

f

THE WHITE HOUSE

WASHINGTON

November 30, 1981

MEMORANDUM FOR JAMES A. BAKER III

FROM: Jim Cicconi *JC*

SUBJECT: Intelligence Executive Order

The following are points on which the proposed order might draw public criticism, though adequate justification can be given for many of the changes. (References are to pages in the Analysis.)

1. AG no longer has to approve CIA counterintelligence inside U.S.; DCI no longer has to approve FBI counterintelligence outside U.S. Instead each "coordinate" with the other under a procedure agreed to by the AG and DCI. (pp. 36 and 58).
2. "Consistent with applicable law" language eliminated in section on conduct of special activities (p. 38). It is now redundant due to other sections (especially 2.8 on p. 80); could easily be reinserted to eliminate misunderstanding.
3. Eliminates language that required intelligence activities to be conducted "in a manner that preserves and protects established concepts of privacy and civil liberties." Substitutes a requirement for consistency with the Constitution and applicable law, and that the activity respect traditional US principles (p. 61).
4. Allows CIA to gather intelligence within US for foreign intelligence purposes only, and only in "significant" matters; it may not gather info re domestic activities of US persons. (p. 64)
5. Allows free (probably automatic) dissemination of intelligence gathered on US persons to other agencies in the Intelligence Community. (p. 67A)
6. Allows physical surveillance by CIA of former employees (now allowed only for present employees). Also eliminates the "reasonable belief" standard for overseas surveillance of US persons; would allow it to obtain significant information that cannot otherwise be obtained. (p. 72)

7. Eliminates the requirement that the President specifically authorizes intelligence techniques "for which a warrant would be required." Instead, the AG can approve without the President's involvement.
8. General: Question re our use of the term "aggressive" in describing the ways in which we will gather intelligence. (section 2.1, pg. 61). While this may be accurate, the word itself is a red flag. For example, in the Q & A we state "the new Administration supports an aggressive and effective intelligence effort.." Suggest we might substitute the word "active", or some other word in order to avoid the deliberate misinterpretations some might wish to put forward.

→ have discussed w/ Fielding: he agrees and will see about making the change.
je

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR ED MEESE
JIM BAKER
MIKE DEEVER

FROM: DICK ALLEN *Dick*

SUBJECT: Intelligence Executive Orders

Attached is CIA's analysis of the new Intelligence Orders, contrasting them with the previous orders and commenting on changes that had been made. As you know, the Intelligence Oversight Board is now dealt with in a separate order. CIA's analysis of this order is also attached.

Also attached are Questions and Answers dealing with the new orders.

The NSC Staff is currently reviewing this final package, and some additional Questions and Answers may emerge from that review. They will be forwarded on Friday.

Attachments

- Tab A Analysis of Intelligence Order
- Tab B Analysis of IOB Order
- Tab C Q's and A's

cc: The Vice President

See also p 38 - CIA to discontinue activities as ordered by Pres. Phrases: "consistent w/ applicable law" - deleted as "unnecessary!"

See also p 61 et seq - Proceeding right to collect intell. in US relating to U.S. persons, but not their domestic activities.

Partic. p 67A - Discern. ? intell. of U.S. persons.

Same for Counter-Intel - p 9.

See also p 36 - CIA can conduct counter-intell. activities inside U.S. (See also p 58)

*CgS
& Councilor
as well as D CgS -
not incl. in covert
OKs, etc. See pgs 5, 7, 8.*



EXECUTIVE ORDER 12036

UNITED STATES
INTELLIGENCE ACTIVITIES

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the organization and control of United States foreign intelligence activities, it is hereby ordered as follows:

PROPOSED EXECUTIVE ORDER

UNITED STATES
INTELLIGENCE ACTIVITIES

Timely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to the national security of the United States. All reasonable and lawful means must be used to ensure that the United States will receive the best intelligence available. For that purpose, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the effective conduct of United States intelligence activities and the protection of constitutional rights, it is hereby ordered as follows:

REASON FOR CHANGE

(Discussion is of provisions of the new Order unless otherwise indicated. No comment indicates technical or no change from E.O. 12036.)

Language has been added to strengthen the preamble by stating more forcefully the reasons for the Order and to provide a positive tone for the Order.

SECTION 1

PART 1

DIRECTION, DUTIES AND
RESPONSIBILITIES WITH
RESPECT TO THE NATIONAL
INTELLIGENCE EFFORT

GOALS, DIRECTION, DUTIES AND
RESPONSIBILITIES WITH
RESPECT TO THE NATIONAL
INTELLIGENCE EFFORT

1.1 Goals. The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.

A statement of goals has been added to the Order to provide clearer direction to the Intelligence Community and to give the Order a more positive tone.

Proposed Executive Order

(1.1 Continued)

(b) All means, consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, shall be used to develop intelligence information for the President and the National Security Council. A balanced approach between technical collection efforts and other means should be maintained and encouraged.

(c) Special emphasis should be given to detecting and countering espionage and other threats and activities directed by foreign intelligence services against the United States Government, or United States corporations, establishments, or persons.

(1.1 Continued)

(d) To the greatest extent possible consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons, all agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.

1-1. National Security Council.

1-101. Purpose. The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for, and direction to the conduct of all national foreign intelligence and counterintelligence activities.

1.2 The National Security Council.

(a) Purpose. The National Security Council (NSC) was established by the National Security Act of 1947 to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for and direction to the conduct of all national foreign intelligence, counterintelligence, and special activities, and attendant policies and programs.

Language has been added to make it clear that the NSC will provide review of and guidance for special activities and other policies and programs attendant to the national intelligence effort.

1-102. Committees. The NSC Policy Review Committee and Special Coordination Committee, in accordance with procedures established by the Assistant to the President for National Security Affairs, shall assist in carrying out the NSC's responsibilities in the foreign intelligence field.

1-2. NSC Policy Review Committee.

1-201. Membership. The NSC Policy Review Committee (PRC), when carrying out responsibilities assigned in this Order, shall be chaired by the Director of Central Intelligence and composed of the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Assistant to the President for National Security Affairs, and the Chairman of the Joint Chiefs of Staff, or their designees, and other senior officials, as appropriate.

(1.2 Continued)

(b) Committees. The NSC shall establish such committees as may be necessary to carry out its functions and responsibilities under this Order. The NSC, or a committee established by it, shall consider and submit to the President a policy recommendation, including all dissents, on each special activity and shall review proposals for other sensitive intelligence operations.

The detailed specification of NSC committees found in E.O. 12036 has been abandoned in favor of a shorter statement authorizing the establishment of such committees. This is to provide greater flexibility in dealing with a variety of problems which require NSC-level review. The new section makes it clear that special activities must be reviewed by the NSC or a committee established by it.

1-202. Duties. The PRC shall:

(a) Establish requirements and priorities for national foreign intelligence;

(b) Review the National Foreign Intelligence Program and budget proposals and report to the President as to whether the resources allocations for intelligence capabilities are responsive to the intelligence requirements of the members of the NSC.

(c) Conduct periodic reviews of national foreign intelligence products, evaluate the quality of the intelligence product, develop policy guidance to ensure quality intelligence and to meet changing intelligence requirements; and

(d) Submit an annual report on its activities to the NSC.

1-203. Appeals.

Recommendations of the PRC on intelligence matters may be appealed to the President or the NSC by any member of the PRC.

1-3. NSC Special Coordination Committee.

1-301. Membership. The NSC Special Coordination Committee (SCC) is chaired by the Assistant to the President for National Security Affairs and its membership includes the statutory members of the NSC and other senior officials, as appropriate. // ?

1-302. Special Activities. The SCC shall consider and submit to the President a policy recommendation, including all dissents, on each special activity. When meeting for this purpose, the members of the SCC shall include the Secretary of State, the Secretary of Defense, the Attorney General, the Director of the Office of Management and Budget, the Assistant to the President for National Security Affairs, the Chairman of the Joint Chiefs of Staff, and the Director of Central Intelligence. and | ?

1-303. Sensitive Foreign Intelligence Collection Operations. Under standards established by the President, proposals for sensitive foreign intelligence collection operations shall be reported to the Chairman by the Director of Central Intelligence for appropriate review and approval. When meeting for the purpose of reviewing proposals for sensitive foreign intelligence collection operations, the members of the SCC shall include the Secretary of State, the Secretary of Defense, the Attorney General, the Assistant to the President for National Security Affairs, the Director of Central Intelligence, and such other members designated by the Chairman to ensure proper consideration of these operations.

*who in
NSC Adv.*

|?

1-304. Counterintelligence. The SCC shall develop policy with respect to the conduct of counterintelligence activities. When meeting for this purpose the members of the SCC shall include the Secretary of State, the Secretary of Defense, the Attorney General, the Director of the Office of Management and Budget, the Assistant to the President for National Security Affairs, the Chairman of the Joint Chiefs of Staff, the Director of Central Intelligence, and the Director of the FBI. The SCC's counterintelligence functions shall include:

(a) Developing standards and doctrine for the counterintelligence activities of the United States;

(b) Resolving interagency differences concerning implementation of counterintelligence policy;

(1-304. Continued)

(c) Developing and monitoring guidelines consistent with this Order for the maintenance of central records of counterintelligence policy;

(d) Submitting to the President an overall annual assessment of the relative threat to United States interests from intelligence and security services of foreign powers and from international terrorist activities, including an assessment of the effectiveness of the United States counterintelligence activities; and

(e) Approving counterintelligence activities which, under such standards as may be established by the President, require SCC approval.

1-305. Required Membership. The SCC shall discharge the responsibilities assigned by sections 1-302 through 1-304 only after consideration in a meeting at which all designated members are present or, in unusual circumstances when any such member is unavailable, when a designated representative of the member attends.

1-306. Additional Duties. The SCC shall also:

(a) Conduct an annual review of ongoing special activities and sensitive national foreign intelligence collection operations and report thereon to the NSC; and

(b) Carry out such other coordination and review activities as the President may direct.

1-307. Appeals. Any member of the SCC may appeal any decision to the President or the NSC.

1-4. National Foreign Intelligence Board.

1-401. Establishment and Duties. There is established a National Foreign Intelligence Board (NFIB) to advise the Director of Central Intelligence concerning:

(a) Production, review, and coordination of national foreign intelligence;

(b) The National Foreign Intelligence Program budget;

(c) Interagency exchanges of foreign intelligence information;

(d) Arrangements with foreign governments on intelligence matters;

(e) The protection of intelligence sources and methods;

1.3 National Foreign Intelligence Advisory Groups.

(a) Establishment and Duties. The Director of Central Intelligence shall establish such boards, councils, or groups as required for the purpose of obtaining advice from within the Intelligence Community concerning:

(1) Production, review and coordination of national foreign intelligence;

(2) Priorities for the National Foreign Intelligence Program budget;

(3) Interagency exchanges of foreign intelligence information;

(4) Arrangements with foreign governments on intelligence matters;

(5) Protection of intelligence sources and methods;

The new Order does not itself establish Intelligence Community advisory boards and groups, but instead gives the DCI the authority to establish such boards as are required for the purpose of providing advice on issues of a Community concern. This is in keeping with the approach of eliminating unnecessary organizational and structural details from the Order. To eliminate duplication of a DCI responsibility, such groups will provide advice on priorities for the National Foreign Intelligence Program budget rather than the entire budget as under E.O. 12036.

(1-401. Continued)

(f) Activities of common concern; and

(g) Other matters referred to it by the Director of Central Intelligence.

1-402. Membership. The NFIB shall be chaired by the Director of Central Intelligence and shall include other appropriate officers of the CIA, the Office of the Director of Central Intelligence, the Department of State, the Department of Defense, the Department of Justice, the Department of the Treasury, the Department of Energy, the Defense Intelligence Agency, the offices within the Department of Defense for reconnaissance programs, the National Security Agency and the FBI. A representative of the Assistant to the President for National Security Affairs may attend meetings of the NFIB as an observer.

(1.3 Continued)

(6) Activities of common concern;

(7) Such other matters as may be referred by the Director of Central Intelligence.

(b) Membership. Advisory groups established pursuant to this section shall be chaired by the Director of Central Intelligence or his designated representative and shall consist of senior representatives from organizations within the Intelligence Community and from departments or agencies containing such organizations, as designated by the Director of Central Intelligence. Groups for consideration of substantive intelligence matters will include representatives of organizations involved in the collection, processing and analysis of intelligence. A senior representative of the Secretary of Commerce, the Attorney General, the Assistant to the President for National Security Affairs, and the Office of the Secretary of Defense shall be invited to participate in any group which deals with other than substantive intelligence matters.

The membership provision has been reworded to make it clear that the membership of Community advisory groups will depend upon whether substantive intelligence matters, such as estimates, or other issues are being considered.

1-403. Restricted Membership and Observers. When the NFIB meets for the purpose of section 1-402(a), it shall be composed solely of the senior intelligence officers of the designated agencies. The senior intelligence officers of the Army, Navy and Air Force may attend all meetings of the NFIB as observers.

Section 1-403 has been deleted since its requirement that representatives of intelligence production organizations participate in the consideration of substantive intelligence matters is covered in the new section 1.3(b).

1-5. National Intelligence Tasking Center.

1-501. Establishment. There is established a National Intelligence Tasking Center (NITC) under the direction, control and management of the Director of Central Intelligence for coordinating and tasking national foreign intelligence collection activities. The NITC shall be staffed jointly by civilian and military personnel including designated representatives of the chiefs of each of the Department of Defense intelligence organizations engaged in national foreign intelligence activities. Other agencies within the Intelligence Community may also designate representatives.

Section 1-501 of E.O. 12036, which established a national intelligence tasking center, has been deleted. The NITC never really came into being, although its functions were performed by staff elements of the DCI. The functions and authorities of the NITC have been continued as responsibilities of the DCI under section 1.5 of the new Order. Elimination of the NITC will hereinafter be referred to as a "technical change".

1-502. Responsibilities.

The NITC shall be the central mechanism by which the Director of Central Intelligence:

(a) Translates national foreign intelligence requirements and priorities developed by the PRC into specific collection objectives and targets for the Intelligence Community.

(b) Assigns targets and objectives to national foreign intelligence collection organizations and systems;

(c) Ensures the timely dissemination and exploitation of data for national foreign intelligence purposes gathered by national foreign intelligence means, and ensures the resulting intelligence flow is routed immediately to relevant components and commands;

(1.5 ... the Director of Central Intelligence ... shall:)

(m) Establish mechanisms which translate national foreign intelligence objectives and priorities approved by the NSC into specific guidance for the Intelligence Community, resolve conflicts in tasking priority, provide to departments and agencies having information collection capabilities that are not part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence, and provide for the development of plans and arrangements for transfer of required collection tasking authority to the Secretary of Defense when directed by the President;

(1) Ensure the timely exploitation and dissemination of data gathered by national foreign intelligence collection means, and ensure that the resulting intelligence is disseminated immediately to appropriate government entities and military commands;

Section 1-502(a) of E.O. 12036 has been modified and incorporated in section 1.5(m) of the new Order.

Section 1-502(b) of E.O. 12036 has been eliminated as unnecessary detail.

(1-502. Continued)

(d) Provides advisory tasking concerning collection of national foreign intelligence to departments and agencies having information collection capabilities or intelligence assets that are not a part of the National Foreign Intelligence Program. Particular emphasis shall be placed on increasing the contribution of departments or agencies to the collection of information through overt means.

See section 1.5(m) of the new Order.

1-503. Resolution of Conflicts. The NITC shall have the authority to resolve conflicts of priority. Any PRC member may appeal such a resolution to the PRC; pending the PRC's decision, the tasking remains in effect.

See section 1.5(m) of the new Order. Language in E.O. 12036 authorizing appeals from DCI resolution of conflicts was eliminated as unnecessary.

1-504. Transfer of Authority. All responsibilities and authorities of the Director of Central Intelligence concerning the NITC shall be transferred to the Secretary of Defense upon the express direction of the President. To maintain readiness for such transfer, the Secretary of Defense shall, with advance agreement of the Director of Central Intelligence, assume temporarily during regular practice exercises all responsibilities and authorities of the Director of Central Intelligence concerning the NITC.

Condensed. See section 1.5(m) of the new Order.

Proposed Executive Order

Reason for Change

1.4 The Intelligence Community. The agencies within the Intelligence Community shall, in accordance with applicable United States law and with the other provisions of this Order, conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, including:

(a) Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;

(b) Production and dissemination of intelligence;

This new section was added to make it clear that the Intelligence Community has the designated responsibilities and functions listed therein. In addition, the provision makes it clear that the Community shall perform such other intelligence activities as the President may direct from time to time.

Proposed Executive Order

(1.4 Continued)

(c) Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents;

(d) Special activities;

(e) Administrative and support activities within the United States and abroad necessary for the performance of authorized activities; and

(f) Such other intelligence activities as the President may direct from time to time.

1-6. The Director of Central Intelligence.

1-601. Duties. The Director of Central Intelligence shall be responsible directly to the NSC and, in addition to the duties specified elsewhere in this Order, shall:

(a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

(b) Be the head of the CIA and of such staff elements as may be required for discharge of the Director's Intelligence Community responsibilities;

(c) Act, in appropriate consultation with the departments and agencies, as the Intelligence Community's principal spokesperson to the Congress, the news media and the public, and facilitate the use of national foreign intelligence products by the Congress in a secure manner;

1.5 Director of Central Intelligence. In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the President and the NSC and shall:

(a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

This provision was modified slightly to emphasize that the DCI carries out responsibilities prescribed by law and serves at the pleasure of the President.

Section 1-601(b) was eliminated as unnecessary since it merely restates authority under existing statutes.

Section 1.5(s) of the new Order continues the requirement that the DCI facilitate the use of national foreign intelligence products by the Congress in a secure manner. The remainder of this provision was eliminated as unnecessary verbiage.

(1-6. Continued)

(d) Develop, consistent with the requirements and priorities established by the PRC, such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

(e) Promote the development and maintenance of services of common concern by designated foreign intelligence organizations on behalf of the Intelligence Community;

(f) Ensure implementation of special activities;

(1.5 Continued)

(b) Develop such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

(c) Promote the development and maintenance of services of common concern by designated intelligence organizations on behalf of the Intelligence Community;

(d) Ensure implementation of special activities;

Reference to the NSC's Policy Review Committee has been eliminated since that committee no longer exists under the new Order (hereinafter referred to as a "technical change").

(1-601. Continued)

(g) Formulate policies concerning intelligence arrangements with foreign governments, and coordinate intelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments;

(h) Conduct a program to protect against overclassification of foreign intelligence information;

(i) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information and products;

(j) Participate in the development of procedures required to be approved by the Attorney General governing the conduct of intelligence activities;

(1.5 Continued)

(e) Formulate policies concerning foreign intelligence and counterintelligence arrangements with foreign governments, coordinate foreign intelligence and counterintelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments, and establish procedures governing the conduct of liaison by any department or agency with such services on narcotics activities;

(g) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information, and products;

(f) Participate in the development of procedures approved by the Attorney General governing criminal narcotics intelligence activities abroad to ensure that these activities are consistent with foreign intelligence programs;

This provision has been rewritten to clarify the DCI's authority to formulate policies concerning liaison arrangements and relationships. In addition, it clarifies the DCI's authority to establish procedures governing liaison with such services on narcotics activities in order to ensure a coordinated U.S. position with such services on narcotics intelligence matters.

Section 1-601(h) of E.O. 12036 has been eliminated as unnecessary.

This provision contains a requirement formerly in section 1-1503 of E.O. 12036. It will continue to ensure that there is no conflict between criminal narcotics activities and foreign intelligence programs abroad.

(1-601. Continued)

(k) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

(l) Provide appropriate intelligence to departments and agencies not within the Intelligence Community; and

(m) Establish appropriate committees or other advisory groups to assist in the execution of the foregoing responsibilities.

(1.5 Continued)

(i) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

(j) Establish appropriate staffs, committees, or other advisory groups to assist in the execution of the Director's responsibilities;

Section 1-601(1) has been eliminated since it is covered by section 1.5(r) of the new Order.

1-602. National Foreign Intelligence Program Budget. The Director of Central Intelligence shall, to the extent consistent with applicable law, have full and exclusive authority for approval of the National Foreign Intelligence Program budget submitted to the President. Pursuant to this authority:

(a) The Director of Central Intelligence shall provide guidance for program and budget development to program managers and heads of component activities and to department and agency heads;

This section has been eliminated and its major provisions have been listed in the DCI's authorities under section 1.5. See sections 1.5(n), (o), and (t), and section 1.6(b) and (c).

(1-602. Continued)

(b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence of proposed national programs and budgets in the format designated by the Director of Central Intelligence, by the program managers and heads of component activities, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities;

(c) The Director of Central Intelligence shall review and evaluate the national program and budget submissions and, with the advice of the NFIB and the departments and agencies concerned, develop the consolidated National Foreign Intelligence Program budget and present it to the President through the Office of Management and Budget;

(1.6) (b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence by the program managers and heads of component activities of proposed national programs and budgets in the format designated by the Director of Central Intelligence, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

(1.5) (n) Develop, with the advice of the program managers and departments and agencies concerned, the consolidated National Foreign Intelligence Program budget, and present it to the President and the Congress;

This provision was rewritten slightly for clarity.

(1-602. Continued)

(d) The Director of Central Intelligence shall present and justify the National Foreign Intelligence Program budget to the Congress;

(e) The heads of the departments and agencies shall, in consultation with the Director of Central Intelligence, establish rates of obligation for appropriated funds;

(f) The Director of Central Intelligence shall have full and exclusive authority for reprogramming National Foreign Intelligence Program funds, in accord with guidelines established by the Office of Management and Budget, but shall do so only after consultation with the head of the department affected and appropriate consultation with the Congress;

(o) Review and approve all requests for reprogramming National Foreign Intelligence Program funds, in accordance with guidelines established by the Office of Management and Budget;

This provision, formerly found in section 1-602(f) of E.O. 12036, has been shortened but is not intended to have any substantive change.

(1-602. Continued)

(g) The departments and agencies may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

(h) The Director of Central Intelligence shall monitor National Foreign Intelligence Program implementation and may conduct program and performance audits and evaluations.

(1.6) (c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

(1.5) (p) Monitor National Foreign Intelligence Program implementation, and, as necessary, conduct program and performance audits and evaluations;

(1.5) (q) Together with the Secretary of Defense, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs consistent with the requirement to develop competitive analysis, and provide to and obtain from the Secretary of Defense all information necessary for this purpose; and

This provision was rewritten for clarity.

This provision, formerly found in section 1-1111 of E.O. 12036, has been expanded to require that the DCI provide the Secretary of Defense with all information the Secretary needs to ensure that there is no unnecessary overlap between DoD and national foreign intelligence programs.

(1.5 Continued)

1-603. Responsibility for National Foreign Intelligence. The Director of Central Intelligence shall have full responsibility for production and dissemination of national foreign intelligence and have authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations. In doing so, the Director of Central Intelligence shall ensure that diverse points of view are considered fully and that differences of judgment within the Intelligence Community are brought to the attention of national policymakers.

1-604. Protection of Sources, Methods and Procedures. The Director of Central Intelligence shall ensure that programs are developed which protect intelligence sources, methods and analytical procedures, provided that this responsibility shall be limited within the United States to:

(k) Have full responsibility for production and dissemination of national foreign intelligence, and authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations, ensuring that appropriate mechanisms for competitive analysis are developed so that diverse points of view are considered fully and differences of judgment within the Intelligence Community are brought to the attention of national policymakers;

(h) Ensure that programs are developed which protect intelligence sources, methods, and analytical procedures;

This provision retains the requirements established by section 1-603 of E.O. 12036 but adds the requirement that the DCI ensure that appropriate mechanisms are developed for competitive analysis.

This provision, taken from section 1-604 of E.O. 12036, has been shortened to capture only the essence of the charge that the DCI ensure the development of programs to protect intelligence sources, methods, and analytical procedures. The limitations on investigative authority found in section 1-604(a) (current or former employees, etc.) are now found in section 2.3(e) of the new Order. Subsection (b) was eliminated as duplicative of the basic authority granted by section 1.5(h).

(1-604. Continued)

(a) Using lawful means to protect against disclosure by present or former employees of the CIA or the Office of the Director of Central Intelligence, or by persons or organizations presently or formerly under contract with such entities; and

(b) Providing policy, guidance and technical assistance to departments and agencies regarding protection of intelligence information, including information that may reveal intelligence sources and methods.

1-605. Responsibility of Executive Branch Agencies. The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant Attorney General procedures, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States and shall give due consideration to requests from the Director of Central Intelligence for appropriate support for CIA activities.

1.6 Duties and Responsibilities of the Heads of Executive Branch Departments and Agencies.

(a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant procedures approved by the Attorney General under this Order, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States, and shall give due consideration to requests from the Director of Central Intelligence for appropriate support for Intelligence Community activities.

This provision was rewritten slightly for clarity and to emphasize the DCI's Community role.

1-606. Access to CIA Intelligence. The Director of Central Intelligence, shall, in accordance with law and relevant Attorney General procedures, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the office of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies.

(1.5 Continued)

(r) In accordance with law and relevant procedures approved by the Attorney General under this Order, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies; and

(s) Facilitate the use of national foreign intelligence products by Congress in a secure manner.

1-7. Senior Officials of the Intelligence Community.

The senior officials of each of the agencies within the Intelligence Community shall:

1-701. Ensure that all activities of their agencies are carried out in accordance with applicable law;

1-702. Make use of the capabilities of other agencies within the Intelligence Community in order to achieve efficiency and mutual assistance;

1-703. Contribute in their areas of responsibility to the national foreign intelligence products;

1-704. Establish internal policies and guidelines governing employee conduct and ensure that such are made known to each employee;

1-705. Provide for strong, independent, internal means to identify, inspect, and report on unlawful or improper activity;

1.7 Senior Officials of the Intelligence Community. The heads of departments and agencies with organizations in the Intelligence Community or the heads of such organizations, as appropriate, shall:

Sections 1-701 through 1-705 of E.O. 12036 were eliminated as being hortatory and/or offensive in nature. The requirements of section 1-705 concerning internal oversight are assured by a separate, parallel Order which establishes the Intelligence Oversight Board.

(1.7 Continued)

1-706. Report to the Attorney General evidence of possible violations of federal criminal law by an employee of their department or agency, and report to the Attorney General evidence of possible violations by any other person of those federal criminal laws specified in guidelines adopted by the Attorney General;

1-707. In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

1-708. Furnish the Director of Central Intelligence, the PRC and the SCC, in accordance with applicable law and Attorney General procedures, the information required for the performance of their respective duties;

(a) Report to the Attorney General possible violations of federal criminal laws specified by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

(b) In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

(c) Furnish the Director of Central Intelligence and the NSC, in accordance with applicable law and procedures approved by the Attorney General under this Order, the information required for the performance of their respective duties;

This provision was rewritten for clarity without any change in substance. It requires the same reporting of employee and nonemployee crimes as under E.O. 12036.

Technical change only.

(1.7 Continued)

1-709. Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations which raise questions of legality or propriety;

(d) Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive;

A new, clearer standard for reporting to the IOB has been substituted for "questions of legality or propriety."

1-710. Protect intelligence and intelligence sources and methods consistent with guidance from the Director of Central Intelligence and the NSC;

(e) Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence;

Change for clarity.

1-711. Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

(f) Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

1-712. Execute programs to protect against over classification of foreign intelligence;

Eliminated as unnecessary.

(1.7 Continued)

(g) Participate in the development of procedures approved by the Attorney General governing production and dissemination of intelligence resulting from criminal narcotics intelligence activities abroad if their departments, agencies, or organizations have intelligence responsibilities for foreign or domestic narcotics production and trafficking;

This provision preserves the requirement previously found in a deleted DEA section (1-1501) to ensure that intelligence resulting from narcotics law enforcement intelligence activities is disseminated to the Intelligence Community.

1-713. Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

(h) Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

1-714. Ensure that the Inspector General and General Counsel of their agencies have access to any information necessary to perform their duties assigned by this Order.

(i) Ensure that the Inspectors General and General Counsels for their organizations have access to any information necessary to perform their duties assigned by this Order.

Technical change only.

1-8. The Central Intelligence Agency.

All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, and other laws, regulations and directives, the CIA, under the direction of the NSC, shall:

1-801. Collect foreign intelligence, including information not otherwise obtainable, and develop, conduct, or provide support for technical and other programs which collect national foreign intelligence. The collection of information within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

1.8 The Central Intelligence Agency. All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by this Order; the National Security Act of 1947, as amended; the CIA Act of 1949, as amended; appropriate directives or other applicable law, the CIA shall:

(a) Collect, produce and disseminate foreign intelligence and counterintelligence, including information not otherwise obtainable. The collection of foreign intelligence within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

The new section 1.8(a) has been shortened by elimination of unnecessary language which authorizes support activities for collection programs. The obligation to coordinate with the FBI concerning collection of foreign intelligence in the U.S. has been clarified. Coordination would not be required for collection to protect intelligence sources or methods. Coordination on counterintelligence collection is covered by section 1.8(c).

1-802. Produce and disseminate foreign intelligence relating to the national security, including foreign political, economic, scientific, technical, military, geographic and sociological intelligence to meet the needs of the President, the NSC, and other elements of the United States Government;

1-803. Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

1-804. Conduct counter-intelligence activities outside the United States and coordinate counterintelligence activities conducted outside the United States by other agencies within the Intelligence Community;

(1.8. Continued)

(b) Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

(c) Conduct counter-intelligence activities outside the United States and, without assuming or performing any internal security functions, conduct counterintelligence activities within the United States in coordination with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

Section 1-802 of Executive Order 12036 has been deleted as duplicative and unnecessary. (See Section 1.8(a) of the new Order.)

The new Section 1.8(c) gives the DCI a role equal to that of the Attorney General in shaping procedures for coordination with the FBI of CIA counter-intelligence activities (including collection) in the United States. Such procedures can require Attorney General approval of activities in certain cases.

Executive Order 12036

Proposed Executive Order

Reason for Change

1-805. Without assuming or performing any internal security functions, conduct counter-intelligence activities within the United States, but only in coordination with the FBI and subject to the approval of the Attorney General;

1-806. Produce and disseminate counterintelligence studies and reports;

1-807. Coordinate the collection outside the United States of intelligence information not otherwise obtainable;

(1.8 Continued)

(d) Coordinate counter-intelligence activities and the collection of information not otherwise obtainable when conducted outside the United States by other departments and agencies;

Clarification of Section 1-804 of Executive Order 12036.

Deleted as unnecessary.

See Section 1.8(d) of the new Order.

(1.8 Continued)

1-808. Conduct special activities approved by the President and carry out such activities consistent with applicable law;

(e) Conduct special activities approved by the President. No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective;

The reference to "applicable law" was eliminated as unnecessary. Language formerly found in Section 2-306 of Executive Order 12036 which restricted special activities to CIA, the military, and the Intelligence Community, has been added in modified form to permit any department or agency to conduct such activities upon a Presidential determination that an agency other than the CIA is more likely to achieve the activity's objective.

1-809. Conduct services of common concern for the Intelligence Community as directed by the NSC.

(f) Conduct services of common concern for the Intelligence Community as directed by the NSC;

1-810. Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

(g) Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

1-811. Protect the security of its installations, activities, information and personnel by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary;

1-812. Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in section 1-801 through 1-811 above, including procurement and essential cover and proprietary arrangements.

1-813. Provide legal and legislative services and other administrative support to the Office of the Director of Central Intelligence.

(1.8. Continued)

(h) Protect the security of its installations, activities, information, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary; and

(i) Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (a) through (h) above, including procurement and essential cover and proprietary arrangements.

"Property" and "employees" have been added for clarity and completeness.

Deleted as unnecessary.

1-9. The Department of State.

The Secretary of State shall:

1-901. Overtly collect foreign political, sociological, economic, scientific, technical, political-military and associated biographic information;

1-902. Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

1-903. Disseminate, as appropriate, reports received from United States diplomatic and consular posts abroad;

1-904. Coordinate with the Director of Central Intelligence to ensure that national foreign intelligence activities are useful to and consistent with United States foreign policy;

1.9 The Department of State.
The Secretary of State shall:

(a) Overtly collect information abroad relevant to United States foreign policy concerns;

(b) Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

(c) Disseminate, as appropriate, reports received from United States diplomatic and consular posts;

Unnecessary language eliminated.

Section 1-904 of Executive Order 12036 was eliminated as unnecessary since the Secretary of State, as a member of the NSC and through the process of inter-agency coordination, is in a position to review national foreign intelligence activities.

(1.9 Continued)

1-905. Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

(d) Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

1-906. Support Chiefs of Mission in discharging their statutory responsibilities for direction and coordination of mission activities.

(e) Support Chiefs of Missions in discharging their statutory responsibilities for direction and coordination of mission activities.

1-10. The Department of the Treasury.

1.10 The Department of the Treasury. The Secretary of the Treasury shall:

The Secretary of the Treasury shall:

1-1001. Overtly collect foreign financial and monetary information;

(a) Overtly collect foreign financial and monetary information;

1-1002. Participate with the Department of State in the overt collection of general foreign economic information;

(b) Participate with the Department of State in the overt collection of general foreign economic information;

1-1003. Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

(c) Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

1-1004. Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

(1.10 Continued)

(d) Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.