



Washington, D. C. 20505

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26 JUL 1978

Honorable James O. Eastland, Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

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Dear Mr. Chairman:

I am writing in response to your request for views on S. 1720 and S. 1721, bills "to amend Chapter 5, Subchapter II of Title 5, United States Code, to provide for improved administrative procedures."

The Central Intelligence Agency is neither a regulatory agency nor an agency engaging in activities directly impacting on or affecting the public generally. Further, in the foreign affairs field, "rules" would appear to include statements governing such activities as issuing passports and visas, controlling imports and exports, and regulating investment overseas. Nevertheless, the question of whether and to what extent this Agency makes rules is somewhat unsettled.

Because of the possibility that this Agency might at some time be considered to make rules within the meaning of Chapter 5 of Title V of the United States Code, I wish to offer the following comments on the amendments to 5 U.S.C. §553 proposed by S. 1721. The bill would narrow the exemption pertaining to a military or foreign affairs function of the United States currently codified in paragraph (a)(1) of section 553 to exempt only matters in those categories which are properly classified pursuant to Executive Order. I am concerned about the adverse impact this would have on the protections from disclosure afforded national security information.

National security information may fall into two categories: that which is classified pursuant to an Executive Order and that which is designated by the Director of Central Intelligence, pursuant to his statutory responsibility (50 U.S.C. §403(d)(3)), as information involving intelligence sources and methods. The amendment proposed by S. 1721 would cover, at best, only the former category of information; proposed rules relating to or involving intelligence sources and methods would be subject to the public notice and comment procedures. As a result, there would be a very great possibility of disclosure of sensitive foreign intelligence information.