

4-1. Implementation.

4-101. Except as provided in Section 4-105 of this section, this Order shall supersede Executive Order 11905, "United States Foreign Intelligence Activities," dated February 18, 1976; Executive Order 11985, same subject, dated May 13, 1977; and Executive Order 11994, same subject, dated June 1, 1977.

4-102. The NSC, the Secretary of Defense, the Attorney General and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order.

3.2 Implementation. The NSC, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order. The Attorney General shall provide a statement of reasons for not approving any procedures established by the head of an agency in the Intelligence Community other than the FBI. The National Security Council may establish procedures in instances where the agency head and the Attorney General are unable to reach agreement on other than constitutional or other legal grounds.

This provision parallels provisions of Executive Order 12036 which authorize various officials to issue procedures and directives to implement the Order. It adds new provisions which require the Attorney General to provide a statement of reasons for not approving any procedure established by an agency head and which call for resolution by the NSC in cases where the Attorney General and an agency head disagree on a procedure on other than constitutional or legal grounds. These provisions were added to ensure that the Department of Justice does not make the final decision on policy matters.

See Section 3.2 of the new Order.

4-103. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order.

Order. See Section 3.2 of the new

4-104. The Attorney General shall have sole authority to issue and revise procedures required by Section 2-201 for the activities of the FBI relating to foreign intelligence and counter-intelligence.

Order. See Section 3.2 of the new

4-105. Where intelligence activities under this Order are to be conducted pursuant to procedures approved or agreed to by the Attorney General, those activities may be conducted under terms and conditions of Executive Order 11905 and any procedures promulgated thereunder until such Attorney General procedures are established. Such Attorney General procedures shall be established as expeditiously as possible after the issuance of this Order.

4-106. In some instances, the documents that implement this Order will be classified because of the sensitivity of the information and its relation to national security. All instructions contained in classified documents will be consistent with this Order. All procedures promulgated pursuant to this Order will be made available to the Congressional intelligence committees in accordance with Section 3-402.

3.3 Procedures. Until the procedures required by this Order have been established, the activities herein authorized which require procedures shall be conducted in accordance with existing procedures or requirements established under Executive Order 12036. Procedures required by this Order shall be established as expeditiously as possible. All procedures promulgated pursuant to this Order shall be made available to the congressional intelligence committees.

Technical changes to require that activities be conducted pursuant to Executive Order 12036 until new procedures are established. Adopts the requirement formerly in Section 4-106 of Executive Order 12036 that procedures pursuant to the Order be provided to the congressional intelligence committees.

Eliminated as unnecessary except for the requirement to provide procedures to the congressional intelligence committees. See Section 3.3 of the new Order.

4-107. Unless otherwise specified, the provisions of this Order shall apply to activities both within and outside the United States, and all references to law are applicable laws of the United States, including the Constitution and this Order. 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.

Eliminated as unnecessary.

4-2. Definitions.

For the purposes of this Order, the following terms shall have these meanings:

3.4 Definitions. For the purposes of this Order, the following terms shall have these meanings:

4-201. Communications security means protective measures taken to deny unauthorized persons information derived from telecommunications of the United States Government related to national security and to ensure the authenticity of such telecommunications.

Eliminated as unnecessary.

4-202. Counterintelligence means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons, but not including personnel, physical, document, or communications security programs.

4-203. Electronic Surveillance means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction finding equipment solely to determine the location of a transmitter.

(3.4 Continued)

(a) Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

(b) Electronic surveillance means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction-finding equipment solely to determine the location of a transmitter.

The new definition of "counterintelligence" no longer requires that intelligence activities on behalf of foreign powers, etc. be "clandestine" to be within the scope of counterintelligence concern. This change was made to ensure that counterintelligence would not be limited to counter-HUMINT activities and because some intelligence activities, such as technology acquisition, may be conducted overtly.

(3.4 Continued)

4-204. Employee means a person employed by, assigned to, or acting for an agency within the Intelligence Community.

4-205. Foreign Intelligence means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

4-206. Intelligence means foreign intelligence and counterintelligence.

(c) Employee means a person employed by, assigned to or acting for an agency within the Intelligence Community.

(d) Foreign intelligence means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

(e) Intelligence activities means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to this Order.

A broad definition of "intelligence activities" is proposed in order to take advantage of exemptions authorized for the Intelligence Community by the Paperwork Reduction Act. The definition of "intelligence" contained in Section 4-206 of Executive Order 12036 has been eliminated as unnecessary.

4-207. Intelligence Community and agency or agencies within the Intelligence Community refer to the following organizations:

(a) The Central Intelligence Agency (CIA);

(b) The National Security Agency (NSA);

(f) Intelligence Community and agencies within the Intelligence Community refer to the following agencies or organizations:

(1) The Central Intelligence Agency (CIA);

(2) The National Security Agency (NSA);

(4-207. Continued)

(c) The Defense Intelligence Agency;

(d) The Offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(e) The Bureau of Intelligence and Research of the Department of State;

(f) The intelligence elements of the military services, the Federal Bureau of Investigation (FBI), the Department of the Treasury, the Department of Energy, and the Drug Enforcement Administration (DEA); and

(g) The staff elements of the Office of the Director of Central Intelligence.

(3.4(f) Continued)

(3) The Defense Intelligence Agency (DIA);

(4) The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(5) The Bureau of Intelligence and Research of the Department of State;

(6) The intelligence elements of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, and the Department of Energy; and

(7) The staff elements of the Director of Central Intelligence.

DEA is eliminated as a member of the Intelligence Community because its functions are primarily, if not solely, law enforcement.

4-208. Intelligence product means the estimates, memoranda and other reports produced from the analysis of available information.

Eliminated as unnecessary.

4-209. International terrorist activities means any activity or activities which:

Eliminate as unnecessary.

(a) involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts; and

(b) appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; and

(4-209. Continued)

(c) transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate to seek asylum.

4-210. The National Foreign Intelligence Program includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President.

(a) The programs of the CIA;

(b) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;

(3.4 Continued)

(g) The National Foreign Intelligence Program includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President:

(1) The programs of the CIA;

(2) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance, except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;

(4-210. Continued)

(c) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;

(d) Activities of the staff elements of the Office of the Director of Central Intelligence;

(e) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

(3.4(g) Continued)

(3) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;

(4) Activities of the staff elements of the Director of Central Intelligence;

(5) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

4-211. Physical surveillance means an unconsented, systematic and deliberate observation of a person by any means on a continuing basis, or unconsented acquisition of a nonpublic communication by a person not a party thereto or visibly present threat through any means not involving electronic surveillance. This definition does not include overhead reconnaissance not directed at specific United States persons.

4-212. Special activities means activities conducted abroad in support of national foreign policy objectives which are designed to further official United States programs and policies abroad and which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but not including diplomatic activity or the collection and production of intelligence or related support functions.

(3.4 Continued)

(h) Special activities means activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, or policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions.

Eliminate as unnecessary.

The definition of special activities has been modified so that it is not limited to only activities conducted abroad. Since this new provision permits special activities in the United States (in support of foreign policy objectives abroad), language has been added to make it clear that special activities cannot be intended to influence United States political processes, public opinion, policies, or media.

4-213. United States, when used to describe a place, includes the territories of the United States.

(3.4 Continued)

Eliminated as unnecessary.

4-214. United States person means a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association organized in the United States or substantially composed of United States citizens or aliens admitted for permanent residence, or a corporation incorporated in the United States.

(i) United States person means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

The definition of U.S. person has been modified so that only aliens who are known to be permanent resident aliens (PRAs) will be considered U.S. persons. This change will allow certain non-intrusive collection techniques to be used against aliens in the U.S. without following the added procedural requirements applicable to U.S. persons. Also, corporations directed and controlled by foreign governments will no longer be U.S. persons under the Order.

3.5 Revocation. Executive Order No. 12036 of January 24, 1978, as amended, entitled "United States Intelligence Activities," is revoked.

3.6 Purpose and Effect. This Order is intended to control and provide direction and guidance to the Intelligence Community. Nothing contained herein or in any procedures promulgated hereunder is intended to confer any substantive or procedural right or privilege on any person or organization.

This provision has been added in order to strengthen the government's position in any litigation that may ensue over the Order.



PRESIDENT'S INTELLIGENCE  
OVERSIGHT BOARD

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to enhance the security of the United States by assuring the legality of activities of the Intelligence Community, it is hereby ordered as follows:

## SECTION 3

OVERSIGHT OF INTELLIGENCE  
ORGANIZATIONS3-1. Intelligence Oversight  
Board.

3-101. Membership. The President's Intelligence Oversight Board (IOB) shall function within the White House. The IOB shall have three members who shall be appointed by the President and who shall be from outside the government and be qualified on the basis of ability, knowledge, diversity of background and experience. No member shall have any personal interest in any contractual relationship with any agency within the Intelligence Community. One member shall be designated by the President as chairman.

Section 1. There is hereby established within the White House Office, Executive Office of the President, the President's Intelligence Oversight Board, which shall be composed of three members. One member, appointed from among the membership of the President's Foreign Intelligence Advisory Board, shall be designated by the President as Chairman. Members of the Board shall serve at the pleasure of the President and shall be appointed by the President from among trustworthy and distinguished citizens outside the Government who are qualified on the basis of achievement, experience and independence. The Board shall utilize such full-time staff and consultants as authorized by the President.

Although the "Executive Office of the President" is within the reach of the FOIA, the legislative history makes it clear that the term is not to be interpreted as including the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President. The Intelligence Oversight Board, thus, would not be included within the reach of the FOIA.

The decision to require that the Chairman also be a member of the Advisory Board was based on the perceived need to have the Oversight Board chaired by a person with a broad association with intelligence activities.

Note that although reference to "personal interest in any contractual relationship with any agency within the intelligence community" has been deleted. Government-wide conflict of interest provisions (see 18 U.S.C. §201, et seq.; E.O. 11222) continue to apply to Board members.

3-102. Duties.

The IOB shall:

(c) Report periodically, at least quarterly, to the President on its findings; and report in a timely manner to the President any intelligence activities that raise serious questions of legality or propriety;

(d) Forward to the Attorney General, in a timely manner, reports received concerning intelligence activities in which a question of legality has been raised or which the IOB believes to involve questions of legality; and

(b) Review periodically for adequacy the internal guidelines of each agency within the Intelligence Community concerning the legality or propriety of intelligence activities;

Section 2. The Board shall:

(a) Inform the President of intelligence activities that any member of the Board believes are in violation of the Constitution or laws of the United States, Executive orders, or Presidential directives;

(b) Forward to the Attorney General reports received concerning intelligence activities that the Board believes may be unlawful;

(c) Review the practices and procedures of the Inspectors General and General Counsels of the Intelligence Community concerning the lawfulness of intelligence activities;

Deletion of the terms "periodically" and "timely" manner primarily was a stylistic change. It is assumed that the Board's activities will be carried on in a prompt fashion.

The term "propriety" was deleted in an effort to provide a more concise definition of what activities are to be reported. This term was replaced with the reference to "Executive orders" and "Presidential directives." (See §2(a)).

"Lawfulness" and "may be unlawful" have replaced reference to "questions of legality." It is believed that the new language provides a more definite standard.

(a) Review periodically the practices and procedures of the Inspectors General and General Counsel with responsibilities for agencies within the Intelligence Community for discovering and reporting to the IOB intelligence activities that raise questions of legality or propriety, and consider written and oral reports referred under Section 3-201;

(e) Conduct such investigations of the intelligence activities of agencies within the Intelligence Community as the Board deems necessary to carry out its functions under this Order.

(d) Review the practices and procedures of the Inspectors General and General Counsels of the Intelligence Community for discovering and reporting intelligence activities that may be unlawful or contrary to Executive order or Presidential directive; and

(e) Conduct such investigations as the Board deems necessary to carry out its functions under this Order.

3-103. Restriction on Staff. No person who serves on the staff of the IOB shall have any contractual or employment relationship with any agency within the Intelligence Community.

Deletion of this provision does not exempt Board members and staff from application of the Government-wide conflict of interest provisions. (See 18 U.S.C. §201, et seq. and E.O. 11222).

Section 3. The Board shall, when required by this Order, report directly to the President. The Board shall consider and take appropriate action with respect to matters identified by the Director of Central Intelligence, the Central Intelligence Agency or other agencies of the Intelligence Community. With respect to matters deemed appropriate by the President, the Board shall advise and make appropriate recommendations to the Director of Central Intelligence, the Central Intelligence Agency, and other agencies of the Intelligence Community.

This provision does not preclude the Board from initiating appropriate inquiries necessary to carry out its functions.

3-2. Inspectors General and General Counsel.

Inspectors General and General Counsel with responsibility for agencies within the Intelligence Community shall:

3-201. Transmit timely reports to the IOB concerning any intelligence activities that come to their attention and that raise questions of legality or propriety; .

3-202. Promptly report to the IOB actions taken concerning the Board's findings on intelligence activities that raise questions of legality or propriety;

3-203. Provide to the IOB information requested concerning the legality or propriety of intelligence activities within their respective agencies;

3-204. Formulate practices and procedures for discovering and reporting to the IOB intelligence activities that raise questions of legality or propriety; and

3-205. Report to the IOB any occasion on which the Inspectors General or General Counsel were directed not to report any intelligence activity to the IOB which they believed raised questions of legality or propriety.

Section 4. The heads of departments and agencies of the Intelligence Community shall, to the extent permitted by law, provide the Board with all information necessary to carry out its responsibilities. Inspectors General and General Counsels of the Intelligence Community shall, to the extent permitted by law, report to the Board concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.

This section was pared down because it was believed that a lengthy explanation of Inspectors General and General Counsel duties was unnecessary.

## 3-3. Attorney General.

The Attorney General shall:

3-301. Receive and consider reports from agencies within the Intelligence Community forwarded by the IOB;

3-302. Report to the President in a timely fashion any intelligence activities which raise questions of legality;

3-303. Report to the IOB and to the President in a timely fashion decisions made or actions taken in response to reports from agencies within the Intelligence Community forwarded to the Attorney General by the IOB;

3-304. Inform the IOB of legal opinions affecting the operations of the Intelligence Community; and

3-305. Establish or approve procedures, as required by this Order, for the conduct of intelligence activities. Such procedures shall ensure compliance with law, protect constitutional rights and privacy, and ensure that any intelligence activity within the United States or directed against any United States person is conducted by the least intrusive means possible. The procedures shall also ensure that any use, dissemination and storage of information about United States persons acquired through intelligence activities is limited to that necessary to achieve lawful governmental purposes.

It was determined that §3-3 was unnecessary to the Board's performance of its duties.

3-4. Congressional Intelligence Committees.

Under such procedures as the President may establish and consistent with applicable authorities and duties, including those conferred by the Constitution upon the Executive and Legislative Branches and by law to protect sources and methods, the Director of Central Intelligence and heads of departments and agencies of the United States involved in intelligence activities shall:

3-401. Keep the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate fully and currently informed concerning intelligence activities, including any significant anticipated activities which are the responsibility of, or engaged in, by such department or agency. This requirement does not constitute a condition precedent to the implementation of such intelligence activities;

3-402. Provide any information or document in the possession, custody, or control of the department or agency or person paid by such department or agency, within the jurisdiction of the Permanent Select Committee on Intelligence of the House of Representatives or the Select Committee on Intelligence of the Senate, upon the request of such committee; and

See Section 3.1. Congressional Oversight in the new Executive Order on Intelligence Activities.

3-403. Report in a timely fashion to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate information relating to intelligence activities that are illegal or improper and corrective actions that are taken or planned.

Section 5. Information made available to the Board shall be given all necessary security protection in accordance with applicable laws and regulations. Each member of the Board, each member of the Board's staff, and each of the Board's consultants shall execute an agreement never to reveal any classified information obtained by virtue of his or her service with the Board except to the President or to such persons as the President may designate.

Section 6. Members of the Board shall serve without compensation, but may receive transportation, expense, and per diem allowances as authorized by law. Staff and consultants to the Board shall receive pay and allowances as authorized by the President.

This provision is included in response to a perceived need to make the Executive Branch's approach to dealing with disclosure issues more evenhanded.

This provision was included in order to clarify the pay status of Board members and their staff.

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QUESTIONS AND ANSWERS CONCERNING THE  
DRAFT NEW EXECUTIVE ORDER

**GENERAL**

1. In view of the fact that intelligence activities have been regulated under President Carter's Executive Order 12036, why does the Reagan Administration feel that a new order is necessary?

Answer: The new draft Executive Order is another important step in the President's overall program to reinvigorate the United States intelligence capabilities to deal with the challenges of today -- such as unprovoked surprise military attacks, international terrorism, foreign espionage, Soviet expansionism, theft of American technology, and international drug traffic. The Order is intended to send a clear signal to the Intelligence Community and to the nation that the new Administration supports an aggressive and effective intelligence effort in a responsible manner that is consistent with the Constitution and applicable law, and is respectful of the principles upon which the United States was founded. The Order builds upon the experience under President Carter's Executive Order and that of his predecessor, President Ford, and improves upon those Orders.

2. **How will the new Order improve performance of the Intelligence Community?**

Answer: The new Order will improve performance by:

- Providing the Intelligence Community with an overall charge for the conduct of intelligence activities necessary to safeguard the national security.
  
- Encouraging competitive analysis and establishing an environment to ensure that senior policymakers of the Administration will be provided with the very best analysis the Intelligence Community has to offer, which will alert them to the full range of potential happenings abroad.
  
- Facilitating collection activities by simplifying the rules and providing authority for permitted activities in positive language.
  
- Facilitating condensation, simplification, and clarification of procedures implementing the Order that are to be established by the heads of agencies

within the Intelligence Community and approved by the Attorney General.

- Facilitating collection abroad of information about those who have engaged or may be engaging in international terrorist activities or espionage.
  
- Facilitating collection of intelligence in the course of a lawful international terrorism, counterintelligence, or foreign intelligence investigation.
  
- Permitting collection of intelligence for purposes of protecting foreign intelligence or counterintelligence information from unauthorized disclosure.
  
- Facilitating cooperation within the Intelligence Community with regard to counterterrorism and counterintelligence by permitting dissemination of relevant information concerning U.S. persons to agencies within the Intelligence Community for their determination as to whether the information is relevant to their functions and may be retained, and by requiring coordination of collection activities between such agencies.

**SECTION 1: DIRECTION, DUTIES AND RESPONSIBILITIES WITH RESPECT  
TO THE NATIONAL INTELLIGENCE EFFORT**

3. What are the major changes in this section of the new Order outlining the responsibilities and authorities of the DCI and other Intelligence Community elements?

Answer: The new Order presents a more concise, simplified and clearer statement of the authorities and responsibilities of the agencies within the Intelligence Community. However, the explicit delineation of the authorities and responsibilities of departments and agencies involved in intelligence is retained. The Order provides an overall charge to the Intelligence Community for the conduct of intelligence activities necessary to safeguard the security of the Nation.

4. Section 1-4(f) of the new Order provides that agencies within the Intelligence Community shall conduct such intelligence activities as the President may from time to time direct. What does this language mean?

Answer: Section 1-4 provides the Intelligence Community with an overall charge to conduct intelligence activities authorized by the Order to safeguard the national security. This

section includes an enumeration of specific activities which is meant to be illustrative rather than comprehensive. To emphasize that the enumeration was not meant to be all-inclusive, subsection (f) was added. Subsection (f) explicitly indicates that other authorized activities not specifically enumerated may be undertaken by agencies within the Intelligence Community at the explicit direction of the President.

5. Why have all references to specific NSC committees (i.e., the Policy Review Committee and the Special Coordination Committee) been deleted, along with any mention of their review responsibilities regarding intelligence matters?

Answer: The deletion of references to these or successor committees is not intended to preclude high-level review of intelligence matters but merely represents the intent of the Administration to gain additional flexibility to provide for such review outside the confines of the Executive Order.

6. How does the new Order impact upon DCI tasking and budget authorities within the Intelligence Community?

Answer: The provisions of Executive Order 12036 relating to these authorities have been reorganized and consolidated with unnecessary detail deleted.

7. Why is the requirement to present the National Foreign Intelligence Program (NFIP) budget through OMB to the President deleted from the budget authority contained in Section I-5(n) of the new Order?

Answer: As noted above, throughout the Order unnecessary detail has been eliminated. There is no need to specify by Executive order how the Executive Branch will accomplish many functions. The budget review mechanism for the NFIP will parallel the mechanisms used with regard to the defense budget.

8. Why was Section I-601(c) of Executive Order 12036, which specifically designated the DCI as principal Intelligence Community advocate to Congress, the news media, and the public, deleted?

Answer: This language was deleted as self-evident, unnecessary detail. The deletion represents no substantive change in current authorities inherent in the DCI's Community role.

9. Why is Defense Intelligence Agency given the authority to collect foreign intelligence?

Answer: The provisions of the new Order that refer to DIA intelligence collection do not constitute new authorities. This

language only reflects DIA's historical role in collecting overt intelligence via the Defense Attache System.

10. Under the new Order, what will be the obligation of agencies within the Intelligence Community to report violations of criminal law?

Answer: Agencies will be required to report to the Attorney General possible violations of federal criminal laws which are specified in procedures agreed upon by the Attorney General and the head of the agency concerned. However, the new Order specifically states that reporting will be done in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures.

11. Why does the new Order require agencies in the Intelligence Community to report possible violations of federal criminal law to the Attorney General?

Answer: The new Order is consistent with the United States Code, which requires all Executive branch agencies, not only those within the Intelligence community, to report to the Attorney General evidence of possible violations of federal law committed by employees of the government. The new Order could go even further by requiring reporting of specified crimes when committed by nonemployees, too, if implemented in procedures agreed upon by the Attorney General. The new Order makes clear,

however, that all reporting will be done in a manner that fully protects intelligence sources and methods.

**SECTION 2: CONDUCT OF INTELLIGENCE ACTIVITIES**

12. What are the major changes between this Section of the new Order and Section 2 of Executive Order 12036 which dealt with restrictions on intelligence activities?

Answer: This Section of the new Order continues to protect the basic interests of the American people under the Constitution and applicable law of the United States by defining the bounds within which all intelligence activities must be conducted. In it, the President directs that collection of information concerning United States persons is authorized only in accordance with specified criteria and only in accordance with procedures approved by the Attorney General. No intrusive techniques such as electronic surveillance or unconsented physical searches may be used without approval of the Attorney General and unless conducted in accordance with procedures approved by him. In no respect does this Section of the new order diminish the basic protections of the American people. The new Section recognizes the needs of our Nation's intelligence agencies for positive authorization to carry out their missions and for clear and concise rules governing collection activities.

13. Will the new Order expand CIA's authority to conduct counterintelligence activities within the United States?

Answer: No. The new Order, as did Executive Order 12036, permits CIA to conduct such activities only in accordance with procedures agreed upon by the Attorney General.

14. Will the new Order permit CIA collection of foreign intelligence in the United States?

Answer: The new Order specifies that collection of foreign intelligence by the CIA within the United States will be coordinated with the FBI as required by procedures agreed upon by the Attorney General.

15. Does the new Order reduce the need for senior level approval of intelligence activities?

Answer: The new Order continues to require Attorney General approval on a case-by-case basis for use of intrusive techniques such as electronic surveillance or unconsented physical searches. Delegation of authority will be permitted, however, in some other contexts. As an example, the new Order will permit provision of expert assistance to law enforcement authorities upon the approval of the General Counsel of the

providing agency, rather than the Attorney General as required under Executive Order 12036.

16. Since the new Order provides positive authorization for the use of intelligence collection techniques, does this mean that the jurisdiction of the various agencies within the Intelligence Community to employ such techniques has been enlarged?

Answer: No. Agencies may engage in authorized collection activities only if such collection executes an authorized function of the agency as specified in Section 1 of the new Order.

17. The new Order continues to permit collection of foreign intelligence or counterintelligence concerning U.S. persons. Why was the reference tying the collection of foreign intelligence or counterintelligence concerning U.S. persons in the United States to "cooperating sources" changed?

Answer: The reference to cooperating sources could be interpreted by some to limit the ability of the Intelligence Community to obtain necessary intelligence in a manner in which it was never intended. This change will not permit any collection activity in violation of the Constitution or statutes of the United States.

18. The new Order permits collection of information about a U.S. person obtained in the course of a "lawful foreign intelligence" investigation. What is a lawful foreign intelligence investigation?

Answer: It involves inquiries relating to the capabilities, intentions and activities of foreign powers, organizations, or persons.

19. What is the purpose of the new provision permitting collection of U.S. person information concerning individuals or organizations who are the targets, victims or hostages of international terrorist activities?

Answer: Although there is some overlap with other provisions, this provision is intended to ensure that such targets, victims, or hostages will not be jeopardized because of restrictions on collection or dissemination of information that may be relevant to their safety.

20. Why was the provision permitting collection, retention, and dissemination of information concerning U.S. persons for purposes of protecting intelligence sources and methods expanded to include any person, not only employees as in Executive Order 12036?

Answer: The change was made to permit the Intelligence Community to protect intelligence sources and methods in situations in which it is necessary to go beyond employees because other individuals are involved.

21. What is the purpose of the provision that permits dissemination of U.S. person information, other than SIGINT, to other intelligence agencies for their determination as to whether the information may be kept?

Answer: This provision is intended to remove an undue burden on disseminating agencies to determine the need and jurisdiction of other agencies within the Intelligence Community before lawfully acquired intelligence may be disseminated to those agencies. The recipient agencies must make the determination as to whether the intelligence may be retained lawfully by them.

22. Is the new Order more permissive as to when electronic surveillance, unconsented searches, and similar intrusive collection techniques may be undertaken abroad against a U.S. person?

Answer: No. The new Order, as did the Executive Order 12036, requires an Attorney General approval before such a technique may be used. Moreover, an intrusive technique may be used only if it is the least intrusive technique feasible to acquire the information sought and only if it is conducted in

accordance with procedures approved by the Attorney General. The new Order further requires that those procedures protect Constitutional and other rights and limit the use of information to lawful governmental purposes.

23. Will the new Order expand the authority of the Intelligence Community, and CIA in particular, to conduct activities in the United States?

Answer: The primary focus of the changes in the new Order is upon activities abroad, and its impact upon activities in the United States is minimal and incidental. The existing restrictions upon electronic surveillance and unconsented physical searches in the United States will continue. Unconsented physical searches by agencies other than the FBI are not authorized except in two very limited circumstances. The military services will be able to conduct searches of military personnel if approved by military commanders empowered to approve such searches based upon their finding of probable cause to believe that the person is acting as an agent of a foreign power. CIA will be able to examine personal property of non-United States persons only when the property is lawfully in possession of the agency. CIA electronic surveillance continues to be prohibited in the United States.

24. How does the new Order affect the use of physical surveillance?

Answer: The new Order retains existing limitations upon the conduct of physical surveillance in the United States. CIA and other agencies of the Intelligence Community will continue to be permitted to conduct physical surveillance in the United States only of current employees and other persons with similar relationships to the Intelligence Community and government.

The new Order will permit use of physical surveillance of U.S. persons abroad to a limited, reasonable, and necessary degree. Surveillance will be permitted in the course of a lawful counterintelligence, international terrorism, or other specified investigation or for the purpose of protecting foreign intelligence or counterintelligence sources and methods from unauthorized disclosure.

25. Will the new Order permit physical surveillance abroad of a reporter who is engaged in espionage on behalf of a foreign power?

Answer: Yes. The new Order will permit physical surveillance of any person engaged in espionage abroad, including reporters. The new Order does not authorize, however, the use of any activity in violation of the Constitution or statutes of the United States.

26. Would the answer to question 25 be different if the individual were involved in the theft of information concerning intelligence sources and methods?

Answer: No. All such persons, including reporters, would be subject to physical surveillance abroad under the new Order.

27. Does the new Order restrict assistance provided by agencies within the Intelligence Community to law enforcement authorities?

Answer: No. The new Order removes unnecessary restrictions on such assistance under Executive Order 12036 and clearly provides that any other assistance to and cooperation with law enforcement authorities may be provided if not precluded by applicable law such as the National Security Act. It is time that we remove unnecessary barriers to cooperation between the Intelligence Community and the law enforcement community.

28. How does the new Order regulate contracting?

Answer: The new Order, as did Executive Order 12036, does not require agencies within the Intelligence Community to reveal agency sponsorship of contracts or arrangements for authorized intelligence purposes but limits such contracts or arrangements with academic institutions to situations in which agency sponsorship is revealed to appropriate officials of the academic institutions.

29. Will agencies within the Intelligence Community be able to engage in undisclosed participation in domestic organizations?

Answer: Under the new Order, 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 their 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 may 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 unless the Attorney General has approved the participation and determined that it will not interfere with any rights protected by the Constitution or laws of the United States.

30. Under the new Order may agencies within the Intelligence Community avoid the prohibitions of that Order by asking others to do what they may not?

Answer: No. The new Order specifically states that no agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by the Order.

31. Will the new Order permit unconsented research involving human subjects?

Answer: No. As under Executive Order 12036, such research will not be permitted without an individual's informed consent in accordance with guidelines issued by the Department of Health and Human Services.

32. Will assassinations be permitted under the new Order?

Answer: No. As under Executive Order 12036, persons employed by or acting on behalf of the United States Government will not be permitted to engage in, or conspire to engage in, assassinations.

33. Will the new Order contain restrictions on opening mail and examining envelopes in United States postal channels?

Answer: The new Order specifically provides that mail surveillance may not be employed within the United States or directed against United States persons abroad unless in accordance with procedures approved by the Attorney General. Nothing in the new Order authorizes any activity in violation of the Constitution or statutes of the United States.

34. Will the new Order permit unlawful examination of tax returns or tax information by Intelligence Community agencies?

Answer: The new Order does not authorize such examination of tax returns or tax information as would violate of the Constitution or statutes of the United States.

### **SECTION 3: OVERSIGHT OF INTELLIGENCE ACTIVITIES**

35. What impact will Section 3 have upon the oversight of intelligence activities?

Answer: Section 3 preserves and strengthens the oversight responsibilities of the Intelligence Oversight Board (IOB), the Attorney General, and the Inspector Generals and General Counsels of the Intelligence Community. In particular, with regard to the IOB, the Order continues IOB review of internal oversight practices and procedures of agencies within the Intelligence community and authorizes the IOB to take appropriate actions or make appropriate recommendations regarding information it receives. Moreover, the crimes reporting standard applicable to agencies within the Intelligence Community has been clarified. Rather than an ambiguous requirement to receive information concerning questions of legality and propriety, the President, the Attorney General, and the IOB must now be provided with information concerning violations of law or Presidential directive. Unnecessary and self-evident detail contained in the previous Executive Order have been eliminated. The Congressional oversight provisions incorporate by reference 50 U.S.C. Section 413, which established Congressional oversight of Intelligence Community agencies.

**SECTION 4: GENERAL PROVISIONS**

36. Does the new Order provide a means for resolving disputes between the Attorney General and other intelligence agency heads regarding the contents of procedures implementing the Order?

Answer: Yes. If an intelligence agency head disagrees with the Attorney General after reviewing his reasons, the issue may be taken to the National Security Council for resolution.

37. The new Order redefines the Intelligence Community so as to eliminate the Drug Enforcement Agency (DEA). Why was DEA taken out of the Order?

Answer: Notwithstanding DEA's formal membership in the Intelligence Community under Executive Order 12036, DEA has never really been considered a Intelligence Community agency. By mutual agreement between the DCI and the Attorney General, DEA was excluded from the NFIP budget and no action has ever been taken to implement DEA's membership in the Community. Since the Department of Justice is currently examining options regarding the ultimate disposition of DEA's functions, reference to DEA was deleted from the Order at the Justice Department's request. However, it should be noted that DEA's intelligence functions, without mention of DEA, are referenced in Sections 1-5(e), 1-5(f), and 1-7(g) of the new Order.

38. Why was the definition of "special activities" changed?

Will CIA now be able to conduct special activities in the United States?

Answer: CIA will not be permitted to conduct special activities intended to influence domestic United States political processes, public opinion or policies under the new Order. The new definition specifically precludes such activities.

The intent of the change in the definition is not to permit special activities directed at objectives in the United States, but, rather, to clarify that special activities in support of national foreign policy objectives abroad are not precluded merely because they are initiated within the United States. Of course, any special activity, whether intended in the United States or abroad, would require an appropriate Presidential finding and reporting to the intelligence oversight committees in accordance with existing statutory requirements.

39. Why was the definition of "United States person" changed in the new Order?

Answer: The definition was simplified to facilitate compliance with the restrictions applicable to United States persons that are contained within the Order. The definition

continues to protect U.S. citizens, known permanent resident aliens, unincorporated associations substantially composed of U.S. citizens or permanent resident aliens and corporations incorporated in the United States, except for corporations directed or controlled by a foreign government or governments.