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MARINE CORPS ORDER 3800.2B

From: Commandant of the Marine Corps
To: Distribution List

Subj: OVERSIGHT OF INTELLIGENCE ACTIVITIES

Ref: (a) Executive Order 12333, "United States Intelligence Activities," December 4, 1981
(b) DoD Regulation 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 1982
(c) SECNAVINST 3820.3D
(d) DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," January 7, 1980
(e) MCO 5040.6G
(f) SECNAVINST 5000.34B
(g) DoD Directive 5240.1, "DoD Intelligence Activities," April 25, 1988
(h) DoD OGC Memo, "Principles Governing the Collection of Internet Addresses by DoD Intelligence and Counterintelligence Components," February 6, 2002
(i) National Imagery and Mapping Agency, Imagery Policy Series, section 9, part B, (Domestic Imagery), SECRET//X1

Encl: (1) USMC Intelligence Components
(2) Intelligence Oversight Regulations and Intelligence Support to CONUS Anti-Terrorism/Force Protection Missions
(3) Domestic Tactical Air Reconnaissance Imagery Policy
(4) Intelligence Oversight Policy for Domestic Off-Base Training in Civilian Environments
(5) Sample Intelligence Oversight Brief
(6) Intelligence Oversight Responsibilities and Staff Relationships
(7) Sample Quarterly Intelligence Oversight Report

DISTRIBUTION STATEMENT A: Approved for public release; distribution is unlimited.

Reports Required:
I. Consolidated Quarterly Intelligence Oversight (Report Control Symbol EXEMPT), pars. 8a(5), 8d(5), and encl. (7)
II. Consolidated Listing of Intelligence Components, Sections, Elements, and Teams (Report Control Symbol EXEMPT), pars. 8a(5) and 8d(7)

1. Purpose. To establish policy, procedures, and responsibilities governing the inspection and oversight of activities of U.S. Marine Corps intelligence and the reporting requirements regarding those activities. This Order has been substantially revised and should be reviewed in its entirety.

2. Cancellation. MCO 3800.2A.

3. Summary of Revision. This revision:

a. Clarifies the purpose, scope, and applicability of intelligence oversight (Intel Ovst) requirements for the Marine Corps. Required inspections have changed from 18 to 24 months.

b. Introduces new guidance on anti-terrorism/force protection (AT/FP), domestic urban training considerations, tactical air reconnaissance imagery, domestic imagery provisions, use of the Internet; and revises baseline training requirements, staff roles, and responsibilities.

c. Serves as formal notification for the termination of the HQMC Intelligence Oversight Review Board (IORB).

d. Provides procedures to facilitate uniform reporting and expanded guidance on select topics.

4. Background. Reference (a) sets forth the President's guidance with respect to U.S. intelligence activities. Reference (b) sets forth the procedures governing the activities of DoD intelligence components that affect U.S. persons. Reference (c) issues Intel Ovst policies and procedures for the Department of the Navy (DON). For purposes of this Order, Intel Ovst is the program ensuring that all USMC intelligence activities, operations, and programs are conducted in accordance with applicable U.S. laws, statutes, executive orders, DoD directives, and regulations. Intel Ovst procedures ensure intelligence components carry out their

authorized functions while adhering to certain restrictions against the collection, retention, and dissemination of information concerning U.S. persons. References (d) through (i) govern related areas peripheral to this Order.

5. Definitions. For the purposes of this Order, the following definitions apply:

a. Marine Corps Intelligence Components. Those units, organizations, staffs, and offices that perform any intelligence activity, to include collection, production, retention, or dissemination of intelligence information. Intelligence sources are grouped into the following specific disciplines:

(1) imagery intelligence,

(2) human intelligence,

(3) signals intelligence,

(4) measurement and signature intelligence,

(5) open source intelligence, and

(6) counterintelligence.

Intelligence components that collect intelligence include ground and aerial reconnaissance units. Enclosure (1) lists Marine Corps intelligence components.

b. U.S. Person. A citizen of the U.S.; an alien known by the intelligence agency concerned to be a permanent resident alien; an unincorporated association substantially composed of U.S. citizens or permanent resident aliens; or a corporation incorporated in the U.S., except for a corporation directed and controlled by a foreign government or governments.

c. Questionable Activity. Any conduct that constitutes, or is related to, an intelligence activity that may violate U.S. laws, statutes, Executive Orders, Presidential directives, applicable DoD directives, and DON or other Services' policies.

d. Domestic Imagery. Satellite and airborne imagery of any part of the U.S., its territories, or possessions to a 12NM seaward limit of those land areas.

e. Proper Use Statements. For the purposes of this Order, a statement included on a flight schedule that publishes domestic tactical air reconnaissance missions, both manned and unmanned. The proper use statement will state: "THIS DOMESTIC TACTICAL AIR RECONNAISSANCE MISSION IS CONDUCTED IAW MCO 3800.2B." The authorized signature on the flight schedule constitutes certification of the proper use statement. The proper use statement validates the mission and certifies that it is conducted in accordance with the Intel Ovst regulations and Service domestic tactical air reconnaissance imagery policy.

6. Scope

a. This Order is primarily directed at intelligence components and governs all intelligence activities undertaken by such components. It also applies to the following:

(1) The Marine Corps total force regarding the participation in intelligence activities by any component or person.

(2) All military and civilian personnel assigned or attached to intelligence components on a permanent or temporary basis, regardless of specialty or job function.

(3) Contractors or consultants if they are involved in activities subject to the requirements of reference (a).

(4) Non-intelligence units and staffs when they are used for intelligence purposes and to personnel conducting intelligence activities as an additional duty, whether or not assigned or attached to an intelligence component.

b. This Order does not constitute authority for any Marine Corps component and/or person to conduct an activity not otherwise authorized by law. Marine Corps personnel engaged in any intelligence activity must be familiar with the provisions of references (a), (b), (c), and this Order.

7. Policy

a. The collection, retention, and dissemination of information concerning U.S. persons by Marine Corps intelligence components will be governed by the requirements set forth in references (a), (b), (c), and this Order.

b. Marine Corps intelligence activities shall be carried out in a manner that protects the constitutional rights and privacy of

U.S. persons, and shall not request any person or entity to undertake unauthorized activities.

c. Marine Corps intelligence units and staffs can collect, retain, and disseminate intelligence on U.S. persons, provided they adhere to a very specific set of criteria and restrictions. Information that identifies a U.S. person may be collected by a Marine Corps intelligence component only if it:

(1) is necessary to the conduct of a function assigned to the collecting component; and,

(2) falls within one of the 13 categories authorized under reference (b), procedure 2. Enclosure (2) provides extracts of information categories.

d. The use of collection techniques authorized by reference (b) will be limited to those necessary to perform assigned functions. The least intrusive means of collection will always be the preferred method of collection.

e. The following is Intel Ovst policy regarding domestic airborne and open source/commercially available imagery:

(1) DoD policy for domestic airborne imagery proper use statements is revised. The new policy authorizes individual Services to establish proper use statement requirements for domestic manned and unmanned airborne imagery overflights of both military/government property and private property. Enclosure (3) expands on the above policy and establishes baseline procedures for Marine Corps tactical air reconnaissance imagery.

(2) Per reference (i) (available on ATSD/IO SIPRNET website), domestic imagery from commercial systems does not fall under the authorities of the Director of Central Intelligence; therefore, the use of this domestic open source imaging is dependent upon the authorities and responsibilities of each user organization. Marine intelligence personnel may utilize domestic open source or publicly available imagery (e.g., TerraServer.com, Falcon View Imagery, U.S. Geological Survey imagery) as long as Intel Ovst provisions are met. Enclosures (3) and (4) provide further clarification.

f. Special considerations exist for intelligence support to command AT/FP programs within U.S. territory and/or involving information regarding U.S. persons. Enclosure (2) provides specific guidance.

g. Intelligence training, or support to unit training, in an off-base domestic civilian environment demands due diligence to ensure that not only intelligence personnel but also other key personnel (e.g., commanders, controllers, or non-intelligence Marines who may be conducting intelligence activities), are aware of Intel Ovst provisions. Enclosure (4) provides specific guidance.

h. Use of the Internet by intelligence components to conduct intelligence activities presents unique challenges beyond traditional collection methods. To maximize the use of the Internet while properly applying the provisions of reference (a), intelligence personnel must understand how to analyze, as well as characterize, information collected via the Internet. Reference (h) addresses Internet-based collection activity against the network (as opposed to network content) and is available for review by commanders on the Inspector General of the Marine Corps (IGMC) (Oversight Division) website listed below.

i. Commanders shall ensure that initial assignment and annual refresher Intel Ovst training is provided to all personnel performing duties described in paragraph 5a. Training will cover, at a minimum, the matters set out in enclosure (5). Additionally, commanders, executive officers, staff judge advocates, and key staff should receive Intel Ovst training. Records of training will be maintained for 3 years. The IGMC (Oversight Division) website http://www.hqmc.usmc.mil/ig/ig.nsf is a source for training materials and other references governing the DoD Intel Ovst program.

j. Commanders shall ensure that no adverse or retaliatory action is taken against any Marine or civilian employee who reports questionable activities.

k. This Order, paragraph 7b; reference (a), parts 2.3, 2.4, and 2.9 to 2.12; reference (b), procedures 1 to 15; and, reference (c), paragraphs 7b, 7c, and 8h(2), constitute and shall apply as general punitive and regulatory orders. A violation of these provisions may be punishable under the Uniform Code of Military Justice for military personnel and could be the basis for appropriate administrative disciplinary procedures for civilian employees.

1. This Order does not apply to law enforcement activities conducted by U.S. Marine Corps Military Police. Reference (d) provides guidance to all non-intelligence components pertaining to the collecting, processing, storing, and dissemination of information concerning persons and organizations not affiliated with the DoD.

8. Action

a. In compliance with references (c) and (e), the IGMC will:

(1) Implement applicable policies and procedures governing Intel Ovst.

(2) Publish an inspection checklist and inspect, or cause to have inspected, all Marine Corps intelligence components to ensure compliance with references (a), (b), (c), and this Order.

(3) Investigate and report to Naval Inspector General (NAVIG) any reports of questionable activities, significant intelligence activities, and intelligence activities that use non-intelligence component assets, conducted by or on behalf of Marine Corps intelligence components.

(4) Determine the reason for the failure to report questionable activities and recommend corrective action.

(5) Receive consolidated Marine Corps Quarterly Intel Ovst reports and annual listing of Marine Corps intelligence components reports from the major subordinate commands (MSC) and submit reports to the NAVIG as required by reference (c).

(6) In compliance with reference (f), attend meetings of the DON Senior Review Board (SRB). The DON SRB, chaired by the Under Secretary of the Navy, exercises final review and oversight of DON compartmented programs and sensitive activities. Marine Corps participants include the Assistant Commandant of the Marine Corps (ACMC); Deputy Commandants for Programs and Resources (DC P&R), and Plans, Policies and Operations (DC PP&O); IGMC; and the Director of Intelligence (DirInt). The IGMC (Director, Oversight Division) serves as a special assistant to the Board for Marine Corps matters.

(7) In compliance with reference (f), attend meetings as a voting member of the DON Sensitive Activities Review Board (SARB).

The SARB provides review and oversight of all intelligence activities, non-intelligence sensitive activities, and special activities. The NAVIG chairs the SARB, which meets quarterly or as called by the Chair. Marine Corps participants include IGMC, Assistant DC, PP&O, and Deputy DirInt. The IGMC (Director, Oversight Division) serves as a special assistant to the Board for Marine Corps matters.

b. The Counsel for the Commandant (CL) and Staff Judge Advocate (SJA) will jointly:

(1) Determine whether activities conducted by Marine Corps intelligence components are legal and consistent with applicable policies.

(2) Refer all reports of questionable activities conducted by or on behalf of Marine Corps intelligence components to the IGMC for investigation. Provide legal assistance and advice in the conduct of such investigations.

(3) Attend meetings of the SRB and SARB, as appropriate, or when issues pertain to the review of Marine Corps matters.

c. The DirInt will:

(1) Provide close liaison with the IGMC for all Intel Ovst matters.

(2) Refer all reports of questionable activities conducted by or on behalf of Marine Corps intelligence components to the IGMC for investigation. Provide assistance and technical expertise in the conduct of such investigations.

(3) Provide necessary updates to ensure the IGMC is kept abreast of all Marine Corps intelligence and counterintelligence activities planned or conducted where Intel Ovst or sensitive activities issues may be involved.

(4) Ensure that authorized legal and oversight officials are granted access to all information required to properly perform their Intel Ovst functions.

(5) Provide technical assistance and augmentation personnel during the preparation and execution of Intel Ovst inspections or evaluations.

(6) Ensure Intel Ovst indoctrination and annual refresher training for HQMC Intelligence Department personnel are conducted and documented.

d. The Commanders, U.S. Marine Corps Forces and Commander, Marine Corps Intelligence Activity will:

(1) Monitor intelligence components' compliance with the provisions of references (a), (b), (c), and this Order, and other applicable directives. When implementing an Intel Ovst program, commanders are responsible for conducting independent and impartial reviews to ensure compliance with policy, establishing awareness training and reporting procedures, and ensuring legal/policy review of intelligence actions. Consequently, the success of the Intel Ovst program demands the active participation of the command inspector, the senior intelligence officer and the SJA. Enclosure (6) provides a baseline explanation of staff roles and relationships.

(2) Ensure subordinate intelligence components are inspected, at a minimum, every 2 years. The IGMC Automated Inspection Reporting System (AIRS) provides commanders with guidelines for day-to-day administration of functional areas and sets minimum criteria for inspections. The official AIRS Intel Ovst checklist #240 sets minimum criteria for Intel Ovst program implementation and is accessible at the IGMC website.

(3) Ensure Intel Ovst indoctrination and annual refresher training for all personnel identified in paragraph 5a above are conducted and documented.

(4) Report immediately all questionable activities conducted by or on behalf of subordinate intelligence components to the IGMC.

(5) In compliance with reference (c), the command inspector or office performing that function shall submit not later than the 5th of October, January, April, and July the consolidated Quarterly Intel Ovst report to the IGMC. See enclosure (7). The Marine Corps Intelligence Activity shall report directly to the IGMC, with a copy to the DirInt. Reports by subordinate intelligence components may be submitted in any format sufficient for MSC to record, at a minimum, the reporting unit, date received, any violations, training conducted, and identification of the individual submitting and receiving the

report. The originator shall retain signed copies of reports transmitted digitally/electronically for record purposes.

(6) Report to the IGMC significant intelligence activity with Intel Ovst interest (e.g., domestic off-base training in a civilian environment or intelligence support to law enforcement activities/organizations) prior to the event.

(7) Report to the IGMC by 10 September annually the information for any intelligence component, section, element, or team under operational or administrative control that has been physically relocated, established, or disestablished during the last fiscal year.

(8) Maintain all Intel Ovst reports, training documentation, and records of inspection for 3 years.

e. Procedures for Reporting Questionable Activities

(1) The primary means for reporting questionable activities, as defined in this Order, will be via the chain of command. If the commanding officer/supervisor is involved in the allegation, the next senior commanding officer/supervisor in the chain of command will be informed. Commands must expedite handling of such allegations. Commanders will forward such allegations up the chain of command to the commanding general (inspector) for forwarding to the IGMC, per reference (c).

(2) Request Mast procedures or the Marine Corps Hotline Program can also be used to report questionable activities. The IGMC will coordinate with the DirInt, CL, and SJA to the CMC to determine the validity of the allegation. When appropriate, an investigation will be initiated.

(3) The IGMC will maintain overall responsibility for the conduct of investigations into allegations of questionable activities as defined in this Order.

9. Reports. Reports required by this Order are exempt from reports control and require no report symbols.

10. Questions or Recommendations

a. Questions of interpretation of references (a), (b), (c), and this Order should be referred to the legal office responsible for advising the Marine Corps intelligence component concerned. Questions that cannot be resolved in this manner shall be referred

to the Inspector General of the Marine Corps, Staff Judge Advocate to the Commandant, and Counsel for the Commandant for resolution. Requests for exceptions or amendments to the policies or procedures of this Order should be referred to the IGMC.

b. Recommendations for change or inclusion concerning the content of this Order are invited. Forward recommendations to the CMC (IGMC) via the appropriate chain of command.

11. Applicability. This Order is applicable to the Marine Corps Total Force.

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USMC INTELLIGENCE COMPONENTS

1. Marine Corps intelligence components are those units, organizations, staffs, and offices that perform any intelligence activity, to include collection, production, retention, or dissemination of intelligence information.

2. For the purposes of this Order, USMC intelligence components include:

a. HQMC Intelligence Department.

b. Marine Corps Intelligence Activity (includes all subordinate commands/elements).

c. Unit G-2/S-2 staffs.

d. Intelligence battalions.

e. Radio battalion.

f. Reconnaissance battalions/companies.

g. Scout sniper platoons.

h. Unmanned aerial vehicle squadrons.

INTELLIGENCE OVERSIGHT REGULATIONS AND INTELLIGENCE SUPPORT TO CONUS ANTI-TERRORISM/FORCE PROTECTION MISSIONS

1. Purpose. To provide information on intelligence oversight (Intel Ovst) regulations, specifically DoD Regulation 5240.1-R, and with emphasis on military intelligence support to CONUS AT/FP missions.

2. Key Points

a. In light of the 11 September 2001 terrorist attacks, the Marine Corps will be increasingly required to perform domestic missions with an increased emphasis on AT/FP. As a result, there will be increased instances whereby Marine intelligence activities may come across information regarding U.S. persons. Marine intelligence personnel may collect, retain, and disseminate information about U.S. persons only under certain circumstances. This enclosure will briefly discuss when it is permissible to collect, retain, and disseminate information about U.S. persons. This enclosure is not intended as a substitute for qualified legal advice. Marine intelligence activities must seek the advice of the command's SJA before collecting, retaining, or disseminating any information about U.S. persons.

b. Information that identifies a U.S. person may be collected by a Marine intelligence activity only if it is necessary to the conduct of a function assigned to the activity; only if it falls within one of the categories listed in DoD Regulation 5240.1-R, procedure 2, and set forth below; and is accomplished by the least intrusive means. The permissible categories are:

(1) Information obtained with consent.

(2) Publicly available information.

(3) Foreign intelligence, provided the U.S. person is reasonably believed to be an officer or employee of a foreign power; an organization reasonably believed to be owned or controlled, directly or indirectly, by a foreign power; a person or organization reasonably believed to be engaged or about to engage in international terrorist or international narcotics activities; or is reasonably believed to be a prisoner of war, missing in action, or is the target, hostage, or victim of international terrorist organizations.

(4) Counterintelligence, provided the U.S. person is reasonably believed to be engaged or about to engage in intelligence activities on behalf of a foreign power, or international terrorist activities; or, is a person in contact with such persons, for the purpose of identification and assessing his or her relationship with such persons.

(5) Potential sources of assistance to Marine intelligence activities for the purpose of assessing the suitability or credibility of a U.S. person.

(6) Protection of intelligence sources and methods, provided that within the U.S., the collection is limited to present and former DoD employees; present or former employees of a former DoD contractor; and applicants for employment at DoD or at a DoD contractor.

(7) Physical security, provided the U.S. person is reasonably believed to threaten the physical security of DoD employees, installations, operations, or official visitors. Information also may be collected in the course of a lawful physical security investigation.

(8) Personnel security, provided the information is collected pursuant to a lawful background investigation.

(9) Communications security, provided the information is collected pursuant to a lawful communications security investigation.

(10) Narcotics, provided the U.S. person is reasonably believed to be engaged in international narcotics activities.

(11) Threats to safety, provided the information is needed to protect the safety of any person or organization against threats of international terrorism.

(12) Overhead reconnaissance, provided it is not directed at a specific U.S. person. See enclosure (3) for Marine Corps policy.

(13) Administrative purposes.

c. DoD Regulation 5240.1-R, procedure 2, sets forth more detail on these permissible categories. In addition, before any information about a U.S. person is collected, the Marine

intelligence component must seek the advice of the command's SJA. SJA to CMC (JAO) can provide assistance to local SJAs, if necessary.

d. When foreign groups or persons threaten DoD personnel, resources or activities, intelligence components may intentionally target, collect, retain, and disseminate this information.

e. Marine intelligence personnel may "receive" information from law enforcement agencies, other organizations, or sources that contains information about a U.S. person. Merely "receiving" information does not constitute "collection" under DoD Regulation 5240.1-R, procedure 2. Information is considered "collected" only when it has been received for use by an employee of a DoD intelligence component in the course of his/her official duties.

f. DoD Regulation 5240.1-R, procedure 3, sets forth when information about U.S. persons may be retained. Retention of information refers to the maintenance of information about U.S. persons which can be retrieved by reference to the person's name or other identifying data. Information about U.S. persons may be retained for the following reasons:

(1) The information was lawfully collected under DoD Regulation 5240.1-R, procedure 2.

(2) The information was acquired incidentally to authorized collection and:

(a) such information could have been collected intentionally under DoD Regulation 5240.1-R, procedure 2;

(b) such information is necessary to understand foreign intelligence or counterintelligence;

(c) the information is foreign intelligence or counterintelligence collected from electronic surveillance conducted in compliance with DoD Regulation 5240.1-R; or,

(d) is incidental to authorized collection and may indicate involvement in activities that may violate Federal, state, local, or foreign law.

(3) Information may be retained temporarily, for a period not to exceed 90 days, to determine if the information may be retained permanently.

(4) Information other than that covered in subparagraphs 2f(1) through 2f(3), shall be retained only for the purposes of reporting such collection for oversight purposes and for subsequent proceedings that may be necessary.

g. The references contain more detailed information on intelligence support relating to CONUS force protection. Many of these references have been disseminated to all major commands and are available on the unclassified IGMC homepage and the Director of Intelligence SIPRNET homepage.

h. DoD Regulation 5240.1-R, procedure 4, states that information about U.S. persons may be disseminated without the individual's consent if the information was collected or retained or both in accordance with DoD Regulation 5240.1-R, procedures 2 and 3; if the recipient is reasonably believed to have a need to receive such information for the performance of a lawful governmental function; and is one of the following:

(1) an employee of either DoD or a DoD contractor, and has a need for such information in the course of his or her official duties;

(2) a Federal, state, or local government law enforcement entity, and the information may indicate involvement in activities which may violate laws which the recipient is responsible to enforce;

(3) an agency within the intelligence community; provided that within the intelligence community (other than information gathered through signals intelligence), may be disseminated for the purpose of allowing the recipient agency to determine whether the information is relevant to its responsibility;

(4) an agency of the Federal Government authorized to receive such information in the performance of a lawful Government function; or

(5) a foreign government, and dissemination is undertaken pursuant to an agreement or other understanding with such government. Any other dissemination that does not conform

to the conditions listed above must be approved by the SJA to CMC after consultation with the Department of Justice and DoD General Counsel. Such approval shall be based on a determination that the proposed dissemination complies with applicable laws, Executive Orders, and regulations.

i. DoD Regulation 5240.1-R, procedures 5 through 11, deal with limitations on and approval procedures for specialized collection techniques and contract services.

(1) Collection techniques covered are electronic surveillance, concealed monitoring, physical searches, searches and examination of mail, physical surveillance, and undisclosed participation in organizations.

(2) These techniques and the out-sourcing of intelligence activities are used infrequently and only by a small number of units.

j. DoD Regulation 5240.1-R, procedure 12, covers provision of assistance to law enforcement authorities. Consistent with published limitations and approval procedures, DoD intelligence components are authorized to cooperate with law enforcement authorities. Subparagraph 2h(2) above delineates disseminating information to law enforcement authorities. Specialized equipment and facilities or assistance may be provided to law enforcement authorities under certain situations. Requests for specialized assistance to law enforcement authorities should be reviewed by the command SJA and notification made to the IGMC.

k. DoD Regulation 5240.1-R, procedure 14, covers employee conduct. Individuals and commands are responsible for the conduct of intelligence activities and familiarity with Intel Ovst regulations. Furthermore, commands are required to ensure no adverse action is taken against any person for reporting questionable activities.

l. DoD Regulation 5240.1-R, procedure 15, describes identifying, investigating, and reporting questionable activities. Reports of questionable activity will be made to higher appropriate authorities as required, including reports of Intel Ovst violations or questionable activities. Such reports will be thoroughly vetted through the command inspector and SJA to the IGMC as appropriate.

m. It should be noted that the provisions of DoD Regulation 5240.1-R do not prohibit commanders from calling meetings or even establishing "information fusion cells" where representatives from the intelligence, security and law enforcement sections meet to share and synthesize information to support the commander's force protection mission. Such meetings should be headed by force protection, security, or law enforcement, not intelligence personnel.

DOMESTIC TACTICAL AIR RECONNAISSANCE IMAGERY POLICY

1. Applicability. This policy applies to Marine Corps domestic tactical air reconnaissance missions, both manned and unmanned. It provides guidance for the validation of domestic tactical air reconnaissance missions and the handling of derived imagery products to ensure compliance with intelligence laws, Executive Orders, and regulations. This policy does not apply to commercially available domestic imagery, non-intelligence related public affairs, or law enforcement imagery. However, the use of commercially available domestic imagery by Marine Corps intelligence components is subject to Intel Ovst regulations as is Marine Corps intelligence support to law enforcement activities.

2. Policy

a. All DoD intelligence activities and related activities shall be carried out in strict conformity with the U.S. Constitution, applicable laws, Executive Orders, and DoD regulations governing Intel Ovst, with special emphasis given to the protection of the rights and privacies of U.S. persons.

b. Collection or use of imagery of private or non-Federal property requires written permission (permission to collect/image) by the property owner when the private or non-Federal property is the objective of the collection (e.g., imaged to support follow-on military operations, geographic orientation, etc.). Private property collected/imaged incidental to aircraft transit to and from government property collection objectives is not subject to this requirement. Written permission documentation should be maintained with proper use statements.

c. U.S. persons shall not be specifically targeted by Marine Corps tactical air reconnaissance imagery platforms (manned or unmanned) for the purpose of gathering information.

d. If inadvertent collection occurs that identifies any U.S. person, the resultant imagery must be immediately destroyed.

e. DoD Regulation 5240.1-R provides for specific exceptions to paragraphs 2a and 2b. Consult with the command inspector and SJA prior to executing these missions.

f. Proper use statements will be recorded on flight schedules and retained for 3 years in files of units that execute domestic imagery missions, both manned and unmanned. Written permission obtained to collect and/or image private or non-Federal property will also be maintained in accordance with this procedure.

g. Officers with properly delegated authority to sign unit flight schedules will become knowledgeable of Intel Ovst procedures and the Marine Corps domestic tactical air reconnaissance imagery policy. Their signature on flight schedules authorizing domestic imagery missions certifies that those domestic imagery missions are in compliance with the provisions of this policy.

h. Commanders, or their designated representatives, will implement positive controls to ensure the constitutional rights of U.S. persons are protected, and to ensure compliance with laws and regulations, to include appropriate legal and command inspector review/oversight.

3. Procedure

a. Commands executing domestic tactical air reconnaissance missions will establish local standing operating procedures (SOPs) that comply with the policies set forth herein and are in compliance with applicable Intel Ovst regulations.

b. Officers, aircrew, and unmanned aerial vehicle (UAV) operators who assign, certify, or conduct domestic tactical air reconnaissance missions shall receive requisite Intel Ovst training (unit indoctrination and annual refresher) supplemented by this policy and those policies and SOPs developed to govern and regulate domestic imagery activities.

c. Documentation of Intel Ovst training, supplemental domestic imagery training, proper use statements, permission to collect/image documents or domestic tactical air reconnaissance missions, shall be retained for 3 years in unit records.

d. Proper use statements will be included on flight schedules that publish domestic tactical air reconnaissance missions, both manned and unmanned. The proper use statement will state: "THIS DOMESTIC TACTICAL AIR RECONNAISSANCE MISSION IS CONDUCTED IAW MCO 3800.2B". The authorization signature on the flight schedule constitutes certification of the proper use statement.

INTELLIGENCE OVERSIGHT POLICY FOR DOMESTIC OFF-BASE TRAINING IN CIVILIAN ENVIRONMENTS

1. General

a. Realistic Urban Training (RUT) is an essential part of many Marine units' training cycles. The Secretary of Defense, in a 26 April 2000 memo, defined RUT as, "high-intensity, close-quarter battle training and the use of live or non-lethal fires, the use of demolitions/explosives (i.e., breaching), and air and naval supporting platforms at the objective in civilian urban settings. This includes Military Operations in Urban Terrain training which otherwise meets the definition of RUT." The most common Marine Corps RUT is the Training in an Urban Environment Exercise (TRUEX) Program used in the pre-deployment training cycle for Marine Expeditionary Units (Special Operations Capable) (MEU (SOC)). RUT has strict requirements, time-lines and higher-level notifications above and beyond non-RUT exercises. A commander must first determine whether the off-base training falls under the RUT criteria.

b. To assist commanders and inspectors, a checklist of "Considerations for Conducting Training and Exercises in an Off-Base Civilian Environment" may be viewed on the IGMC Oversight Division website at http://www.hqmc.usmc.mil/ig/ig.nsf.

c. This enclosure specifically addresses Intel Ovst issues for domestic off-base training in civilian environments.

2. Policy

a. All DoD intelligence activities and related activities shall be carried out in strict conformity with the U.S. Constitution, applicable laws, Executive Orders, and DoD regulations governing Intel Ovst, with special emphasis given to the protection of the rights and privacies of U.S. persons.

b. To the extent practicable, consistent with Operational Security (OPSEC) and safety considerations, recommendations of civilian officials regarding community notification/outreach and press procedures will be followed. All requested training must be in accordance with applicable statutes, laws, DoD directives, and other guidance and implementing Service directives.

c. Commanders, or their designated representatives, will implement positive controls to ensure the constitutional rights of U.S. persons are protected, and to ensure compliance with laws and regulations, to include appropriate legal and inspector general review/oversight.

d. U.S. persons shall not be specifically targeted by Marine Corps tactical air reconnaissance imagery platforms (manned or unmanned) or video recording equipment for the purpose of gathering information without written permission. TRUEXs may be one example whereby specific U.S. persons and their property are targeted for the play of the exercise and require written permission.

e. If inadvertent intelligence collection occurs that identifies any U.S. person, the resultant products must be immediately destroyed. However, if the information relates to criminal activity, it should be passed to appropriate law enforcement authorities.

f. Gathering general information about a potential training site to determine suitability for use is an administrative function, and thereby permissible under DoD Regulation 5240.1-R, procedure 2C.13.

g. Imagery

(1) General Policy. Broad overhead imagery may be collected in the play of the exercise if it is not directed at a specific U.S. person; that imagery may be exploited in order to identify potential boat landing sites (BLSs) and helicopter landing zones (HLZs). If the imagery is magnified and enhanced, it must be done in such a way as to not identify the particular property linked to a U.S. person. If the designated area is to be used for training, coordination with the property owner must also occur. If the site is then to be collected against again by overhead collection assets, consent must be obtained from the property owner. Coordinates may be labeled on the imagery throughout the process.

(2) Open Source Publicly Available Imagery

(a) Domestic imagery from commercial systems does not fall under the authority of the Director, Central Intelligence; therefore, the use of this domestic open source imagery will be dependent upon the authorities and the responsibilities of each user organization. However,

organizations within the intelligence community are still governed by the legal and policy constraints that have been previously stated. Caution must be used in the collection and use of commercial satellite imagery to avoid the appearance of violating any previously stated legal or policy concerns.

(b) If a training area has been identified for use, intelligence personnel may use open source or publicly available imagery (e.g., National Geospatial Intelligence Agency imagery, U.S. Geological Survey (USGS) imagery, Falcon View Imagery, TerraServer.com, globexplorer.com) so long as the property cannot be directly attributed to a particular U.S. person. For example, during a TRUEX, Special Operations Training Group may provide the MEU with an HLZ location to which the property owner has given the permission to use. The MEU S-2 may then download available unclassified imagery from the Internet or develop imagery from USGS flats; that imagery may be used for tactical planning so long as the property owner cannot be identified on the image unless consent has been granted. Street names and coordinates may be annotated on the imagery. Non-definitive names such as three-story building, light post, ditch, wire, tower, etc., may also be annotated on the imagery (items that are essential to the safety of the aircraft).

(3) Domestic Tactical Air Reconnaissance. See enclosure (3).

h. Counterintelligence/Human Intelligence (CI/HUMINT)/ Ground Reconnaissance

(1) CI/HUMINT Marines may measure and sketch an HLZ or BLS so long as the property owner is not identified (unless consent has been granted). Street names and coordinates may be applied to the sketch.

(2) Route reconnaissance, either video taped from a ground vehicle or an aviation platform, may be conducted so long as it is not directed at a specific U.S. person. If images are to be "chipped out" for further exploitation, they must not include any specifically identifiable features with respect to a specific U.S. person unless consent has been granted.

(3) In order to establish both real world security and security for the play of the problem/exercise, a reconnaissance team may emplace surveillance cameras on hide sites. Cameras may be positioned on the property to which Marines have permission to operate as a force protection measure. This allows the team to monitor, for the purpose of physical security, the areas to its left, right and rear while remaining focused on the objective on which it is permitted/has consent to collect against. Vehicle hide sites may particularly benefit from this since the observer inside the vehicle typically has a very narrow field of view due to limited view apertures.

i. While information may be legitimately collected by intelligence personnel under paragraphs 2g and 2h above, once the training event has concluded, information may not be retained on file without a determination under DoD Regulation 5240.1-R, procedure 3, being made. Information legitimately collected may be retained on a site if it will be utilized for future near-term training.

3. Procedure

a. Commands executing off-base training in domestic civilian environments will establish local standing operating procedures (SOPs) that comply with the policies set forth herein and are in compliance with applicable Intel Ovst regulations.

b. All personnel who assign or certify, or intelligence components or personnel who conduct off-base training in domestic civilian environments, shall receive requisite Intel Ovst training (unit indoctrination and annual refresher) supplemented by this policy and those policies and SOPs developed to govern and regulate RUT and non-RUT missions.

SAMPLE INTELLIGENCE OVERSIGHT BRIEF

1. Purpose. To provide a baseline curriculum for an Intel Ovst awareness program.

2. Background. To deter DoD intelligence personnel from infringing upon the rights of U.S. persons, all military, civilian, and contractor personnel serving in intelligence billets or units are required to be knowledgeable of Intel Ovst policy.

3. Intelligence Oversight Program

a. Intel Ovst ensures that all DoD intelligence and intelligence related activities are conducted in accordance with applicable U.S. laws, Presidential Executive Orders, and DoD directives and regulations. The program is designed to ensure that the DoD can conduct its intelligence and counterintelligence missions while protecting the statutory and constitutional rights of U.S. persons. (Basic references: Executive Order 12333, DoD Regulation 5240.1-R, SECNAVINST 3820.3, and MCO 3800.2).

b. The term "U.S. persons" includes U.S. citizens. It also includes permanent resident aliens, unincorporated associations substantially composed of U.S. citizens or permanent resident aliens, and corporations incorporated in the U.S. that are not directed and controlled by a foreign government.

c. Generally, Marine intelligence personnel may not intentionally target, collect, retain, and disseminate information on U.S. persons CONUS or OCONUS. Information pertaining to U.S. persons posing a threat to DoD personnel, resources or activities, is criminal information and falls under the purview of law enforcement and security.

d. Exceptions do exist which allow intelligence components to receive, retain, and disseminate information on U.S. persons. Even under these circumstances, military intelligence personnel are limited to the 13 categories of information laid out in DoD Regulation 5240.1-R, procedure 2.

e. Violations and even "questionable activities" (actions that may be violations) must be referred to the IGMC, Oversight Office. No adverse or retaliatory actions may be taken against personnel who report questionable activities.

4. Questions. Confer with the command inspector and the staff judge advocate on any occasion when intelligence personnel appear to require collection, retention, or dissemination of information on U.S. persons.

INTELLIGENCE OVERSIGHT RESPONSIBILITIES AND STAFF RELATIONSHIPS

1. Command Inspector. The command inspector is responsible to the commanding general to monitor and oversee the implementation and management of intelligence oversight (Intel Ovst) programs at the command element and subordinate command level. Command inspector of Intel Ovst responsibilities include:

a. Inspect a minimum of every 2 years using the HQMC AIRS Intel Ovst checklist, #240.

b. Receive and forward required Intel Ovst reports.

c. Receive, investigate, and forward reports of Intel Ovst violations or questionable activity.

d. Ensure the command SJA is consulted as appropriate, but especially as part of the review, investigation, or reporting of Intel Ovst violations or questionable activity.

e. Advise the commander on status of Intel Ovst policy and procedures.

2. Senior Intelligence Officer. The senior intelligence officer is responsible to ensure the command Intel Ovst awareness program is implemented and properly administered. Duties of individuals assigned command oversight awareness responsibilities include:

a. Design and implement the command Intel Ovst training and reporting program.

b. Submit Intel Ovst program activity reports to the command inspector via the chain of command.

c. Ensure the command SJA is consulted as appropriate, but especially as part of the review, investigation, or reporting of Intel Ovst violations or questionable activity.

d. If directed, an intelligence specialist may support the command inspector during inspections of subordinate commands.

3. Staff Judge Advocate. The SJA serves in a legal review and advisory role of Intel Ovst policy and procedures. The role of the SJA may include review of the following:

a. Intel Ovst program activity reports submitted by the command.

b. Command intelligence activities to ensure they are legal and consistent with applicable policies.

c. Reports or investigations of Intel Ovst violations and questionable activities.

SAMPLE QUARTERLY INTELLIGENCE OVERSIGHT REPORT

3800
IG/G-7
Date

From: Commander, U.S. Marine Force _____
To: Commandant of the Marine Corps (IGO)

Subj: QUARTERLY INTELLIGENCE OVERSIGHT REPORT, ____ QTR, FY ___

Ref: (a) MCO 3800.2B

1. Per the reference, the following informational report is submitted.

2. [A statement identifying any intelligence or counterintelligence activity that was illegal, improper, or contrary to applicable laws, statutes, directives, and/or policies, and corrective action taken.]

3. [Identify intelligence oversight activities completed during this quarter (e.g., training, inspections, etc.) and any significant activities planned for the next quarter.]

4. [Provide any additional comments or suggestions for improving the intelligence oversight program developed locally or reported from the field.]

5. [Identify intelligence oversight point of contact and contact information.]

_____
Commander
or, By Direction