

*File Ex Order*

STATINTL

MANAGEMENT

30 January 1978

STATINTL

NEW EXECUTIVE ORDER 12036, WHICH  
SUPERSEDES EXECUTIVE ORDER 11905

REFERENCE:

1. Executive Order 11905, issued on February 18, 1976 by President Ford, delineated the authorities, responsibilities, duties, and limitations of the various officials and agencies responsible for the performance of national foreign intelligence and counterintelligence functions. That order has served as the primary source of guidance concerning the proper scope of intelligence activities ever since. On January 24, 1978, President Carter signed and issued Executive Order 12036, which supersedes Executive Order 11905. The purpose of this notice is to familiarize employees generally with the provisions in Executive Order 12036, particularly insofar as they affect CIA and differ from the provisions of Executive Order 11905.

2. The new order is intended principally to implement Presidential Directive NSC-17 of August 4, 1977, which established the full and exclusive authority of the Director of Central Intelligence for approval of the National Foreign Intelligence Program budget. Thus the statement of the Director's authorities in the new order has been expanded to include the various functions necessary to carry out this responsibility. In addition, the Presidential Directive mandated a stronger role for the Director in the establishment of intelligence requirements as well as the direction and coordination of the collection systems available to fulfill those requirements. The new order accomplishes this by designating the Director as Chairman of the National Security Council's cabinet-level Policy Review Committee for the purpose of establishing requirements, and by creating the National Intelligence Tasking Center, under the control of the Director, which is responsible for developing specific collection objectives to meet those requirements. The Director also has been specifically recognized as the focal point for intelligence arrangements with foreign governments and as the principal spokesman to the Congress, the news media, and the public on intelligence matters. The Director is authorized to draw the support necessary to discharge the national foreign intelligence functions assigned to the Director from staff elements within the Office of the Director as well as CIA. Further, the National Foreign Intelligence Board is recognized and "established" under the order to advise the Director in the performance of these responsibilities.

MORI/CDF

30 January 1978

3. The CIA authorities have been expanded in the new order to recognize not only those functions explicitly authorized in Executive Order 11905, but also the Agency's responsibilities for the conduct and support of technical collection programs, for the clandestine collection of foreign intelligence within the U.S. in coordination with the FBI, for the coordination of all foreign counterintelligence and clandestine foreign intelligence collection activities conducted abroad, and for the provision of legal, legislative, and other administrative support to the Director. Except for wartime, or where the President determines another intelligence entity may be better suited to achieve the objective, only CIA may perform special activities in support of U.S. foreign policy objectives.

4. The National Security Council's Special Coordination Committee, which includes the Director, will continue in its role as the advisory body to the President concerning special activities in support of U.S. foreign policy objectives. In addition, sensitive foreign intelligence collection operations will be reported by the Director to the Chairman of this committee for appropriate review and approval under standards established by the President. A new responsibility of this committee is the development of policy regarding the conduct and objectives of national foreign counterintelligence activities and the approval of such counterintelligence activities or proposals as the President determines require such approval.

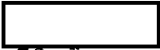
5. No existing restriction on CIA activities has been removed. Absolute prohibitions continue to be in effect concerning CIA-conducted electronic surveillance within the U.S. and unconsented physical searches within the U.S. As to other types of activity which CIA is authorized to perform in the course of its foreign intelligence functions, the supervisory role of the Attorney General has been enlarged in terms of both tone and substance. Existing requirements for Attorney General approval or compliance with Attorney General-approved procedures governing CIA conduct of counterintelligence activities with the FBI in the U.S., FBI intelligence and counterintelligence activities including electronic surveillance within the U.S. in support of CIA and other intelligence agencies, electronic surveillance directed against U.S. persons abroad, CIA testing of electronic equipment in the U.S., and unconsented physical searches directed against U.S. persons abroad have been continued. The new order specifically requires, in addition, that the Attorney General approve procedures governing CIA conduct of foreign intelligence collection activities in the U.S., activities which also must be coordinated with the FBI; physical surveillance directed against limited categories of U.S. persons in the U.S. and abroad; surreptitious movie and television surveillance within the U.S. or directed against a U.S. person abroad; audio countermeasures activities; training on electronic communications equipment; examination of mail of a U.S. person; undisclosed participation in organizations within the U.S.; all types of collection, as well as dissemination and storage, of the limited categories of nonpublic information concerning the domestic and foreign activities of U.S. persons

30 January 1978

which the order allows to be acquired; the provision of expert personnel (as opposed to specialized equipment or technical knowledge) to assist federal agencies, or where lives are endangered, local law enforcement agencies; and concealment of CIA-sponsorship in contracting with private companies. Further, in circumstances where a warrant would be required if the activity were undertaken for law enforcement purposes, electronic surveillance, TV and movie surveillance, physical searches, and mail surveillance may not be directed against a U.S. person without a warrant unless the President has authorized the activity and the Attorney General has approved and found probable cause to believe the U.S. person is an agent of a foreign power. In addition, a new section has been added which charges the Attorney General with approving the procedures for these various activities with the objective of ensuring compliance with law, protecting constitutional rights and privacy, and ensuring that intelligence activities authorized to be directed against U.S. persons employ the least intrusive means necessary to achieve their purposes. Until the Attorney General has approved the new procedures required by the order, the activities to be affected are to continue to be conducted in accordance with Executive Order 11905. In all other respects Executive Order 12036 takes effect immediately.


6. The section formerly restricting "infiltration or undisclosed participation" in U.S. organizations now provides that employees may not "join, or otherwise participate in" such organizations on behalf of the Agency without disclosure of their CIA affiliation, except for certain types of participation which are to be approved by the Attorney General and described generally in a public document. Further, this participation must be of limited scope and duration, and nondisclosure must be determined to be essential to achieving lawful purposes under approved procedures. The prohibitions on collection of information concerning U.S. persons have been extended to include information concerning their activities abroad as well as in the U.S., and the existing exceptions to this bar have been modified to include such information acquired through overhead reconnaissance or for the purpose of assisting the State Department in locating U.S. persons abroad. The requirement that academic institutions be made aware of Agency sponsorship of contracts and agreements for goods and services has been retained. This requirement has been extended to agreements with private companies except where it is determined under approved procedures that concealment from the company of CIA sponsorship is necessary for essential cover or proprietary reasons. Assistance to law enforcement agencies may now include providing expert personnel under approved procedures, dissemination of lawfully collected information to Federal or local authorities when it indicates criminal activities, and participation in the prevention or detection of clandestine intelligence activities or international terrorist or narcotics activities. The order also contains a new section barring an intelligence agency from using third parties to indirectly accomplish purposes otherwise forbidden by the order or by law.

MANAGEMENT

  
30 January 1978

7. Other significant revisions include the explicit recognition of the oversight functions of the Senate and House Select Committee on Intelligence and a description of the responsibilities of the Director and heads of other agencies to report various matters to those committees. The intelligence activities of the FBI, formerly excepted from the restrictions provisions of Executive Order 11905, have now been brought specifically within the limitations of the new order. In addition, the Drug Enforcement Administration has been added to the agencies constituting the Intelligence Community and its intelligence functions have been made subject to Attorney General procedures and DCI coordination. Section 7 of Executive Order 11905, which required a Community-wide mandatory secrecy agreement for the protection of intelligence sources and methods, has been omitted in its entirety from the new order. All relevant terms have been incorporated into a single definitions section rather than appearing in duplicative definitions sections as was the case in Executive Order 11905. Definitions have been added for "Communications Security," "Intelligence Product," and "International Terrorist Activities" and information concerning terrorism has been included in the definition of "foreign intelligence" as well as "foreign counterintelligence." The composition of the National Foreign Intelligence Program has become more fluid because of the provision for three categories of programs: (1) those that are included without question (such as CIA and the staff elements of the Office of the Director); (2) those that are included unless the Director and the Secretary of Defense agree to their exclusion (such as the Consolidated Cryptologic Program, the General Defense Intelligence Program, and the special reconnaissance programs); and (3) those that are excluded unless the Director and the appropriate agency head agree to their inclusion (such as the intelligence elements of the FBI). Tactical military intelligence activities are specifically excluded from the NFIP.

8. This notice is not intended to represent a definitive interpretation of the new order and constitutes a mere summary of its more prominent features. Employees are encouraged to review the new order in its entirety in order to gain a more complete understanding of its contents and determine the manner in which it affects the performance of their duties. Any ambiguity or question which arises concerning the interpretation of the new order and its application to the Agency's functions should be referred to the Office of General Counsel. Likewise there should be referred to that office any question regarding the need to modify Agency regulations, directives, instructions, or policies so as to conform them to the provisions and requirements of the new order.

  
STANSFIELD TURNER  
Director

STATINTL

DISTRIBUTION: ALL EMPLOYEES