

1-11. The Department of Defense.

The Secretary of Defense shall:

1-1101. Collect national foreign intelligence and be responsive to collection tasking by the NITC.

1-1102. Collect, produce and disseminate foreign military and military-related intelligence information, including scientific, technical, political, geographic and economic information as required for execution of the Secretary's responsibilities;

1-1103. Conduct programs and missions necessary to fulfill national and tactical foreign intelligence requirements;

1.11 The Department of Defense. The Secretary of Defense shall:

(a) Collect national foreign intelligence and be responsive to collection tasking by the Director of Central Intelligence;

(b) Collect, produce and disseminate military and military-related foreign intelligence and counterintelligence as required for execution of the Secretary's responsibilities;

(c) Conduct programs and missions necessary to fulfill national, departmental and tactical foreign intelligence requirements;

Technical change.

Technical change.

(1.11 Continued)

1-1104. Conduct counter-intelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General, and produce and disseminate counter-intelligence studies and reports;

1-1105. Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities;

1-1106. Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

1-1107. Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

(d) Conduct counter-intelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI, pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General;

(j) Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities; and

(e) Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

(f) Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

Unnecessary language eliminated.

Same as Section 1-1105 of Executive Order 12036.

(1.11 Continued)

1-1108. Review budget data and information on Department of Defense programs within the National Foreign Intelligence Program and review budgets submitted by program managers to the Director of Central Intelligence to ensure the appropriate relationship of the National Foreign Intelligence Program elements to the other elements of the Defense program;

1-1109. Monitor, evaluate and conduct performance audits of Department of Defense intelligence programs;

1-1110. Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;

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

This section of Executive Order 12036 was eliminated as unnecessary. (See Section 1.11(j) of the new Order.)

This section of Executive Order 12036 was eliminated as unnecessary. (See Section 1.11(j) of the new Order.)

(1.11 Continued)

1-1111. Together with the Director of Central Intelligence, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs and provide the Director of Central Intelligence all information necessary for this purpose;

1-1112. Protect the security of Department of Defense installations, activities, information and personnel by appropriate means including such investigations of applicants, employees, contractors and other persons with similar associations with the Department of Defense as are necessary; and

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

(i) Establish and maintain military intelligence relationships and military intelligence exchange programs with selected cooperative foreign defense establishments and international organizations, and ensure that such relationships and programs are in accordance with policies formulated by the Director of Central Intelligence;

Moved and modified. (See Section 1.5(q) of the new Order.

This section was added to clarify and confirm DOD authority to conduct military intelligence liaison activities with foreign defense establishments and international organizations, in accordance with policies formulated by the DCI.

(1.11 Continued)

1-1113. Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in section 1-1101 through 1-1112 above.

(k) 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 (j) above.

1-12. Intelligence Components Utilized by the Secretary of Defense.

In carrying out the responsibilities assigned in sections 1-1101 through 1-1113, the Secretary of Defense is authorized to utilize the following:

1-1201. Defense Intelligence Agency, whose responsibilities shall include:

(a) Production or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(b) Provision of military intelligence for national foreign intelligence products;

1.12 Intelligence Components Utilized by the Secretary of Defense. In carrying out the responsibilities assigned in section 1.11, the Secretary of Defense is authorized to utilize the following:

(a) Defense Intelligence Agency, whose responsibilities shall include:

(1) Collection, production, or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(2) Collection and provision of military intelligence for national foreign intelligence and counterintelligence products;

"Collection" was added to recognize existing DIA collection activities.

(1-12. Continued)

(c) Coordination of all Department of Defense intelligence collection requirements for departmental needs;

(d) Management of the Defense Attache system; and

(e) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

1-1202. National Security Agency (NSA), whose responsibilities shall include:

(a) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense.

(1.12(a) Continued)

(3) Coordination of all Department of Defense intelligence collection requirements;

(4) Management of the Defense Attache system; and

(5) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

(b) National Security Agency, whose responsibilities shall include:

(1) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

Technical change to recognize existing practice.

(1-1202. Continued)

(b) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(c) Collection of signals intelligence information for national foreign intelligence purposes in accordance with tasking by the NITC;

(d) Processing of signals intelligence data for national foreign intelligence purposes consistent with standards for timeliness established by the Director of Central Intelligence;

(e) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the NITC;

(1.12(b) Continued)

(2) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(3) Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(4) Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence;

(5) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the Director of Central Intelligence;

Technical change.

Technical change.

Technical change.

(1-1202. Continued)

(f) Collection, processing, and dissemination of signals intelligence information for counterintelligence purposes;

(g) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities and standards of timeliness assigned by the Secretary of Defense. If provisions of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

(h) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(i) Conduct of research and development to meet needs of the United States for signals intelligence and communications security;

(1.12(b) Continued)

(6) Collection, processing and dissemination of signals intelligence information for counterintelligence purposes;

(7) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities, and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

(8) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(9) Conduct of research and development to meet needs of the United States for signals intelligence and communications security;

(1-1202. Continued)

(j) Protection of 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 NSA as are necessary; and

(k) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations.

(1.12(b) Continued)

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

(11) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations;

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

(1.12(b) Continued)

(12) Conduct of foreign cryptologic liaison relationships, with liaison for intelligence purposes conducted in accordance with policies formulated by the Director of Central Intelligence; and

(13) Conduct of such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections (1) through (12) above, including procurement.

(c) Offices for the collection of specialized intelligence through reconnaissance programs, whose responsibilities shall include:

1-1203. Offices for the collection of specialized intelligence through reconnaissance programs, whose responsibilities shall include:

(a) Carrying out consolidated reconnaissance programs for specialized intelligence;

(1) Carrying out consolidated reconnaissance programs for specialized intelligence;

This section was added to clarify and confirm NSA's authority to conduct foreign cryptologic liaison activities. Such liaison for intelligence purposes (liaison on other than communications security matters), must be in accordance with policies formulated by the DCI.

This provision was added to clarify and confirm NSA's authority to conduct support activities and procurement.

(1.1203. Continued)

(b) Responding to tasking through the NITC; and

(c) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.

1-1204. The foreign intelligence and counterintelligence elements of the military services, whose responsibilities shall include:

(1.12(c) Continued)

(2) Responding to tasking in accordance with procedures established by the Director of Central Intelligence; and

(3) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.

(d) The foreign intelligence and counterintelligence elements of the Army, Navy, Air Force, and Marine Corps, whose responsibilities shall include:

Technical change.

(1-1204. Continued)

(a) Collection, production and dissemination of military and military-related foreign intelligence, including information on indications and warnings, foreign capabilities, plan and weapons systems, scientific and technical developments and narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be tasked by the NITC. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(b) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI, and production and dissemination of counterintelligence studies or reports; and

(1.12(d) Continued)

(1) Collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(2) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI; and

Technical changes only.

Unnecessary language eliminated.

(1-1204. Continued)

(c) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

1-1205. Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense. If such other offices are used for intelligence purposes, the provisions of Section 2-101 through 2-309 of this Order shall apply to those offices when used for those purposes.

1-13. The Department of Energy.

The Secretary of Energy shall:

1-1301. Participate with the Department of State in overtly collecting political, economic and technical information with respect to foreign energy matters;

(1.12(d) Continued)

(3) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

(e) Other offices within the Department of Defense appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense. If such other offices are used for intelligence purposes, the provisions of Part 2 of this Order shall apply to those offices when used for those purposes.

1.13 The Department of Energy. The Secretary of Energy shall:

(a) Participate with the Department of State in overtly collecting information with respect to foreign energy matters;

(1-1301. Continued)

1-1302. Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

1-1303. Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

1-1304. Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1-14. The Federal Bureau of Investigation.

Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(1.13 Continued)

(b) Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

(c) Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

(d) Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1.14 The Federal Bureau of Investigation. Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

(1-14. Continued)

1-1401. Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

1-1402. Conduct counterintelligence activities outside the United States in coordination with the CIA, subject to the approval of the Director of Central Intelligence;

(1.14 Continued)

(a) Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

(b) Conduct counterintelligence activities outside the United States in coordination with the CIA as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

This provision has been reworded to make it parallel to the provision for CIA coordination with the FBI on counterintelligence activities within the United States. (See Section 1.8(c) of the new Order).

(1.14 Continued)

1-1403. Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, lawful activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community;

1-1404. Produce and disseminate foreign intelligence, counterintelligence and counterintelligence studies and reports; and

1-1405. Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

(c) Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community, or, when requested by the Director of the National Security Agency, to support the communications security activities of the United States Government;

(d) Produce and disseminate foreign intelligence and counterintelligence; and

(e) Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

New language has been added to permit FBI support to communications security activities when requested by the Director of NSA. The existing provision has been interpreted to not permit such support.

1-15. The Drug Enforcement Administration.

Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Administrator of DEA shall:

1-1501. Collect, produce and disseminate intelligence on the foreign and domestic aspects of narcotics production and trafficking in coordination with other agencies with responsibilities in these areas;

1-1502. Participate with the Department of State in the overt collection of general foreign political, economic and agricultural information relating to narcotics production and trafficking; and

1-1503. Coordinate with the Director of Central Intelligence to ensure that the foreign narcotics intelligence activities of DEA are consistent with other foreign intelligence programs.

DEA has been eliminated from the new Order because it has never really functioned as a member of the Intelligence Community and because its activities are primarily, if not solely, for law enforcement purposes. Provisions for DEA's or its successor's interface with the Intelligence Community have been preserved. (See Sections 1.5(e), (f) and (g) of the new Order.

SECTION 2

PART 2

RESTRICTIONS ON
INTELLIGENCE ACTIVITIES

CONDUCT OF INTELLIGENCE
ACTIVITIES

2.1 Adherence to Law.

2-101. Purpose. Information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decision-making in the areas of national defense and foreign relations. The measures employed to acquire such information should be responsive to legitimate governmental needs and must be conducted in a manner that preserves and respects established concepts of privacy and civil liberties.

2.1 Need. Accurate and timely information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decision-making in the areas of national defense and foreign relations. Collection of such information is a priority objective and will be pursued in an aggressive, innovative and responsible manner that is consistent with the Constitution and applicable law and respectful of the principles upon which the United States was founded.

The new order, unlike Executive Order 12036, emphasizes that collection of accurate and timely intelligence is a priority objective and that such collection will be aggressively pursued in a manner that is lawful and respectful of the principles upon which the United States was founded.

2-102. Principles of Interpretation. Sections 2-201 through 2-309 set forth limitations which, in addition to other applicable laws, are intended to achieve the proper balance between protection of individual rights and acquisition of essential information. Those sections do not authorize any activity not authorized by sections 1-101 through 1-1503 and do not provide any exemption from any other law.

2.2 Purpose. This Order is intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers. Set forth below are certain general principles that, in addition to and consistent with applicable laws, are intended to achieve the proper balance between the acquisition of essential information and protection of individual interests. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

The new provision stresses the intent of the new order to enhance intelligence activities.

2-208. Collection of Nonpublicly Available Information. No agency within the Intelligence Community may collect, disseminate or store information concerning the activities of United States persons that is not available publicly, unless it does so with their consent or as permitted by procedures established pursuant to section 2-201. Those procedures shall limit collection, storage, or dissemination to the following types of information:

(a) Information concerning corporations or other commercial organizations or activities that constitutes foreign intelligence or counter-intelligence;

2.3 Collection of Information. Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:

(a) Information that is publicly available or collected with the consent of the person concerned, or through cooperating sources;

New section 2.3 clearly and affirmatively authorizes collection, retention and dissemination of U.S. person information for the stated intelligence purposes. Its counterpart in Executive Order 12036 is negative in tone and imposes limitations upon such activities.

The substance of the new subsection was taken from the stem of section 2-208 of Executive Order 12036.

(2-208. Continued)

(f) Information constituting foreign intelligence or counterintelligence gathered abroad or from electronic surveillance conducted in compliance with section 2-202 or from cooperating sources in the United States;

(2.3 Continued)

(b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons.

This subsection grants authority to collect foreign intelligence and is intended to consolidate and specify the circumstances under which such intelligence may be collected in the United States from or concerning United States persons by agencies of the Intelligence Community. The current Order (Section 2-208(f)) limits such collection to information obtained from "cooperating sources." It should be a sufficient safeguard to limit the authority of the Intelligence Community to engage in such collection in only significant cases which could not concern the domestic activities of U.S. persons.

(2-208. Continued)

(g) Information about a person who is reasonably believed to be acting on behalf of a foreign power, engaging in international terrorist activities or narcotics production or trafficking, or endangering the safety of a person protected by the United States Secret Service or the Department of State;

(2.3 Continued)

(c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;

This subsection simplifies and standardizes the criteria for foreign intelligence, counterintelligence, narcotics and terrorism investigations, and permissible retention and dissemination of information derived therefrom. The subsection eliminates the ambiguities and inconsistencies of its counterparts in Executive Order 12036.

(k) Information concerning persons or activities that pose a clear threat to any facility or personnel of any agency within the Intelligence Community. Such information may be retained only by the agency threatened and if appropriate, by the United States Secret Service and the FBI.

(d) Information needed to protect the safety of any person or organizations, including those who are targets, victims or hostages of international terrorist organizations;

This subsection consolidates three separate provisions of Executive Order 12036 and removes arbitrary and unnecessary limits on collection needed to protect the safety of any persons or organizations.

(2-208. Continued)

(c) Information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting, which is needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure;

(e) Information concerning persons who are reasonably believed to be potential sources or contacts, but only for the purpose of determining the suitability or credibility of such persons;

(2.3 Continued)

(e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

This subsection is expanded to permit collection abroad for this purpose of individuals other than employees and others with similar relationships to intelligence agencies.

(2-208. Continued)

(b) Information arising out of a lawful counterintelligence or personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

[See § 2-310(a)]

[See § 2-310(d)]

(2.3 Continued)

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.

This new paragraph will facilitate dissemination of information within the Intelligence Community concerning U.S. persons. It will be of most benefit to agencies with counter-intelligence responsibilities. Under Executive Order 12036, no dissemination of information concerning U.S. persons can occur until a determination has been made that the information is within one of the categories designated in Section 2-208. This requires the disseminating agency to make an administrative determination before it can disseminate the information. This new provision will allow dissemination of information, other than information derived from signals intelligence, without the delay occasioned by the administrative determination that the information falls within the categories listed in the new Section 2.3. Rather, the information is relevant to its responsibilities before the agency can retain it. Signals intelligence information, because of the possible constitutional implications raised by the manner in which it is acquired, is subject to separate dissemination procedures.

Deleted:

(d) Information needed solely to identify individuals in contact with those persons described in paragraph (c) of this section or with someone who is the subject of a lawful foreign intelligence or counter-intelligence investigation;

Eliminated as unnecessary in view of other expanded categories in Section 2.3.

(i) Information concerning United States persons abroad that is obtained in response to requests from the Department of State for support of its consular responsibilities relating to the welfare of those persons;

Eliminated as unnecessary in view of new subsection 2.3(d).

(j) Information collected, received, disseminated or stored by the FBI and necessary to fulfill its lawful investigative responsibilities; or

Eliminated as unnecessary in view of other expanded categories in Section 2.3.

2-2. Restrictions on Certain Collection Techniques.

2-201. General Provisions.

(a) The activities described in section 2-202 through 2-208 shall be undertaken only as permitted by this Order and by procedures established by the head of the agency concerned and approved by the Attorney General. Those procedures shall protect constitutional rights and privacy, ensure that information is gathered by the least intrusive means possible, and limit use of such information to lawful governmental purposes.

[Section 2-201(b) is set out opposite § 2.5 of new Order.]

2.4 Collection Techniques. Agencies within the Intelligence Community shall use the least intrusive collection techniques feasible within the United States or directed against United States persons abroad. Agencies are not authorized to use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices unless they are in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such procedures shall protect constitutional and other legal rights and limit use of such information to lawful governmental purposes. These procedures shall not authorize:

Section 2.4 consolidates several separate provisions of Executive Order 12036.

(2.4. Continued)

2-202. Electronic Surveillance. The CIA may not engage in any electronic surveillance within the United States. No agency within the Intelligence Community shall engage in any electronic surveillance directed against a United States person abroad or designed to intercept a communication sent from, or intended for receipt within, the United States except as permitted by the procedures established pursuant to section 2-201. Training of personnel by agencies in the Intelligence Community in the use of electronic communications equipment, testing by such agencies of such equipment, and the use of measures to determine the existence and capability of electronic surveillance equipment being used unlawfully shall not be prohibited and shall also be governed by such procedures. Such activities shall be limited in scope and duration to those necessary to carry out the training, testing or countermeasures purpose. No information derived from communications intercepted in the course of such training, testing or use of countermeasures may be retained or used for any

(a) The CIA to engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance;

The prohibition found in Executive Order 12036 on CIA use of electronic surveillance within the United States is retained. Electronic surveillance for training, testing, or conducting countermeasures to hostile electronic surveillance is permitted, as under the old Order and the Foreign Intelligence Surveillance Act of 1978.

(2-202. Continued)

other purpose. Any electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act as well as this Order.

2-204. Physical Searches. No agency within the Intelligence Community except the FBI may conduct any unconsented physical searches within the United States. All such searches conducted by the FBI, as well as all such searches conducted by any agency within the Intelligence Community outside the United States and directed against United States persons, shall be undertaken only as permitted by procedures established pursuant to section 2-201.

(2.4 Continued)

(b) Unconsented physical searches in the United States by agencies other than the FBI, except for:

(1) Searches by counterintelligence elements of the military services directed against military personnel within the United States or abroad for intelligence purposes, when authorized by a military commander empowered to approve physical searches for law enforcement purposes, based upon a finding of probable cause to believe that such persons are acting as agents of foreign powers; and

(2) Searches by CIA of personal property of non-United States persons lawfully in its possession.

Section 2.4(b)(1) authorizes the counterintelligence elements of the military services to conduct unconsented physical searches against active-duty military personnel. Under Executive Order 12036, only the FBI is permitted to conduct unconsented physical searches within the United States.

Under Section 2.4(b)(2), CIA will be permitted to conduct a search of a non-U.S. person's personal property lawfully in its possession. Under Executive Order 12036, such property acquired abroad or entrusted to a CIA asset could not be opened in the United States unless the opening is accomplished by the FBI.

(2.4 Continued)

2-206. Physical Surveillance. The FBI may conduct physical surveillance directed against United States persons or others only in the course of a lawful investigation. Other agencies within the Intelligence Community may not undertake any physical surveillance directed against a United States person unless:

(c) Physical surveillance of a United States person in the United States by agencies other than the FBI, except for:

(1) Physical surveillance of present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting; and

(2) Physical surveillance of a military person employed by a nonintelligence element of a military service.

(d) Physical surveillance of a United States person abroad to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means.

The new Order expands the authority to conduct physical surveillance in the United States to encompass former employees and others with similar relationships to the Intelligence Community.

The new Order eliminates the requirement of a reasonable belief that a person is acting on behalf of a foreign power or engaging in terrorist or narcotics activities before he may be physically surveilled abroad. The new Order substitutes the requirement that if the purpose of the physical surveillance is to acquire foreign intelligence, the information sought must be significant and cannot be acquired by other means. Physical surveillance for other than foreign intelligence purposes (counterintelligence, terrorism, narcotics) could be in the course of a lawful investigation.

(2-206. Continued)

(b) The surveillance is conducted solely for the purpose of identifying a person who is in contact with someone who is the subject of a foreign intelligence or counterintelligence investigation; or

Eliminated. See comment on page 72.

(c) That person is being surveilled for the purpose of protecting foreign intelligence and counterintelligence sources and methods from unauthorized disclosure or is the subject of a lawful counterintelligence, personnel, physical or communications security investigation.

Eliminated. See comment on page 72.

(2-206. Continued)

(d) No surveillance under paragraph (c) of this section may be conducted within the United States unless the person being surveilled is a present employee, intelligence agency contractor or employee of such a contractor, or is a military person employed by a non-intelligence element of a military service. Outside the United States such surveillance may also be conducted against a former employee, intelligence agency contractor or employee of a contractor or a civilian person employed by a non-intelligence element of an agency within the Intelligence Community. A person who is in contact with such a present or former employee or contractor may also be surveilled, but only to the extent necessary to identify that person.

Eliminated. See comment on page 72.

(2-206. Continued)

(a) The surveillance is conducted outside the United States and the person being surveilled is reasonably believed to be acting on behalf of a foreign power, engaging in international terrorist activities, or engaging in narcotics production or trafficking;

2-203. Television Cameras and Other Monitoring. No agency within the Intelligence Community shall use any electronic or mechanical device surreptitiously and continuously to monitor any person within the United States, or any United States person abroad, except as permitted by the procedures established pursuant to section 2-201. Any monitoring which constitutes electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978 shall be conducted in accordance with that Act as well as this Order.

[See § 2.4 of new Order.]

Section 2.4 of the new Order covers this subject substantively and eliminates the need for a separate provision as in Executive Order 12036.

2-205. Mail Surveil-
lance. No agency within the
Intelligence Community shall open
mail or examine envelopes in
United States postal channels,
except in accordance with
applicable statutes and regula-
tions. No agency within the
Intelligence Community shall open
mail of a United States person
abroad except as permitted by
procedures established pursuant
to section 2-201.

(See sections 2.4 and 2.8
of new Order.)

Sections 2.4 and 2.8 of
the new Order cover this subject
substantively and eliminate the
need for separate provisions as
in Executive Order 12036.

2-301. Tax Infor-
mation. No agency within the
Intelligence Community shall
examine tax returns or tax infor-
mation except as permitted by
applicable law.

[See § 2.8 of new Order.]

Section 2.8 of the new
Order covers this subject sub-
stantively and eliminates the
need for a separate provision as
in Executive Order 12036.

2-201. (b) Activities described in section 2-202 through 2-205 for which a warrant would be required if undertaken for law enforcement rather than intelligence purposes shall not be undertaken against a United States person without a judicial warrant, unless the President has authorized the type of activity involved and the Attorney General has both approved the particular activity and determined that there is probable cause to believe that the United States person is an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.

2.5 Attorney General Approval. The Attorney General hereby is delegated the power to approve the use for intelligence purposes, within the United States or against a United States person abroad, of any technique for which a warrant would be required if undertaken for law enforcement purposes, provided that such techniques shall not be undertaken unless the Attorney General has determined in each case that there is probable cause to believe that the technique is directed against a foreign power or an agent of a foreign power. Electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act, as well as this Order.

This provision delegates authority to the Attorney General to approve the use of intrusive techniques under defined circumstances. It eliminates the need for a separate Presidential delegation, as is currently the case under E.O. 12036.

2-3. Additional Restrictions and Limitations.

2-308. Restrictions on Assistance to Law Enforcement Authorities. Agencies within the Intelligence Community other than the FBI shall not, except as expressly authorized by law:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration (or its successor agencies) or to state or local police organizations of the United States; or

(b) Participate in or fund any law enforcement activity within the United States.

2-309. Permissible Assistance to Law Enforcement Authorities. The restrictions in section 2-308 shall not preclude:

(a) Cooperation with appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of any agency within the Intelligence Community;

2.6 Assistance to Law Enforcement Authorities. Agencies within the Intelligence Community are authorized to:

(a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property and facilities of any agency within the Intelligence Community;

The new Order generally authorizes assistance permitted under Executive Order 12036. Subsection (d) goes somewhat beyond Executive Order 12036, however, by making it clear that any other assistance may be provided to law enforcement authorities if not precluded by applicable law. This provision is included to give the Intelligence Community authority to provide assistance unless prohibited by the Posse Comitatus Act or the National Security Act of 1947.

(2-309. Continued)

(b) Participation in law enforcement activities in accordance with law and this Order, to investigate or prevent clandestine intelligence activities by foreign powers, international narcotics production and trafficking, or international terrorist activities; or

(c) Provision of specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency or, when lives are endangered, to support local law enforcement agencies. Provisions of assistance by expert personnel shall be governed by procedures approved by the Attorney General.

(2.6 Continued)

(b) Unless otherwise precluded by law or this Order, participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities;

(c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel of the providing agency; and

(d) Render any other assistance and cooperation to law enforcement authorities not precluded by applicable law.

This provision was added to make it clear that other lawful assistance to law enforcement authorities is permitted.

2-303. Restrictions on Contracting. No agency within the Intelligence Community shall enter into a contract or arrangement for the provision of goods or services with private companies or institutions in the United States unless the agency sponsorship is known to the appropriate officials of the company or institution. In the case of any company or institution other than an academic institution, intelligence agency sponsorship may be concealed where it is determined pursuant to procedures approved by the Attorney General, that such concealment is necessary to maintain essential cover or proprietary arrangements for authorized intelligence purposes.

[See §§ 2-205 and 2-301 of E.O. 12036.]

2.7 Contracting. Agencies within the Intelligence Community are authorized to enter into contracts or arrangements for the provision of goods or services with private companies or institutions in the United States and need not reveal the sponsorship of such contracts or arrangements for authorized intelligence purposes. Contracts or arrangements with academic institutions may be undertaken only with the consent of appropriate officials of the institution.

2.8 Consistency With Other Laws. Nothing in this Order shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.

The new Order eliminates the requirement for Attorney General procedures, but otherwise retains the prohibition on concealed contracts with academic institutions.

This Section, not highlighted in Executive Order 12036, embodies the principle that the Order does not exempt the Intelligence Community from the requirements of law. It supports the elimination of some provisions of Executive Order 12036 that merely repeat the requirements of current law, such as Section 2-205 concerning mail surveillance.

2-207. Undisclosed Participation in Domestic Organizations. No employee may join, or otherwise participate in, any organization within the United States on behalf of any agency within the Intelligence Community without disclosing their intelligence affiliation to appropriate officials of the organization, except as permitted by procedures established pursuant to section 2-201. Such procedures shall provide for disclosure of such affiliation in all cases unless the agency head or a designee approved by the Attorney General finds that nondisclosure is essential to achieving lawful purposes, and that finding is subject to review by the Attorney General. Those procedures shall further limit undisclosed participation to cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation;

2.9 Undisclosed Participation in Organizations Within the United States. No one acting on behalf of agencies within the Intelligence Community may join or otherwise participate in any organization in the United States on behalf of any agency within the Intelligence Community without disclosing his intelligence affiliation to appropriate officials of the organization, except in accordance with procedures established by the head of the agency concerned and approved by the Attorney General. Such participation shall be authorized only if it is essential to achieving lawful purposes as determined by the agency head or designee. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation; or

The new Order does not significantly alter the regulation of undisclosed participation. No exceptions, other than those already contained within Executive Order 12036 have been made to permit the influencing of organizations in the United States.

(2-207. Continued)

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power; or

(c) The participation is strictly limited in its nature, scope and duration to that necessary for other lawful purposes relating to foreign intelligence and is a type of participation approved by the Attorney General and set forth in a public document. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members.

2-302. Restrictions on Experimentation. No agency within the Intelligence Community shall sponsor, contract for, or conduct research on human subjects except in accordance with guidelines issued by Department of Health, Education and Welfare. The subject's informed consent shall be documented as required by those guidelines.

(2.9 Continued)

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

2.10 Human Experimentation. No agency within the Intelligence Community shall sponsor, contract for or conduct research on human subjects except in accordance with guidelines issued by the Department of Health and Human Services. The subject's informed consent shall be documented as required by those guidelines.

2-305. Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2-307. Restrictions on Indirect Participation in Prohibited Activities. No agency of the Intelligence Community shall request or otherwise encourage, directly or indirectly, any person, organization, or government agency to undertake activities forbidden by this Order or by applicable law.

2-304. Restrictions on Personnel Assigned to Other Agencies. An employee detailed to another agency within the federal government shall be responsible to the host agency and shall not report to the parent agency on the affairs of the host agency unless so directed by the host agency. The head of the host agency, and any successor, shall be informed of the employee's relationship with the parent agency.

2.11 Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12 Indirect Participation. No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

The wording in the new Order is changed from that in Executive Order 12036, which refers to applicable law, to substitute the more objective standard of participation in activities forbidden by the new Order.

Eliminated as unnecessary.

2-306. Restrictions on Special Activities. No component of the United States Government except an agency within the Intelligence Community may conduct any special activity. No such agency except the CIA (or the military services in wartime) may conduct any special activity unless the President determines, with the SCC's advice, that another agency is more likely to achieve a particular objective.

[See § 1.8(e) of new Order.]

2-310. Permissible Dissemination and Storage of Information. Nothing in sections 2-201 through 2-309 of this Order shall prohibit:

(a) Dissemination to appropriate law enforcement agencies of information which indicates involvement in activities that may violate federal, state, local or foreign laws;

[See § 2.3(i) of new Order.]

(b) Storage of information required by law to be retained;

(2-306. Continued)

(c) Dissemination of information covered by section 2-208(a)-(j) to agencies within the Intelligence Community or entities of cooperating foreign governments; or

[See § 2.3 of the new Order.]

(d) Lawful storage or dissemination of information solely for administrative purposes not related to intelligence or security.

[See § 2.3(j) of new Order.]

SECTION 4

PART 3

GENERAL PROVISIONS

GENERAL PROVISIONS

3.1 Congressional Oversight. The duties and responsibilities of the Director of Central Intelligence and the heads of other departments, agencies, and entities engaged in intelligence activities to cooperate with the Congress in the conduct of its responsibilities for oversight of intelligence activities shall be as provided in title 50, United States Code, section 413. The requirements of section 662 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. §2422), and section 501 of the National Security Act of 1947, as amended (50 U.S.C. §413), shall apply to all special activities as defined in this Order.

This provision recognizes that Congressional oversight of intelligence activities shall be as provided by statute. In addition, it specifies that the statutory oversight provisions shall apply to all special activities. This is to ensure that special activities in the United States will be reportable to the Congress to the same extent as such activities abroad.