
**DEPARTMENT OF ENERGY
PROCEDURES
FOR
INTELLIGENCE ACTIVITIES**



**APPROVED BY THE ATTORNEY GENERAL
UNDER EXECUTIVE ORDER 12333
OCTOBER 19, 1992
Washington, DC 20585**



Office of the Attorney General

Washington, D.C. 20530

October 7, 1992

Honorable James D. Watkins
Secretary of Energy
Department of Energy
Washington, D.C. 20585

Dear Admiral Watkins:

Attached are procedures I have approved to govern the Department of Energy's limited intelligence activities. These procedures are consistent with relevant law and the policies reflected in Executive Order 12333 and were developed by representatives of your Office of Intelligence in conjunction with the Department of Justice Office of Intelligence Policy and Review.

Consistent with the previously developed practice of presenting approved procedures for Congressional review seven working days in advance of their effective date, the procedures will take effect ten days from the date you approve them.

I understand that upon our joint approval the Department of Energy will furnish the procedures to the Senate and House Intelligence Committees. Upon your approval, please provide this Department with an executed copy of the procedures.

Sincerely,

A handwritten signature in cursive script, appearing to read "W.P. Barr".

William P. Barr
Attorney General

Attachments

AS REQUIRED BY EXECUTIVE ORDER 12333, THESE PROCEDURES GOVERN CERTAIN ACTIVITIES CONDUCTED BY OR ON BEHALF OF INTELLIGENCE COMPONENTS OF THE DEPARTMENT OF ENERGY. ACTIVITIES SUBJECT TO THESE PROCEDURES INCLUDE --

- THE COLLECTION, RETENTION AND DISSEMINATION OF INFORMATION,
- THE PROVISION OF ASSISTANCE TO OTHER AGENCIES,
- PARTICIPATION IN U.S. ORGANIZATIONS,
- CONTRACTING FOR GOODS AND SERVICES, AND
- THE REPORTING OF QUESTIONABLE INTELLIGENCE ACTIVITIES.

THESE PROCEDURES MAY BE SUPPLEMENTED FROM TIME TO TIME BY ADDITIONAL DIRECTIVES.

PROCEDURES FOR INTELLIGENCE ACTIVITIES

TABLE OF CONTENTS

| | | |
|-------|--|----|
| I. | INTRODUCTION | 1 |
| II. | APPLICABILITY AND SCOPE | 1 |
| III. | DOE INTELLIGENCE COMPONENTS | 2 |
| IV. | RESPONSIBILITIES OF THE DEPARTMENT OF ENERGY WITH RESPECT TO THE UNITED STATES INTELLIGENCE EFFORT | 4 |
| V. | GENERAL PRINCIPLES | 6 |
| VI. | DEFINITIONS | 7 |
| VII. | COLLECTION OF FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE INFORMATION BY DOE INTELLIGENCE COMPONENTS | 12 |
| VIII. | DOE SUPPORT OF AUTHORIZED FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE COLLECTION ACTIVITIES OF OTHER IC MEMBER AGENCIES | 16 |
| IX. | PROVISION OF TECHNICAL, ANALYTICAL AND RESEARCH ASSISTANCE TO OTHER IC MEMBER AGENCIES | 17 |
| X. | RETENTION OF INFORMATION CONCERNING U.S. PERSONS BY DOE | 17 |
| XI. | DISSEMINATION OF INFORMATION CONCERNING U.S. PERSONS BY DOE | 19 |
| XII. | UNDISCLOSED PARTICIPATION IN ORGANIZATIONS WITHIN THE UNITED STATES | 20 |
| XIII. | PROVISION OF ASSISTANCE TO LAW ENFORCEMENT AGENCIES | 24 |
| XIV. | CONTRACTING FOR GOODS AND SERVICES | 25 |
| XV. | EMPLOYEE CONDUCT | 25 |
| XVI. | IDENTIFYING, INVESTIGATING AND REPORTING QUESTIONABLE ACTIVITIES | 26 |
| XVII. | APPROVAL AND EFFECTIVE DATE | 28 |

PROCEDURES FOR INTELLIGENCE ACTIVITIES

I. INTRODUCTION

Executive Orders (E.O.) 12333 and 12334 of December 4, 1981, govern the conduct of intelligence activities by all agencies within the Intelligence Community (IC) and are intended to ensure the protection of constitutional and other individual rights. Section 2.3 of E.O. 12333 requires the head of each IC member agency to establish procedures governing the collection, retention, and dissemination of information concerning United States persons.

Section 2.9 requires that procedures be established and approved before anyone acting on behalf of an intelligence component may participate in an organization within the United States without disclosing his or her intelligence affiliation. Section 2.4 likewise requires approved procedures before certain intelligence information collection techniques may be used. E.O. 12334, which establishes the President's Intelligence Oversight Board (PIOB), and section 1.7 of E.O. 12333 delineates the obligations of members of the IC with respect to the PIOB.

These Department of Energy (DOE) Procedures For Intelligence Activities (these "Procedures"), which are adopted pursuant to E.O. 12333, are intended to enable DOE Intelligence Components to carry out effectively their authorized functions and to provide appropriate assistance to other member agencies of the IC; and to ensure that DOE intelligence activities and programs do not violate constitutional protections and other individual rights of "U.S. persons" as defined in E.O. 12333, applicable laws, other Executive Orders, Presidential Directives, or applicable DOE policy.

II. APPLICABILITY AND SCOPE

- A. Unless specified otherwise, these Procedures apply to all activities, in the United States or abroad, relating to the collection, retention, or dissemination of foreign intelligence and counterintelligence information, and any other activities authorized by E.O. 12333. These Procedures also apply to all DOE Management & Operating (M & O) contractors, their subcontractors and employees engaged in intelligence-related, non-DOE funded work, including:
- Work sponsored by an organization identified in E.O. 12333 as an intelligence component; or
 - Work funded by either the National Foreign Intelligence Program (NFIP) or the Tactical Intelligence and Related Activities (TIARA) Program; or

- Work for which the cognizant technical DOE Headquarters official is the Director of Intelligence.
- B. These Procedures apply to "DOE Intelligence Components," as defined below, and include DOE Field Intelligence Elements as designated by the Director of the Office of Intelligence; and to DOE employees, detailees, contractor, and subcontractor employees acting on behalf of those Intelligence Components and field elements, when those components, elements, detailees, or employees are engaged in intelligence activities authorized by Executive Order 12333. In no event shall DOE Intelligence Components or employees undertake or request any person or entity to undertake any activity forbidden by Executive Order 12333.
- C. When DOE employees, contractors, contractor employees, or persons assigned or detailed to DOE, engage in the collection of foreign intelligence information or the conduct of counterintelligence operations at the request or tasking of another IC member agency, approved in accordance with section VIII hereof, the Procedures of the requesting IC member agency govern the activity.
- D. Domestic threat assessments are governed by the Office of Threat Assessment's "Threat Assessment Procedures for Collecting, Maintaining, & Disseminating Information," approved in October 1989. Nuclear emergency response is governed by E.O. 12656, dated November 18, 1988.

III. DOE INTELLIGENCE COMPONENTS

DOE Intelligence Components subject to these Procedures include:

- A. The Secretary of Energy as Senior Official of the Intelligence Community, when acting in that role.
- B. The Office of the Director of the Office of Intelligence.
- C. The Office of the Deputy Director of the Office of Intelligence.
- D. The Office of the Associate Director of the Office of Intelligence.
- E. The Office of Foreign Intelligence (OFI). OFI is responsible for producing and disseminating the foreign intelligence necessary for the Secretary to carry out his responsibilities; collecting foreign intelligence information as authorized by E.O. 12333 and these Procedures; maintaining liaison and providing support in foreign intelligence matters to IC member

agencies, particularly the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI).

- F. The Office of Threat Assessment (OTA). OTA is responsible for providing the Secretary with timely analyses of potential threats to DOE facilities and property; analyses of domestic and international criminal and terrorist activities that could affect DOE security interests; and information on threats to international energy systems. The OTA domestic threat assessment program is a law enforcement support responsibility not subject to these Procedures. All other OTA activities, including foreign intelligence, counterintelligence and assessments of international terrorist threats, are subject to E.O. 12333 and these Procedures.
- G. The Office of Counterintelligence (OCI). OCI is responsible for identifying and neutralizing the foreign intelligence threat to classified and sensitive DOE programs, information, and activities; counterintelligence awareness and training; briefing and debriefing regarding DOE foreign contacts and travel; counterintelligence investigations and production of intelligence on hostile and foreign intelligence; and maintaining liaison with the Federal Bureau of Investigation and other Federal agencies on counterintelligence matters.
- H. The Office of Intelligence Security and Support (OISS). OISS provides special security, computer support, management services, and ADP support to all DOE Intelligence Components. It manages the Department's intelligence-related reimbursable work conducted for other U.S. Government agencies and departments. OISS also develops and manages DOE's foreign intelligence requirements and ensures they are expressed adequately in appropriate Intelligence Community collection requirements registers and tasking mechanisms.
- I. The Nevada Intelligence Center (NVIC) is a Federally-owned and operated intelligence element in support of the Field Office Manager and DOE/NV mission. The NVIC is responsible for developing local policies, procedures, budget, program development, and implementation strategies and for the conduct of foreign intelligence, counterintelligence, and special security programs mission.
- J. DOE Field Intelligence Elements as designated by the Director of the Office Of Intelligence.
- K. DOE representatives to committees, subcommittees, panels, and boards of the Director of Central Intelligence and other Intelligence Community bodies when these individuals are acting in that capacity.

IV. RESPONSIBILITIES OF THE DEPARTMENT OF ENERGY WITH RESPECT TO THE UNITED STATES INTELLIGENCE EFFORT

- A. Part 1 of E.O. 12333 defines the duties and responsibilities of the various Executive Branch agencies with respect to the national intelligence effort.
1. Section 1.4 of E.O. 12333 outlines the general authority of agencies within the Intelligence Community to conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, in accordance with applicable U.S. laws and the other provisions of the Order. Authorized intelligence activities include:
 - a. Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities.
 - b. Production and dissemination of intelligence.
 - c. Collection of information concerning, and the conduct of activities, to protect against intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons and their agents.
 - d. Special activities, although only the CIA may conduct special activities in peacetime unless the President determines that another agency is more likely to achieve a particular objective.
 - e. Administrative and support activities within the United States and abroad necessary for the performance of authorized activities.
 - f. Such other intelligence activities as the President may direct from time to time.
 2. Under section 1.7 of E.O. 12333, the Secretary of Energy as the Senior Official of the Intelligence Community for DOE, or his designee, shall:
 - a. Report to the Attorney General possible violations of Federal criminal laws by employees and of specified criminal laws by any other person as provided in

procedures agreed upon by the Attorney General, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

- b. In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;
- c. Furnish the DCI and the National Security Council (NSC), in accordance with applicable law and these Procedures; the information required for the performance of their respective duties;
- d. Report to the PIOB, and keep the DCI appropriately informed, concerning any intelligence activities that he has reason to believe may be unlawful or contrary to Executive order or Presidential directive;
- e. Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the DCI;
- f. Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the DCI;
- g. Instruct employees to cooperate fully with the PIOB; and
- h. Ensure that the Inspector General and General Counsel have access to any information necessary to perform their duties assigned by this order.

The Secretary has designated the Director of the Office of Intelligence as the Senior Intelligence Official for DOE to perform these functions.

- 3. Section 1.13 outlines the primary responsibilities of the Department of Energy, as a member of the Intelligence Community, directing that the Secretary of Energy shall:
 - a. Participate with the Department of State in overtly collecting information with respect to foreign energy matters. This inter alia authorizes the Department to post personnel overseas in coordination with the Department of State.
 - b. Produce and disseminate foreign intelligence necessary for the Secretary to carry out his responsibilities. In addition, the Department may contribute to intelligence production efforts, either as directed by the NSC or as

requested by other IC member agencies. "Intelligence production" refers here to "finished intelligence" or collated information evaluated and interpreted.

- c. Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute.
 - d. Provide expert technical, analytical, and research capability to other agencies within the Intelligence Community.
- B. In addition, the Department may provide support and assistance to the authorized foreign intelligence and counterintelligence collection activities of other IC member agencies. The approval of requests for such support and assistance is governed by Part VIII of these Procedures; the conduct of the activities is governed by the approved Procedures of the requesting agency.

V. GENERAL PRINCIPLES

A. ADMINISTRATION

These Procedures shall not apply to the processing by DOE Intelligence Components of information concerning U.S. persons necessary for administrative purposes, including contracting, building maintenance, construction, fiscal matters, internal accounting procedures, or disciplinary matters.

B. MEANS USED TO COLLECT INFORMATION CONCERNING U.S. PERSONS

Where collection of information concerning U.S. persons by DOE Intelligence Components is authorized, DOE Intelligence Components must utilize the least intrusive lawful collection techniques feasible, provided that all collection activities shall be carried out in accordance with E.O. 12333 and these Procedures, or, where applicable, the procedures of the IC member agency that has requested the support and assistance of the DOE Intelligence Component.

C. RESTRICTIONS

E.O. 12333 prohibits or restricts DOE intelligence components and elements from engaging in the following activities:

1. Electronic surveillance of United States persons unless authorized by the Attorney General of the United States in accordance with the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. 1801-11 and Executive Orders 12139 and 12333;

2. Physical surveillance of United States persons except as permitted by E.O. 12333 in the case of physical surveillance of present or former employees, contractors or their present or former employees;
3. Unconsented physical searches of United States persons;
4. Mail surveillance;
5. Undisclosed participation in organizations within the U.S. for the purpose of influencing their activities, except as specified in section XII.D.3 hereof; and
6. Experimentation, testing, and research on human beings except with the subject's informed consent and in accordance with Executive Order 12333.

D. PRESUMPTIONS

Where the subject of information collected by or on behalf of a DOE Intelligence Component is present in the United States, but his or her status is unknown, there shall be, for purposes of applying these Procedures, a presumption that the subject is a U.S. person. Where the subject of such information is not present in the United States, and his or her status is unknown, there shall be a presumption that the subject is not a U.S. person.

VI. DEFINITIONS

The following definitions apply to these Procedures:

1. Analytical Assistance means the provision of support or assistance in the form of analytical capability by DOE employees and employees of DOE contractors where their technical expertise, knowledge, abilities, capabilities, training, contacts, or associations will facilitate the United States intelligence effort, and includes evaluation of "raw" information from other IC member agencies and/or the production of "finished" intelligence.
2. Collection means the active gathering by an employee, a detailee, a contractor or an employee of a contractor of a DOE Intelligence Component, of intelligence information for use in the course of his official duties.
 - a. It does not include the routine receipt of "raw" information or of "finished" intelligence from other members of the Intelligence Community.

- b. In the case of intelligence information volunteered to a DOE Intelligence Component by a cooperating source, such information is "collected" when an employee of the component officially accepts such information for use by that component.
3. Cooperating Sources mean persons or organizations that knowingly and voluntarily provide intelligence information, or access thereto, to a DOE Intelligence Component at the request of such component or at the sources' initiative.
4. 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.
5. Domestic Activities mean activities that take place within the United States that do not involve a connection with a foreign power, organization, or person.
6. Experimentation means any research or testing activity, involving human subjects, whether U.S. persons or otherwise, that may expose such subjects to the possibility of permanent or temporary injury (including physical or psychological damage or damage to reputation) beyond the risks of injury to which such subjects are ordinarily exposed in their daily lives.
7. 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.
8. Foreign Power means:
- a. A foreign government or any component thereof, whether or not recognized by the United States;
 - b. A faction of a foreign nation or nations, not substantially composed of United States persons;
 - c. An entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;
 - d. A group engaged in international terrorism or activities in preparation therefor;

- e. A foreign-based political organization, not substantially composed of United States persons; or
 - f. An entity that is directed and controlled by a foreign government or governments.
9. Incidental Collection means the receipt of information that is not itself the object of collection activities or that concerns individuals who are not targets of collection activities, but that is received incidentally or as a result of a collection activity authorized in these Procedures. Such information may be collected whether or not it relates to an authorized activity or function of a DOE Intelligence Component but may be retained and disseminated only in accordance with Sections X and XI hereof.
10. Intelligence Activities means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to Executive Order 12333.
11. Intelligence Community and Agencies Within the Intelligence Community mean the following agencies or organizations:
- a. The Central Intelligence Agency (CIA);
 - b. The National Security Agency (NSA);
 - c. The Defense Intelligence Agency (DIA);
 - 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 Army, Navy, Air Force, Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, the Department of Energy; and
 - g. The staff elements of the Director of Central Intelligence (DCI).
12. Join means to become a member of, or become associated with, an organization, with or without the payment of dues or membership fees.
13. Organization means corporations and other commercial entities, academic institutions, clubs, professional societies,

associations, and any other group whose existence is formalized or which otherwise functions on a continuing basis.

14. Organization Within the United States means any organization physically located within the geographical boundaries of the United States whether or not it constitutes a United States person. A branch, subsidiary, or office which is physically located outside the United States, is not considered an "organization within the United States."
15. Overt means open, done without attempt at concealment. Overt collection means the acquisition of intelligence information from public media, observation, government-to-government dialogue, elicitation, and from the sharing of data openly acquired; the process may be classified or unclassified; the target, host governments or the sources involved are normally aware of the general collection activity although not necessarily of the specific acquisition, sites and processes involved.
16. Participation means taking any action within the structure or framework of the organization involved. Such actions include, but are not limited to, joining or participating in an organization; serving as a representative or agent of the organization; attending meetings; attending social functions of the organization; carrying out the work or functions of the organization; and contributing funds to the organization other than in payment for goods or services. Actions taken outside the organizational framework, however, do not constitute participation. Attendance at meetings or activities which are not functions or activities sponsored by the organization itself, does not constitute participation.
17. Participation on Behalf of a DOE Intelligence Component means that a DOE employee or contractor employee is tasked or requested to participate as defined above in an organization for the benefit of the tasking or requesting Intelligence Component. Such an employee may already be a member of the organization or may be asked to join. Actions undertaken for the benefit of an Intelligence Component include collecting information, identifying potential sources or contacts, or establishing and maintaining cover. Participation on behalf of a DOE Intelligence Component may also occur when a DOE employee or contractor employee acts upon his own initiative but for the benefit of that component. If a cooperating source voluntarily furnishes information to an Intelligence Component which he or she obtained by participation in an organization, but was not given prior direction or tasking by the Intelligence Component to collect such information, then such participation is not on behalf of the Intelligence Component.

18. Participation Solely for Personal Purposes means that the participation is undertaken at the initiative and expense of the employee solely for the employee's benefit.
19. Questionable Activity, as used herein, means any conduct that constitutes, or is related to, an intelligence activity that may violate E.O. 12333, applicable law, any other Executive order, Presidential directive, or applicable DOE policy, including these Procedures.
20. Research Assistance means the provision of support or assistance in the form of research capability by DOE employees and employees of DOE contractors where their technical expertise, knowledge, abilities, capabilities, training, contacts or associations will facilitate the United States intelligence effort.
21. Retention means that a conscious decision has been made to retain information after review. Retention may be temporary or permanent.
22. Special Activities mean 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 are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions. For related definition of "covert action," see Intelligence Authorization Act of 1991, P.L. 102-88, section 602, 105 Stat. 443.
23. Technical Assistance means the provision to other IC agencies of support or assistance in the form of personnel, equipment, or both where the technical expertise, knowledge, abilities, capabilities, training, contacts, or associations of DOE employees or contractor personnel will facilitate the United States intelligence effort, and includes the provision of technical devices and training.
24. United States Person or U.S. 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 or controlled by a foreign government or governments.

VII. COLLECTION OF FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE INFORMATION BY DOE INTELLIGENCE COMPONENTS

A. GENERAL

In conformance with E.O. 12333 and in accordance with these Procedures, DOE Intelligence Components may collect information in support of departmental missions as set forth in the Atomic Energy Act, the DOE Organization Act, the Nuclear Nonproliferation Act, E.O. 12333, other Executive orders, Presidential Directives and DCI Directives. Activities conducted in support of authorized collection activities of other IC member agencies are governed by Part VIII hereof.

B. COORDINATION

The collection of foreign intelligence and counterintelligence information by DOE Intelligence Components within the United States shall be coordinated with the FBI and other IC member agencies as appropriate. The collection of such information outside the United States shall be coordinated with the CIA and other IC member agencies as appropriate.

C. INFORMATION THAT MAY BE COLLECTED CONCERNING U.S. PERSONS

Information under this section concerning a U.S. person may be collected by a DOE Intelligence Component only if it falls within one or more of the following categories:

1. Information obtained with the consent of the person the information concerns.
2. Information that is publicly available.
3. Foreign intelligence. Foreign intelligence information pertaining to foreign energy matters and concerning a U.S. person may be collected, provided that the intentional collection of such information must be overt and limited to persons who are:
 - a. Reasonably believed to be officials or employees of, or otherwise acting for or on behalf of, a foreign power;
 - b. Members of an organization reasonably believed to be owned or controlled directly or indirectly by a foreign power;
 - c. Persons or organizations reasonably believed to be targets, hostages, or victims of international terrorist organizations;

- d. Persons or organizations reasonably believed to be engaged or about to engage in international terrorist activities; or
 - e. Corporations or other commercial organizations believed to be acting for or on behalf of foreign powers, organizations, or persons engaged in clandestine intelligence activities, sabotage, assassinations, or international terrorist activities.
4. Administrative Inquiries and Investigations. DOE Intelligence Components may conduct administrative inquiries and investigations at DOE facilities, DOE-owned, contractor-operated facilities, and contractor-owned DOE facilities engaged in DOE contracts, to include personnel, programs and contractors, to determine the existence of clandestine relationships, contacts with foreign intelligence services, and other hostile activities directed against DOE facilities, property, personnel, programs and contractors by foreign powers, organizations and their agents, as follows:
- a. Information may be collected concerning a DOE employee, a contractor employee or other U.S. person, provided that the intentional collection of such information must be based upon:
 - (1) Indications that the subject DOE employee or contractor employee may be engaged in such intelligence, terrorist or other hostile activities; or
 - (2) Indications of contact between a subject DOE employee or contractor employee and U.S. persons who may be engaged in any of the foregoing activities.
 - b. As soon as the DOE administrative inquiry or investigation reveals clandestine activity or a relationship with foreign intelligence services, the DOE Intelligence Component must promptly advise the FBI. The FBI will conduct and coordinate all subsequent counterintelligence or criminal investigative activities regarding clandestine activities, suspect relationships, or contacts with foreign nationals at DOE facilities. The FBI will determine whether:
 - (1) It will assume responsibility for continuing the investigation, and/or
 - (2) Request that DOE Intelligence Components assist the FBI in collecting additional information.

- c. Under section 2.6(b) of E.O. 12333, DOE Intelligence Components may participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers or international terrorist or narcotics activities.
 - d. Subject to section VII.c.4. above, nothing in these Procedures shall be deemed to prevent DOE from exercising its authority and responsibility under the Atomic Energy Act to pursue administrative inquiries and investigations regarding personnel, physical, document or communications security matters.
5. Special Nuclear Material, Restricted Data, or other classified and unclassified sensitive information. Subject to section VII.C.4.b. above, information concerning a U.S. person may be collected that is necessary to protect Special Nuclear Material, Restricted Data, Formerly Restricted Data, National Security Information and Unclassified Controlled Nuclear Information, as defined in the Atomic Energy Act 42 U.S.C. 2014.
6. Potential sources of assistance to intelligence activities.
- a. With the prior approval of the Director of the Office of Intelligence, information may be collected concerning U.S. persons reasonably believed to be potential sources of intelligence regarding foreign energy matters, or potential sources of assistance to DOE intelligence activities, for the purpose of assessing their suitability, personal reliability or credibility.
 - b. Information may not be so collected or retained for more than 1 year without the official concurrence of the Director of the Office of Intelligence. Information collected for this purpose is limited to publicly available sources, Federal agency records checks, and inquiries of DOE and DOE contractor employees. This category does not include investigations undertaken for personnel security purposes.
7. Protection of intelligence sources and methods. Subject to section VII.C.4.b. above, information may be collected concerning a U.S. person who has access to, had access to, or is otherwise in possession of, information which reveals foreign intelligence or counterintelligence sources or methods, when collection is reasonably believed necessary to protect against the unauthorized disclosure of such information;

provided that intentional collection of such information shall be limited to persons who are:

- a. Present or former DOE employees; or
- b. Present or former employees of present or former DOE contractors.

Otherwise, collection within the United States of such information shall be undertaken only by the FBI.

8. Information acquired by overhead reconnaissance not directed at specific U.S. persons.
9. Incidentally obtained information that may indicate involvement in activities that may violate Federal, State, local, or foreign laws.
10. Threats to safety. Information may be collected concerning a U.S. person when the information is needed to protect the safety of DOE facilities, personnel, programs, contractors, or official visitors, including those who are targets, victims or hostages of foreign or international terrorist organizations.
11. Physical security. Information may be collected concerning a U.S. person reasonably believed to threaten the physical security of DOE facilities, personnel, programs, contractors or official visitors. Information may also be collected in the course of a lawful physical security investigation.
12. Personnel security. Information may be collected concerning a U.S. person in the course of a lawful DOE personnel security investigation.
13. Communications security. Information may be collected concerning a U.S. person in the course of a lawful DOE communications security investigation.
14. Administrative purposes. Information may be collected concerning U.S. persons that is necessary for DOE administrative purposes, including information:
 - a. Necessary for the purpose of oversight, accountability, or redress; or
 - b. Required by law to be retained for the purpose of determining that the requirements of these Procedures are satisfied.

VIII. DOE SUPPORT OF AUTHORIZED FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE COLLECTION ACTIVITIES OF OTHER IC MEMBER AGENCIES

A. GENERAL

DOE is authorized, upon request, to support, assist and cooperate with the foreign intelligence and counterintelligence collection activities of other IC member agencies so long as the collection activity is in accordance with all applicable U.S. laws, is within the authority of the requesting IC member agency, and is conducted in accordance with the approved intelligence procedures of that agency.

B. PROCEDURES FOR APPROVAL

In order for DOE to provide support and assistance to the foreign intelligence or counterintelligence collection activities of a requesting IC member agency, the following procedures must be followed:

1. The request for assistance or support must be in writing from an authorized official of the intelligence component of the requesting IC member agency.
2. Written assurance must be provided by the requesting agency that the activity for which support or assistance is requested is within the authority of the requesting agency and will be conducted in accordance with E.O. 12333, all applicable U.S. laws, other Executive orders, Presidential directives, Director of Central Intelligence Directives (DCIDs), and the approved intelligence procedures of the requesting agency.
3. Written approval of the Director of the Office of Intelligence must be obtained.
4. Written assurance must be provided by the requesting agency that any cooperating DOE employee or DOE contractor employee will not be exposed to any unreasonable or undisclosed risks to his or her health or safety by reason of participation in the intelligence activity for which support is requested.

C. RETENTION AND DISSEMINATION OF INFORMATION

Approval of DOE support and assistance is to be conditioned upon agreement of the requesting agency that all foreign intelligence or counterintelligence information collected with DOE assistance and support will be retained and disseminated only in accord with the approved intelligence procedures of the requesting agency. The

requesting agency shall be responsible for any dissemination to DOE as appropriate.

IX. PROVISION OF TECHNICAL, ANALYTICAL AND RESEARCH ASSISTANCE TO OTHER IC MEMBER AGENCIES

A. GENERAL

E.O. 12333 recognizes the unique expert technical capabilities of the Department of Energy, its employees, and contractors. Provision of technical, analytical, and research assistance is expressly authorized in section 1.13(d) of the order.

B. PROCEDURES FOR APPROVAL

In order for DOE to provide technical, analytical, or research assistance to the intelligence activities of a requesting IC member agency, the following procedures must be followed:

1. The request for assistance must be in writing from an authorized official of the Intelligence Component of the requesting IC member agency.
2. Written assurance must be provided by the requesting agency that the activity for which support or assistance is requested is within the authority of the requesting agency and will be conducted in accordance with E.O. 12333, all applicable U.S. laws, other Executive orders, Presidential directives, DCIDs and the approved intelligence procedures of the requesting agency.
3. Written approval of the Director of the Office of Intelligence must be obtained.
4. Written assurance must be provided by the requesting agency that any DOE employee or DOE contractor employee will not be exposed to any unreasonable or undisclosed risks to his or her health or safety as a result of providing the assistance requested.

X. RETENTION OF INFORMATION CONCERNING U.S. PERSONS BY DOE

A. APPLICABILITY

This section governs the retention of information concerning U.S. persons that may be retained by a DOE intelligence component without the consent of the person whom the information concerns.

B. CRITERIA FOR RETENTION

Information concerning a U.S. person may be retained in manual or automated systems, if the Department has a legitimate foreign intelligence or counterintelligence purpose to retain the information, it was lawfully collected or is the subject of routine receipt from another IC member agency, and it falls within one or more of the following categories:

1. The information is publicly available or obtained with the consent of the person concerned.
2. The information is foreign intelligence or counterintelligence; information concerning international terrorist activities; information needed to protect the safety of DOE facilities, personnel, programs, contractors, or official visitors; or information needed to protect foreign intelligence or counterintelligence sources and methods from unauthorized disclosure.
3. The information is collected in the course of an administrative inquiry or investigation.
4. The information is needed to protect Special Nuclear Material, Restricted Data, or other classified or unclassified sensitive information.
5. The information concerns persons who are reasonably believed to be potential sources or contacts and is for the purpose of determining their suitability or credibility.
6. The information is incidentally collected, and
 - a. It indicates involvement in activities that may violate Federal, State, local, or foreign laws; or
 - b. It could have been collected intentionally; or
 - c. It is necessary to understand or assess foreign intelligence or counterintelligence.
7. The information was acquired by overhead reconnaissance not directed at U.S. persons.
8. The information arises from a lawful personnel, physical, or communications security investigation.
9. The information is necessary for administrative purposes, including information:

- a. Necessary for the purpose of oversight, accountability, or redress; or
 - b. Required by law to be retained for the purpose of determining that the requirements of these Procedures are satisfied.
10. The information has been disseminated by another IC member agency to a DOE Intelligence Component for the purposes of allowing that component to determine whether the information is relevant to DOE responsibilities and can be retained.

C. REVIEW OF RETAINED INFORMATION

1. Temporary Retention - Information concerning U.S. persons may be retained temporarily, for a period not to exceed 1 year, solely for the purpose of determining whether that information may be permanently retained under these Procedures.
2. Each DOE Intelligence Component retaining any information collected under these Procedures shall conduct periodic reviews to assure that all such information is being retained in accordance with these Procedures and that the information is relevant, timely, and necessary for the performance of its functions.
3. Such periodic reviews must be conducted at least once each calendar year.

XI. DISSEMINATION OF INFORMATION CONCERNING U.S. PERSONS BY DOE

A. DISSEMINATION TO OTHER AGENCIES AND ENTITIES WITHIN THE INTELLIGENCE COMMUNITY

Subject to any other applicable regulations, information, other than information derived from signals intelligence, may be disseminated to appropriate entities within the Intelligence Community, even if the information identifies United States persons, but the receiving organization is responsible for determining whether the information may be retained in accordance with their Procedures.

B. DISSEMINATION OUTSIDE THE INTELLIGENCE COMMUNITY

Information concerning United States persons that identifies those persons may be disseminated outside the Intelligence Community without the consent of those persons only under the following conditions:

1. The information was collected or retained or both in accordance with these Procedures;

2. The identity of the United States person is or may reasonably become necessary to understand or assess the importance of the information; the recipient is reasonably believed to have a need to receive such information for the performance of a lawful governmental function; and the recipient is one of the following:
 - a. An employee of DOE or an employee of a contractor of DOE who has a need for such information in the course of his or her official duties;
 - b. A Federal, State, or local law enforcement entity, and the information appears to indicate involvement in activities which may violate laws which the recipient is responsible to enforce; or
 - c. An agency of the Federal Government authorized to receive such information in the performance of a lawful governmental function; and
3. The dissemination is in accordance with the Privacy Act of 1974, 5 U.S.C. 552a.

C. OTHER DISSEMINATION

Any other dissemination that does not conform to the conditions set forth above must be approved by the legal office responsible for advising the DOE Intelligence Component concerned after consultation with the Office of Intelligence Policy and Review of the Department of Justice. Such approval shall be based upon a determination that the proposed dissemination complies with E.O. 12333, applicable laws, other Executive orders, Presidential directives, DCIDs, and regulations.

XII. UNDISCLOSED PARTICIPATION IN ORGANIZATIONS WITHIN THE UNITED STATES

A. APPLICABILITY

This section applies to participation by employees of DOE Intelligence Components and to those acting on behalf of DOE Intelligence Components, as defined herein, in any organization within the United States.

B. PERMITTED PARTICIPATION AND APPROVALS REQUIRED

1. NO SPECIFIC APPROVAL REQUIRED - Subject to subsection B.2 below, no specific approval is required for the following:

- a. Participation in meetings open to the public, the sponsors of which do not expect disclosure of affiliation as a condition of attendance.
 - b. Participation solely for personal purposes as defined herein. If there is any question about the nature of the participation or whether it is on behalf of a DOE Intelligence Component, the employee should disclose his or her intelligence affiliation or request specific approval to participate without disclosure in accordance with section XII.B.2., below.
 - c. Participation in educational or professional organizations for the purpose of enhancing the professional skills, knowledge, or capabilities of employees.
 - d. Participation in an organization that is an official establishment of a foreign government.
 - e. Participation in seminars, forums, conferences, exhibitions, trade fairs, workshops, symposiums, and similar types of meetings, sponsored by organizations in which the employee is a member, or has been invited to participate, or when the sponsoring organization does not require disclosure of the participants' employment affiliations, for the purpose of collecting significant foreign intelligence that is generally made available to participants at such meetings, and does not involve the domestic activities of the organization or its members.
 - f. To obtain publications of organizations whose membership is open to the general public.
2. SPECIFIC APPROVAL REQUIRED - Undisclosed participation may be authorized by the Director of the Office of Intelligence, in accordance with section VII of these Procedures, for the following purposes:
- a. For counterintelligence purposes, at the written request of the Federal Bureau of Investigation or other authorized U.S. counterintelligence agency, provided that the activity is properly coordinated as required by E.O. 12333;
 - b. To collect significant counterintelligence about non-United States persons, provided any such participation that occurs within the United States shall be coordinated with the Federal Bureau of Investigation or other authorized U.S. counterintelligence agency;

- c. To collect information necessary to identify and assess non-U.S. persons as potential sources of assistance for foreign intelligence and counterintelligence activities, except as provided in subsection D.2 below; or
- d. Participation in seminars, forums, conferences, exhibitions, trade fairs, workshops, symposiums, and similar types of meetings sponsored by organizations in which the employee is a member, or has been invited to participate, or when the sponsoring organization does not require disclosure of the participants' employment affiliations, when the employee is specifically tasked to collect foreign intelligence that is not generally made available to participants at such meetings, and does not involve the domestic activities of the organization or its members;
- e. At the request or tasking of another IC member agency, so long as the participation is in accordance with the Intelligence Procedures approved by the Attorney General for that agency and so long as the request has been approved by the Director of the Office of Intelligence in accordance with these Procedures.

In all instances in which specific, prior approval of the Director of the Office of Intelligence is required, a written record of such approval shall be maintained.

C. DISCLOSURE REQUIREMENT

1. When required by these Procedures, disclosure of the intelligence affiliation of an employee of a DOE Intelligence Component, or of a person acting on behalf of a DOE Intelligence Component, shall be made to an executive officer of the organization in question, or to an official in charge of membership, attendance, or the records of the organization concerned.
2. When required by these Procedures, disclosure may be made by the DOE Intelligence Component involved, an authorized DOE official, or by another official authorized to take such action on behalf of the DOE Intelligence Component concerned.
3. When disclosure of intelligence affiliation is required by these Procedures, the disclosure must be sufficient to apprise the appropriate official of the organization of the fact of affiliation with the DOE intelligence component or field element, e.g., by identifying the particular component or field element where the name of the component or field element itself reveals the intelligence affiliation, or by stating the fact of

intelligence affiliation where the name does not reveal the underlying affiliation.

4. A record shall be kept of the date, time, and manner of any disclosure of intelligence affiliation required by these Procedures, which shall include the name of the person to whom the disclosure was made.

D. LIMITATIONS ON UNDISCLOSED PARTICIPATION

1. Lawful purpose. Such participation shall be authorized only if it is essential to achieving a lawful foreign intelligence or counterintelligence purpose.
2. Undisclosed participation for foreign intelligence purposes within the United States. Undisclosed participation may not be authorized within the United States for the purpose of collecting foreign intelligence information about a United States person, or to collect information necessary to assess United States persons as potential sources of assistance to foreign intelligence activities. This does not preclude the collection of information about such persons, volunteered by cooperating sources participating in organizations to which such persons belong, however, if otherwise permitted by section VII hereof.
3. Participation for the purpose of influencing the activities of an organization or its members. 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 or other authorized U.S. agency in the course of a lawful activity; or
 - b. The organization is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

Any such participation must be approved by the Director of the Office of Intelligence with the concurrence of the DOE General Counsel.

4. Duration. Authorization to participate under section XII.B.2. shall be limited to the period covered by such participation, which shall be no longer than 12 months. Participation which lasts longer than 12 months shall be re-approved by the appropriate official on an annual basis in accordance with these Procedures.

XIII. PROVISION OF ASSISTANCE TO LAW ENFORCEMENT AGENCIES

A. APPLICABILITY

This procedure applies to the provision of assistance by DOE Intelligence Components to law enforcement authorities. It incorporates the specific limitations on such assistance contained in E.O. 12333.

B. PROCEDURES

1. Cooperation with law enforcement authorities. Consistent with the limitations of E.O. 12333, applicable laws, other Executive orders, Presidential directives and these Procedures, DOE Intelligence Components are authorized to cooperate with law enforcement authorities as follows:
 - a. To protect DOE and DOE contractor facilities, property, personnel, and information;
 - b. Unless otherwise precluded by law or E.O. 12333, to participate in investigating or preventing clandestine intelligence activities by foreign powers, international narcotics activities, or international terrorist activities;
 - c. To 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 the assistance of expert personnel shall be approved in each case by the Director of the Office of Intelligence and the DOE General Counsel;
 - d. To provide assistance to law enforcement agencies and security services of foreign governments or international organizations in accordance with established policy. Included in this category are credibility assessments of threatened nuclear incidents; and
 - e. To render any other assistance and cooperation not precluded by applicable law.
2. DOE Intelligence Components may not assist or participate in activities undertaken against U.S. persons that would not be permitted under E.O. 12333.

XIV. CONTRACTING FOR GOODS AND SERVICES

A. GENERAL

This procedure applies to contracting or other arrangements with U.S. persons for the procurement of goods and services by DOE Intelligence Components within the United States. It does not apply to contracting with government entities.

B. PROCEDURES

1. Contracts or other arrangements with academic institutions. DOE Intelligence Components may directly or indirectly enter into a contract or other arrangement for goods or services with an academic institution only if, prior to contracting, the Intelligence Component has disclosed to appropriate officials of the academic institution the fact of sponsorship by the Intelligence Component.
2. Contracts or other arrangements with commercial entities, private institutions, and individuals. DOE Intelligence Components may directly or indirectly enter into contracts or other arrangements for goods or services with commercial entities, private institutions, and individuals without revealing the sponsorship by the Intelligence Component if:
 - a. The contract or other arrangement is for published, publicly available material or for routine goods or services necessary for the support of approved activities, such as credit cards, car rentals, travel, lodging, meals, rental of office space or apartments, and other items incident to approved activities; or
 - b. There is a written determination by the Director of the Office of Intelligence that the sponsorship of the DOE Intelligence Component must be concealed to protect the activity concerned.

XV. EMPLOYEE CONDUCT

A. GENERAL

DOE and DOE contractor employees shall conduct intelligence activities only in accordance with Executive Order 12333, applicable laws, other Executive orders, Presidential directives, DOE policy, these Procedures when acting on behalf of a DOE Intelligence Component, and the applicable Procedures of another IC member agency when acting on behalf of that IC member agency in response to a tasking.

B. FAMILIARITY WITH RESTRICTIONS

1. Each DOE Intelligence Component shall familiarize its personnel with the provisions of Executive Order 12333, these Procedures, and any instructions implementing these Procedures which apply to the activities of such component.
2. The Director of the Office of Intelligence shall ensure that training is conducted to achieve the requisite familiarity.

C. RESPONSIBILITIES OF HEADS OF DOE INTELLIGENCE COMPONENTS

The Heads of DOE and DOE contractor elements that constitute or contain Intelligence Components shall:

1. Ensure that no adverse action is taken against any employee for reporting activities pursuant to section XVI hereof.
2. Impose such sanctions as may be appropriate under DOE regulations and orders upon any employee who violates the provisions of these Procedures or any instructions promulgated thereunder.
3. In any case involving a breach of security regulations and guidelines by either DOE or non-DOE employees, recommend to the Director of Security Affairs appropriate investigative actions.
4. Ensure that, to the extent permitted by law, the General Counsel and the Inspector General have access to all information concerning the intelligence activities of that component necessary to perform their oversight responsibilities.
5. Ensure that employees cooperate fully with the President's Intelligence Oversight Board (PIOB) and its representatives.

XVI. IDENTIFYING, INVESTIGATING AND REPORTING QUESTIONABLE ACTIVITIES

A. GENERAL

This section provides for the identification, investigation, and reporting of questionable activities.

B. THE PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD

In Executive Order 12334 the President established the PIOB in order to enhance the security of the United States by assuring the legality of the activities of the IC. All employees of DOE shall cooperate fully with the PIOB. The Director of the Office of

Intelligence shall, to the extent permitted by law, provide the PIOB with all information necessary to carry out its responsibilities. Under Executive Order 12334 and PIOB guidelines, the General Counsel and the Inspector General are to keep the PIOB appropriately informed concerning any intelligence activities that they have reason to believe may be unlawful or contrary to Executive order, Presidential directive, or DOE policy, including these Procedures.

C. OFFICE OF INSPECTOR GENERAL

The Office of Inspector General independently executes the duties and responsibilities assigned to that office for programs and operations of, or those financed by, the Department, including intelligence programs and activities. Such duties and responsibilities are executed pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3; Executive Order 12333 and Executive Order 12334.

D. PROCEDURE

1. Identification

- a. Each employee of a DOE Intelligence Component shall report any questionable activity to the Director of the Office of Intelligence and to either the General Counsel or the Inspector General. The Director of the Office of Intelligence shall report any questionable activity to the General Counsel and the Inspector General.
- b. The Heads of DOE and DOE contractor elements that constitute or contain Intelligence Components shall report any questionable activity within the element to either the General Counsel or the Inspector General and to the Director of the Office of Intelligence.

2. Investigation

- a. Each report of questionable activity shall be investigated to the extent necessary to determine the facts and assess whether the activity is legal and consistent with applicable policy.
- b. Investigations shall be conducted expeditiously. The officials responsible for these investigations may, in accordance with established procedures, obtain assistance from the component concerned, or from other DOE components as necessary to complete the investigations in a timely manner.

3. Reporting

- a. Under Executive Order 12334 and PIOB guidelines, the General Counsel and the Inspector General report promptly to the PIOB all activities that come to their attention that they have reason to believe may be illegal or contrary to Executive order, Presidential directive, or applicable DOE policy, including these Procedures. Such special reports should be made without delay in order to permit the PIOB to make the determination whether the matter is serious enough to warrant immediate reporting to the President and the Attorney General or whether the matter may be resolved within DOE. Notwithstanding the foregoing, violations which are minor and inadvertent may be deferred until the next formal report to the PIOB.
- b. The PIOB guidelines provide for quarterly reports to the PIOB on questionable activities, whether previously reported or otherwise, any corrective actions taken, and significant oversight activities undertaken. Separate, joint or consolidated reports may be submitted by the General Counsel and the Inspector General.
- c. All reports made pursuant to subsections D.3.a. and b. above, which involve a possible violation of Federal criminal law shall be sent to the Attorney General in accordance with the procedures adopted pursuant to section 1.7(a) of Executive Order 12333.

XVII. APPROVAL AND EFFECTIVE DATE

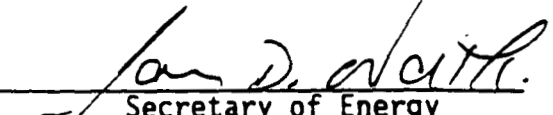
I approve the foregoing Procedures in accordance with Executive Order 12333. In my opinion, intelligence activities conducted pursuant to and in accordance with these Procedures are lawful.

10/7/92
Date


Attorney General

I approve and establish the foregoing Procedures in accordance with Executive Order 12333. The Procedures shall take effect ten days following the date of approval by both the Attorney General and the Secretary of Energy,

10/9/92
Date


Secretary of Energy