

<!--StartFragment-->Department of Defense

DIRECTIVE

NUMBER 5240.1

April 25, 1988

ASD(C3I)

SUBJECT: DoD Intelligence Activities

References: (a) DoD Directive 5240.1, "Activities of DoD Intelligence Components that Affect U.S. Persons," December 3, 1982 (hereby canceled)

(b) Executive Order 12333, "United States Intelligence Activities," December 4, 1981

(c) Executive Order 12334, "President's Intelligence Oversight Board," December 4, 1981

(d) Public Law No. 95-511, "Foreign Intelligence Surveillance Act of 1978," October 25, 1978

(e) through (i), see enclosure E1.

1. REISSUANCE AND PURPOSE

This Directive:

1.1. Reissues reference (a); implements references (b) through (d); updates policies; and shall be the only authority used as guidance by DoD intelligence components to collect, retain, or disseminate information concerning U.S. persons.

1.2. Continues in effect procedures previously approved by the U.S. Attorney General for use by DoD intelligence components under Presidential Directive NSC-9 (reference (e)).

1.3. Authorizes the publication of DoD 5240.1-R (reference (f)), consistent with DoD 5025.1-M (reference (g)) and this Directive.

2. APPLICABILITY AND SCOPE

This Directive:

2.1. Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

2.2. Applies to all intelligence activities of DoD Components.

2.3. Does not apply to authorized law enforcement activities

carried out by DoD intelligence components having a law enforcement mission.

3. DEFINITIONS

3.1. Intelligence activities. The collection, production, and dissemination of foreign intelligence and counterintelligence by DoD intelligence components authorized under reference (b).

3.2. Foreign intelligence. 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.

3.3. Counterintelligence. 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.

3.4. DoD intelligence components. All DoD Components conducting intelligence activities, including the following:

3.4.1. The National Security Agency Central Security Service (NSACSS).

3.4.2. The Defense Intelligence Agency (DIA).

3.4.3. The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs.

3.4.4. The Office of the Deputy Chief of Staff for Intelligence (ODCSINT), U.S. Army.

3.4.5. The Office of Naval Intelligence (ONI).

3.4.6. The Office of the Assistant Chief of Staff, Intelligence (OACSI), U.S. Air Force.

3.4.7. Intelligence Division, U.S. Marine Corps.

3.4.8. The Army Intelligence and Security Command (USAINSCOM).

3.4.9. The Naval Intelligence Command (NIC).

3.4.10. The Naval Security Group Command (NSGC).

3.4.11. The Air Force Intelligence Agency (AFIA).

3.4.12. The Electronic Security Command (ESC), U.S. Air Force.

3.4.13. The counterintelligence elements of the Naval Security and Investigative Command (NSIC).

3.4.14. The counterintelligence elements of the Air Force Office of Special Investigations (AFOSI).

3.4.15. The 650th Military Intelligence Group, Supreme Headquarters Allied Powers Europe (SHAPE).

3.4.16. Other intelligence and counterintelligence organizations, staffs, and offices, or elements thereof, when used for foreign intelligence or counterintelligence purposes. The heads of such organizations, staffs, and offices, or elements thereof, shall, however, not be considered as heads of DoD intelligence components for purposes of this Directive.

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

3.6. United States person. A citizen of the United States; an alien known by the intelligence agency concerned to be a permanent resident alien; an unincorporated association organized in the United States or substantially composed of U.S. 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.

4. POLICY

4.1. All DoD intelligence activities shall be carried out in strict conformity with the U.S. Constitution, applicable law, E.O. 12333 (reference (b)), the policies and procedures authorized herein, and by other relevant DoD Directives, with special emphasis given to the protection of the constitutional rights and privacy of U.S. persons.

4.2. Reference (b) requires that the Department of Defense promulgate procedures to govern the collection, retention, and dissemination of information about U.S. persons, and to govern the use of certain information-gathering techniques. These procedures, approved by the Attorney General of the United States, are contained in DoD 5240.1-R (reference (f)). No DoD intelligence component shall request any person or entity to undertake unauthorized activities.

4.2.1. Authority to employ the collection techniques prescribed by DoD 5240.1-R (reference (f)) shall be limited to that necessary to perform functions assigned to the DoD intelligence component concerned. Use of such techniques to collect information about U.S. persons shall be limited to the least intrusive means feasible.

4.2.2. DoD intelligence component employees shall report

all intelligence activities that may violate a law, an Executive order, a Presidential Directive, or applicable DoD policy to the Inspector General or General Counsel responsible for the DoD intelligence component concerned, or to the Assistant to the Secretary of Defense (Intelligence Oversight) (ATSD(IO)).

4.3. DoD Components shall not conduct, or provide support for the conduct of, special activities except in times of war declared by the Congress or during a period covered by a report from the President to the Congress under the War Powers Resolution (50 U.S.C. 1541-1548, reference (h)), unless such actions have been approved by the President and directed by the Secretary of Defense.

4.4. Under no circumstances shall any DoD employee engage in, or conspire to engage in, assassination.

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C3I)) shall provide overall policy guidance for the conduct of DoD intelligence activities.

5.2. The Deputy Under Secretary of Defense (Policy) (DUSD(P)) shall provide overall policy guidance for the conduct of DoD counterintelligence activities.

5.3. The General Counsel, Department of Defense (GC, DoD), shall:

5.3.1. Serve as the central focal point for contact with, and reporting to, the Attorney General regarding the legal matters arising under this Directive.

5.3.2. Interpret this Directive and DoD 5240.1-R (reference (f)), as may be required.

5.4. The Assistant to the Secretary of Defense (Intelligence Oversight) (ATSD(IO)) shall serve as the central focal point for all contacts with the President's Intelligence Oversight Board (E.O. 12334, reference (c)) and shall perform the responsibilities assigned in DoD Directive 5148.11 (reference (i)).

5.5. The Heads of DoD Components shall ensure that their intelligence components implement this Directive and reference (f), as appropriate.

6. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) and the General Counsel, Department of Defense, within 90 days.

Enclosures - 1

1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

(e) Presidential Directive NSC-9, March 30, 1977

(f) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 11, 1982, authorized by this Directive

(g) DoD 5025.1-M, "Directives System Procedures," April 1981, authorized by DoD Directive 5025.1, October 16, 1980

(h) Title 50, United States Code, Sections 1541-1548, "The War Powers Resolution" (87 Stat. 555), P.L. 93-148

(i) DoD Directive 5148.11, "Assistant to the Secretary of Defense (Intelligence Oversight)," December 1, 1982<!--EndFragment-->