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The Honorable Greg Walden
Republican Leader
Committee on Energy and Commerce
House of Representatives

The Honorable Brett Guthrie
Republican Leader
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

Environmental Protection Agency: Recent Policy Could Improve Working Relations between EPA’s Office of Inspector General and Office of Homeland Security

For at least 7 years, conflict has existed between the Environmental Protection Agency’s (EPA) Offices of Inspector General (OIG) and Homeland Security (OHS) with respect to their jurisdiction over certain activities, according to EPA and OIG officials. In October 2018, a federal judge characterized prior aspects of the conflict as “a shameful turf war.” In part to help improve the working relationship between OIG and OHS, the EPA Acting Administrator in December 2018 approved implementation of an interim policy, according to EPA officials. On May 31, 2019, the Administrator approved a final version of the policy, Order 3230–Intelligence Operations (see enclosure I).¹

You asked us to review issues related to the working relationship between EPA’s OIG and OHS. This report examines (1) the key activities of OIG and OHS, the extent to which these activities overlap, and the responsibility for any overlapping activities and (2) the extent to which OIG and OHS have coordinated any overlapping activities.

To determine the key activities of OIG and OHS and the extent to which these activities overlap,² we reviewed OIG and agency documents and interviewed officials from these offices. To identify the responsibility for any key OIG and OHS activities that overlap, we reviewed relevant laws, EPA policies, and other sources establishing responsibilities, such as memoranda from EPA leadership. We also interviewed officials from OIG, OHS, EPA’s Office of

¹Order 3230 supersedes EPA Order 3220–Intelligence Operations, which was issued on December 30, 2008. Order 3230 also supersedes the memorandum issued by the Acting Administrator on May 31, 2013, concerning managing OIG access to sensitive compartmented information and the memorandum issued by the Administrator on June 19, 2014, concerning OIG and OHS cooperation. Order 3230 states that it is to be read in conjunction with Order 3222–EPA Insider Threat Policy, which formally establishes EPA’s Insider Threat Program and provides direction and guidance to promote the development of this program.

²Overlap occurs when multiple agencies or programs have similar goals, engage in similar activities or strategies to achieve them, or target similar beneficiaries. GAO, *Fragmentation, Overlap, and Duplication: An Evaluation and Management Guide*, [GAO-15-49SP](#) (Washington, D.C.: Apr. 14, 2015).

General Counsel, and the Federal Bureau of Investigation (FBI) about OHS' and OIG's respective responsibilities. We compared this information with federal standards for internal control related to the control environment.³

To determine the extent to which OIG and OHS have coordinated any overlapping activities, we reviewed OIG and agency documents. We interviewed officials from OIG, OHS, and EPA's Office of General Counsel about coordination between OIG and OHS. We compared coordination efforts against relevant agency policy—including EPA's new May 2019 policy, Order 3230—Intelligence Operations,⁴ as well as selected leading collaboration practices we identified in prior work.⁵ We focused on the three practices most relevant to our work: (1) clarifying roles and responsibilities, (2) agreeing on common terminology and definitions, and (3) developing ways to continually update and monitor written agreements on how agencies coordinate.

We conducted this performance audit from July 2018 to October 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary, based on our review of agency documents and interviews with agency officials, we found that key activities of OIG and OHS seldom overlap except for investigations and preliminary inquiries related to national security involving agency employee misconduct. EPA's new May 2019 policy clarifies responsibility for these activities. Agency officials told us that OIG and OHS generally have not coordinated their overlapping activities, but the new policy may increase coordination on these activities in the future. Officials also expressed optimism that the new policy would improve overall working relations between OIG and OHS.

Background

EPA's OIG and OHS were created at different times to serve distinct purposes. The Inspector General Act of 1978 established OIG to audit and investigate EPA programs and operations and to detect and prevent fraud and abuse in them.⁶ OIG operates as an independent office within EPA and receives an appropriation separately from the agency. In addition, by statute, the Inspector General reports only to, or is subject to general supervision by, the EPA Administrator

³GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

⁴We refer to the final version of Order 3230 as EPA's new May 2019 policy. Given the significance of the policy to our audit objectives, we chose to complete our audit work after the policy became final so that we could incorporate it into our analysis.

⁵See, for example, Order 3222—EPA Insider Threat Policy and Order 3220—Intelligence Operations. GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sept. 27, 2012). For the purposes of this report, we use the terms collaboration and coordination interchangeably.

⁶Pub. L. No. 95-452, § 4(a)(1),(3), 92 Stat. 1101, 1102 (1978) (*classified as amended at 5 U.S.C. Appx. § 4(a)(1), (3)*). The act established Offices of Inspectors General at 12 federal agencies. It was later amended to establish offices at additional agencies. The act transferred EPA's Office of Audit and Security and Inspection Division to the EPA Office of Inspector General.

or Deputy Administrator.⁷ In contrast, OHS was established by a memorandum from the EPA Administrator in 2003 as part of federal efforts to better prepare for potential terrorist threats after the attacks of September 11, 2001.⁸ According to OHS officials, OHS' mission is to coordinate EPA's planning, prevention, and response to homeland security-related incidents, such as threats to water and wastewater treatment facilities. OHS also supports the U.S. intelligence community with helping to thwart a possible terrorist attack, for example, by sharing technical expertise with the FBI.⁹ OHS is located within EPA's Office of the Administrator.

Disputes between OIG and OHS have been reported at least as far back as 2012 when, according to OIG officials, OHS entered into a memorandum of understanding (MOU) with the FBI Counterintelligence Division without OIG's knowledge or concurrence. The Assistant Inspector General for Investigations testified to Congress that the MOU conflicted with the Inspector General Act because the MOU designated OHS as the sole agency contact point for all FBI investigations related to national security, including those involving employee misconduct, which the Assistant Inspector General stated fall within OIG's statutory jurisdiction.¹⁰ OHS officials, on the other hand, told us that the purpose of the MOU was not to exclude OIG but, rather, to (1) clarify EPA's roles and responsibilities in supporting FBI national security investigations and (2) facilitate cooperation in protecting national security interests and guarding against insider threats. OHS officials told us that they entered into the MOU after legal review by EPA Office of General Counsel staff and the FBI National Security Law Branch and briefings with EPA and FBI senior leadership. The EPA Administrator rescinded the MOU in July 2015.

In October 2013, an OIG Special Agent alleged that she was assaulted by an OHS employee. EPA and OIG management enlisted the assistance of the Department of Defense Office of Inspector General to investigate the incident. The investigation did not substantiate this allegation.¹¹ Also, in a separate incident in May 2014, EPA OIG's Assistant Inspector General for Investigations testified that OHS conducted interviews that impeded OIG's ability to

⁷Pub. L. No. 95-452, § 3(a), 92 Stat. 1101, 1101 (1978) (*classified as amended at* 5 U.S.C. Appx. § 3(a)). However, the Administrator and Deputy Administrator are prohibited by statute from preventing or prohibiting the Inspector General from initiating, carrying out, or completing any audit or investigation.

⁸Environmental Protection Agency, Administrator, *Permanent Homeland Security Office*, memorandum to all EPA employees (Feb. 6, 2003).

⁹A 2005 memorandum from the EPA Administrator established an Intelligence Operations function within OHS. Environmental Protection Agency, Administrator, *Restructuring in the Office of the Administrator*, Memorandum to all EPA Employees (Oct. 28, 2005). The intelligence community includes the Office of the Director of National Intelligence; Central Intelligence Agency; National Security Agency; Defense Intelligence Agency; National Geospatial-Intelligence Agency; National Reconnaissance Office; other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; the intelligence elements of the Army, Navy, Air Force, Marine Corps, Coast Guard, FBI, Drug Enforcement Administration, and Department of Energy; Bureau of Intelligence and Research of the Department of State; Office of Intelligence and Analysis of the Department of the Treasury; Office of Intelligence and Analysis of the Department of Homeland Security; and other elements designated by the President or jointly by the Director of National Intelligence and head of the agency. See 50 U.S.C. § 3003(4).

¹⁰Patrick Sullivan, EPA Assistant Inspector General for Investigations, Office of the Inspector General, *How the EPA's Office of Homeland Security Impedes the Investigations of the EPA's Office of Inspector General*, testimony before the House Committee on Oversight and Government Reform, 113th Cong., 2nd sess., May 7, 2014.

¹¹Department of Defense, Office of the Inspector General, Defense Criminal Investigative Service, *Report of Investigation*, 2015000059-07-OCT-15-HQ-FF0 (Washington, D.C.: July 16, 2015).

investigate an EPA employee who did not report to work but submitted time cards to EPA and claimed he was doing work for the Central Intelligence Agency.¹² However, OHS officials have denied conducting any investigations regarding this matter.

Since 2014, OIG has reported to Congress on several occasions that OHS consistently withheld information from OIG, citing national security concerns, and that OHS was performing investigative functions in conjunction with the FBI involving employee misconduct that fell within OIG's statutory jurisdiction.¹³ In June 2014, the EPA Administrator signed a memorandum that included procedures for sharing information intended to address concerns raised by OIG regarding its ability to take timely action to, as needed, address any existing or possible conflicts between national security matters and activities undertaken by OIG pursuant to its authority.¹⁴ The memorandum stated that the work of both offices must be performed in a manner that respects the roles of each and places a premium on cooperation. The procedures were premised on the principle of, among other things, the speedy, respectful, and decisive resolution of any perceived or actual conflicts to ensure that neither national security matters nor OIG investigations were jeopardized or compromised.

OHS officials told us that their office has tried over the years to improve information sharing with OIG. In a July 2015 memorandum, the EPA Administrator directed OHS to make available to the Inspector General, for purposes of carrying out its duties under the Inspector General Act, all information within its possession.¹⁵ As previously noted, this memorandum also rescinded the 2012 MOU between OHS and the FBI—a major source of friction with OIG. Additionally, in 2016, OHS drafted protocols for working with OIG on national security incidents. These protocols included when and how to share relevant information with OIG, including information on inquiries being conducted by OHS. According to OIG and OHS officials, these protocols were never finalized or implemented, in part due to a lack of trust between OIG and OHS. Despite various attempts to improve working relations, conflict has persisted between the two offices, according to OIG and OHS officials.

Key Activities of OIG and OHS Seldom Overlap Unless They Concern Both National Security and Employee Misconduct, and New EPA Policy Clarifies Responsibility in This Area

According to officials we interviewed and documents we reviewed, key activities of OIG and OHS seldom overlap except for investigations and preliminary inquiries related to national security involving agency employee misconduct, and EPA's new policy, Order 3230, clarifies

¹²Testimony of Patrick Sullivan, EPA Assistant Inspector General for Investigations, before the House Committee on Oversight and Government Reform, May 7, 2014.

¹³See, for example, EPA Office of Inspector General, *Semiannual Report to Congress: October 1, 2013-March 31, 2014*, EPA-350-R-14-001 (Washington, D.C.: May 2014); *Ongoing Negotiations Regarding Impediments to Full Inspector General Access with the Office of Homeland Security and Importance of Timely Reporting of Employee Misconduct* (Washington, D.C.: Apr. 30, 2015); *Semiannual Report to Congress: October 1, 2017-March 31, 2018*, EPA-350-R-18-001 (Washington, D.C.: May 2018).

¹⁴Environmental Protection Agency, Administrator, *Working Effectively and Cooperatively*, memorandum to the Inspector General of EPA and Acting Associate Administrator, OHS (June 19, 2014).

¹⁵Environmental Protection Agency, Administrator, memo to the Inspector General of EPA (July 7, 2015).

responsibility for these activities.¹⁶ According to OIG's website and officials, OIG's key activities include conducting independent audits, evaluations, and investigations; making evidence-based recommendations to promote economy, efficiency, and effectiveness; and preventing and detecting fraud, waste, abuse, mismanagement, and misconduct at EPA and the Chemical Safety and Hazard Investigation Board.¹⁷ OIG fulfills its mission primarily by issuing audit and evaluation reports that recommend corrective actions, conducting investigations, and referring criminal cases to the U.S. Department of Justice for prosecution, according to the congressional testimony of a senior OIG official.¹⁸

In contrast with OIG, OHS activities are more narrowly focused on national security. Key OHS activities include advising senior agency leadership on national security and homeland security, coordinating with White House offices and federal agencies that have homeland security missions, leading and coordinating EPA homeland security programs, and operating EPA's Intelligence Program, according to OHS documents and officials.¹⁹ Through EPA's Intelligence Program, OHS conducts preliminary inquiries on potential counterintelligence matters that may be referred to OIG, another EPA office, or the intelligence community, as appropriate, according to a senior OHS official we interviewed.²⁰

OIG and OHS officials told us that their offices' key activities seldom overlap, except in situations involving agency employee misconduct and national security. According to OIG and OHS officials, each office has responsibilities in such situations that are based on each office's respective authority. OIG is authorized to investigate employee misconduct under the Inspector General Act of 1978, as amended. OIG is also authorized to make such investigations related to the administration of EPA's programs and operations that are necessary or desirable in OIG's judgment. OHS conducts its activities—which focus on national security, as discussed above—under the agency's general authority to manage employees, operations, documents, and property, according to EPA's Office of General Counsel.²¹ Consequently, OHS officials said that their office's key activities could overlap with those of OIG. For example, if an EPA employee may have shared classified information with a foreign entity, OIG could decide to investigate.

¹⁶A senior OHS official stated that Order 3230 had been under development and that our work for this review helped encourage OHS to finalize it.

¹⁷The Chemical Safety and Hazard Investigation Board is an independent, non-regulatory federal agency that investigates the root causes of major chemical incidents. Annual appropriation acts have designated the EPA Inspector General as the Inspector General of the Chemical Safety and Hazard Investigation Board.

¹⁸Testimony of Patrick Sullivan, EPA Assistant Inspector General for Investigations, before the House Committee on Oversight and Government Reform, May 7, 2014.

¹⁹According to an agency document, the mission of the EPA Intelligence Program is to provide the EPA policymaker and authorized end user with relevant, reliable, objective, and timely all-source intelligence bearing on matters of environmental policy and regulation, terrorism information where EPA functions to preserve or assist in the restoration of human health and the environment, and all other national security activities vital for the performance of EPA personnel and programs.

²⁰Counterintelligence is information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities. See 50 U.S.C. § 3003(3).

²¹Specifically, officials with EPA's Office of General Counsel identified 5 U.S.C. § 301, which authorizes federal agencies to issue regulations governing its employees, performance of its business, and use and control of documents and property, and 5 U.S.C. § 7106(a)(2)(A), which authorizes agencies to hire, assign, discipline, and remove federal employees.

Concurrently, OHS could, at the request of the FBI, attempt to verify certain facts—sometimes through preliminary inquiries—after advising the FBI of potential unauthorized disclosure of classified information. While such a scenario demonstrates the potential for key activities to overlap under certain circumstances, OIG and OHS officials said that such circumstances rarely occur.

EPA's new May 2019 policy, Order 3230, includes language designed to reduce long-standing disagreements between OIG and OHS about their responsibilities for overlapping activities, according to officials from OIG, OHS, and EPA's Office of General Counsel.²² Order 3230 replaced Order 3220, which had been in effect since December 2008.²³ We reviewed Order 3220 and found that it did not define certain key activities—in particular, “investigations” or “preliminary inquiries”—nor did it assign leadership roles or clarify major responsibilities related to these activities. Ambiguities in these areas may have contributed to conflict between OIG and OHS, according to officials we interviewed. Order 3230 addresses these issues by defining key activities, identifying OIG responsibilities, and assigning responsibilities for homeland and national security activities to OHS. This is consistent with federal standards for internal control.²⁴ Specifically, Order 3230:

- Defines “investigations” as a formal process of fact-finding conducted by internal or external law enforcement entities in response to allegations or information regarding a suspected violation of law, regulation, rule, or policy;
- States that OIG serves as the primary office responsible for investigating matters with a nexus to national security, whenever those matters concern waste, fraud, or abuse, and intrusions into EPA network and computer systems; threats to EPA facilities, personnel, or assets; or allegations of misconduct related to EPA employees or contractors;²⁵
- Defines “preliminary inquiries” as an examination of the facts surrounding an incident of potential counterintelligence interest to determine if a counterintelligence investigation is necessary; and
- Assigns responsibility to the Associate Administrator/Deputy Associate Administrator of OHS, or designee, for conducting preliminary inquiries in response to requests from outside agencies.

²²Order 3230 also elevates certain responsibilities to the Associate Administrator/Deputy Associate Administrator of OHS, or a designee. For example, the order designates this official or designee as the Federal Senior Intelligence Coordinator and principal EPA liaison to the intelligence community. The Federal Senior Intelligence Coordinator is the senior position within the agency designated by the Administrator upon the request of the Director of National Intelligence to serve as the primary liaison between EPA and the intelligence community. Prior to Order 3230, the Federal Senior Intelligence Coordinator was not the Associate Administrator or Deputy Associate Administrator.

²³EPA also reviewed Order 3220 in December 2011.

²⁴According to federal standards for internal control, management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives. For example, as part of establishing an organizational structure, management considers how units interact in order to fulfill their overall responsibilities. See [GAO-14-704G](#).

²⁵In contrast, Order 3220 did not identify which office would be responsible for investigating matters with a nexus to national security. However, a 2014 memorandum from the EPA Deputy Administrator emphasized EPA's “longstanding practice” of using OHS for investigating national security matters at EPA. Officials from the OIG noted that OIG is not bound by the Order and the IG's authority derives from the Inspector General Act and not from an EPA Order, which cannot override the statute. In technical comments in response to a draft of this report, OIG officials reiterated this position and also stated that OIG was consulted on Order 3230 and largely had its comments accommodated.

OIG and OHS Generally Have Not Coordinated Overlapping Activities in National Security and Employee Misconduct, but a Recent EPA Policy Could Increase Coordination

According to agency officials we interviewed, OIG and OHS generally have not coordinated when their key activities related to national security and employee misconduct overlap. However, we found, based on our analysis, that Order 3230 may increase coordination on these activities in the future. Officials from OIG and OHS each told us that, previously, their respective office was not required to coordinate with the other office in carrying out activities for which their office was responsible. The officials noted, however, that there had been some attempts to improve coordination between the offices but that these efforts failed to gain traction, partly because of a lack of trust.²⁶

EPA's new May 2019 policy, Order 3230, contains provisions that may increase coordination between OIG and OHS. As discussed earlier, the order clarifies roles and responsibilities and defines key activities, consistent with leading collaboration practices we have identified.²⁷ Moreover, Order 3230 provides written guidance for information sharing across OIG, OHS, and other offices. For example, Order 3230 states that OIG personnel will share with OHS any intelligence or sensitive information related to national security, as appropriate. Additionally, the order states that OHS, unless prohibited by law, will share information with OIG about specific matters that involve an EPA employee or contractor and fall within the jurisdiction of OIG.²⁸ Since sharing information has been an area of contention between OIG and OHS, this written guidance could increase coordination between them through greater information sharing.

OHS officials told us that they are developing an implementation plan for Order 3230 that includes information-sharing protocols to improve coordination between the two offices on preliminary inquiries. According to OHS officials, these protocols will be developed with input from OIG as well as EPA's Office of General Counsel. OHS officials said that they have begun drafting the new protocols and hope the new protocols will help build trust between OIG and OHS.

Order 3230 also provides for OHS to periodically review the order to ensure its continued effectiveness. This is consistent with the leading collaboration practice related to written agreements on how agencies coordinate, which states that written agreements are most effective when they are regularly monitored and updated.²⁹

Since EPA has only recently implemented and finalized Order 3230, it is too early to determine whether the order will increase collaboration between the two offices. However, officials from EPA's OIG, OHS, and Office of General Counsel all expressed optimism that the new order would improve overall working relations between OIG and OHS.

²⁶For example, as previously discussed, OHS drafted protocols for working with OIG on national security incidents, but the protocols were never finalized.

²⁷[GAO-12-1022](#). Leading collaboration practices include clarifying roles and responsibilities and agreeing on common terminology and definitions, among other practices.

²⁸The order also directs other offices within EPA to share intelligence or sensitive information related to national security with OHS, including EPA's Offices of Mission Support, International and Tribal Affairs, Research and Development, Land and Emergency Management, Water, and General Counsel.

²⁹[GAO-12-1022](#).

Agency Comments

We provided a draft of this report to EPA's Offices of the Administrator and Inspector General for their review and comment. In their written comments, both offices generally agreed with our findings. In its comments, reproduced in enclosure III, the Office of the Administrator stated that new personnel are in place at OHS to help improve its working relations with OIG and that EPA leadership believes it has made changes necessary to address and repair past problems. In its comments, reproduced in enclosure II, OIG stated that the new EPA order should facilitate greater collaboration and that OIG looks forward to an improved working relationship with OHS. OIG also provided technical comments, which we incorporated as appropriate.

As agreed, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Administrator and Inspector General of the U.S. Environmental Protection Agency, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or GomezJ@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report include Chad M. Gorman (Assistant Director), John Johnson (Analyst in Charge), Gina Hoover, Cynthia Norris, Jeanette Soares, Sarah Veale, and Michelle R. Wong.



J. Alfredo Gómez
Director, Natural Resources and Environment

Enclosures – 3

Enclosure I: Order 3230 – Intelligence Operations

Classification No.: 3230
Approval Date: 05/31/2019

Order 3230 - Intelligence Operations

1. **PURPOSE:**
The purpose for issuing Order 3230 is to reaffirm the Office of Homeland Security's role in managing and sharing intelligence across the U. S. Environmental Protection Agency and coordinating information sharing across the Intelligence Community.

2. **BACKGROUND:**
EPA's mission expanded to meet new challenges in the wake of September 11, 2001. The agency has both assets and programmatic responsibilities that are of interest to foreign adversaries. To deal with this environment effectively, the agency needed a way of efficiently reviewing, analyzing, and disseminating timely, useful, and potentially sensitive information and intelligence. The EPA Office of Homeland Security was established by Administrator Whitman on February 6, 2003. The agency formally established the intelligence function within the OHS via a memorandum from EPA Administrator Steve Johnson, dated October 28, 2005 to coordinate intelligence matters across the whole of government to protect critical infrastructure. OHS was given the responsibility of advising the Administrator and other senior EPA officials on matters related to national security and intelligence. OHS was also tasked to serve as the principal agency liaison to the U.S. Intelligence Community. Additionally, OHS was given the responsibility of coordinating with agency programs and regions on matters related to national security and intelligence that are deemed classified or sensitive.

3. **POLICY:**
In compliance with all applicable authorities and directives, OHS shall oversee the agency's roles and responsibilities related to national security and intelligence through the responsibilities highlighted below.

4. **SCOPE AND APPLICABILITY:**
This order applies to all intelligence activities, intelligence-related activities, special access programs, controlled unclassified activities within the agency that are related to national security and intelligence. It applies to all organizational components, activities and their personnel, unless otherwise specified. This order does not apply to information related to the Water Vulnerability Assessments or information related to the Water Information Sharing and Analysis Center (WaterISAC). This order should be read in conjunction with Order 3222, EPA Insider Threat Policy. This order supersedes EPA Order 3220, dated December 30, 2008. This order also supersedes the memorandum issued by Acting

Administrator Perciasepe on May 31, 2013 concerning managing Office of Inspector General access to Sensitive Compartmented Information and the memorandum issued by Administrator McCarthy on June 19, 2014 concerning OIG and OHS cooperation.

5. DEFINITIONS:

(a) The National Security Act of 1947 Sec.3. [50 U.S.C. §401a] defines the term “intelligence” to include foreign intelligence and counterintelligence.

- Foreign Intelligence means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist organizations.¹
- Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.²
- National Intelligence and “intelligence related to national security” refer to all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that—
 - (A) pertains, as determined consistent with any guidance issued by the President, to more than one United States government agency; and
 - (B) that involves—
 - (i) threats to the United States, its people, property, or interests;
 - (ii) the development, proliferation, or use of weapons of mass destruction; or
 - (iii) any other matter bearing on United States national or homeland security.³

(b) **Law Enforcement Intelligence or Criminal Intelligence:** The analysis of information related to criminal activity, trends related to criminal activity, and security threats related to law enforcement personnel from criminal activity. The same information may be both criminal intelligence and intelligence related to national security, if both definitions are met.

1 National Security Act of 1947 Sec.3. [50 U.S.C. §401a]

2 National Security Act of 1947 Sec.3. [50 U.S.C. §401a]

3 National Security Act of 1947 Sec.3. [50 U.S.C. §401a]

- (c) **Homeland Security Intelligence:** The collection and analysis of information concerned with domestic threats to critical infrastructure, community health, and public safety, for the purpose of preventing the threats or mitigating the effects of the threats. As with Law Enforcement Intelligence, Homeland Security Intelligence may overlap with intelligence related to national security.
- (d) **Federal Senior Intelligence Coordinator (FSIC)** – The senior position within the agency designated by the Administrator upon request of the Director of National Intelligence to serve as the primary liaison between EPA and the Intelligence IC.
- (e) **Federal Intelligence Coordination Office (FICO):** The office within EPA that coordinates with the IC to support policy makers and other intelligence customers within EPA.
- (f) **National Security:** The national defense or foreign relations of the United States.
- (g) **Preliminary Inquiry:** An examination of the facts surrounding an incident of potential counterintelligence (CI) interest, to determine if a CI investigation is necessary.
- (h) **Investigation:** Formal process of fact finding conducted by internal or external law enforcement entities in response to allegations or information regarding a suspected violation of law, regulation, rule, or policy.

6. RESPONSIBILITIES:

Associate Administrator/Deputy Associate Administrator, Office of Homeland Security, or his/her designee

Coordinates all activities related to homeland security and national security at EPA and serves as the Administrator’s National/Homeland Security Advisor.

- (a) Advises the Administrator and other senior EPA officials on all matters related to national security.
- (b) Serves as the Federal Senior Intelligence Coordinator (FSIC) and principal EPA liaison to the U.S. IC. This includes coordinating requests from the IC for EPA assistance (e.g. evaluating a piece of intelligence or sensitive information from a scientific or technical perspective), or requests from EPA for IC assistance.
- (c) Advises the Administrator on decisions related to classification of documents pursuant to the Administrator’s Original Classification Authority.

- (d) Serves as the point-of-contact for the Department of Homeland Security and the White House National Security Council.
- (e) Represents the Administrator and Deputy Administrator, as appropriate, on national/homeland security matters.
- (f) Leads all activities at EPA related to the notification and dissemination of intelligence, terrorism information, and other sensitive information.
- (g) Develops and implements the agency's policies and procedures for reviewing, analyzing and disseminating National Security Intelligence and sensitive information.
- (h) Manages the execution of the EPA's Intelligence Enterprise, Insider Threat Program, and Defensive Counterintelligence program, and ensures the EPA is properly postured, resourced, and staffed to conduct all necessary intelligence activities.
- (i) Oversees the EPA Senior Intelligence Operations Specialist, who serves as the Senior Intelligence Official, and Intelligence Team Leader.
- (j) Oversees the Program Manager for EPA's Counterintelligence Program.
- (k) Ensures regularly scheduled intelligence briefings are provided to the Administrator, Deputy Administrator, Chief of Staff, the OIG, and other senior EPA officials. Serves as the lead for ensuring intelligence briefings are provided to EPA personnel.
- (l) Serves as EPA's representative on federal government working groups focused on matters dealing with national security and intelligence, except as otherwise indicated below. OHS will request support on these working groups from various program and regional offices in accordance with their specific programmatic, scientific and technical expertise.
- (m) Conducts preliminary inquiries in response to requests from outside agencies. Unless prohibited by law, shares information with the EPA OIG about specific matters whenever such matters involve an EPA employee or contractor and fall within the jurisdiction of the OIG.
- (n) Ensures the implementation of all other OHS responsibilities, including responsibilities designated to the Senior Intelligence Operations Specialist. For example:
 - i. Manages and directs the daily operations of EPA's Counterintelligence Program. This includes receiving and fulfilling requests from the IC regarding information about EPA personnel, programs and facilities

- related to counterintelligence, counterterrorism or weapons of mass destruction.
- ii. Manages and directs EPA's Insider Threat Program manager and manages the Insider Threat Program in consultation with the Senior Insider Threat Official and the Chairman of the Insider Threat Governance Board pursuant to EPA Order 3222.
 - iii. Coordinates with EPA programs and regions on matters related to classified and other sensitive information. This includes conducting intelligence analysis at the request of EPA program and regional offices and coordinating the dissemination of this intelligence/sensitive information with the affected EPA program and regional offices, as appropriate.
 - iv. Ensures close coordination and effective sharing of relevant intelligence with the Criminal Investigation division and the OIG's Assistant Inspector General for Investigations. Ensures close coordination and effective sharing of Homeland Security intelligence with EPA Special Teams, the Office of Water (OW), Security Management Division (SMD), and the Office of Land and Emergency Management (OLEM).
 - v. Coordinates the EPA review of pre-publication intelligence products from the Intelligence Community and the dissemination of published intelligence products from the IC to EPA personnel. Intelligence products generated by EPA program and regional offices will be coordinated for comment by the publishing office and OHS.
 - vi. Reviews requests by EPA personnel for access to the Department of Homeland Security's Homeland Security Data Network (HSDN) and the Central Intelligence Agency's Joint Worldwide Intelligence Communications System (JWICS). If initially approved by the FSIC, requests for access are then referred to the Department of Homeland Security or the Central Intelligence Agency (CIA), through the SMD for consideration.
 - vii. Reviews requests by EPA personnel to acquire access to Sensitive Compartmented Information (SCI), except as otherwise noted in this Order. If initially approved, requests for access to SCI are then referred to the CIA for consideration through the SMD.

Assistant Administrator, Office of Mission Support (OMS), or his/her designee

- (a) Oversees EPA's National Security Information (NSI) program and coordinates with senior managers to disseminate federal requirements as stated in EPA Order 4850.
- (b) OMS personnel will also share with OHS any intelligence or sensitive information related to national security.

- (c) Responsible for providing products, resources, and services necessary to protect and safeguard EPA personnel, facilities, infrastructure, and critical assets nationwide.
- (d) Makes determinations and takes appropriate actions required by law, Executive Orders, or regulations with regards to personnel security programs.

Assistant Administrator, Office of Enforcement and Compliance Assurance (OECA), or his/her designee

- (a) Serves as the primary point of contact for operational law enforcement liaison activities and law enforcement intelligence.
- (b) Disseminates law enforcement intelligence and sensitive information within OECA (in coordination with OHS), including providing briefings to OECA senior management. OECA also disseminates law enforcement sensitive information, when related to its mission of criminal enforcement. Within the office, OECA also disseminates other types of intelligence, specifically intelligence related to national security, terrorism information, and law enforcement sensitive information, when related to its mission of criminal enforcement or the mission of the Administrator's Protective Services Detail (in coordination with OHS).
- (c) Serves on federal government working groups (in coordination with OHS) that focus on law enforcement intelligence related issues.
- (d) Develops and implements policies and procedures for reviewing, analyzing, and disseminating law enforcement intelligence and sensitive information within OECA.

Assistant Administrator, Office of International and Tribal Affairs (OITA), or his/her designee

- (a) Serves as a point of contact (in coordination with OHS) to receive and disseminate, as appropriate, classified and unclassified cables, or other reports, from the Department of State and U.S. diplomatic/consular posts overseas.
- (b) OITA personnel will also share with OHS any intelligence or sensitive information related to national security.

Assistant Administrator, Office of Research and Development (ORD), or his/her designee

- (a) Serves on federal government working groups (in coordination with OHS) that focus on intelligence and sensitive information related to scientific and technical issues.
- (b) Works with the IC (in coordination with OHS) to help both EPA and the IC fulfill their scientific research, data collection and evaluation missions.

- (c) ORD personnel will also share with OHS any intelligence or sensitive information related to national security.

Assistant Administrator, Office of Land and Emergency Management (OLEM), or his/her designee

- (a) Serves as a point of contact (in coordination with OHS) for intelligence and sensitive information related to urgent, time sensitive preparedness and emergency response issues that require an OLEM/Regional field response (e.g. On-Scene Coordinators or EPA Special Teams). During active EPA field operations, works with OHS to notify other Special Teams at EPA, including, but not limited to the Chemical, Biological, Radiological, Nuclear Consequence Management Advisory Team or Environmental Response Team, about this intelligence and sensitive information, as appropriate.
- (b) Serves on federal government working groups (in coordination with OHS) that focus solely on intelligence and sensitive information related to preparedness and emergency response issues that require an OLEM response.
- (c) Serves as the lead (in coordination with OHS) for the National Security Emergency Preparedness Program (NSEP) as described in EPA Order 2040.1.
- (d) OLEM personnel will also share with OHS any intelligence or sensitive information related to national security.

Assistant Administrator, Office of Water (OW), or his/her designee

- (a) Serves as a point of contact (in coordination with OHS and OLEM) for intelligence and sensitive information related to urgent, time sensitive preparedness and emergency response issues that require an OW response.
- (b) Serves on federal government working groups (in coordination with OHS and OLEM) that focus on intelligence and sensitive information related to critical infrastructure protection, preparedness and emergency response issues that require an OW response.
- (c) Maintains responsibility for all information contained in the Water Vulnerability Assessments.
- (d) Maintains responsibility for oversight of all activities related to the WaterISAC.
- (e) OW personnel will also share with OHS any intelligence or sensitive information related to national security.

Inspector General, Office of the Inspector General (OIG), or his/her designee

- (a) Serves as the primary office responsible for investigating matters with a nexus to national security, whenever those matters concern waste, fraud or abuse, and any of the following:
 - Intrusions into EPA network and computer systems;
 - Threats to EPA facilities, personnel or assets; or
 - Allegations of misconduct related to EPA employees or contractors.
- (b) Provides oversight of EPA's Intelligence Program, and maintains responsibility for investigating, or referring for investigation, reports of wrongdoing or misconduct by employees or contractors that involve fraud, waste or abuse within intelligence programs or operations.
- (c) Reviews and approves, if appropriate, requests by OIG personnel for access to SCI. If initially approved, requests for access to SCI are then referred to the CIA for consideration through the SMD, with a copy of the request provided to the EPA FSIC.
- (d) OIG personnel will also share with OHS any intelligence or sensitive information related to national security, as appropriate.
- (e) Nothing in this modifies or restricts in any way the authorities of the OIG under the IG Act of 1978, as amended, or any other statutory authority of the OIG.

General Counsel, Office of General Counsel (OGC), or his/her designee

- (a) Provides legal guidance to help ensure that all intelligence activities, intelligence-related activities, special access programs, sensitive activities, and special activities related to national security and intelligence within EPA are conducted in a legal manner.
- (b) OGC personnel will also share with OHS any intelligence or sensitive information related to national security, as appropriate.

7. AUTHORITIES:

- (a) 5 U.S.C. § 301
- (b) 5 U.S.C. § 7106(a)
- (c) National Security Act of 1947
- (d) Intelligence Reform and Terrorism Prevention Act of 2004
- (e) 32 CFR Parts 2001 and 2003 (Classified National Security Information)
- (f) Executive Order 13526 (Classified National Security Information)

- (g) Executive Order 13587 (Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information)
- (h) Intelligence Community Directive 404 (Executive Branch Intelligence Customers)
- (i) Memorandum from EPA Administrator Stephen L. Johnson dated October 28, 2005.

8. REFERENCES:

- (a) EPA Order 2040.1a1 (National Security Emergency Preparedness Policy)
- (b) EPA Order 3222 (Insider Threat Policy)
- (c) EPA Order 3221 ((Foreign Visitors and Assignments Program)
- (d) EPA Order 4850 (National Security Information)
- (e) Executive Order 12333 (United States Intelligence Activities)
- (f) Presidential Decision Directive/NSC-12 (Security Awareness and Reporting of Foreign Contacts)
- (g) Homeland Security Presidential Directive-9 (Defense of United States Agriculture and Food)
- (h) The National Intelligence Strategy of the United States of America (2019)
- (i) The National Counterintelligence Strategy of the United States of America (2016)
- (j) Defensive Counterintelligence Program Blueprint (2010)
- (k) EPA Topics of Interest (26 February 2010)
- (l) Fundamental Elements of the Counterintelligence Discipline. Universal Counterintelligence Core Competencies Volume 1 (Jan 2006)
- (m) Intelligence Community Directive 404 (Executive Branch Intelligence Customers)
- (n) ES 2017-00409 Designation of the Director, Central Intelligence Agency to Manage the Provision of Sensitive Compartmented Information Technology Connectivity, Services, and Support for Federal Partners as a Service of Common Concern. 16 June 2017
- (o) E/S 00953, Designation of Central Intelligence Agency as Non-Title 50 Connectivity Executive Agent for Top Secret/Sensitive Compartmented Information, August 20, 2008 (U//FOUO)
- (p) Intelligence Community Policy Guidance 404.1-Federal Partner Access to Intelligence Community Information Technology Systems. 16 June 2017
- (q) Federal Senior Intelligence Coordinators (FSIC) Handbook, ODNI, 2018

9. REVIEW:

The OHS will periodically review this order to ensure its continued effectiveness.

Enclosure II: Comments from the Environmental Protection Agency's Office of Inspector General



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 16 2019

OFFICE OF
INSPECTOR GENERAL

Mr. Chad Gorman
Assistant Director, Natural Resources and Environment
Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Gorman:

The U.S. Environmental Protection Agency's (EPA) Office of Inspector General (OIG) would like to thank the Government Accountability Office for the opportunity to review the draft report, *Environmental Protection Agency: Recent Policy Could Improve Working Relations between EPA's Office of Inspector General and Office of Homeland Security*.

The EPA OIG agrees with the report's assessment that EPA Order 3230 should facilitate greater collaboration with the agency's Office of Homeland Security. We look forward to an improved working relationship with the Office of Homeland Security.

Attached are technical comments. Please feel free to contact Deputy Counsel Eric Hanger at 202-566-0866 if you have any questions. We look forward to working with you again in the future.

Sincerely,

A handwritten signature in cursive script that reads "Edward S. Shields".

Edward S. Shields
Associate Deputy Inspector General

Attachment

Enclosure III: Comments from the Environmental Protection Agency's Office of the Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

OCT 1 1 2019

MEMORANDUM

SUBJECT: Agency Response on the GAO Draft Report, "*Environmental Protection Agency: Recent Policy Could Improve Working Relations between EPA's Office of Inspector General and the Office of Homeland Security*," GAO-20-89R.

FROM: Ryan Jackson, Chief of Staff 

TO: J. Alfredo Gomez, Director, Natural Resources and Environment

The U.S. Environmental Protection Agency appreciates the opportunity to comment, and staff at the Agency appreciate the opportunity to be interviewed for the GAO's draft report concerning the working relationship between the EPA's Office of Inspector General (OIG) and the EPA's Office of Homeland Security (OHS).

The EPA could not agree more that at the beginning of this Administration, the EPA leadership found the working relationship between OIG and OHS to be a shameful turf war or simply a state of complete dysfunction. The GAO report highlights examples demonstrating the dysfunctional relationship between these two offices. However, there are even more instances of personality differences than the allegations of physical confrontations and allegations of offices impeding each other's work which required investigation.

In the previous Administration, the EPA Administrator and Deputy Administrator issued specific directives to both offices concerning how to handle information, share information, and cooperate. Unfortunately, severe problems continued to exist.

In this Administration, the EPA leadership has taken a new approach. The Agency Order which established OHS had not been updated since it was originally issued over ten years ago. The EPA leadership drafted an amended Order 3220 and circulated it Agency-wide for comment from the program offices. The new Order 3230 updates the responsibilities for OHS and how it interacts with OIG and all other program offices within the EPA. Order 3230 additionally revokes prior memorandums from the EPA leadership attempting to resolve operational differences between the two offices.

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However, new orders are not enough to finally resolve the differences between OIG and OHS. The EPA leadership has installed new personnel at OHS to continue to work with OIG to best implement Order 3230, to ensure information is being shared appropriately, and most importantly work on a daily basis to create and maintain a professional working relationship between OIG and OHS. OHS staff is working with new staff within OIG as well.

It needs to go without saying that all divisions and offices at the EPA must work together toward the Agency's mission of protecting human health and the environment. The EPA leadership believes we have made changes necessary to address and repair years of problems. The EPA appreciates GAO's receptivity to information it provided to complete this report.

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