



CHIEF NATIONAL GUARD BUREAU INSTRUCTION

NGB-J2
DISTRIBUTION: A

CNGBI 2000.01
17 September 2012

NATIONAL GUARD INTELLIGENCE ACTIVITIES

Reference(s): See Enclosure B.

1. Purpose. This instruction establishes policy and responsibilities for the conduct and oversight of National Guard Bureau (NGB), Joint Forces Headquarters-State (JFHQ-S), and National Guard (NG) Title 32 (T-32) intelligence and intelligence-related activities, and implements guidance in accordance with (IAW) references a and b.

2. Cancellation. All States Memorandum (ASM) P08-0004, "NGB Policy for Handling of U.S. Persons Information", 18 June 2008, and ASM P11-0012, "NGB Policy for Validation, Approval, and Oversight of Department of Defense (DoD) Domestic Airborne Intelligence, Surveillance, and Reconnaissance (ISR) Imagery Proper Use Memorandums (PUMs)", 31 October 2011, are cancelled.

3. Applicability. This instruction applies to all NGB, T-32 NG JFHQ-S, and T-32 NG intelligence units and staff organizations, and T-32 non-intelligence organizations that perform intelligence or intelligence-related activities, as defined in the glossary, hereinafter referred to as the NG intelligence component. This instruction does not apply to criminal investigations, and does not authorize any intelligence activity not otherwise authorized by law. Army National Guard (ARNG) and Air National Guard (ANG) members serving in a Title 10 (T-10) status must comply with Service Component regulations (references c and d).

4. Policy.

a. NG intelligence personnel operating in a T-32 status will operate as members of the Department of Defense (DoD) intelligence component and must comply with all DoD guidance and federal laws applicable to the component, to include all Intelligence Oversight (IO) rules.

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b. NG intelligence personnel and equipment may not be used for activities other than Foreign Intelligence or Counterintelligence (CI) unless that use is approved by the Secretary of Defense (SecDef) or his or her designee.

c. NG intelligence personnel operating in state active duty (SAD) status are not members of the DoD intelligence component, and are prohibited from engaging in DoD intelligence and CI activities, and from using DoD intelligence and CI equipment (e.g., the Joint Worldwide Intelligence Communications System) unless that use is authorized by the SecDef or his or her designee.

d. NG personnel in SAD status are subject to the provisions of state law, to include privacy laws. In most states, the collection, use, maintenance, and dissemination of U.S. persons (USPERs) information is strictly regulated; therefore, NG members in a SAD status should seek competent legal advice on state laws before collecting information concerning USPERs.

e. States may re-assign intelligence personnel to a non-intelligence mission while in a SAD status, as long as they do not use or attempt to access intelligence or CI systems, resources, or equipment.

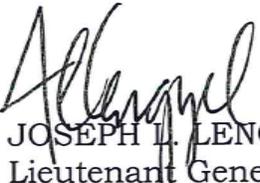
5. Definitions. See Glossary.

6. Responsibilities. See Enclosure A.

7. Summary of Changes. This instruction is a rewrite of National Guard Regulation 381-10/Air Force (AF) 14-202, Conduct of Intelligence Activities, 1 Feb 93, which was rescinded 2 May 2000. Implementing procedures will be published in CNGBM 2000.01, Procedures Governing National Guard Intelligence Activities.

8. Releasability. This instruction is approved for public release; distribution is unlimited. NGB directorates, the Adjutants General (TAG), the Commanding General of the District of Columbia, and JFHQ-S may obtain copies of this instruction through www.ngbpdc.ngb.army.mil.

9. Effective Date. This instruction is effective upon publication.


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Enclosure(s):

A -- Responsibilities
B -- References
GL -- Glossary

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ENCLOSURE A
RESPONSIBILITIES

1. NGB.

a. NGB Joint Director of Intelligence (NGB-J2). NGB-J2 will:

(1) Know the missions, plans, and capabilities of all NGB and State intelligence and intelligence-related organizations/units.

(2) Ensure all proposals for intelligence activities that may be unlawful, or contrary to applicable Executive Branch or DoD derivative policies, are reviewed by NGB Judge Advocate (NGB-JA).

(3) Establish and maintain a NGB-J2 IO program to ensure the legality and propriety of all intelligence and intelligence-related activities.

(4) Appoint, in writing, experienced intelligence professionals to serve as primary and alternate NGB-J2 IO Monitors to perform the functions listed in paragraph 3.b., below.

(5) Ensure all personnel assigned or attached to NGB-J2 receive required IO training and know IO statutory and regulatory guidance, to include reporting responsibilities and all restrictions.

(6) Advise the Chief, National Guard Bureau (CNGB) and staff on all matters regarding the oversight of intelligence and intelligence-related activities.

(7) Liaise with the Intelligence Community on behalf of CNGB on all matters concerning oversight of intelligence and intelligence-related activities.

(8) Conduct IO training for Staff Assistance Visits (SAV) of NG JFHQ-S J2s, as required.

(9) Coordinate with NGB-JA and the NGB Inspector General (NGB-IG) on all IO matters.

(10) Review and approve all T-32 PUMs from NG JFHQ-S J2s with NGB-IG and NGB-JA.

b. NGB-IG Intelligence Oversight Division (NGB-IGO). NGB-IGO will comply with duties as specified IAW reference f.

c. NGB-JA. NGB-JA will:

(1) Know the missions, plans, and capabilities of NGB-J2 and NG JFHQ-S intelligence and intelligence-related organizations/units, and all laws, Executive Orders (EO), policies, regulations, and instructions that apply to their activities, to include restrictions on the collection, retention, and dissemination of USPERs information, and the requirement to report Questionable Intelligence Activity (QIA) and certain federal crimes.

(2) Ensure NGB-JA IO personnel receive IO training.

(3) Provide legal counsel for NGB IO issues.

(4) Provide interpretations of applicable EOs, directives, regulations and instructions, and federal, state, and tribal laws as they relate to intelligence and intelligence-related activities within NGB and NG JFHQ-S.

(5) Provide legal opinions and advice to NGB-J2 and NG JFHQ-S JAs on the legality and propriety of intelligence and intelligence-related activities.

(6) Review T-32 PUMs for legal sufficiency with NGB-J2 and NGB-IG.

(7) Know the jurisdictional relationship between NG intelligence and CI activities, as well as the parallel jurisdictions of Antiterrorism/Force Protection (AT/FP) and law enforcement (LE) activities.

(8) Review NGB intelligence plans, proposals, and concepts for legality and propriety, as required.

(9) Assist in training NGB staff members engaged in intelligence and intelligence-related activities on all EOs, laws, policies, treaties, and agreements that apply to their activities.

d. Army National Guard Director of Intelligence (ARNG-G2). ARNG-G2 will:

(1) Oversee formation of policy, unit budgeting, and staff management for ARNG intelligence activities.

(2) Serve as Senior Intelligence Officer (SIO) for the ARNG and exercise staff responsibility for Sensitive Compartmented Information (SCI) and security programs, and overall readiness of the intelligence disciplines within the ARNG: Imagery Intelligence (IMINT), Signals Intelligence (SIGINT), Human Intelligence, CI, and All-Source Analysis.

(3) Correspond with the Department of Army G2 regarding the oversight of ARNG intelligence activities.

(4) Ensure all personnel assigned or attached to ARNG-G2 receive required IO training, and know IO statutory and regulatory guidance, to include reporting responsibilities and all restrictions.

e. Air National Guard Director of Intelligence (ANG/A2). ANG/A2 will:

(1) Oversee formation of policy, unit budgeting, and staff management for ANG intelligence activities.

(2) Serve as SIO for the ANG and exercise staff responsibility for SCI and security programs, and overall readiness of the intelligence disciplines within the ANG: Geospatial Intelligence, IMINT, SIGINT, and All-Source Analysis.

(3) Correspond with the AF Deputy Chief of Staff for ISR regarding the oversight of ANG intelligence activities. ANG units are inspected by their gaining major command (MAJCOM); however, they may also be inspected by the NGB-IG. ANG units will provide yearly IO reporting to NGB-IG and their gaining MAJCOM.

(4) Ensure all personnel assigned or attached to ANG/A2 receive required IO training and know IO statutory and regulatory guidance, to include reporting responsibilities and all restrictions.

2. NG JFHQ-S.

a. TAGs. TAGs will:

(1) Know all State intelligence and intelligence-related activities.

(2) Develop and publish state IO policy and procedures, to include internal procedures for determining if any USPERs information may be retained; documenting decisions to retain information; purging/redacting information that may not be retained; marking files as containing USPERs information; and conducting a yearly file review and certification.

(3) Ensure compliance with this instruction.

(4) Know IO procedures, and levy tasks and missions IAW IO policy and guidance.

b. NG JFHQ-S J2. NG JFHQ J2 will:

(1) Know all State intelligence and intelligence-related activities.

(2) Establish and maintain an effective IO program for all personnel assigned or attached to NG JFHQ-S J2.

(3) Appoint, in writing, experienced intelligence professionals to serve as NG JFHQ-S primary and alternate IO Monitors.

(4) Ensure all personnel assigned or attached to NG JFHQ-S J2 receive required IO training, and know IO statutory and regulatory guidance, to include reporting responsibilities and all restrictions.

(5) Identify intelligence staffs, units, and personnel performing intelligence and intelligence-related functions, and verify compliance with appropriate directives. Dual-responsibility personnel are subject to the provisions of reference e for non-intelligence duties.

(6) Advise TAG and staff on matters related to the oversight of intelligence and intelligence-related activities.

(7) Liaise with State JA and IG on IO matters.

(8) Review, in consultation with the State IG and JA, any planned and/or on-going NG information collection activities. Submit any required documentation, to include PUMs.

c. NG JFHQ-S IG. NG JFHQ-S IG will comply with duties as specified in reference f.

d. NG JFHQ-S JA. NG JFHQ-S JA will:

(1) Know the missions, plans, and capabilities of State intelligence and intelligence-related entities, and the federal and state laws, policies, and treaties that apply to their activities, to include the restrictions on the collection, retention, and dissemination of USPERs information, and the requirement to report QIA and certain federal crimes.

(2) Know the jurisdictional relationship between NG intelligence and CI activities, as well as the parallel jurisdictions of AT/FP and LE activities.

(3) Advise TAG and NGB-J2 on intelligence law and NGB-IO matters within their purview.

(4) Review intelligence plans, proposals, and concepts, to include PUMs, for legality and propriety.

(5) Train members of organizations engaged in intelligence and intelligence-related activities on all laws, policies, treaties, and agreements that apply to their activities, as required.

3. Intelligence and intelligence-related organizations, units and staffs.

a. Commanders/Directors and SIOs. Commanders/Directors of intelligence or intelligence-related organizations and SIOs will:

(1) Receive IO training.

(2) Correspond with TAG regarding the oversight of the State IO program. Command SIOs are responsible for unit IO programs (e.g., a Division G2, a Brigade Combat Team,; an Intelligence Officer or a wing A2/SIO.)

(3) Know the missions, plans, and capabilities of subordinate intelligence and intelligence-related units and levy tasks and missions IAW IO policy and guidance.

(4) Establish and maintain an effective IO program for all personnel assigned or attached to the organization.

(5) Appoint, in writing, experienced intelligence professionals to serve as primary and alternate IO Monitors to perform the functions listed in paragraph 3.b., below.

(6) Ensure all personnel assigned or attached to the organization receive required IO training, and know IO statutory and regulatory guidance, to include reporting responsibilities and all restrictions.

(7) Ensure proposals for intelligence activities that may be questionable or contrary to policy are reviewed by NGB-JA.

(8) Ensure personnel who report QIA allegations are protected from reprisal or retaliation. If personnel are threatened or retaliation occurs, reports will be made to the IG.

(9) Ensure compliance with this instruction, and that appropriate sanctions are imposed upon any employees who violate the provisions of this instruction and other applicable policies.

b. IO Monitors. IO Monitors will:

(1) Implement an IO program to educate and train intelligence personnel on applicable IO regulations and directives, as well as individual reporting responsibilities.

(2) Conduct IO training, and maintain records of this training for three calendar years, to include the dates personnel received training.

(3) Test personnel to confirm that they can identify, at a minimum, the regulations and instructions governing reporting procedures on QIA and the identity of the IO Monitors.

(4) Maintain an IO Continuity Book containing, at a minimum, copies of: applicable regulations and instructions; Standard Operating Procedures (SOP); training materials and documentation; IO Monitor appointment letters; records of IO SAVs and inspections; annual file review certification; self inspection reports; and Memorandums for Record (MFR). This information may be maintained electronically (e.g., through a web portal or on a shared drive).

(5) Ensure State IO policy and applicable references are maintained and available to the organization in hard copy and/or electronic format.

(6) Perform a self-inspection in the final quarter of the calendar year, if the organization was not evaluated that year by an IG from one of the following organizations: the Assistant to the Secretary of Defense, Intelligence Oversight; Major Command (Army) or MAJCOM (AF); ARNG; ANG; or NGB.

(7) Assist in making determinations on collectability of USPERs information within the 90-day window, as detailed in Procedure 2 of reference a, and seek assistance from the unit, State JA, IG, or NGB-J2.

(8) Review all files, electronic and paper, at a minimum of once per calendar year to ensure any USPERs information is retained IAW Procedure 4 of reference a. Certify that all files have been reviewed through MFR, which will be maintained on file in the IO Continuity Book.

(9) Immediately route QIA reports IAW Procedure 15 of reference a, and reports of Sensitive/Highly Sensitive incidents as articulated in paragraph 16 of reference a.

c. Intelligence personnel. All intelligence personnel will:

(1) Know the authorized mission of the organization to which assigned.

(2) Be familiar with Procedures 1-4, 12, 14, and 15 of reference a, and any other procedures applicable to the assigned unit's mission/discipline, this instruction, and any organization-specific regulation, instruction, or SOPs concerning the intelligence mission and/or discipline.

(3) Conduct intelligence activities IAW applicable law and policy, including references a and b; this instruction; and the policy of the appropriate intelligence discipline, and not exceed the authorities granted by them.

(4) Complete the organization's IO training within 90 days of the assignment/employment, as well as annual refresher training and pre-deployment training.

(5) Report any intelligence activity that may violate guiding laws or policies.

(6) Identify the organization's IO Monitor and know how to establish contact.

d. Other IGs. IGs responsible for organizations or units that perform intelligence or intelligence-related activities other than JFHQ-S IGs (e.g., an ARNG Division IG or ANG Wing IG) will:

(1) Know what intelligence and/or non-intelligence units that perform intelligence and intelligence-related activities come under IG jurisdiction, and understand the mission of each organization and which Procedures of reference a apply.

(2) Understand IG responsibilities as highlighted in Procedures 14 and 15 of reference a.

(3) Ensure that organizations performing intelligence functions have an established mechanism for reporting QIA.

(4) Report QIA and submit quarterly reports IAW reference f.

e. JA/Legal Advisors. JAs/Legal Advisors responsible for organizations or units that perform intelligence or intelligence-related activities will:

(1) Know what intelligence and/or non-intelligence units that perform intelligence or intelligence-related activities come under JA jurisdiction, and understand the mission of each organization and which laws and Procedures of reference a apply.

(2) Understand JA responsibilities as highlighted in Procedures 14 and 15 of reference a.

(3) Review all unit intelligence plans, proposals, and concepts, to include PUMs, for legality and propriety.

ENCLOSURE B

REFERENCES

- a. DoD 5240.1-R, December 1982, "Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons"
- b. Executive Order 12333, 4 Dec 1981, "United States Intelligence Activities", (as amended by Executive Orders 13284 (2003), 13355 (2004) and 13470 (2008))
- c. Army Regulation 381-10, 3 May 2007, "U.S. Army Intelligence Activities"
- d. Air Force Instruction 14-104, 23 April 2012, "Oversight of Intelligence Activities"
- e. DoD Directive 5200.27, 7 Jan 1980, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense"
- f. National Guard Regulation (NGR) 20-10/ANGI 14-101, 13 June 2011, "National Guard Inspector General Intelligence Oversight Procedures"
- g. 32 United States Code (U.S.C.) § 101, "Definitions"
- h. 10 U.S.C. § 10501, "National Guard Bureau"

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

A2	Director of Intelligence (Air Force)
AF	Air Force
ANG	Air National Guard
ARNG	Army National Guard
ASM	All States Memorandum
AT/FP	Anti-Terrorism/ Force Protection
CI	Counterintelligence
CJCS	Chairman of the Joint Chiefs of Staff
CNGB	Chief National Guard Bureau
DoD	Department of Defense
EO	Executive Order
G2	Director of Intelligence (Army)
IAW	In accordance with
IG	Inspector General
IMINT	Imagery Intelligence
IO	Intelligence Oversight
ISR	Intelligence, Surveillance, and Reconnaissance
J2	Joint Director of Intelligence
JA	Judge Advocate
JFHQ-S	Joint Forces Headquarters-State
LE	Law Enforcement
MAJCOM	Major Command (Air Force)
MFR	Memorandum for Record
NG	National Guard
NGB	National Guard Bureau
PUM	Proper Use Memorandum
QIA	Questionable Intelligence Activity
SAD	State Active Duty
SAV	Staff Assistance Visit
SecDef	Secretary of Defense
SIGINT	Signals Intelligence
SIO	Senior Intelligence Officer
SOP	Standard Operating Procedure
T-10	Title 10
T-32	Title 32
TAG	The Adjutant General
USPER	United States Person

PART II. DEFINITIONS

Air National Guard (ANG) -- That part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that is an Air Force; is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution; is organized, armed, and equipped wholly or partly at Federal expense; and is federally recognized IAW reference g.

Army National Guard (ARNG) -- That part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that is a land force; is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution; is organized, armed, and equipped wholly or partly at Federal expense; and is federally recognized IAW reference g.

Chief, National Guard Bureau (CNGB) -- The head of the NGB, which is a joint activity of DoD, and is the highest ranking officer in the NG and the NG of the U.S.; the latter of which is a joint reserve component of the U.S. Army and U.S. AF. The CNGB serves as the principal advisor to the SecDef, through the Chairman of the Joint Chiefs of Staff (CJCS), on matters involving non-federalized NG forces and other matters as determined by the SecDef. The CNGB also serves as the principal advisor to the Secretary of the Army, Secretary of the AF, the Chief of Staff of the Army, and the Chief of Staff of the AF, on matters relating to federalized forces of the NG of the U.S. and its subcomponents, the ARNG and ANG of the U.S.

Counterintelligence (CI) -- Information gathered and activities conducted to 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 activities, but not including personnel, physical, document, or communication security programs.

DoD Intelligence Components -- DoD Intelligence Components include: the Defense Intelligence Agency; the National Geospatial-Intelligence Agency, the National Reconnaissance Office, the National Security Agency/Central Security Service, and the intelligence elements of the Active and Reserve components of the Military Departments, including the U.S. Coast Guard when operating as a service in the Navy.

Foreign Intelligence -- Information related to the capabilities, intentions, and activities of foreign powers, organizations, or persons, but not including counterintelligence except for information on international terrorist activities.

Intelligence activity -- All activities that DoD Intelligence Components are authorized to undertake pursuant to reference b, and includes activities conducted by “non-intelligence” organizations.

Intelligence oversight monitor -- An individual assigned to establish and implement intelligence oversight procedures and training, in order to evaluate staff/unit personnel intelligence oversight knowledge, and resolve collectability determinations in consultation with his or her servicing IG and legal advisor.

Intelligence-related activity -- Activities usually linked directly or indirectly to the intelligence field. Those activities outside the consolidated defense intelligence program that respond to operational commanders' tasking for time-sensitive information on foreign entities; respond to national intelligence community tasking of systems whose primary mission is support to operating forces; train personnel for intelligence duties; provide an intelligence reserve; or are devoted to research and development of intelligence or related capabilities. Specifically excluded are programs that are so closely integrated with a weapon system that their primary function is to provide immediate-use targeting data.

National Guard Bureau (NGB) -- A joint activity of the DoD pursuant to reference h. The CNGBI is under the authority, direction, and control of the SecDef. The SecDef normally exercises authority, direction, and control through the Secretaries of the Army and the AF for matters pertaining to their responsibilities in law or DoD policy.

National Guard Intelligence Component -- NGB, T-32 NG JFHQ-S, and T-32 NG intelligence units and staff organizations, and T-32 non-intelligence organizations that perform intelligence or intelligence-related activities.

Questionable Intelligence Activity (QIA) -- Any conduct that constitutes, or is related to, an intelligence activity that may violate the law, any executive order or Presidential directive, including references a and b, this instruction, and/or other NGB, Army, and AF policy documents and instructions.

United States Person (USPER) -- A U.S. citizen, born in the U.S. or naturalized; an alien known by the DoD intelligence component 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., unless it is directed and controlled by a foreign government or governments.