laws of the United States are respected and to report to the President in accordance with the functions assigned to the IOB by EO 13462. The IOB will audit, review, and assess the adequacy of the respective processes by which the DNI performs his oversight and review functions and the IC components perform their reporting functions under EO 13462. As necessary, the IOB may conduct its own investigations of intelligence activities. The IOB also will continue to receive and review reports of all matters that may be unlawful or contrary to executive order or presidential directive and to report to the President and the Attorney General concerning those matters.

In addition, a key element of intelligence oversight is the explicit direction that "significant or highly sensitive matters" must be reported immediately. "Significant or highly sensitive matters" are intelligence activities that may or may not be unlawful or contrary to executive order or presidential directive, that could impugn the reputation or integrity of the IC, or that could otherwise call into question the propriety of U.S. intelligence activities. These types of matters, initially articulated by Assistant to the President for National Security Affairs Stephen Hadley in his memorandum of April 17, 2007, are also captured in the accompanying criteria for reporting.

As a reminder, section 8(b)(ii) of EO 13462 provides that the heads of departments with organizations in the IC shall designate offices within their respective organizations that shall submit to the IOB the reports required by executive order and inform the IOB and the DNI of such designations.

Each component of the IC is responsible for reviewing its internal processes, guidelines, and training for reporting intelligence oversight matters to the IOB and DNI and updating them in accordance with EO 13462 and the criteria and instructions set forth in this memorandum. Please provide the IOB and the DNI with a progress report on your review by July 30, 2008.

J. M. McConnell
Director of National Intelligence

Stephen Friedman
Chairman, Intelligence Oversight Board

Attachment
Tab A Reporting Criteria

CRITERIA ON THRESHOLDS FOR REPORTING INTELLIGENCE OVERSIGHT MATTERS AND INSTRUCTIONS RELATING TO FORMATTING AND SCHEDULING

Intelligence oversight reporting serves as an early warning of intelligence activities of which the President should be informed, through either his Intelligence Oversight Board (IOB) or the Director of National Intelligence (DNI), or both, and provides a means by which the Executive Branch may timely identify and correct any deficiencies in the conduct of its intelligence activities. The following criteria on thresholds for reporting intelligence oversight matters to the Intelligence Oversight Board, and instructions on formatting and scheduling of reports, are issued under the authority of Executive Order 13462.

I. Criteria on Thresholds for Reporting. The heads of departments with organizations in the Intelligence Community (IC), or the heads of such organizations, or their designees, shall:

A. Report to the IOB, with copies to the DNI, any intelligence activity with respect to which there is reason to believe may be unlawful or contrary to executive order (EO) or presidential directive (PD). The following guidance applies to determining whether a particular matter should be reported:

1. "Intelligence activities" are defined in Part 3.4(e) of EO 12333 and, for purposes of these criteria, include, but are not limited to, the acquisition, collection, retention, analysis, and dissemination of intelligence information.

2. Intelligence activities are reportable if a reasonable person would believe they may be unlawful or contrary to EO or PD without waiting for substantiation, investigation, formal adjudication, or resolution of the issue of whether a particular matter is unlawful or contrary to EO or PD.

3. Intelligence activities to be reported under EOs 13462 and 12333 are not limited to those that concern "United States persons," as defined in Part 3.4(i) of EO 12333 or in any successor EO.

4. "Executive order or presidential directive" means, for purposes of implementing these criteria, a document signed by the President of the United States that has the force of law for the Executive Branch or constitutes the exercise by the President of his Executive authority. Reports may include violations of procedures and guidelines that heads of departments or IC components have established to implement EO 12333, or a successor order, provided, however, that such matters are of potential presidential interest or deemed appropriate for the IOB's review, e.g., because they involve the apparent violation of substantive rights of individuals.

5. Reportable events include the initiation of, and significant developments in, investigations or other inquiries relating to the legality or propriety of intelligence activities.

6. Initial reports made on the basis of incomplete or inaccurate reporting are to be updated as additional information becomes available. Subsequent or updated reports should be identified in such a manner that they can be accurately related to the relevant initial reports.

7. Intelligence activities are reportable to the IOB if such activities are required to be reported or have been reported to the Attorney General as required by law or other directive, including the Memorandum of Understanding on Reporting of Information Concerning Federal Crimes (1995).

8. Any intelligence activity that is to be reported to any congressional committee or member of Congress because it is or may be unlawful or contrary to executive order or otherwise "significant or highly sensitive" (see paragraph B, below) shall also be reported to the IOB and DNI generally before such a congressional report is made. Any report concerning intelligence activities that is submitted to any committee or member of Congress shall also be submitted to the IOB and DNI if the commencement of the investigation or other inquiry regarding such activities was also reportable under these criteria.

B. Report to the DNI, and the IOB as appropriate, significant or highly sensitive matters, whether or not unlawful or contrary to EO or PD.

1. "Significant or highly sensitive matters" are developments or circumstances involving intelligence activities that could impugn the reputation or integrity of the IC, or otherwise call into question the propriety of intelligence activities.

2. Such matters might be manifested in or by:
   a. congressional inquiries or investigations;
   b. adverse media coverage;
   c. impact on foreign relations or foreign partners; or
   d. unauthorized disclosure of protected information.

II. Content of Reports. Intelligence oversight reports should include (to the extent practicable without compromising the timeliness of reporting) the following:

A. A narrative describing each intelligence activity in question.

B. Why the matter is being reported, i.e., it is:

1. a potential violation of law (cite the relevant law, if a judgment has been made);

2. potentially contrary to EO or PD (cite the relevant section or part of the EO or PD);

3. a potential violation of agency procedures implementing EO 12333 (cite the specific rule or procedure, if a judgment has been made);

4. "'significant' because . . ."; or

5. "'highly sensitive' because . . .."

C. An explanation and analysis of how or why the incident occurred.

D. An assessment of any impact of the incident on national security or international relations, as well as any mitigation efforts, including success and failures of such efforts.

E. Any remedial action the IC element has taken or is taking to prevent recurrence of the incident being reported.

F. An assessment of any impact the reported intelligence activity may have on civil liberties or protected privacy rights.

G. How the IC element concerned is addressing any information improperly acquired, handled, used, destroyed, etc., as a consequence of the matter being reported.

H. A summary of the gravity, frequency, trends, and patterns of matters reported for the quarter.

I. Any additional information that the reporting official considers relevant for purposes of fully and completely informing the IOB and the DNI on intelligence oversight matters.

III. Formatting of Reports. Reports may be formatted in accordance with departmental or agency policies, provided all the substantive information described above is included in each report.

IV. Schedule for Reporting.

A. Significant or highly sensitive matters must be reported immediately.

1. Significant or highly sensitive matters may be reported orally, if necessary, and followed up with a written report as soon as possible thereafter. The preference is for written reports.

2. Significant or highly sensitive matters that may be unlawful or contrary to EO or PD shall be reported to the DNI and IOB.

3. Significant or highly sensitive matters that are NOT unlawful or contrary to EO or PD shall be reported to the DNI.

B. Routine reports shall be submitted on a quarterly basis. The first report for the calendar year shall cover 1 January through 31 March, and so on for each quarter of the year.

C. Quarterly reports are due the last day of the month following the end of the quarter. For example, a report for the first quarter of the calendar year is due 30 April.

D. All IC elements must submit reports at least quarterly, even if a component has not been made aware of any reportable matter during the reporting period.

Questions concerning the implementation of EO 13462, or intelligence oversight reporting in general, may be submitted to the IOB's General Counsel by calling 202-456-2352, or to the ODNI IOB Team by calling 703-482-6304 (ODNI/OIG) or 703-275-2523 (ODNI/OGC).