

February 3, 1980

## CONGRESSIONAL RECORD—SENATE

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is much too late to be of assistance to farmers throughout the Southeastern United States. Many of these farmers begin planting corn in late February. Orders for seed, fertilizer, pesticides, and other necessary items for planting must be placed several weeks prior to the anticipated planting date to insure adequate time for delivery. How can these farmers be expected to make rational planting and marketing decisions without knowledge of the administration's plans regarding a crop diversion program in 1980?

Mr. President, on several occasions I have expressed my support of the suspension of grain sales to the Soviet Union. However, I have also strongly voiced my views that farmers should not bear a disproportionate share of the burden. It seems to me that forcing them to make critical planting decisions—decisions that have the potential of bankrupting many farmers should they seriously miscalculate—is clearly unfair and unnecessary.

Mr. President, this is a very real and serious problem. In 1978, the value of corn produced for grain purposes in South Carolina exceeded \$68 million. The farmers of South Carolina cannot afford to make decisions of such great magnitude in the state of suspense they find themselves in today.

Findings of a survey, completed just prior to the announcement of the suspension of grain sales to the Soviet Union, indicate that South Carolina farmers planned to increase corn acreage by 19 percent in 1980. Today, these farmers have no idea of what they should do.

Several days ago, I sent a letter to Secretary of Agriculture Bergland, which other members of the South Carolina congressional delegation cosigned, urging a prompt announcement of any decisions pertaining to acreage diversion programs in 1980. Today I ask all my colleagues in the Senate to join me in expressing the urgency of announcing such decisions as soon as possible, and I am now introducing an appropriate Senate resolution for this purpose.

The administration has committed itself to insuring that the American farmers not be forced to bear a disproportionate share of the effects of the grain embargo. Yet, Southeastern farmers are today being forced to do just that. This situation is most unfair and cannot be allowed to continue.

Mr. President, I ask unanimous consent that my letter to Secretary Bergland be printed at this point in the RECORD. I also ask unanimous consent that the text of this resolution be printed in the RECORD following these remarks.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C., January 31, 1980.

HON. BOB BERGLAND,  
Secretary of Agriculture,  
Washington, D.C.

DEAR SECRETARY BERGLAND: The present March 1st deadline for announcing any de-

isions concerning acreage diversion programs for the 1980 crops of feed grain and wheat is a point of great concern to the South Carolina Congressional Delegation.

Farmers in South Carolina, as well as in the rest of the Southeast, are currently attempting to formulate planting and marketing strategies for the 1980 crop year. In fact, many of these farmers normally begin the planting of corn in late February. In order for supplies to arrive at the appropriate time, the farmers must place their orders with farm suppliers several weeks in advance of their anticipated planting date.

The farmers of South Carolina and the Southeast have been placed in a very awkward position as a result of the late announcement date for a decision on acreage diversion programs in 1980. We feel that placing these farmers in such a state of uncertainty is completely unfair. They cannot and should not be expected to make rational planting and marketing decisions under the existing conditions.

In view of these facts, we strongly urge you to announce a decision on any acreage diversion programs for the 1980 crops of feed grains and wheat as soon as possible. Furthermore, we urge you to implement any programs necessary to protect producers of other agricultural commodities that may be adversely affected by the Administration's recent decision not to issue export licenses for any agricultural products to the Soviet Union.

With kindest regards,

MENDEL DAVIS,  
BUTLER DERRICK,  
JOHN W. JENNETTE, JR.,  
STROM THURMOND,  
CARROLL A. CAMPBELL, JR.,  
FLOYD SPENCE,  
KENNETH L. HOLLAND.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 366) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

## S. RES. 366

Whereas American farmers have been adversely affected by the suspension of grain sales to the Soviet Union; and

Whereas the future effects of the suspension on the sale of grain to the Soviet Union are uncertain; and

Whereas farmers in the southeastern part of the United States need to begin ordering supplies, preparing their acreage for planting, and making other necessary plans for the 1980 crops of wheat and feed grains; and

Whereas American farmers cannot make rational planting and marketing decisions with respect to the 1980 crops of wheat and feed grains without adequate information concerning the executive branch's plans for an acreage diversion program for such crops: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that the Secretary of Agriculture should announce promptly his decision on whether there will be an acreage diversion program in effect for the 1980 crops of wheat and feed grains.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the resolution was agreed to, and, Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## S. 2284—NATIONAL INTELLIGENCE ACT OF 1980

Mr. HUDDLESTON. Mr. President, I am joining with the Senator from Indiana (Mr. BAYH), the chairman of the Intelligence Committee, Senator GOLDWATER, the vice chairman, and Senator MATHIAS, to introduce the National Intelligence Act of 1980.

Senator MATHIAS, as vice chairman of the Subcommittee on Charters and Guidelines, and I, as chairman, are acting at the direction of the full committee. Shortly after President Carter was inaugurated, the full committee met with the President and agreed to work together to write a legislative charter governing the intelligence activities of the United States. We all agreed that a consensus was desirable between the executive and legislative branches in order to write a statute that would have the widest possible support. The National Intelligence Act represents endless hours of work over the past 3 years by members of the Intelligence Committee, the intelligence community, the Justice Department, and the White House. This effort has been thoroughly bipartisan; regulation of intelligence activity is much too vital to our national interest to be lost in partisan wrangling.

With only one major exception which I shall discuss later, the committee and the executive branch have indeed reached a consensus on the conduct of intelligence activities. The positions in this bill are not mine or the Intelligence Committee's; they represent the joint product of the executive branch and the subcommittee. In his state of the Union speech, the President called for "quick passage of a charter to define clearly the legal authority and accountability of our intelligence agencies." The National Intelligence Act is that charter. For the first time in history, a nation has set down in law what it expects from its intelligence agencies.

The National Security Act of 1947, the current "charter" for intelligence activities, is vague and cursory. As Clark Clifford, a primary author of that legislation, told this committee, that act was considered interim legislation that would be replaced once the Executive and Congress better knew what was required. Here, we have given the intelligence community authority to do what needs to be done.

We set forth the mission of the principal agencies in as much detail as needed. The role of the National Security Council in defining intelligence policies is clearly spelled out. As under the President's Executive order, a central figure—here called the Director of National Intelligence—is given the authority to coordinate the foreign intelligence functions of separate entities of the intelligence community including the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency.

Specific authority is given to these agencies to carry out the kinds of intelligence activities which are required in today's world. This includes collection of

foreign intelligence through both technical and human sources. It includes engaging in counterintelligence and counterterrorism activities. And finally, it also includes, when important to the security of the United States, the conduct of special activities, or covert action.

Although there are restrictions and limitations on intelligence activities, the act authorizes all intelligence activities which the agencies believe are necessary. Unwarranted restraint on the CIA is removed. For example, the Hughes-Ryan amendment which requires admittedly excessive reporting to Congress on covert operations overseas would be modified to limit prior notice only to the intelligence oversight committees. Similarly, CIA has complained of unnecessary burdens caused by Freedom of Information Act requests. Yet all agree that the FOIA has helped make the CIA accountable to the American people. In the context of comprehensive legislation, the accountability of the CIA is insured by standards and procedures, congressional oversight, and the annual public report of the Director of National Intelligence. Thus, we have been able to modify CIA's responsibilities under the FOIA in the context of a comprehensive charter; CIA would have to furnish information only to Americans asking about themselves or to those requesting finished intelligence reports.

Instead of restrictions, the act stresses a system of oversight and accountability. No more could any intelligence agency conceivably be out of control. By insuring accountability, we hope also to insure that decisions are made by the right people, at the right time. There is not excessive detail here, either. The President, for example, is required to approve only two types of activities which by their nature require the highest-level attention—covert actions and using covert techniques to obtain essential foreign intelligence from an American who is not a spy.

In investigating Americans, the agencies are told what is proper and what is not. Clear instructions to the intelligence agencies are necessary to demonstrate that intelligence activities are fully supported by the Congress and the executive branch. Restraints on activities affecting Americans are necessary and, at the same time, these restraints are designed not to affect the agencies' major task of collecting and analyzing foreign intelligence.

Under the provisions of this bill, there is a presumption that Americans will not be investigated unless they are acting on behalf of a foreign power or committing espionage. Searches and seizures of the possessions of Americans are not permitted without a court order, although I might add that the committee should take a further look at the issue of surreptitious entries. One exception to the general presumption against collecting intelligence on innocent Americans is made in the charter. In extraordinary cases, when an American person possesses information which the President believes to be essential to the national security, the President may ap-

prove such collection using "covert techniques," a term which I hope will be construed broadly. I have some doubts about the propriety of such a provision because it permits the Government to collect information by intrusive means on innocent Americans, but the executive branch has consistently maintained that this authority is needed for unforeseen circumstances where there is a grave danger to the national security and there is no other way to secure the needed information.

The foundation of this charter enterprise is congressional oversight. The minimum necessary to insure that secret activities will be conducted in accord with the Constitution is effective oversight. Because intelligence operations are secret, they are not subject to public scrutiny and debate, as is normal foreign policy. Thus, the intelligence committees must play key roles as representatives for the American people in overseeing intelligence. Full access to timely information and prior notice of significant activities are the prerequisite for intelligence legislation. Without it there can be no assurance that careful scrutiny of intelligence activities will be given by the legislative branch.

The bill introduced today acknowledges the committee's rights to be fully and currently informed and to receive access to necessary information. Of course, we understand the grave responsibility we have undertaken to act on behalf of the Congress and to protect intelligence secrets. In the 3 years the Intelligence Committee has been in existence, we have achieved a reputation for keeping intelligence secrets and in fact have been congratulated by President Carter for our record in this area.

The one fundamental disagreement with the executive branch in this entire charter in fact deals with oversight language; it is this disagreement which has prevented introduction of a wholly agreed bill. The bill contains a provision requiring prior notice to the Intelligence Committees of covert activities. We have also provided for a waiver of the usual prior notice procedure in extraordinary circumstances; prior notice would be provided only to the two intelligence committees' chairmen and vice chairmen and also to the Speaker, the Senate majority leader, and the two minority leaders. As of this moment we have not reached an agreement on this issue with the administration, and thus the Intelligence Committee directed us to introduce the bill without executive branch agreement on this particular issue.

The committee believes that at times covert operations are necessary, as does the President. At the same time, investigations of the covert action program carried out by the U.S. Government since 1947 and the experience of the Senate Select Committee on Intelligence to date gives strong support to the view that covert actions pose great risks to the United States if they go wrong, or if they are ill-conceived or ill-advised. Such high risk activities that can seriously affect the interests of the United States, its policies, or its reputation require the involvement of the Congress through its

oversight committees. At the same time, this committee believes that it is in the national interest to inform the Congress prior to undertaking covert activities. The consideration and advice of the committees would further the best interests of the United States. It is in the President's interest to have the advice from the two intelligence committees, even though approval is not required. I would like to emphasize that, Mr. President.

We are not seeking and never have sought to give these committees either a veto or a required approval before such actions as might be anticipated and initiated by the executive branch. Congress, through the committees, should share with the President the responsibility to represent the public interest.

The President has sent a letter which I will have printed in the Record directly after this statement—acknowledging that the administration and the subcommittee are in substantial agreement with this bill but that there are a few differences. One of these differences centers around a criminal statute designed to punish those who disclose the names of undercover officers. Like many others, nothing makes my blood boil more than seeing a former CIA employee traipsing about the world pointing fingers at people who are risking their lives for their country.

However, in the National Intelligence Act, the statute is aimed at those who have violated their trust, who have received authorized access to this information through their jobs. The administration would prefer to cover anyone who discloses these names; but for reasons relating to constitutional considerations, thus far we have felt that should concentrate our efforts on those who have abused their trust.

I am hopeful that recent world events have given intelligence charters a major impetus. These comprehensive charters would actually help the intelligence agencies by giving them statutory authority for a clearly defined mission. We have been studying what is needed for 3 years. We are ready to get these charters before Congress and move quickly on them. Hearings on the charter are tentatively scheduled to begin February 21. I can understand the desire of the CIA and of the President to remove any unnecessary restrictions from our intelligence activities, but this should be done in the context of comprehensive legislation as far as possible. I know the President agrees with this. If the impetus for charter legislation is expended only on short-term needs, this might undercut the chances for passage of comprehensive charter legislation containing provisions that could very well prove more important to the strength and effectiveness of our intelligence system in the long-run.

Other bills have been introduced which are intended to achieve many if not all of the aims of the National Intelligence Act. The Senate Select Committee on Intelligence is to consider those bills, together with this one, and the full committee's position will become clear in hearings and markup. On behalf of the Intelligence Committee, I can say to you today that legislation will be reported out

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of the Intelligence Committee this spring which removes any unwarranted restraints on CIA and at the same time promises proper congressional oversight.

Mr. President, I have the following letter from the White House, signed by the President:

DEAR MR. CHAIRMAN: Over the past two years, this Administration and the Senate Select Committee on Intelligence have worked closely and diligently together in an effort to agree on a comprehensive legislative charter for the nation's intelligence community. Our goal has been to provide for a strong, effective intelligence effort and at the same time protect individual rights and liberties.

As our January 30 meeting confirmed, agreement has been reached on most of the important issues. I would like to commend the members of the Committee, and especially Senator Huddleston and his Subcommittee, for their outstanding contribution to this effort. I am especially pleased that we have reached virtually complete agreement on the organization of the intelligence community and on the authorizations and restrictions pertaining to intelligence collection and special activities.

Although a few issues remain to be resolved, I urge that we move ahead on this important legislative endeavor. The substantial agreement we have already achieved should facilitate resolution of remaining differences in a manner that will not bar or deter necessary action in extraordinary and difficult circumstances. In the course of our work together, we have overcome a number of misconceptions and misapprehensions. We have demonstrated that the system of oversight works as a safeguard against abuse. For these reasons, I am confident that we can resolve the remaining issues so as to protect the capacity of our government to act, while ensuring that our crucial intelligence services are operating within the bounds of law and propriety.

In closing, I wish to emphasize my support for a comprehensive intelligence charter, and for the majority of the provisions contained in your submission. Only a comprehensive charter will give the American intelligence community the kind of endorsement it needs and deserves from the American people. I also want to express again my appreciation for the Committee's assistance in this effort. I trust that our disagreements can be resolved as the legislative process continues.

Sincerely,

JIMMY CARTER.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Intelligence Act of 1980".*

**TITLE I—AUTHORIZATION FOR INTELLIGENCE ACTIVITIES**

**Part A—FINDINGS; PURPOSES; DEFINITIONS**

**STATEMENT OF FINDINGS**

SEC. 101. The Congress hereby makes the following findings:

(1) Intelligence activities should provide timely, accurate, and relevant information and analysis necessary for the conduct of the foreign relations and the protection of the national security of the United States.

(2) The collection and production of intelligence should be conducted in a manner

that avoids waste and unnecessary duplication of effort within the intelligence community.

(3) Supervision and control are necessary to ensure that intelligence activities are in support of the foreign relations of the United States and do not abridge rights protected by the Constitution and laws of the United States.

**STATEMENT OF PURPOSES**

SEC. 102. It is the purpose of this Act—

(1) to authorize the intelligence activities necessary for the conduct of the foreign relations and the protection of the national security of the United States;

(2) to replace the provisions of the National Security Act of 1947 governing intelligence activities;

(3) to ensure that the intelligence activities of the United States are conducted in a manner consistent with United States defense and foreign policy interests and are properly and effectively directed, regulated, coordinated, and administered;

(4) to ensure that the Government of the United States is provided, in the most efficient manner, with accurate, relevant, and timely information and analysis so that sound and informed decisions may be made regarding the security and vital interests of the United States and so that the United States may be protected against foreign intelligence activities, international terrorist activities, and other forms of hostile action by foreign powers, organizations, or their agents, or by international terrorists, directed against the United States; and

(5) to ensure that the entities of the intelligence community are accountable to the President, the Congress, and the people of the United States and that the intelligence activities of the United States are conducted in a manner consistent with the Constitution and laws of the United States.

**DEFINITIONS**

SEC. 103. As used in this title—

(1) The term "communications security" means the protection resulting from any measure taken to deny unauthorized persons information derived from the telecommunications of the United States related to the national security, or from any measure taken to ensure the authenticity of such telecommunications.

(2) The term "counterintelligence" means information pertaining to the capabilities, intentions, or activities of any foreign power, organization, or person in the fields of espionage, other clandestine intelligence activity, covert action, assassination, or sabotage.

(3) The term "counterintelligence activity" means—

(A) the collection, retention, processing, analysis, and dissemination of counterintelligence; and

(B) any other activity, except for personnel, document, physical and communications security programs, undertaken to counter or protect against the espionage, other clandestine intelligence activity, covert action, assassination, or sabotage, or similar activities of a foreign government.

(4) The term "counterterrorism intelligence" means information pertaining to the capabilities, intentions, or activities of any foreign power, organization or person related to international terrorist activity.

(5) The term "counterterrorism intelligence activity" means—

(A) the collection, retention, processing, analysis, or dissemination of counterterrorism intelligence; and

(B) any other activity undertaken by an entity of the intelligence community to counter or protect against international terrorist activity.

(6) The term "cover" means any means by which the true identity or relationship with

an entity of the intelligence community of any activity, officer, employee, or agent of such entity, or of a related corporation or organization, is disguised or concealed.

(7) The terms "departments and agencies" and "department or agency" mean any department, agency, bureau, independent establishment, or wholly owned corporation of the Government of the United States.

(8) The term "foreign intelligence" means information pertaining to the capabilities, intentions or activities of any foreign state, government, organization, association, or individual, or information on the foreign aspects of narcotics production and trafficking, but does not include counterintelligence, counterterrorism intelligence, or tactical intelligence.

(9) The term "foreign intelligence activity" means the collection, retention, processing, analysis, or dissemination of foreign intelligence.

(10) The term "intelligence" means foreign intelligence, counterintelligence, counterterrorism intelligence, and information relating to or resulting from any intelligence activity.

(11) The term "intelligence activity" means—

(A) any foreign intelligence activity;

(B) any counterintelligence activity;

(C) any counterterrorism intelligence activity;

(D) any special activity.

(12) The terms "intelligence community" and "entity of the intelligence community" mean—

(A) the Office of the Director of National Intelligence;

(B) the Central Intelligence Agency;

(C) the Defense Intelligence Agency;

(D) the National Security Agency;

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

(F) the intelligence components of the military services;

(G) the intelligence components of the Federal Bureau of Investigation;

(H) the Bureau of Intelligence and Research of the Department of State;

(I) the foreign intelligence components of the Department of the Treasury;

(J) the foreign intelligence components of the Department of Energy.

(K) the successor to any of the agencies, offices, components, or bureaus named in clauses (A) through (J); and

(L) such other components of the departments and agencies, to the extent determined by the President, as may be engaged in intelligence activities.

(13) The term "international terrorist activity" means any activity which—

(A) involves—

(i) killing, causing serious bodily harm to, or kidnapping one or more individuals;

(ii) violent destruction of property;

(iii) an attempt or credible threat to commit any act described in clause (i) or (ii); 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—

(i) intimidating or coercing a civilian population or any segment thereof;

(ii) influencing the policy of a government or international organization by intimidation or coercion; or

(iii) obtaining widespread publicity for a group or its cause; and

(C) occurs totally outside the United States, or transcends national boundaries in terms of—

(i) the means by which its objective is accomplished;

(ii) the civilian population, government,

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number of whose members are citizens of the United States or aliens lawfully admitted for permanent residence and which is not openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments, or which is incorporated or organized abroad and controlled by a foreign power abroad is not a United States person.

(14) The term "national intelligence" means foreign intelligence which is collected, retained, processed, or disseminated by the entities of the intelligence community for use in the formulation and direction of national policy.

(15) The term "national intelligence activity" means (A) any special activity, (B) any foreign intelligence activity the primary purpose of which is to collect or produce national intelligence, and (C) any foreign intelligence activity designated by the President as a national intelligence activity.

(16) The term "national intelligence budget" means the budget prepared by the Director of National Intelligence pursuant to section 308 of this Act and includes all funds for—

(A) the programs of the Central Intelligence Agency and of the Office of the Director of National Intelligence;

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

(C) any other program or programs of any department or agency designated by the President or jointly by the Director of National Intelligence and the head of such department or agency.

(17) The term "proprietary" means a sole proprietorship, partnership, corporation, other commercial entity organized in the United States, or other entity organized abroad that is owned or controlled by an entity of the intelligence community but whose relationship to that entity is not officially acknowledged.

(18) The term "special activity" means an activity conducted abroad which is (A) designed to further official United States programs and policies abroad, and (B) planned and executed so that the role of the United States Government is not apparent or acknowledged publicly. Such term does not include any counterintelligence or counterterrorism intelligence activity or the collection, retention, processing, dissemination and analysis of intelligence or related support functions, nor any diplomatic activity of the United States.

(19) The term "tactical intelligence" means information pertaining to the capabilities, intentions, or activities of any foreign state, government organization, association, or individual required by the armed forces of the United States to maintain their readiness for combat operations and to support the planning and conduct of combat operations by the United States.

(20) The term "United States", when used in a geographical sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(21) The term "United States person" means—

(A) a citizen of the United States;

(B) an alien lawfully admitted for permanent residence (as defined in section 101 (a) (20) of the Immigration and Nationality Act), except that such alien may be presumed to have lost status as a United States person for purposes of this Act after one year of continuous residence outside the United States until information is obtained which indicates an intent on the part of such alien to return to the United States as a permanent resident alien;

(C) any unincorporated association organized in the United States or a substantial

number of whose members are citizens of the United States or aliens lawfully admitted for permanent residence and which is not openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments, or which is incorporated or organized abroad and controlled by a foreign power abroad is not a United States person.

(D) any corporation or other entity organized in the United States and which is not openly acknowledged by a foreign government or governments to be directed and controlled by such government or governments, except that a corporation or corporate subsidiary incorporated abroad or controlled by a foreign power abroad is not a United States person.

#### Part B—GENERAL INTELLIGENCE AUTHORITIES

##### AUTHORIZATION FOR INTELLIGENCE ACTIVITIES

SEC. 111. (a) The entities of the intelligence community are authorized to conduct intelligence activities, under the direction and review of the National Security Council, but only in accordance with the provisions of this Act.

(b) Nothing in this Act shall be construed to prohibit any department or agency from continuing to retain, process, analyze, or disseminate information if such department or agency is otherwise authorized to do so.

(c) Except as expressly provided, nothing in this Act shall be construed to prohibit or affect any activities of any department or agency that are not intelligence activities.

(d) Except as expressly provided, nothing in this Act is intended to affect or alter existing responsibilities under law, including those established under 22 U.S.C. 2680a.

(e) Nothing in this Act shall be construed to authorize any entity of the intelligence community to conduct any activity for the purpose of depriving any person of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

#### NATIONAL SECURITY COUNCIL

SEC. 112. (a) The National Security Council shall provide the highest level review of, guidance for, and direction to the conduct of all intelligence activities. The responsibilities of the National Security Council, or such committees of the National Security Council as may be established by the President, shall be to—

(1) establish requirements and priorities for national intelligence;

(2) review the responsiveness of program and budget proposals to intelligence requirements and priorities;

(3) review the quality of national intelligence products and develop appropriate policy guidance;

(4) develop policy, standards, and doctrine for the conduct of counterintelligence and counterterrorism intelligence activities;

(5) advise and assist the President in the formulation of policy with respect to communications security, including the relationship between the communications security and intelligence activities of the United States;

(6) perform its responsibilities under Part C of this title and under Sec. 213 of this Act; and

(b) The President may—

(1) establish such committees of the National Security Council as may be necessary to discharge its responsibilities under this Act;

(2) determine the membership of such committees, consistent with this Act, including designation of a chairman and requirements for attendance of members;

(3) prescribe such other standards, proce-

to discharge such responsibilities under this Act.

#### PART C—AUTHORIZATION AND PROCEDURES FOR SPECIAL ACTIVITIES AND OTHER SENSITIVE INTELLIGENCE ACTIVITIES

##### PURPOSE

SEC. 121. The purpose of this Part is to ensure that special activities are undertaken only in support of important national security interests of the United States when overt or less sensitive alternatives would not be able to achieve the intended objective. Such activities are consistent with the intelligence and policies of the United States, and when anticipated benefits of such activities justify the foreseeable risks and likely consequences.

##### SCOPE OF SPECIAL ACTIVITIES

SEC. 122. Special activities may be conducted by the Central Intelligence Agency and the Department of Defense may also conduct special activities in accordance with section 123(e). Any department or agency may conduct special activities when the President determines that the intended United States objective is more likely to be achieved.

(b) Support for any special activity may be provided by any department or agency if the President determines for activities involving substantial resources, risks, or consequences, or if the National Security Council or a committee thereof determines for other activities, that such support is necessary.

##### AUTHORIZATION FOR SPECIAL ACTIVITIES

SEC. 123. Special activities shall be authorized only as follows:

(a) Special activities shall be authorized by the President.

(1) Authorization for any special activity that involves substantial resources, risks, or consequences shall require a finding by the President that each such special activity is important to the national security of the United States and consistent with the purposes of this Part.

(2) Authorization for any other special activities may be by category and shall require a finding by the President that such category of special activities is important to the national security of the United States and consistent with the purposes of this Part. The National Security Council or a committee thereof designated by the President for that purpose shall be responsible for the supervision of each such activity and shall ensure that it is consistent with the Presidential finding.

(b) Authorization by the President for special activities shall be preceded by a review by the National Security Council or a committee thereof designated by the President for that purpose. Such review shall include an assessment and a recommendation as to whether the activity or category of activities is consistent with the purposes of this Part.

Such recommendation shall include the views of any member who disagrees with the majority of the Council or committee thereof.

(c) No decision or recommendation to the President relating to a special activity may be made by the National Security Council or a committee thereof unless the following officers, were present: The Secretary of Defense, the Secretary of State, the Attorney General, and the Director of National Intelligence.

(d) Any special activity which lasts more than a year or which is substantially changed in form or purpose must be reaffirmed by the President under subsection (a), and reviewed by the National Security Council or a committee thereof under subsection (b).



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(e) The President may delegate presidential authorities and responsibilities under this section to the Secretary of Defense with respect to special activities conducted by the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution, 87 Stat. 555, to the extent necessary to carry out the activity that is the subject of the report.

**AUTHORIZATION FOR OTHER SENSITIVE INTELLIGENCE ACTIVITIES**

SEC. 124. The President shall establish procedures for the approval of sensitive foreign intelligence, counterintelligence, or counterterrorism intelligence activities which may require review or findings by the President, the National Security Council, a committee thereof, the Director of National Intelligence, the head of an entity of the intelligence community, or any other designated official.

**CONGRESSIONAL NOTIFICATION**

SEC. 125. Each special activity authorized under section 123(a) (1) and each category of special activities authorized under section 123(a) (2) shall be considered significant anticipated intelligence activities for the purposes of the requirement of section 142 of this Act, except that such prior notice may be limited for a period of forty-eight hours to the chairmen and ranking minority members of the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate if the President determines it is essential to meet extraordinary circumstances affecting vital interests of the United States. Such committees shall be fully informed under section 142 of this Act upon expiration of the forty-eight hour period.

**Part D—LIMITATIONS ON INTELLIGENCE AUTHORITIES**

**PROHIBITION ON ASSASSINATION**

SEC. 131. No person employed by or acting on behalf of the United States Government shall engage or conspire to engage in assassination.

**INTEGRITY OF PRIVATE INSTITUTIONS OF THE UNITED STATES**

SEC. 132. (a) The President shall establish public guidelines for the intelligence activities of the entities of the intelligence community to protect the integrity and independence of private institutions of the United States in accordance with constitutional principles.

(b) No entity of the intelligence community may use, for the purpose of establishing or maintaining cover for any officer of that entity to engage in foreign intelligence activities or special activities, any affiliation, real or ostensible, with any United States religious organization, United States media organization, United States educational institution, the Peace Corps, or any United States Government program designed to promote education, the arts, humanities, or cultural affairs through international exchanges.

(c) Nothing in this section shall be construed to prohibit voluntary contacts or the voluntary exchange of information between any person and any entity of the intelligence community.

(d) The President may waive any or all of the provisions of this section during any period in which the United States is engaged in war declared by Act of Congress, or during any period covered by a report from the President to the Congress under the War Powers Resolution, 87 Stat. 555, to the extent necessary to carry out the activity that

is the subject of the report. The President shall notify the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence in a timely manner of such a waiver and inform those committees of the facts and circumstances requiring such a waiver.

**RESTRICTIONS ON COVERT DOMESTIC PUBLICATIONS**

SEC. 133. No entity of the intelligence community may pay for or otherwise knowingly cause or support distribution of any book, magazine, article, periodical, film, or video or audio tape, for the purpose of influencing public opinion within the United States, unless the involvement of the United States Government is acknowledged.

**RESTRICTIONS ON CONTRACTING**

SEC. 134. Entity sponsorship of a contract or arrangement for the provision of goods or services with any United States organization may be concealed from such organization if—

(a) the contract or arrangement is a routine service contract, procurement contract, or transaction carried out under the Economy Act, 38 Stat. 1084; or

(b) the organization is not an educational institution and it is determined, pursuant to procedures approved by the Attorney General, that such concealment is necessary for intelligence activities authorized by this Act.

**ACTIVITIES UNDERTAKEN INDIRECTLY**

SEC. 135. No entity of the intelligence community and no employee of an entity of the intelligence community may request or otherwise knowingly encourage, directly or indirectly, an individual, organization, or foreign government to engage in any activity on behalf of the United States Government in which such entity of the intelligence community is prohibited by this Act from engaging; *Provided however*, That this restriction shall not prohibit any entity of the intelligence community from requesting a department or agency of the United States Government to engage in an activity that is within the authorized functions of the department or agency to which the request is made.

**Part E—OVERSIGHT AND ACCOUNTABILITY INTELLIGENCE OVERSIGHT BOARD; REPORTING ON VIOLATIONS; DISCIPLINARY PROCEDURES**

SEC. 141. (a) The President shall appoint a board to be known as the Intelligence Oversight Board (hereinafter referred to as the "Board") whose members shall be selected from outside the Government.

(b) The Board is authorized to employ staff to assist in carrying out its functions.

(c) As prescribed by the President, the Board shall—

(1) function to provide the President independent oversight of the intelligence community, in order to report to the President on questions of legality and propriety;

(2) be given access to all information relevant to its functions which is in the possession, custody or control of any entity of the intelligence community; and

(3) conduct such inquiries into the activities of any entity of the intelligence community as the Board deems necessary to perform its functions.

(d) Each entity of the intelligence community shall have a general counsel or a person designated to fulfill the responsibilities of a general counsel who shall serve as legal advisor to the head of that entity and shall have the responsibility to—

(1) review activities of that entity to determine whether such activities are in conformity with the Constitution and laws of the United States, Executive orders, Presidential directives and memoranda, and the rules, regulations, and policies of that entity;

(2) review all rules and regulations of that entity, including but not limited to any rule or regulation proposed to implement the provisions of this Act, to ensure that such rules and regulations are in conformity with the Constitution and laws of the United States, Executive orders, and Presidential directives and memoranda;

(3) report to the Board any intelligence matters as specified by the President; and

(4) perform such additional duties as the head of that entity may prescribe, consistent with the provisions of this Act.

(e) Each entity of the intelligence community shall have an inspector general or a person designated to fulfill the responsibilities of an inspector general who shall have the responsibility to—

(1) investigate all activities of that entity to determine in what respects authorized functions may more effectively be performed and to determine the facts and circumstances of any alleged wrongdoing;

(2) advise the head of that entity and, with respect to matters of legality, the general counsel of that entity of findings regarding activities of that entity;

(3) report to the Board any intelligence matters as specified by the President; and

(4) perform such other investigations as the head of that entity deems necessary, consistent with the provisions of this Act.

(f) The Attorney General or a designee shall—

(1) report, in a timely manner, to the Board any intelligence activity that involves a question as to whether there has been a significant violation of law and which has not been previously reported to the Attorney General by the Board;

(2) report to the President in a timely manner any intelligence activities that involve serious questions of law;

(3) report to the President, the Board, and the heads of the appropriate entities of the intelligence community, in a timely manner, decisions made or actions taken in response to reports from such entities concerning intelligence activities; and

(4) keep the Board and general counsels of entities of the intelligence community informed regarding legal opinions of the Department of Justice affecting the operations of the intelligence community.

(g) The head of each entity of the intelligence community shall—

(1) ensure that the inspector general and the general counsel of that entity have access to any information necessary to perform their functions under this Act;

(2) provide to the Attorney General, in accordance with applicable law, any information required by the Attorney General to fulfill the Attorney General's responsibilities under this Act;

(3) report to the Attorney General, pursuant to section 535 of title 28, United States Code, immediately upon discovery, evidence of possible violation of Federal criminal law by any person employed by, assigned to, or acting for, such entity; and

(4) report to the Attorney General evidence of possible violations by any other person of those Federal criminal laws specified in guidelines adopted by the Attorney General.

(h) All officers and employees of each entity of the intelligence community shall cooperate fully with the Board, the inspector general and general counsel of that entity, and the Attorney General in the conduct of their authorized functions, and in the reporting of any possible violation of law to the head of the entity and the inspector general or general counsel of that entity or the Board. The head of each entity of the intelligence community shall ensure such full cooperation. No officer or employee who so reports in good faith or so cooperates shall be subject to adverse personnel action solely on account of such reporting or cooperation.

(1) (1) The head of each entity of the intelligence community shall be empowered to take disciplinary action against any person employed by that entity for any action or omission that violates the provisions of this Act or any guidelines, procedures, or regulations established pursuant to this Act, including any regulation, procedure, or obligation to provide for personnel, document, communications, or physical security or to protect intelligence sources and methods from unauthorized disclosure. Notwithstanding any other provision of law, such action may include—

(A) suspension from employment without pay for a period not to exceed 180 days;

(B) reduction in salary or grade, or both;

(C) dismissal from employment; or

(D) a combination of (A) and (B).

(2) Before such disciplinary action is taken under this subsection against persons employed by or assigned to an entity of the intelligence community, such persons shall have the opportunity to present evidence on their behalf.

(3) Nothing contained in this subsection shall be construed to affect or limit the authority of the head of an entity of the intelligence community to terminate the employment of or take disciplinary action against any person employed by or assigned to that entity under any provision of law other than this subsection.

#### CONGRESSIONAL OVERSIGHT

SEC. 142. (a) Consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches, the head of each entity of the intelligence community shall—

(1) keep the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, that entity of the intelligence community, including any significant anticipated intelligence activity; but the foregoing provision shall not require approval of such committees as a condition precedent to the initiation of any such anticipated intelligence activity;

(2) furnish any information or material concerning intelligence activities in the possession, custody, or control of the head of the relevant entity of the intelligence community or in the possession, custody, or control of any person paid by such entity whenever requested by the House Permanent Select Committee on Intelligence or the Senate Select Committee on Intelligence; and

(3) report in a timely fashion to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence information relating to intelligence activities that are illegal or improper and corrective actions that are taken or planned.

(b) The head of each entity of the intelligence community shall maintain a complete record of all legal authorities, published regulations, and published instructions pertaining to the intelligence activities of that entity.

(c) The head of each entity of the intelligence community shall establish procedures to ensure that a record is maintained and preserved of each authorization or approval required by law, regulation or procedures under section 212 with respect to any intelligence activity.

(d) The Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate shall be furnished copies of all record schedules, which the entities of the intelligence community are required by law to furnish to the Archivist of the United States, including any modifications, amend-

ments or supplements, at such time as these schedules, modifications, amendments, or supplements are submitted to the Archivist for approval.

(e) The President may establish such procedures as the President determines may be necessary to carry out the provisions of this section.

#### CONGRESSIONAL COMMITTEE REPORTS; DISCLOSURE PROVISIONS

SEC. 143. (a) The House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence shall report, at least annually, to their respective Houses on the nature and extent of the intelligence activities of the United States. Each committee shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities which requires or should have the attention of such House or such committee or committees. In making such reports, the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence shall do so in a manner consistent with the protection of the national security interests of the United States.

(b) No information or material provided to the House Permanent Select Committee on Intelligence or the Senate Select Committee on Intelligence relating to the intelligence activities of any department or agency that has been classified under established security procedures or that was submitted by the Executive Branch with the request that such information or material be kept confidential shall be made public by the House Permanent Select Committee on Intelligence or the Senate Select Committee on Intelligence or any member thereof, except in accordance with the provisions of House Resolution 658 of the Ninety-Fifth Congress in the case of the House Permanent Select Committee on Intelligence and its members, or in accordance with the provisions of Senate Resolution 400 of the Ninety-Fourth Congress in the case of the Senate Select Committee on Intelligence and its members.

(c) (1) The House Permanent Select Committee on Intelligence shall, under such regulations as that committee shall prescribe, make any information described in subsection (a) or (b) available to any other committee or any other Member of the House. Whenever the House Permanent Select Committee on Intelligence makes such information available, that committee shall keep a written record showing which committee or which Members of the House received such information. No Member of the House who, and no committee which, receives such information under this paragraph shall disclose such information except in accordance with the provisions of House Resolution 658 of the Ninety-Fifth Congress.

(2) The Senate Select Committee on Intelligence may, under such regulations as that committee shall prescribe to protect the confidentiality of such information, make any information described in subsection (a) or (b) available to any other committee or any other Member of the Senate. Whenever the Senate Select Committee on Intelligence makes such information available, the committee shall keep a written record showing which committee or which Members of the Senate received such information. No Member of the Senate who, and no committee which, receives any information under this paragraph, shall disclose such information except in accordance with the provisions of Senate Resolution 400 of the Ninety-Fourth Congress.

(d) No employee of the House Permanent Select Committee on Intelligence or the Senate Select Committee on Intelligence, or of any committee to which information is pro-

vided pursuant to subsection (c), or any person engaged by contract or otherwise to perform services for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has (1) agreed in writing and under oath to be bound by the rules of the House or the Senate, as the case may be, and of such committees as to the security of such information during and after the period of his employment or contractual agreement with such committees; and (2) received an appropriate security clearance as determined by such committee in consultation with the Director of National Intelligence. The type of security clearance to be required in the case of any such employee or person shall, within the determination of such committees in consultation with the Director of National Intelligence be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committees.

(e) The provisions of subsections (a), (b), and (c) are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, and shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (as far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

#### REQUIREMENTS RELATING TO APPROPRIATIONS FOR NATIONAL INTELLIGENCE, AND COUNTER-INTELLIGENCE, AND COUNTERTERRORISM INTELLIGENCE ACTIVITIES

SEC. 144. No funds may be appropriated for any fiscal year beginning after September 30, 1980, for the purpose of carrying out any national intelligence activity, counterintelligence activity, or counterterrorism intelligence activity by any entity of the intelligence community unless funds for such activity have been previously authorized by legislation enacted during the same fiscal year or during one of the two immediately preceding fiscal years, except that this limitation shall not apply to funds appropriated by any continuing resolution or required by pay raises.

#### AUDITS AND REVIEWS BY THE COMPTROLLER GENERAL

SEC. 145. (a) All funds appropriated to the Office of the Director, all funds appropriated to entities of the intelligence community, and all intelligence activities conducted by entities of the intelligence community, and information and materials relating thereto, shall be subject to financial and program management audit and review by the Comptroller General of the United States, upon the request of the House Permanent Select Committee on Intelligence or the Senate Select Committee on Intelligence.

(b) Any other committee of the Congress may request financial and program management audits and reviews by the Comptroller General of the United States of any intelligence activity over which such committee has legislative jurisdiction, but only through and with the approval of the House Permanent Select Committee on Intelligence or the Senate Select Committee on Intelligence. The results of any such audit or review shall be submitted to (1) the House Permanent Select Committee on Intelligence, in the case of any audit or review requested by a committee of the House of Representatives, and shall be made available by such select committee, in accordance with and subject to the provisions of section 143 of this Act, to the committee of the House of Representatives which requested such audit or

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review, and (2) the Senate Select Committee on Intelligence in the case of any audit or review requested by a committee of the Senate, and shall be made available by such select committee, in accordance with and subject to the provisions of section 143 of this Act, to the committee of the Senate which requested such audit or review.

(c) Any audit or review of any intelligence activity authorized in subsection (a) or (b) above shall be conducted in accordance with such security standards as may be prescribed by the Director.

(d) Notwithstanding the foregoing provisions of this subsection, the Director may exempt from any such audit and review any funds expended for a particular intelligence activity, and the activity for which such funds are expended, if the Director (1) determines such exemption to be essential to protect the security of the United States, and (2) notifies the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence of such exemption.

## TITLE II—STANDARDS FOR INTELLIGENCE ACTIVITIES

### PART A—PURPOSES AND DEFINITIONS

#### STATEMENT OF PURPOSES

SEC. 201. It is the purpose of this title—

(a) to provide statutory authorization for activities of entities of the intelligence community that concern United States persons and that are necessary for the conduct of the foreign relations or the protection of the national security of the United States;

(b) to establish statutory standards for such activities and effective means to ensure that such activities are conducted in accordance with those standards; and

(c) to delineate responsibilities of government officials for ensuring that such activities are conducted in accordance with the Constitution and laws of the United States.

#### DEFINITIONS

SEC. 202. (a) The definitions in title I of this Act shall apply to this title. References to law within this title are to the laws of the United States.

(b) As used in this title—

(1) "Collecting agency" means, with respect to information, the department or agency that collects the information.

(2) "Covert technique" means any extraordinary technique and any other category or type of collection activity that is designated by the President for the purpose of protecting privacy and constitutional rights from significant intrusion.

(3) "Directed collection" means obtaining information that concerns a United States person by requesting or directing any person to acquire such information through exploiting or developing a relationship with a United States person without disclosing that the information will be conveyed to an intelligence entity. This term does not include placing of employees under section 214(b).

(4) "Employee" means a person employed by, assigned to, or acting for an entity of the intelligence community.

(5) "Extraordinary techniques" means foreign electronic surveillance and foreign physical search and any other technique directed against a United States person for which a warrant would be required if undertaken for law enforcement purposes in the United States, but does not include electronic surveillance or physical search under the Foreign Intelligence Search and Surveillance Act, 92 Stat. 1783, as amended.

(6) "Foreign electronic surveillance" means the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire, oral, or radio communication of a particular, known United States person who is outside the United

States, if the contents are acquired by intentionally targeting that United States person, or the use of an electronic, mechanical, or other surveillance device to monitor the activities of a particular, known United States person who is outside the United States, in circumstances in which a court order would be required under the Foreign Intelligence Search and Surveillance Act, 92 Stat. 1783, as amended, if undertaken within the United States, but does not include electronic surveillance as defined in that Act.

(7) "Foreign physical search" means any search directed against a United States person who is outside the United States or the property of a United States person that is located outside the United States and any opening of mail outside the United States and outside United States postal channels of a known United States person under circumstances in which a court order under the Foreign Intelligence Search and Surveillance Act, 92 Stat. 1783, as amended, would be required in the United States.

(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 known to be directed and controlled by a foreign government or governments;

(D) a group engaged in international terrorist activity or activities in preparation therefor;

(E) a foreign-based political organization, not substantially composed of United States persons.

(9) "Mail cover" means systematic and deliberate inspection and recording of information appearing on the exterior of envelopes in the mails.

(10) "Minimization procedures", with respect to extraordinary techniques, means specific procedures which shall be adopted by the Attorney General in consultation with the head of an entity of the intelligence community and the Director of National Intelligence—

(A) that are reasonably designed in light of the purpose of a particular technique to minimize the acquisition and retention and to prohibit the dissemination of nonpublicly available information concerning unconsenting United States persons, consistent with the need of the United States to obtain, produce and disseminate intelligence; and

(B) under which foreign intelligence that is not publicly available may be disseminated in a manner that identifies a United States person, without such person's consent, only if such person's identity is necessary to understand that foreign intelligence or to assess its importance, provided that information that is evidence of a crime may be disseminated for law enforcement purposes.

(11) "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 thereat, through any means not involving electronic surveillance.

### PART B—AUTHORITY AND STANDARDS FOR ACTIVITIES THAT CONCERN UNITED STATES PERSONS

#### AUTHORITY FOR ACTIVITIES THAT CONCERN UNITED STATES PERSONS

SEC. 211. (a) An entity of the intelligence community may engage in the following activities only in accordance with this title and only to fulfill a lawful function of that entity:

(1) collection, retention, or dissemination of intelligence concerning United States persons;

(2) any other intelligence activities directed against United States persons;

(3) collection, retention, or dissemination of information concerning United States persons who are targets of clandestine intelligence gathering activities of a foreign government;

(4) collection, retention, or dissemination of information concerning United States persons to determine the suitability or credibility of potential sources of intelligence or operational assistance;

(5) collection, retention, or dissemination of information concerning United States persons to provide personnel, document, communications or physical security for intelligence activities.

(b) Information concerning any United States person may be collected, retained and disseminated, and intelligence activities may be directed against any United States person, by an entity of the intelligence community using any technique with the consent of that person.

(c) Publicly available information concerning any United States person may be collected by an entity of the intelligence community when such information is relevant to a lawful function of that entity, and may be retained and disseminated for lawful governmental purposes.

(d) Information concerning any United States person may be retained and disseminated by an entity of the intelligence community if the information does not identify that person.

(e) Information concerning a United States person collected by a means or in a manner prohibited by this Act shall be destroyed as soon as feasible after recognition and may not be disseminated unless the head of the collecting agency or a designee determines that the information—

(1) should be retained for purposes of oversight, accountability or redress;

(2) evidences danger to the physical safety of any person, provided that dissemination is limited to that deemed necessary to protect against such danger and the Attorney General or a designee is notified in a timely manner; or

(3) is required by law to be retained or disseminated for any administrative, civil or criminal proceeding of which the collecting agency has prior notice, provided that dissemination is limited to that necessary for such proceeding.

(f) Nothing in this Act shall affect the use by an entity of the intelligence community of security guards, access controls, requirements for identification credentials, or inspection of material carried by persons entering or leaving its installations as measures to protect the security of its personnel, installations, activities, equipment or classified information.

(g) Nothing in this Act shall be construed to prohibit voluntary provision of information to an entity of the intelligence community by any person not employed by or assigned to that entity.

(h) Nothing in this Part shall prohibit, limit, or otherwise affect activities of any department or agency other than activities described in subsection (a).

#### PROCEDURES

SEC. 212. (a) Except as authorized by subsections 211(b) through (d) of this title, activities described in subsection 211(a) may not be conducted by an entity of the intelligence community unless permitted by procedures established by the head of that entity and approved by the Attorney General. Those procedures shall—

(1) protect constitutional rights and privacy;

(2) designate officials authorized to initiate or approve particular activities, provide for periodic review of activities at timely intervals by designated officials, and ensure that records are maintained of all approvals required by such procedures and this title for particular activities;

(3) be reasonably designed in light of the purpose of a particular technique to minimize the acquisition and retention and to prohibit the dissemination of information concerning United States persons, consistent with the need of the United States to obtain, produce and disseminate information for lawful governmental purposes;

(4) prohibit dissemination of foreign intelligence in a manner that identifies a United States person unless such person's identity is necessary to understand that intelligence or assess its importance, provided that information that is evidence of a crime may be disseminated for law enforcement purposes;

(5) prescribe reasonable requirements for the scope, intensity and duration of particular types of activities taking into account the nature and quality of information on which the activity is based and the importance of the intended United States objective;

(6) ensure that activities to collect information that are directed against any United States person are conducted with minimal intrusion consistent with the need to acquire information of the nature, reliability and timeliness that is required;

(7) implement the determinations by the President regarding covert techniques under section 202(b)(2); and

(8) govern the conduct of employees under cover engaged in activities within the United States or directed against United States persons abroad.

(b) The head of the entity shall make such procedures and any changes thereto available to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a reasonable time prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such procedures and the reason for their becoming effective immediately.

#### COLLECTION OF FOREIGN INTELLIGENCE

SEC. 213. (a) Collection of foreign intelligence by means of covert techniques shall not be directed against United States persons, except in the course of collection of counterintelligence or counterterrorism intelligence, or in extraordinary cases when authorized in accordance with this section.

(b)(1) Except as provided in subsection (c), approval for any collection of foreign intelligence by means of covert techniques directed against a United States person shall be based on a finding by the President that extraordinary circumstances require such collection to acquire foreign intelligence that is essential to the national security of the United States and that cannot reasonably be acquired by other means.

(2) Approval for any such collection shall be preceded by a review by the National Security Council or a committee thereof designated by the President for that purpose. No recommendation to the President relating to any such collection may be made unless the following officers, or if unavailable their representatives, were present: the Secretary of State, the Secretary of Defense, the Attorney General, and the Director of National Intelligence.

(3) Any collection under this subsection which lasts more than a year or which is substantially changed in purpose must be reaffirmed by the President under paragraph (1) and reviewed by the National Security Council or a committee thereof under paragraph (2).

(c)(1) Approval for collection of foreign intelligence involving covert techniques directed against a United States person may be based on a finding by an official designated by the President that the target is a senior official of a foreign power, an unincorporated association substantially composed of United

States citizens or permanent resident aliens directed and controlled by a foreign government or governors, or any other entity directed and controlled by a foreign power and that unusual circumstances require such collection to acquire foreign intelligence that is important to the national security of the United States and that cannot reasonably be acquired by other means.

(2) The Attorney General shall be advised of any collection conducted under this subsection, and the National Security Council or the committee thereof designated by the President under subsection (b) shall review periodically any collection conducted under this subsection.

(d) Foreign intelligence may be collected within the United States by clandestine means directed against unconsenting United States persons who are within the United States only by the Federal Bureau of Investigation, with notice to the Attorney General or a designee by components of the military services when directed against persons subject to the Uniform Code of Military Justice, 10 U.S.C. 803, Art. 2, (1) through (10); by the National Security Agency when directed at foreign electromagnetic communications, as defined in section 602(b)(5); or, when collection is authorized under subsection (c) and approved by the Attorney General, by the Central Intelligence Agency through established sources and pretext interviews.

#### COUNTERINTELLIGENCE AND COUNTERTERRORISM INTELLIGENCE ACTIVITIES

SEC. 214. (a) Counterintelligence and counterterrorism intelligence activities may be directed against United States persons without the consent of the United States person concerned only on the basis of facts or circumstances which reasonably indicate that the person is or may be engaged in clandestine intelligence activities on behalf of a foreign power or international terrorist activity.

(b) Counterintelligence and counterterrorism intelligence may be collected by placing employees in an organization in the United States or substantially composed of United States persons, only if—

(1) a designated senior official of the entity makes a written finding that such participation is necessary to achieve significant intelligence objectives and meets the requirements of the procedures established under section 212; and

(2) independent means are created in the procedures established under section 212 for audit and inspection of such participation.

(c) Counterintelligence and counterterrorism intelligence may be collected through the use against a United States person of mail covers, physical surveillance for purposes other than identification, recruitment of persons to engage in directed collection, or access to the records of a financial institution, as defined in section 1101 of the Eight to Financial Privacy Act of 1978, only if an official designated pursuant to the procedures established under section 212 makes a written finding that the use of such technique or techniques is necessary to achieve authorized intelligence objectives and meets the requirements of the procedures established pursuant to section 212.

(d) The Attorney General or a designee shall be notified of findings under subsections (b) and (c) with respect to counterintelligence or counterterrorism intelligence activities which the entity, based on guidelines established by the Attorney General, concludes may involve significant collection of information concerning political or religious activity.

#### COLLECTION OF INFORMATION CONCERNING TARGETS OF CLANDESTINE INTELLIGENCE GATHERING ACTIVITY OF FOREIGN GOVERNMENTS

SEC. 215. Information concerning United States persons may be collected without the

consent of the United States person concerned if an official designated pursuant to the procedures established under section 212 makes a written finding with notice to the Attorney General or a designee that the person is the target of clandestine intelligence gathering activity of a foreign government and such collection is necessary for counterintelligence purposes and meets the requirements of the procedures established pursuant to section 212. Covert techniques and mail covers may not be directed against unconsenting United States persons for collection under this section.

#### COLLECTION OF INFORMATION CONCERNING POTENTIAL SOURCES OF INTELLIGENCE OR OPERATIONAL ASSISTANCE

SEC. 216. Information concerning persons who are under consideration as potential sources of intelligence or operational assistance may be collected, without the consent of a United States person against whom such collection is directed, only in accordance with procedures established under section 212 which shall limit the scope, intensity and duration of such collection to that necessary to determine in a timely manner the suitability or credibility of the potential source. Such collection shall be limited to interviews, physical surveillance for purposes of identification, checks or Federal, State or local government records, and other techniques approved by the head of the collecting agency or a designee with notice to the Attorney General or a designee, except that covert techniques and mail covers may not be directed against unconsenting United States persons for such collection.

#### COLLECTION OF INFORMATION FOR SECURITY PURPOSES

SEC. 217. (a) Information may be collected to provide personnel, document, communication, or physical security for intelligence activities, without the consent of a United States person against whom such collection is directed, only in accordance with procedures established under section 212 which shall govern the categories of persons who may be subjects of such collection by particular agencies, and which shall limit the scope, intensity, duration, and targets of such collection to that required—

(1) to determine the suitability or trustworthiness of employees, contractors and contractor employees who will perform work in connection with an agency contract, applicants for contractor status, persons employed by proprietaries, or applicants for employment or for access to classified information or facilities, consultants, or persons detailed or assigned to an entity, when requesting the consent of the person against whom the collection is directed would jeopardize the security of an intelligence activity;

(2) to protect against breaches of security regulations or contractual obligations applicable to persons described in paragraph (1), except that such collection shall be limited to that necessary to refer the matter to the Department of Justice;

(3) to protect against a direct or imminent threat that may be posed by the activities of that person to the physical safety of personnel, installations, property, documents or other materials related to intelligence activities, except that such collection within the United States shall be limited to that necessary to refer the matter to an appropriate law enforcement agency; and

(4) to determine whether proposed intelligence activity sites meet appropriate physical security requirements.

(b) Covert techniques and mail covers may not be directed against unconsenting United States persons for collection under this section. Information may be collected under this section by clandestine means directed against unconsenting United States persons only if an official designated pur-



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suant to the procedures established under section 212 makes a written finding that the use of such means is necessary for authorized security purposes and meets the requirements of the procedures established pursuant to section 212.

## REVIEW OF ACTIVITIES

SEC. 218. Activities directed against particular United States persons that are authorized pursuant to sections 213 through 217 of this part for longer than one year shall be reviewed at least annually by the head of the entity or a designee. Except for collection of information under section 217 concerning employees of an entity, a report of such review shall be submitted to the Attorney General or a designee or, for activities by components of the military services directed against persons subject to the Uniform Code of Military Justice, 10 U.S.C. 803, Art. 2 (1) through (10), to the appropriate Service Secretary or a designee.

## PART C—STANDARDS FOR EXTRAORDINARY TECHNIQUES

## USE OF EXTRAORDINARY TECHNIQUES OUTSIDE THE UNITED STATES

SEC. 221. (a) Extraordinary techniques may not be directed against a United States person outside the United States for the purposes of collecting intelligence, except pursuant to court order.

(b) Applications for an order from the court established pursuant to the Foreign Intelligence Search and Surveillance Act, 92 Stat. 1783, as amended, are authorized and, notwithstanding any other law, a judge to whom an application is made pursuant to this section may grant an order approving the use of an extraordinary technique directed against a United States person outside the United States to collect intelligence.

(c) An order approving the use of an extraordinary technique pursuant to this section to collect foreign intelligence shall be granted if the court finds that—

(1) the Attorney General has certified in writing that the proposed use of an extraordinary technique against the United States person has been approved in accordance with section 213 of this title to collect foreign intelligence;

(2) the information sought is foreign intelligence;

(3) there is probable cause to believe that the United States person against whom the extraordinary technique is to be directed is in possession of, or, in addition with respect to foreign electronic surveillance, is about to receive, the information sought;

(4) less intrusive means cannot reasonably be expected to acquire intelligence of the nature, reliability and timeliness that is required; and

(5) the proposed minimization procedures meet the definition of minimization procedures under section 202(b)(10) of this title.

(d) An order approving the use of an extraordinary technique pursuant to this section to collect counterintelligence or counterterrorism intelligence shall be granted if the court finds that—

(1) significant counterintelligence or counterterrorism intelligence is likely to be obtained from the proposed use of an extraordinary technique against the United States person;

(2) there is probable cause to believe that the United States person against whom the extraordinary technique is to be directed engages or is about to engage in clandestine intelligence activities on behalf of a foreign power, international terrorist activity, or activities in furtherance thereof;

(3) less intrusive means cannot reasonably be expected to acquire intelligence of the nature, reliability and timeliness that is required; and

(4) the proposed minimization procedures meet the definition of such procedures under section 202(b)(10) of this title.

(e) The order of the court approving such use of an extraordinary technique shall be in writing and shall—

(1) specify the identity, if known, or a description of the United States person against whom the extraordinary technique is to be directed;

(2) specify the nature and location of the property, communications or activity to be the subject of the use of the extraordinary technique and state whether physical entry may be involved;

(3) specify a reasonable period, not to exceed 90 days, during which the use of an extraordinary technique is authorized, provided that no order shall authorize more than one unconsented entry into real property except for entries to install, repair, or remove surveillance devices; and

(4) direct that minimization procedures be followed.

(f) Extensions of an order issued under this section may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an initial order.

(g) The procedural, administrative, and security provisions established under the Foreign Intelligence Search and Surveillance Act, 92 Stat. 1783, as amended, shall be observed by the court considering applications for use of extraordinary techniques under this section. The provisions of that Act with respect to use of information, wartime authority, and congressional oversight shall apply to the use of extraordinary techniques under this section.

(h) The court of review established pursuant to section 103(b) of the Foreign Intelligence Search and Surveillance Act, 92 Stat. 1783, shall have jurisdiction to hear appeals from decisions with respect to applications for use of extraordinary techniques under this section. Decisions of the court of review shall be subject to review by the Supreme Court of the United States as provided in that Act.

(i) Use of extraordinary techniques by military components directed against United States persons outside the United States who are subject to the Uniform Code of Military Justice, 10 U.S.C. 802, Art. 2, (1) through (10), may be authorized pursuant to an order issued in conformance with subsections (c) through (f) of this section by a military judge appointed under the Uniform Code of Military Justice and designated by the Secretary of Defense. The Attorney General shall be informed in a timely manner of all applications and orders under this subsection. The procedural, administrative, and security provisions established under the Foreign Intelligence Search and Surveillance Act, 92 Stat. 1783, as amended, shall be observed by a military judge considering applications for use of extraordinary techniques under this section, except that security measures may be established by the Secretary of Defense.

## COOPERATIVE ARRANGEMENTS

SEC. 222. (a) Notwithstanding the provisions of this title, no agency, federal officer or employee may be required in connection with any proceeding under section 221 to disclose to a court information concerning any cooperative or liaison relationship that any agency of the United States Government may have with any foreign government or component thereof, provided that the Director of National Intelligence has determined that such disclosure would jeopardize such relationship.

(b) In any case in which a determination of facts related to a finding of probable cause under section 221(c)(3) or (d)(2) would require disclosure of information pro-

ected by this section, the Attorney General may submit a certification of facts to the court based on a determination by the Attorney General that the information reliably supports such certification of facts and is protected from disclosure by this section. The court may require disclosure of any information relating to a finding of probable cause under section 221(c)(3) or (d)(2) which does not disclose information protected by this section. In any case in which the Attorney General has submitted such a certification of facts, the court shall base its finding of probable cause under section 221(c)(3) or (d)(2) on such certification of facts and on any other information relating to the finding which is not protected by this section. The court shall not refuse to make a finding of probable cause under section 221(c)(3) or (d)(2) because information protected by this section has been withheld.

## EMERGENCY PROCEDURES

SEC. 223. Activities that require approval under section 213 or a court order under section 221 of this title may be conducted without such approval or court order for a period not longer than 72 hours, provided that—

(a) The head of the entity of the intelligence community, or the senior agency official, or the senior military officer authorized to act in such cases, in the country in which the activity is to be conducted, approves the activity and determines that—

(1) an emergency situation exists such that the activity is required before such approval or court order could be obtained with due diligence; and

(2) the factual basis for such approval or court order exists.

(b) An application for such approval or court order shall be made within 72 hours of the initiation of the activity.

(c) The activity shall be terminated when the information sought is obtained; when the application for such approval or court order is denied; or upon the expiration of the 72-hour period without such approval or issuance of a court order, whichever occurs first; and

(d) Information concerning a United States person obtained through the activity before an application for such approval or court order is granted or denied shall be treated in accordance with minimization procedures and shall be treated in accordance with section 211(e) of this title if the application is denied.

PART D—REMEDIES AND SANCTIONS;  
OTHER PROVISIONS

## CRIMINAL SANCTIONS

SEC. 231. (a) Any employee of the United States who intentionally—

(1) engages in foreign electronic surveillance or foreign physical search under color of law except as authorized by statute; or

(2) discloses or uses information obtained under color of law by foreign electronic surveillance or foreign physical search knowing or having reason to know the information was obtained through foreign electronic surveillance or foreign physical search engaged in by any employee of the United States and not authorized by statute, shall be guilty of an offense under this Act.

(b) It is a defense to a prosecution under subsection (a) that the defendant was an employee of the United States engaged in the course of official duties and the foreign electronic surveillance or foreign physical search was authorized by and conducted pursuant to a court order or search warrant issued by a court of competent jurisdiction. It is also a defense to prosecution that, at the time of the activity, the defendant was a law enforcement officer engaged in the course of official duties and there was no statute or established judicial procedure governing

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authorizations for the type of surveillance or search involved.

(c) An offense described in subsection (a) is punishable by a fine of not more than \$10,000, or imprisonment for not more than five years, or both.

(d) There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

## CIVIL LIABILITY AND JURISDICTION

Sec. 232. (a) Any aggrieved person, other than a foreign power, as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978, or an agent of a foreign power, as defined in section 101(b)(1)(A) of the Foreign Intelligence Surveillance Act of 1978 but regardless of whether the agency occurs within or outside of the United States, who has been subjected to a foreign electronic surveillance or whose property has been the subject of a foreign physical search, or about whom information obtained by foreign electronic surveillance of such person or foreign physical search of such property has been disclosed or used, in violation of section 231 shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(1) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;

(2) punitive damages; and

(3) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

(b) The district courts of the United States shall have original jurisdiction over all civil actions for money damages under this section.

(c) Except as provided in this section, nothing in this title, or in any guidelines or procedures established pursuant to this title, creates a civil cause of action for equitable relief against the United States or a civil cause of action against any officer, agent, or employee or former officer, agent, or employee of the United States Government not otherwise available under the Constitution or laws of the United States.

(d) Except as provided in this section and section 221(g), nothing in this Act or in any guidelines or procedures established pursuant to this Act creates any substantive or procedural right and no court has jurisdiction over a claim in any proceeding, including a motion to quash a subpoena, suppress evidence, or dismiss an indictment based solely on an alleged failure to follow a provision of this Act or of guidelines or procedures established pursuant to this Act.

## PROTECTION OF PRIVILEGED COMMUNICATIONS

Sec. 233. No otherwise privileged communications or information shall lose its privileged character as a consequence of this Act.

## ADMINISTRATIVE RULEMAKING

Sec. 234. The Director of National Intelligence and the head of each entity of the intelligence community shall, in appropriate consultation with the Attorney General, promulgate regulations necessary to carry out the provisions of this Act. Any promulgation of a standard, rule, regulation or procedure to implement this title shall be exempt from the provisions of section 553 of title 5, United States Code.

## TITLE III—THE INTELLIGENCE COMMUNITY

## PURPOSES

Sec. 301. It is the purpose of this title—

(a) to provide for the appointment of a Director of National Intelligence, to delineate the responsibilities of such Director, and to confer on such Director the authority necessary to fulfill those responsibilities;

(b) to ensure that the national intelligence activities of the entities of the intelligence community are properly and effectively directed, regulated, coordinated, and administered; and

(c) to ensure that the Director of National Intelligence is accountable to the President, the Congress, and the people of the United States, and that the national intelligence activities of the entities of the intelligence community are conducted in a manner consistent with the Constitution and laws of the United States.

## PRESIDENTIAL DESIGNATION OF NATIONAL INTELLIGENCE ACTIVITIES

Sec. 302. The President shall determine from time to time which foreign intelligence activities, if any, in addition to those specifically defined as national intelligence activities by this Act, shall constitute national intelligence activities for the purposes of this title.

## DIRECTOR AND DEPUTY DIRECTOR OF NATIONAL INTELLIGENCE

Sec. 303. (a) There is established in the executive branch of the Government an independent establishment to be known as the "Office of the Director of National Intelligence" (hereinafter in this title referred to as the "Office of the Director"). There shall be at the head of the Office of the Director a Director of National Intelligence (hereinafter in this part referred to as the "Director"). There shall be a Deputy Director of National Intelligence (hereinafter in this part referred to as the "Deputy Director") to assist the Director in carrying out the Director's functions under this Act.

(b) The Director and the Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate. The Director and the Deputy Director shall each serve at the pleasure of the President. No person may serve as Director for more than ten years or as Deputy Director for more than ten years.

(c) At no time shall the two offices of Director and Deputy Director be occupied simultaneously by commissioned officers of the armed forces whether in an active or retired status.

(d)(1) If a commissioned officer of the armed forces is appointed as Director or Deputy Director, then—

(A) in the performance of the duties of Director or Deputy Director, as the case may be, the officer shall be subject to no supervision, control, restriction, or prohibition of the Department of Defense, the military departments, or the armed forces of the United States or any component thereof; and

(B) that officer shall not possess or exercise any supervision, control powers, or functions (other than those authorized to that officer as Director or Deputy Director) with respect to the Department of Defense, the military departments, or the armed forces of the United States or any component thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

(2) Except as provided in this section, the appointment to the office of Director or Deputy Director of a commissioned officer of the armed forces, and acceptance of and service in such an office by that officer, shall in no way affect any status, office, rank, or grade that officer may occupy or hold in the armed forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A commissioned officer shall while serving in the office of Director or Deputy Director, continue to hold rank and grade not lower than that in which that officer was serving at the time of that officer's appointment as Director or Deputy Director.

(3) The grade of any such commissioned

officer shall, during any period such officer occupies the office of Director or Deputy Director, be in addition to the numbers and percentages authorized for the military department of which such officer is a member.

(e) The Director and Deputy Director whether civilian or military shall be compensated while serving as Director or Deputy Director only from funds appropriated to the Office of the Director.

(f) If a commissioned officer of the armed forces is serving as Director or Deputy Director, that officer shall be entitled, while so serving, to the difference, if any, between the regular military compensation (as defined in section 101(25) of title 37, United States Code) to which that officer is entitled and the compensation provided for that office under subchapter II of chapter 53 of title 5, United States Code.

(g) The Deputy Director shall act in the place of the Director during the absence or disability of the Director or during any temporary vacancy in the office of the Director. The Director shall provide by regulation which Assistant Director of National Intelligence shall, whenever there is no Deputy Director, act in the place of the Director during the absence or disability of the Director or during any temporary vacancy in the office of the Director and which Assistant Director of National Intelligence shall act in the place of the Deputy Director during the absence or disability of the Deputy Director or during any temporary vacancy in the office of the Deputy Director, or while the Deputy Director is acting as Director.

## DUTIES AND AUTHORITIES OF THE DIRECTOR

Sec. 304. (a) The Director shall serve, under the direction of the National Security Council, as the principal foreign intelligence officer of the United States.

(b) The Director shall be responsible for—

(1) the coordination of national intelligence activities of the entities of the intelligence community;

(2) the coordination of counterintelligence activities of the entities of the intelligence community that are conducted abroad; and

(3) the coordination of counterterrorism intelligence activities conducted abroad by the entities of the intelligence community and the coordination of those activities with similar activities abroad by other departments and agencies.

(c) The Director shall be responsible for evaluating the quality of the national intelligence that is collected, produced and disseminated by entities of the intelligence community and shall, on a continuing basis, review all current and proposed national intelligence activities in order to ensure that these activities are properly, efficiently, and effectively directed, regulated, coordinated and administered.

(d) The Director shall coordinate and direct the collection of national intelligence by the entities of the intelligence community by—

(1) developing such specific collection objectives and targets for the entities of the intelligence community as are necessary to meet the intelligence requirements and priorities established by the National Security Council;

(2) establishing procedures, in coordination with the heads of departments and agencies not within the intelligence community, to increase, insofar as is possible, the national intelligence contribution made by those departments and agencies without adversely affecting the performance of their other authorized duties; and

(3) coordinating all clandestine collection of intelligence outside the United States including all clandestine collection of intelligence outside the United States utilizing human sources.

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(e) The Director shall be responsible for the production of national intelligence, including national intelligence estimates and other intelligence community-coordinated analyses, and shall—

(1) ensure that in the production of national intelligence estimates or other intelligence community-coordinated analysis any diverse points of view are presented fully and considered carefully, and that differences of judgment within the intelligence community are expressed clearly for policymakers; and

(2) have authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations.

(f) The Director shall be responsible for the dissemination, under appropriate security procedures, of national intelligence, and shall—

(1) ensure that departments and agencies and appropriate operational commanders of the armed forces of the United States are furnished such national intelligence as is relevant to their respective duties and responsibilities;

(2) establish dissemination procedures to increase the usefulness for departments and agencies (including departments and agencies not within the intelligence community) of information collected, processed, and analyzed through national intelligence activities; and

(3) ensure access of each entity of the intelligence community to national intelligence relevant to that entity's authorized activities which has been collected or produced by any other entity of the intelligence community.

(g) The Director shall ensure the appropriate implementation of special activities and sensitive foreign intelligence, counterintelligence, and counterterrorism intelligence activities outside the United States designated under section 124 of this Act.

(h) The Director shall—

(1) formulate policies with respect to intelligence arrangements with foreign governments, in consultation with the Secretary of State; and

(2) coordinate intelligence relationships between the various entities of the intelligence community and the foreign intelligence or internal security services of foreign governments.

(i) The Director shall promote the development and maintenance of services of common concern by designated foreign intelligence organizations on behalf of the intelligence community.

(j) The Director shall be responsible for the protection from unauthorized disclosure of intelligence sources and methods and shall establish for departments and agencies minimum security standards for the management and handling of information and material relating to intelligence sources and methods.

(k) No provision of law shall be construed to require the Director or any other officer or employee of the United States to disclose the organization, function, name, official title, salary, or affiliation with the Office of the Director of National Intelligence of any person employed by the Office, or the numbers of persons employed by the Office.

(l) The Director may appoint and separate such civilian personnel or contract for such personal services as the Director deems advisable to perform the functions of the Office of the Director, without regard to the provisions of any other law, including, but not limited to, provisions which place limitations on types of persons to be employed, and fix the compensation of such personnel without regard to chapter 51 and subchapter III and IV of chapter 53 of title V, United States Code, relating to classification and General Schedule pay rates, but at such rates not in excess of the maximum

rate authorized under other provisions of law.

(m) Notwithstanding any other provision of law, the Director may terminate the employment of any officer or employee of the Office of the Director or, with the concurrence of the head of the department or agency concerned, the security clearance of any contractor of any entity of the intelligence community whenever the Director considers such termination necessary or advisable in the interests of the United States.

(n) Any officer or employee of the Office of the Director including those separated under subsection (l) or whose employment has been terminated under subsection (m) may seek or accept employment in any other department or agency of the Government; if declared eligible for such employment by the Office of Personnel Management; and that Office shall consider such officer or employee for positions in the competitive civil service in the same manner as if transferring between two positions in the competitive service, but only if such officer or employee has served with the Office of the Director or any other entity of the intelligence community for a total of at least one year continuously immediately preceding separation or termination.

(o) In order to carry out the Director's duties under this title, the Director is authorized to conduct program and performance audits and evaluations of the national intelligence activities of the entities of the intelligence community and to obtain from any department or agency such information as the Director deems necessary to perform such duties; and each department and agency shall furnish, upon request and in accordance with applicable law, such information to the Director.

(p) In order to carry out the Director's duties under this title, the Director is authorized to review all research and development activities which support the intelligence activities of the Government and may review all the intelligence activities of the Government.

ASSISTANT DIRECTOR; GENERAL COUNSEL;  
COMMITTEES AND BOARDS

Sec. 305. (a) The President is authorized to appoint up to five Assistant Directors of National Intelligence to assist the Director in carrying out the responsibilities of the Director under this Act. At no time shall more than two of the positions of Assistant Director of National Intelligence be occupied by commissioned officers of the armed forces, whether in active or retired status. If a commissioned officer of the armed forces serves as an Assistant Director of National Intelligence, the provisions of section 303 (d)-(f) shall apply to such officer.

(b) The Director, with respect to the Office of the Director, the Attorney General with respect to the Attorney General's duties and responsibilities under this Act, and the head of each entity of the intelligence community with respect to that entity, is authorized to establish such committees or boards, composed of officers and employees of the United States, as may be necessary to carry out effectively the provisions of this Act.

(c) The President is authorized to appoint, by and with the advice and consent of the Senate, a General Counsel who shall discharge the responsibilities of general counsel under this Act for the Office of the Director of National Intelligence and for the Central Intelligence Agency.

(d) (1) The Director, with respect to the Office of the Director, the Attorney General with respect to the Attorney General's duties and responsibilities under this Act, and the head of each entity of the intelligence community with respect to that entity, are

authorized to establish such advisory committees as may be necessary to provide expert advice regarding the administration of this Act.

(2) The provisions of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App. I, 1-15) shall apply with respect to any advisory committee established under authority of this subsection except that the Director, Attorney General, or the head of any entity of the intelligence community, as the case may be, may waive the application of any or all of the provisions of that Act when such official deems such action necessary to the successful performance of the duties of the Director, the Attorney General, or any entity of the intelligence community, as the case may be, or to protect the security of the activities of the intelligence community.

DEPARTMENTAL RESPONSIBILITY FOR REPORTING  
NATIONAL INTELLIGENCE

Sec. 306. It shall be the responsibility of the heads of departments and agencies to ensure that all national intelligence obtained by such departments and agencies is promptly furnished to the Director or to the entity of the intelligence community designated by the Director to receive such intelligence.

ANNUAL REPORT OF THE DIRECTOR

Sec. 307. The Director shall make available to the public an unclassified annual report on the national intelligence, counterintelligence, and counterterrorism activities conducted by entities of the intelligence community. Nothing in this subsection shall be construed as requiring the public disclosure, in any such report made available to the public, of the names of individuals engaged in such activities for the United States or the divulging of classified information which requires protection from disclosure by law.

NATIONAL INTELLIGENCE PROGRAM AND BUDGET  
AUTHORITY; INFORMATION

Sec. 308. The Director shall, to the extent consistent with applicable law, have full and exclusive authority for approval of the national intelligence budget submitted to the President. Pursuant to this authority—

(a) The Director shall provide guidance for program and budget development to program managers and heads of component activities and to department and agency heads;

(b) The heads of departments and agencies involved in the national intelligence budget shall ensure timely development and submission to the Director of proposed national programs and budgets, in the format designated by the Director, by the program managers and heads of component activities, and shall also ensure that the Director is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities;

(c) The Director shall review and evaluate the national program and budget submissions and, with the advice of the departments and agencies concerned, develop the national intelligence budget and present it to the President through the Office of Management and Budget;

(d) The Director shall present and justify the national intelligence budget to the Congress;

(e) The Director shall have full and exclusive authority for reprogramming national intelligence budget funds, in accordance with guidelines established by the Office of Management and Budget and after consultation with the head of the department or agency affected. The implementation of the overall budget by the departments and agencies that include entities of the intel-

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Intelligence community shall have no significant predictable adverse effect on the implementation of the national intelligence budget.

FUNDS APPROPRIATED TO THE OFFICE OF THE DIRECTOR

Sec. 309. Whenever the Director determines such action to be necessary in the interest of the national security, the expenditure of funds appropriated to the Office of the Director for authorized activities shall be accounted for solely on the certificate of the Director, and every such certificate shall be deemed a sufficient voucher for the amount certified therein, but funds expended for such purposes may be expended only for activities authorized by law.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

PART A—PURPOSES

STATEMENT OF PURPOSES

Sec. 401. It is the purpose of this title—

- (1) to clarify the statutory authorities, functions, and responsibilities of the Central Intelligence Agency;
- (2) to authorize the Central Intelligence Agency to perform intelligence activities that are necessary for the conduct of the foreign relations and the protection of the national security of the United States;
- (3) to ensure that the intelligence activities of the Central Intelligence Agency are properly and effectively directed, regulated, coordinated, and administered; and
- (4) to ensure that the Central Intelligence Agency is accountable to the President, the Congress, and the people of the United States, and that the activities of the Central Intelligence Agency are conducted in a manner consistent with the Constitution and laws of the United States.

PART B—ESTABLISHMENT OF AGENCY; DIRECTOR; GENERAL COUNSEL; INSPECTOR GENERAL; FUNCTIONS

ESTABLISHMENT OF CENTRAL INTELLIGENCE AGENCY

Sec. 411. There is established in the Executive branch of the government an independent establishment to be known as the Central Intelligence Agency (hereinafter in this title referred to as "the Agency"), which shall perform its functions under the direction of the National Security Council and subject to intelligence plans, objectives, and requirements established by the Director of National Intelligence.

DUTIES OF DIRECTOR AND DEPUTY DIRECTOR

Sec. 412. (a) There shall be at the head of the Agency a Director of the Central Intelligence Agency (hereinafter in this title referred to as the "Director of the Agency") who shall be appointed by the President, with the advice and consent of the Senate. The Director of National Intelligence shall serve as Director of the Agency. The President is authorized to appoint the Deputy Director of National Intelligence or an Assistant Director of National Intelligence as the Director of the Agency or to transfer any of the duties and authorities of the Director of the Agency to such Deputy Director or Assistant Director, provided that such appointment or transfer receives the advice and consent of the Senate. No person may serve as the Director of the Agency for more than 10 years.

(b) There shall be a Deputy Director of the Central Intelligence Agency (hereinafter in this title referred to as the "Deputy Director") who shall be appointed by the President, with the advice and consent of the Senate, and who shall assist in carrying out the functions of the Director of the Agency and who shall exercise all the duties of the Director of the Agency in the absence of the Director of the Agency.

(c) At no time shall the offices of Director of the Agency and Deputy Director be occu-

pled simultaneously by commissioned officers of the Armed Forces, whether in an active or retired status.

(d)(1) If a commissioned officer of the Armed Forces is appointed as Director of the Agency or Deputy Director, then—

(A) in the performance of the duties of Director of the Agency or Deputy Director, as the case may be, the officer shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be applicable if that officer were a civilian in no way connected with the Department of Defense, the military departments, or the Armed Forces of the United States or any component thereof; and

(B) that officer shall not possess or exercise any supervision, control, powers, or functions (other than those authorized to that officer as Director of the Agency or Deputy Director) with respect to the Department of Defense, the military departments, or the Armed Forces of the United States or any component thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

(2) Except as provided in this section, the appointment to the office of Director of the Agency or Deputy Director of a commissioned officer of the Armed Forces, and acceptance of and service in such an office by that officer, shall in no way affect any status, office, rank, or grade that officer may occupy or hold in the armed forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A commissioned officer shall, while serving in the office of Director of the Agency or Deputy Director, continue to hold rank and grade not lower than that in which that officer was serving at the time of that officer's appointment as Director of the Agency or Deputy Director.

(e) It shall be the duty of the Director of the Agency to—

- (1) ensure that the activities of the Agency are conducted in accordance with the provisions of this Act and with the Constitution and laws of the United States;
- (2) ensure that the activities of the Agency are properly and efficiently directed, regulated, coordinated, and administered;
- (3) perform as Director of the Agency the duties assigned elsewhere in this Act to the head of each entity of the intelligence community;
- (4) protect intelligence sources and methods from unauthorized disclosure; and
- (5) specify by regulation the order in which senior officials of the Agency may exercise all the duties of the Deputy Director during any temporary absence, disability, or vacancy in that office.

GENERAL COUNSEL AND INSPECTOR GENERAL

Sec. 413. (a) There shall be a General Counsel appointed by the President, by and with the advice and consent of the Senate, who shall discharge the responsibilities of general counsel under this Act for the Office of the Director of National Intelligence and for the Agency. In the temporary absence of the General Counsel, the Deputy General Counsel is authorized to exercise all the functions of the General Counsel.

(b) There shall be an Inspector General appointed by the Director of the Agency who shall discharge the responsibilities of Inspector general under this Act for the Office of the Director of National Intelligence and for the Agency.

FUNCTIONS

Sec. 414. (a) All activities, duties, and responsibilities of the Agency shall be performed in accordance with this Act.

- (b) The Agency shall—
  - (1) conduct foreign intelligence activities including collection by clandestine means;
  - (2) conduct counterintelligence and counterterrorism intelligence activities including activities by clandestine means;

(4) and by any means and process available to it to fulfill its responsibilities under this Act;

(5) produce, publish, and disseminate intelligence to meet the needs of the President, the National Security Council, the Director of National Intelligence, and other officials and agencies, including intelligence estimates and similar documents, in accordance with other activities of the intelligence community;

(6) develop, maintain, and provide support for technical reconnaissance and other programs, including the conduct of clandestine intelligence activities in accordance with section 604(d) of this Act, to collect intelligence outside the United States;

(7) act as the agent of the Director of National Intelligence in the coordination of counterintelligence activities, counterterrorism intelligence activities, and clandestine collection of foreign intelligence, conducted outside the United States by any other entity of the intelligence community;

(8) under the direction of the Director of National Intelligence conduct liaison with and provide assistance to foreign governmental agencies and act as the agent of the Director of National Intelligence in the coordination of such relationships by any other entity of the intelligence community;

(9) conduct as services of common concern for the intelligence community:

(A) monitoring of foreign public radio and television broadcasts and foreign press services, collection of intelligence from cooperating sources in the United States, acquisition and translation of foreign publications, and photographic interpretation; and

(B) such other services of common concern as the Director of National Intelligence may prescribe;

(10) coordinate the overt collection of foreign intelligence by entities of the intelligence community from witting and voluntary sources within the United States;

(11) conduct or contract for research, development, and procurement of systems and devices relating to its authorized functions;

(12) perform inspection, audit, public affairs, legal, legislative, and other administrative functions to support its authorized activities, and provide such support to the Office of the Director of National Intelligence as directed by the Director of National Intelligence; and

(13) perform such additional functions as are otherwise authorized by this Act to be performed by each entity of the intelligence community.

(c) Within the United States the Agency may collect intelligence by clandestine means only in coordination with the Federal Bureau of Investigation, in accordance with standards and procedures agreed upon by the Director of National Intelligence and the Attorney General, and may direct such collection against unconsenting United States persons only as permitted by section 213(d) of this Act.

(d) Within the United States the Agency may conduct counterintelligence and counterterrorism intelligence activities by clandestine means only with the approval of the Director of the Federal Bureau of Investigation or a designee, made or confirmed in writing, and shall keep the Federal Bureau of Investigation fully and currently informed of any such activities, in accordance with section 504(d) of this Act.

PART C—AUTHORITIES OF THE AGENCY; AUTHORIZATION FOR APPROPRIATIONS

GENERAL AUTHORITIES OF THE AGENCY

Sec. 421. (a) In carrying out its functions under this Act, the Agency is authorized to—

- (1) exchange funds, and transfer to and receive from other departments and agencies such sums of money as may be approved by



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the Director of the Office of Management and Budget for the purpose of carrying out authorized functions, and sums so transferred to or from the Agency may be expended without regard to any limitation on appropriations from which transferred;

(2) reimburse or be reimbursed by other departments and agencies in connection with the detail or assignment of personnel to or from the Agency;

(3) rent any premises within or outside the United States as appropriate to carry out any authorized function of the Agency; lease property, supplies, services, equipment, buildings or facilities; acquire, construct, or alter buildings and facilities, or contract for such purposes; repair, operate, and maintain buildings, utilities, facilities, and appurtenances; and exercise exclusive jurisdiction, control, and custody over all facilities and properties owned or utilized by the Agency;

(4) maintain and operate full-scale printing facilities for the production of intelligence and intelligence-related materials and lease or purchase and operate computer and communications equipment as appropriate to carry out authorized functions;

(5) conduct background investigations in accordance with section 217 of this Act to determine the suitability and trustworthiness of employees, contractors and contractor employees who will perform work in connection with an Agency contract, applicants for contractor status, persons employed by Agency proprietaries, or applicants for employment or for access to facilities or classified Agency information, consultants, persons detailed or assigned to the Agency, and persons similarly associated with the Office of the Director of National Intelligence;

(6) acquire, establish, maintain, and operate secure communications systems in support of Agency operations and in support of the Office of the Director of National Intelligence, and, when authorized by the Director of the Agency, in support of any other department or agency;

(7) in addition to the authority provided under 31 U.S.C. 686, provide to any department or agency such services, supplies, or equipment as the Agency may be in a position to render, supply, or obtain by contract, and place orders with departments or agencies that may be in a position to render, supply, or obtain services, supplies, or equipment by contract or otherwise.

(8) protect Agency personnel, installations, equipment and information by lawful security procedures, including, but not limited to, inspections of persons and items entering or leaving facilities and grounds owned or utilized by the Agency;

(9) provide transportation, in accordance with regulations approved by the Director of the Agency, for officers, employees and contractors of the Agency and the Office of the Director of National Intelligence, or their dependents, when other means of transportation are unsafe or inadequate;

(10) settle and pay claims of civilian and military personnel, as prescribed in Agency regulations consistent with the terms and conditions by which claims are settled and paid under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243);

(11) pay, in accordance with regulations approved by the Director, expenses of travel in connection with, and expenses incident to membership in, or attendance at meetings of professional, technical, scientific, and other similar organizations and professional associations when such attendance or membership would be of benefit in the conduct of the work of the Agency;

(12) provide or pay expenses of training to support authorized Agency functions, and, as appropriate, provide training for personnel of other departments and agencies;

(13) perform inspection, audit, public affairs, legal, legislative, and other administrative functions; and

(14) perform such additional functions as are otherwise authorized by this Act to be performed by each entity of the intelligence community.

(b) Any department or agency may transfer to or receive from the Agency any sum of money in accordance with subsection (a) (1)-(2) of this section.

(c) Any department or agency is authorized to assign or detail to the Agency any officer or employee of such department or agency to assist the Agency in carrying out any authorized function and the Agency may similarly assign or detail personnel to any other department or agency.

(d) No provision of law shall be construed to require the Director of the Agency or any other officer or employee of the United States to disclose information concerning the organization or functions of the Agency, including the name, official title, salary, or affiliation with the Agency of any person employed by, or otherwise associated with the Agency, or the number of persons employed by the Agency. In addition, the Agency shall also be exempted from the provisions of any law which require the publication or disclosure, or the search or review in connection therewith, of information in files specifically designated to be concerned with: The design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of intelligence; special activities and intelligence operations; investigations conducted to determine the suitability of potential intelligence sources; intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; except that requests by United States citizens and permanent resident aliens for information concerning themselves, made pursuant to Sections 552 and 552a of title 5, shall be processed in accordance with those sections.

(e) The Agency is authorized to establish, administer, and maintain methods to conceal and protect the relationship between the Agency and any of its officers, employees, sources, and activities, and for personnel and activities of the Office of the Director of National Intelligence, and for defectors from foreign countries.

(f) The Agency may continue to use and may modify with the approval of the President the seal of office used by the Central Intelligence Agency prior to the effective date of this title and judicial notice shall be taken of such seal.

(g) The Director of the Agency may employ or contract for security officers to police and protect the security of Agency personnel, installations and grounds owned or utilized by the Agency or the Office of the Director of National Intelligence, and such security officers shall have the same powers as sheriffs and constables for the protection of persons and property, to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rule or regulation the Director of the Agency may promulgate for the protection of such installations and grounds. The jurisdiction and police powers of such security officers shall not, however, extend to the service of civil process.

(h) Under such regulations as the Director of the Agency shall prescribe, Agency personnel may carry and use firearms while in the discharge of their official duties: *Provided*, That within the United States, such official duties shall include only the protection of (1) information concerning intelligence sources and methods and classified documents and material; (2) facilities, property, monies and other valuable assets owned or utilized by the Agency or the Office of the Director of National Intelligence; (3) per-

sonnel of the Agency or the Office of the Director of National Intelligence as may be designated by the Director of the Agency; and (4) defectors and foreign persons visiting the United States under Agency auspices; *And provided further*, that such duties shall include the transportation and utilization of firearms for authorized training.

(i) (1) The Agency may employ, manage and separate personnel or contract for such personal services as it deems advisable, and the Agency may expend such sums as it deems advisable for the compensation and management of persons employed by or otherwise associated with the Agency;

(2) The Director of the Agency may, in the discretion of the Director of the Agency, terminate the employment of any officer or employee of the Central Intelligence Agency, or the access of any individual, including contractors of the Agency or any employee of any such contractor, to information relating to intelligence activities whenever the Director of the Agency considers such termination necessary or advisable.

(3) Any Agency officer or employee, including any officer or employee who has been separated under paragraph (1), or whose employment has been terminated under paragraph (2), may seek or accept employment in the competitive service of the Government if declared eligible for such employment by the Office of Personnel Management; and that Office shall consider such officer or employee for positions in the competitive civil service in the same manner as if transferring between two positions in the competitive service, but only if such Agency officer or employee has served with the Agency or the Office of the Director of National Intelligence for a total of at least one year continuously immediately preceding separation or termination.

(j) The Director of the Agency is authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for artistic or general employee or dependent welfare, educational, recreational or like purpose, whenever the Director of the Agency determines that it would be in the interests of the Agency to do so. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Director of the Agency. Property accepted pursuant to this provision, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest. For purposes of federal, income, estate, or gift taxes, gifts or property accepted under this subsection shall be accepted as a gift, devise, or bequest to the United States.

(k) Except as otherwise provided in this Act, the authorities contained in subsections (a) through (e) and (l) of this section may be exercised notwithstanding any other provision of law.

(l) The Agency shall have no police, subpoena, or law enforcement powers, nor perform any internal security or criminal investigation functions, except to the extent expressly authorized by this Act.

## PROCUREMENT

Sec. 422. (a) Except as otherwise provided in this Act, the Agency is authorized to procure, use, and dispose of such real and personal property, supplies, services, equipment and facilities without regard to any other provision of law, whenever deemed necessary to carry out authorized functions.

(b) The provisions of chapter 137, relating to the procurement of property and services, and chapter 139, relating to the procurement of research and development services, of title 10, United States Code, as amended, shall apply to the procurement of property and research and development services by the Agency under this title in the same manner and to the same extent

such chapters apply to the procurement of property, services, and research and development services by the agencies named in section 2303(a) of chapter 137 of title 10, except that the Director of the Agency may specify by regulation when any or all of the provisions of chapters 137 and 139 of title 10 may be waived for the effective performance of authorized functions.

(c) In accordance with regulations promulgated by the Director of the Agency, the Agency is authorized to enter into contracts and amendments of contracts, and to make advance payments on contracts, without regard to any other provision of law, whenever deemed necessary for the effective performance of authorized functions.

(d) Except as otherwise provided in this Act, the Agency is authorized to dispose of property and use the proceeds therefrom to purchase new property without regard to any other provision of law, in accordance with regulations approved by the Director of the Agency, whenever such action is found necessary for the effective performance of authorized functions in accordance with regulations established by the Director of the Agency.

#### PROPRIETARIES

Sec. 423. (a) The Agency is authorized to establish and operate proprietaries in support of Agency operations and, with the approval of the Director of National Intelligence, in support of other entities of the intelligence community. In addition, any such proprietaries may be operated on a commercial basis to the extent necessary to provide effective cover.

(b) Appropriated funds and funds generated by an Agency proprietary or otherwise received may be deposited in banks or other financial institutions and expended as necessary to accomplish the same or closely related operational purposes except that funds in excess of amounts necessary for such purposes shall be deposited into miscellaneous receipts of the Treasury.

(c) Proceeds from the liquidation, sale, or other disposition of any Agency proprietary may be expended to establish and operate other proprietaries in furtherance of the same or closely related operational purposes. Any such proceeds not so expended shall be deposited into miscellaneous receipts of the Treasury, except for amounts deemed necessary or required by law to be retained for the purpose of satisfying claims or obligations.

(d) Whenever any Agency proprietary, or operationally related group of proprietaries, whose net value exceeds \$150,000 is to be liquidated, sold, or otherwise disposed of, the Agency shall, as much in advance of the liquidation, sale, or other disposition as practicable, report the circumstances of the intended liquidation, sale, or other disposition to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence.

(e) The authority contained in this section shall, except as otherwise provided in this Act, be available to the Agency notwithstanding any other provision of law.

#### RELATIONSHIPS WITH OTHER ENTITIES

Sec. 424. In addition to those activities of the Agency that relate to other departments and agencies and that are authorized in other provisions of this Act, the Agency is further authorized—

(1) to request other entities of the intelligence community to undertake authorized intelligence activities;

(2) to receive assistance from federal, state and local law enforcement agencies in the conduct of authorized functions;

(3) to provide and receive technical guidance, training, and equipment, and, under regulations established by the Director of the

Agency, the services of expert personnel, to or from any other federal agency or foreign government, and, when not readily available from another federal agency, to or from state or local governments;

(4) to provide and receive technical information or assistance to or from the Passport Office of the Department of State and the Immigration and Naturalization Service of the Department of Justice to assist in carrying out authorized functions; and

(5) when the Internal Revenue Service is performing an audit of an Agency proprietary or any other organization or individual whose relationship with the Agency is concealed or protected, to notify the Internal Revenue Service of such relationship in order that it not be disclosed publicly in connection with the audit.

#### ADMISSION OF ESSENTIAL ALIENS

Sec. 425. (a) Whenever the Director of the Agency, the Attorney General, and the Commissioner of Immigration and Naturalization determine that the entry of particular aliens into the United States for permanent residence is in the interest of national security or essential to intelligence activities, such aliens and their immediate families shall be given entry into the United States for permanent residence without regard to their inadmissibility under, or their failure to comply with, any immigration law of the United States or any other law or regulation, but in no case may the number of aliens and members of their immediate families who enter the United States under the authority of this section exceed one hundred in any one fiscal year. The Agency is authorized to process, debrief, and provide relocation assistance to such individuals, as necessary and appropriate under regulations established by the Director of the Agency.

(b) When extraordinary circumstances indicate that a foreign person associated with the Agency should enter or leave the United States under other than that person's true identity, the Agency is authorized to notify the Immigration and Naturalization Service of these circumstances and request a waiver of otherwise applicable rules and procedures.

#### AUTHORIZATION FOR APPROPRIATIONS AND EXPENDITURES

Sec. 426. (a) Notwithstanding any other provision of law, sums available to the Agency by appropriation or otherwise received may be expended to carry out the authorized functions of the Agency. No funds may be appropriated for any fiscal year beginning after September 30, 1980, for the purpose of carrying out any activity of the Agency unless funds for such activity have been previously authorized by legislation enacted during the same fiscal year or during one of the two immediately preceding fiscal years, except that this limitation shall not apply to funds appropriated by any continuing resolution or required by pay raises.

(b) Whenever the Director of the Agency determines such action to be necessary in the interest of the national security, the expenditure of funds appropriated to or otherwise received by the Agency shall be accounted for solely on the certificate of the Director of the Agency and every such certificate shall be deemed a sufficient voucher for the amount certified therein.

(c) There is established and the Director of the Agency is authorized to establish and maintain a fund to be known as the Contingency Reserve Fund (hereinafter in this section referred to as the "Reserve Fund") and to credit to the Reserve Fund monies specifically appropriated to the Central Intelligence Agency for such fund and unused balances of funds previously withdrawn from the Reserve Fund.

(d) The Director of the Agency is authorized to expend monies from the Reserve Fund for the payment of expenses incurred

in connection with any authorized intelligence activity if—

(1) the withdrawal of funds from the Reserve Fund has been approved by the Office of Management and Budget;

(2) the Committee on Appropriations of the House of Representatives, the Committee on Appropriations of the Senate, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence have been notified of the purpose of such withdrawal at least 72 hours in advance of the withdrawal; except that in extraordinary circumstances the Director of the Agency may authorize the withdrawal of funds from the Reserve Fund without prior notification to the appropriate committees of the Congress if the Director of the Agency notifies such committees within 48 hours after initiation of the withdrawal, describes the activity for which such funds have been or are to be expended, certifies to such committees that prior notification would have resulted in a delay which would have been harmful to the United States, and discloses to such committees the reasons why the delay would have been harmful. The foregoing shall not be construed as requiring the approval of any committee of the Congress prior to the initiation of any such activity;

(3) the monies from the Reserve Fund are used solely for the purpose of meeting needs that were not anticipated at the time the President's budget was submitted to the Congress for the fiscal year in which the withdrawal is authorized, and the activities to be funded require protection from unauthorized disclosure; and

(4) any activity funded from the Reserve Fund that continues after the end of the fiscal year in which it was funded by monies from the Reserve Fund shall be funded thereafter through the regular budgetary process at the earliest practicable date.

(e) Monies from the Reserve Fund may be expended only for the purpose for which the withdrawal was approved under this subsection and any amount approved for expenditure but not actually expended or to be expended for the purpose for which approved shall be returned to the Reserve Fund.

#### PART D—TRAVEL AND OTHER ALLOWANCES: RELATED EXPENSES; RETIREMENT SYSTEM; AND DEATH GRATUITIES

Sec. 431. (a) As used in this section "employee" means an "employee" as defined in 5 U.S.C. 2105, but does not include, unless otherwise specifically provided in accordance with regulations issued by the Director of the Agency, any person working for the Agency under a contract or any person who, when initially employed, is a resident in or a citizen of the foreign country in which such person is to be assigned to duty.

(b) Under regulations issued by the Director of the Agency the Agency may pay—

(1) travel, transportation, and subsistence expenses as provided for in chapters 57 and 59 of title 5, United States Code;

(2) travel, transportation, medical, subsistence, and other allowances and benefits in a manner and under circumstances comparable to those provided under title IX of the Foreign Service Act of 1946 (22 U.S.C. 1131-1160);

(3) educational travel benefits for dependents in the same manner and under the same circumstances as such benefits are provided under 5 U.S.C. 5924(4) (A) and (B) for dependents of employees of the Department of State; and

(4) (A) a gratuity to the surviving dependents of officers or employees who die as a result of injuries (excluding disease) sustained outside the United States, in an amount equal to one year's salary at the time of death. Such payment shall be made only upon determination of the Director of the Agency or his designee that the death:

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(1) resulting from hostile or terrorist activity, or (2) occurred in connection with an intelligence activity having a substantial element of risk. Any payment made under this subsection shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

(B) A death gratuity payment under this subsection shall be made as follows:

(1) First, to the widow or widower.

(2) Second, to the child, or children in equal shares, if there is no widow or widower.

(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child. If there is no survivor entitled to payment no payment shall be made.

(C) As used in this subsection—

(1) each of the terms 'widow', 'widower', 'child', and 'parent' shall have the same meaning given each such term by section 8101 of title 5, United States Code; and

(2) the term 'United States' means the several States and the District of Columbia.

(D) the provisions of this subsection shall apply with respect to deaths occurring on or after July 1, 1979."

(c) Whenever any provision of law relating to expenses, allowances, benefits or death gratuities of Foreign Service employees or dependents is enacted after the date of enactment of this Act in a form other than as an amendment to one of the provisions referred to in subsection (b) and the Director of the Agency determines that it would be appropriate for the purpose of promoting the effective performance of authorized functions, the Director of the Agency may, by regulation authorize payment, in whole or in part to Agency employees or dependents of such expenses, allowances, benefits and gratuities.

(d) Notwithstanding the provisions of subsections (b) and (c), and under regulations issued by the Director of the Agency, the Agency may pay expenses, allowances, benefits, and gratuities similar to those specifically authorized in those subsections in any case in which the Director of the Agency determines that such expenses, allowances, benefits or gratuities are necessary for the effective performance of authorized functions or that, for reasons of operational necessity or security, the means of paying expenses, allowances, benefits, and gratuities authorized in subsections (b) and (c), should not be utilized, and may pay special expenses, allowances, benefits, and gratuities when necessary to sustain particular Agency activities.

## RETIREMENT SYSTEM

Sec. 432. The "Central Intelligence Agency" in section 111(1) of the Central Intelligence Agency Retirement Act, and the "Director of Central Intelligence" in section 112 of that Act, shall be deemed to refer to the "Central Intelligence Agency" and the "Director of the Agency" as established under this title. With the exception of the foregoing sentence, nothing in this Act shall affect the entitlement of Agency employees and former Agency employees to participate in the retirement system established by the Central Intelligence Agency Retirement Act or the retirement system established by chapter 83 of title 5, United States Code.

**PART E—TRANSFER OF PERSONNEL, PROPERTY, AND FUNCTIONS; STATUTES REPEALED; EFFECT OF SUBSEQUENT LAW**

## TRANSFER OF PERSONNEL, PROPERTY, AND FUNCTIONS

Sec. 441. (a) All positions, except those of the Director of Central Intelligence and the Deputy Director of Central Intelligence, established in and personnel employed by the Central Intelligence Agency on the day before the effective date of this title, and all

obligations, contracts, properties, and records employed, held, or used by the Agency are transferred to the Agency.

(b) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, entitlements, and privileges which have become effective in the exercise of functions transferred under this title and which are in effect on the effective date of this title, shall continue in effect until modified, terminated, superseded, set aside, or repealed by the Director of the Agency or other properly designated Agency official, by any court of competent jurisdiction, or by operation of law.

(c) The provisions of this title shall not affect any proceedings pending before the Central Intelligence Agency as in effect prior to the effective date of this title.

(d) No suit, action, or other proceeding begun prior to the effective date of this title, shall abate by reason of enactment of this title.

(e) With respect to any function transferred by this title and exercised after the effective date of this title, reference in any other Federal law to any department, agency, office, or part thereof shall be deemed to refer to the department, agency, or office in which such function is vested pursuant to this title, and reference in any other Federal law to a provision of law replaced by similar provisions in this title shall be deemed to refer to the provisions in this title.

## STATUTES REPEALED; EFFECT OF SUBSEQUENT LAW

Sec. 422. (a) No provision of this Act shall be construed to limit or deny to the Agency any authority which may be exercised by the Agency under any other provision of applicable law existing on the date of the enactment of this Act, or as amended subsequent to the date of the enactment of this Act.

(b) No law enacted after the date of the enactment of this Act shall be held, considered or construed as amending, limiting, superseding or otherwise modifying sections 421(a)(3), 421(d), 421(i), 422, 423, 425, and 426 of this title unless such law does so by specifically and explicitly amending, limiting, or superseding such provision.

(c) Section 102 of the National Security Act of 1947 (50 U.S.C. 403) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a-403j) are repealed.

## PART F—CRIMINAL PENALTY

Sec. 443. (a) Chapter 33 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"SEC. 716. MISUSE OF THE NAME, INITIALS, OR SEAL OF THE CENTRAL INTELLIGENCE AGENCY

"Any person who knowingly and without the express written permission of the Director of the Central Intelligence Agency uses the name 'Central Intelligence Agency', the initials 'CIA', the seal of the Central Intelligence Agency, or any colorable imitation of such name, initials, or seal in connection with any solicitation or impersonation for other than authorized purposes or in connection with any commercial enterprise, including any merchandise, advertisement, book, circular, pamphlet, play, motion picture, broadcast, telecast, or other publication or production in a manner intended to convey the impression that such use is approved, endorsed, or authorized by the Central Intelligence Agency shall be fined not more than \$10,000 or imprisoned not more than one year, or both."

(b) The table of sections at the beginning of chapter 33 of such title is amended by adding at the end thereof a new item as follows:

"716. Misuse of the name, initials, or seal of the Central Intelligence Agency"

## TITLE V—FEDERAL BUREAU OF INVESTIGATION

## STATEMENT OF PURPOSE

Sec. 501. It is the purpose of this title—

(1) to authorize the Federal Bureau of Investigation, subject to the supervision and control of the Attorney General, to perform certain intelligence activities necessary for the conduct of the foreign relations and the protection of the national security of the United States;

(2) to delineate responsibilities of the Director of the Federal Bureau of Investigation, and to confer upon the Director the authority necessary to fulfill those responsibilities;

(3) to ensure that the intelligence activities of the Federal Bureau of Investigation are properly and effectively directed, regulated, coordinated, and administered; and

(4) to ensure that in the conduct of its intelligence activities the Federal Bureau of Investigation is accountable to the Attorney General, the President, the Congress, and the people of the United States and that those activities are conducted in a manner consistent with the Constitution and laws of the United States.

## SUPERVISION AND CONTROL

Sec. 502. (a) All authorities, duties, and responsibilities of the Federal Bureau of Investigation (hereinafter in this title referred to as the "Bureau") for the conduct of intelligence activities, including law enforcement aspects of intelligence activities, shall be exercised in accordance with this Act.

(b) All intelligence functions of the Bureau shall be performed under the supervision and control of the Attorney General. In exercising such supervision and control, the Attorney General shall be guided by policies and priorities established by the National Security Council and shall be responsive to foreign intelligence collection objectives, requirements, and plans promulgated by the Director of National Intelligence.

(c) The Attorney General and the Director of the Federal Bureau of Investigation (hereinafter in this title referred to as the "Director") shall review at least annually the intelligence activities conducted or coordinated by the Bureau to determine whether those activities have been conducted in accordance with the requirements of this Act and procedures approved by the Attorney General pursuant to this Act.

(d) The Attorney General and the Director shall publicly designate officials who shall discharge the responsibilities of general counsel and inspector general with respect to the activities of the Bureau under this Act.

## DUTIES OF THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Sec. 503. (a) It shall be the duty of the Director, under the supervision and control of the Attorney General, to—

(1) serve as the principal officer of the Government for the conduct and coordination of counterintelligence activities and counterterrorism intelligence activities within the United States;

(2) ensure that intelligence activities conducted or coordinated by the Bureau are carried out in conformity with the provisions of this Act and with the Constitution and laws of the United States, and that such activities do not abridge any right protected by the Constitution or laws of the United States;

(3) ensure that the intelligence activities of the Bureau are properly and efficiently directed, regulated, coordinated, and administered;

(4) keep the Attorney General fully and currently informed of all intelligence activities conducted or coordinated by the Bureau and provide the Attorney General with any

information the Attorney General may request concerning such activities;

(5) advise the Attorney General and the National Security Council regarding the objectives, priorities, direction, conduct, and effectiveness of counterintelligence and counterterrorism intelligence activities within the United States;

(6) assist the Attorney General and the National Security Council in the assessment of the threat to United States interests from intelligence activities within the United States of foreign powers and from international terrorist activities within the United States; and

(7) perform with respect to the Bureau the duties assigned elsewhere in this Act to the head of each entity of the intelligence community.

(b) The Attorney General shall provide by regulation which officials of the Bureau shall perform the duties of the Director under this Act during the absence or disability of the Director or during any temporary vacancy in the Office of the Director.

#### COUNTERINTELLIGENCE AND COUNTERTERRORISM INTELLIGENCE FUNCTIONS

SEC. 504. (a) The Bureau shall, in accordance with procedures approved by the Attorney General—

(1) collect, produce, analyze, publish, and disseminate counterintelligence and counterterrorism intelligence;

(2) conduct such other counterintelligence and counterterrorism intelligence activities as are necessary for lawful purposes; and

(3) conduct, in coordination with the Director of National Intelligence, liaison for counterintelligence or counterterrorism intelligence purposes with foreign governments.

(b) All Bureau counterintelligence and counterterrorism intelligence activities outside the United States shall be conducted in coordination with the Central Intelligence Agency and with the approval of a properly designated official of such agency. All requests for such approval shall be made or confirmed in writing. Any such activities that are not related directly to the responsibilities of the Bureau for the conduct of counterintelligence or counterterrorism intelligence activities within the United States shall be conducted only with the approval of the Attorney General or a designee, made or confirmed in writing.

(c) (1) The Bureau shall be responsible for the coordination of all counterintelligence and counterterrorism intelligence activities conducted within the United States by any other entity of the intelligence community.

(2) Such activities shall be conducted by clandestine means only with the approval of the Director or a designee, made or confirmed in writing, and only if the request for such approval—

(A) is made or confirmed in writing by a properly designated senior official of the requesting entity;

(B) describes the activity to be conducted; and

(C) sets forth the reasons why the requesting entity wishes to conduct such activity within the United States.

(3) The Bureau shall provide the Attorney General or a designee in a timely manner with copies of all requests made to the Bureau under this subsection and shall notify the Attorney General or a designee in a timely manner of any action taken by the Bureau with respect thereto.

(4) Any entity of the intelligence community conducting any counterintelligence or counterterrorism intelligence activity within the United States shall keep the Bureau fully and currently informed regarding that activity.

(5) The requirements of paragraphs (2) through (4) of this subsection shall not apply

to counterintelligence or counterterrorism intelligence activities of the military services directed against persons subject to the Uniform Code of Military Justice, 10 United States Code 802, Art. 2, (1) through (10), except for activities conducted by clandestine means outside military installations.

#### FOREIGN INTELLIGENCE FUNCTIONS

SEC. 505. (a) The Bureau may, in accordance with procedures approved by the Attorney General—

(1) collect foreign intelligence within the United States in the course of authorized collection of counterintelligence or counterterrorism intelligence;

(2) conduct activities within the United States in support of the foreign intelligence collection programs of any other entity of the intelligence community; and

(3) produce, analyze, and disseminate foreign intelligence in coordination with the Director of National Intelligence.

(b) Any Bureau collection of foreign intelligence upon the request of another entity of the intelligence community, or any Bureau activity in support of the foreign intelligence collection programs of another entity of the intelligence community, shall be conducted only upon the request, made or confirmed in writing, of an official of an entity of the intelligence community who has been designated by the President to make such requests. The Bureau may not comply with any such request unless such request—

(1) describes the information sought or the support activity requested;

(2) certifies that the information sought or the support activity requested is relevant to the authorized functions and duties of the requesting entity; and

(3) sets forth the reasons why the Bureau is being requested to collect the information or conduct the support activity.

The Bureau shall provide the Attorney General or a designee in a timely manner with copies of all such requests, and shall conduct such support activity only with the approval of the Director.

(c) The Bureau shall be responsible, in accordance with procedures agreed upon by the Attorney General and the Director of National Intelligence, for the coordination of all collection of foreign intelligence by clandestine means within the United States by any other entity of the intelligence community.

(d) Within the United States foreign intelligence may be collected by clandestine means directed against unconsenting United States persons only by the Bureau, with notice to the Attorney General or a designee, except as otherwise permitted by section (d) of this Act.

#### COOPERATION WITH FOREIGN GOVERNMENTS

SEC. 506. (a) The Bureau may, in accordance with procedures approved by the Attorney General, collect counterintelligence and counterterrorism intelligence within the United States upon the written request of any law enforcement, intelligence, or security agency of a foreign government, and provide assistance to any officer of such agency who is collecting intelligence within the United States. The Bureau may not comply with any such request unless such request specifies the purposes for which the intelligence or assistance is sought and—

(1) the Bureau would be authorized under this Act to collect the intelligence or provide the assistance in the absence of any such request; or

(2) the collection of the intelligence or the provision of assistance pertains to foreign persons and is approved by the Attorney General or a designee after a written finding that, as a matter of comity, such collection or assistance is in the interests of the United States.

(b) The Bureau shall keep the Attorney

General or a designee fully and currently informed of all intelligence collection within the United States by officers or agencies of foreign governments in which information or assistance is furnished by the Bureau.

(c) The authority provided in subsection (a) of this section is subject to the procedures, prohibitions, and restrictions contained in title II of this Act.

#### GENERAL AND SPECIAL AUTHORITIES

SEC. 507. (a) In carrying out its functions under this title, the Bureau is authorized to—

(1) procure or lease such property, supplies, services, equipment, buildings, and facilities, and construct or alter such buildings and facilities, as may be necessary to carry out its authorized intelligence functions;

(2) establish, furnish, and maintain secure cover for Bureau officers, employees, and sources when necessary to carry out its authorized intelligence functions, in accordance with procedures approved by the Attorney General;

(3) establish and operate proprietaries when necessary to support Bureau intelligence activities, in accordance with procedures approved by the Attorney General;

(4) deposit public moneys in banks or other financial institutions when necessary to carry out its authorized intelligence functions;

(5) conduct or contract for research, development, and procurement of technical systems and devices relating to its authorized intelligence functions;

(6) protect from unauthorized disclosure, in accordance with standards established by the Director of National Intelligence under section 114, intelligence sources and methods; and

(7) perform such additional functions as are otherwise authorized by this Act to be performed by each entity of the intelligence community.

(b) (1) Any proprietary established and operated by the Bureau may be operated on a commercial basis to the extent necessary to provide effective cover. Any funds generated by any such proprietary in excess of the amount necessary for its operational requirements shall be deposited by the Director into miscellaneous receipts of the Treasury.

(2) Whenever any Bureau proprietary whose net value exceeds \$150,000 is to be liquidated, sold, or otherwise disposed of, the Bureau shall, as much in advance of the liquidation, sale, or other disposition of the proprietary as practicable report the circumstances of the intended liquidation, sale, or other disposition to the Attorney General and to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence. Any proceeds from any liquidation, sale, or other disposition of any Bureau proprietary, in whatever amount, after all obligations of the proprietary have been met, shall be deposited by the Director into miscellaneous receipts of the Treasury.

(c) The Bureau is authorized, in accordance with procedures approved by the Attorney General, to procure or lease property, goods, or services for its own use in such a manner that the role of the Bureau is not apparent or publicly acknowledged when public knowledge could inhibit or interfere with the secure conduct of an authorized intelligence function of the Bureau.

(d) The authority contained in clauses (1), (2), (3), and (4) of subsection (a) shall, except as otherwise provided in this Act, be available to the Bureau notwithstanding any other provision of law and shall not be modified, limited, suspended, or superseded by any provision of law enacted after the effective date of this title unless such provision expressly cites the specific provision



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of subsection (a) intended to be so modified, amended, suspended, or superseded.

### NATIONAL SECURITY AGENCY PURPOSES AND DEFINITIONS

Sec. 601. It is the purpose of this title—  
(1) to authorize, and provide guidance for, those signals intelligence and communications security activities necessary for the conduct of the foreign relations and the protection of the national security of the United States;

(2) to ensure that signals intelligence and communications security activities are properly and effectively directed, regulated, coordinated and administered, and are organized and conducted so as to meet, in the most efficient manner, the signals intelligence and communications security needs of the United States;

(3) to establish by law the National Security Agency, to provide for the appointment of a director of that Agency, to delineate the responsibilities of such director, and to confer upon such director the authorities necessary to fulfill those responsibilities;

(4) to ensure that the National Security Agency is accountable to the President, the Congress, and the people of the United States and that the signals intelligence activities and communications security activities of the United States are conducted in a manner consistent with the Constitution and laws of the United States.

#### DEFINITIONS

SEC. 602. (a) Except as otherwise provided in this section, the definitions in title I shall apply to this title.

(b) As used in this title—

(1) The term "communications intelligence" means technical and intelligence information derived from foreign electromagnetic communications by other than the intended recipients.

(2) The term "cryptographic system" includes any code, cipher, and any manual, mechanical or electrical device or method used for the purpose of disguising, concealing, or authenticating the contents, significance, or meanings of communications.

(3) The term "cryptology" encompasses both signals intelligence and communications security.

(4) The term "electronics intelligence" means technical and intelligence information derived from foreign electromagnetic radiations emanating from other than communications, nuclear detonations, or radioactive sources.

(5) The term "foreign electromagnetic communication" means a communication that has at least one communicant outside of the United States or that is entirely among foreign powers or between a foreign power and officials of a foreign power (but not including communications intercepted by electronic surveillance directed at premises used exclusively for residential purposes).

(6) The term "foreign instrumentation signals intelligence" means technical and intelligence information derived from the collection and processing of foreign telemetry, beaconry, and associated signals.

(7) The term "signals intelligence" includes, either individually or in combination, communications intelligence, electronics intelligence, foreign instrumentation signals intelligence, and information derived from the collection and processing of non-imagery infrared and coherent light signals, but does not include electronic surveillance activities conducted by the Federal Bureau of Investigation on its own behalf.

(8) The term "unauthorized person" means a person not authorized access to signals intelligence or communications security information by the President or by the head of any department or agency that has been designated expressly by the President to engage in cryptologic activities for the United States.

(9) The term "United States signals intelligence system" means an entity that is comprised of (A) the National Security Agency (including assigned military personnel); (B) those elements of the military departments and the Central Intelligence Agency performing signals intelligence activities; (C) those elements of any other department or agency which may from time to time be authorized by the National Security Council to perform signals intelligence activities during the time when such elements are authorized to perform such activities.

### PART B—ESTABLISHMENT OF AGENCY; DIRECTOR; DEPUTY DIRECTOR; GENERAL COUNSEL; INSPECTOR GENERAL; DUTIES

#### ESTABLISHMENT OF NATIONAL SECURITY AGENCY; FUNCTION

SEC. 611. (a) There is established within the Department of Defense an agency to be known as the National Security Agency (hereinafter in this title referred to as the "Agency").

(b) It shall be the function of the Agency to conduct signals intelligence activities and communications security activities for the United States Government and to serve as the principal agency of the United States signals intelligence system.

(c) (1) The functions of the Agency shall be carried out under the direct supervision and control of the Secretary of Defense and shall be accomplished under the provisions of this Act and in conformity with the Constitution and laws of the United States.

(2) In exercising supervision and control over the Agency, the Secretary of Defense shall comply with intelligence policies, needs, and priorities established by the National Security Council and with intelligence objectives and requirements established by the Director of National Intelligence.

(3) In exercising supervision and control over the Agency, the Secretary of Defense shall comply with communications security policy established by the National Security Council which shall include the Secretary of Commerce for this purpose.

#### DIRECTOR AND DEPUTY DIRECTOR

SEC. 612. (a) There shall be a Director of the National Security Agency (hereinafter in this title referred to as the "Director"). There shall also be a Deputy Director of the National Security Agency (hereinafter in this title referred to as the "Deputy Director") to assist the Director in carrying out the Director's functions under this Act.

(b) The Director and the Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate. The Director and Deputy Director shall each serve at the pleasure of the President. Either the Director or Deputy Director shall be a person with cryptologic experience. No person may serve as Director or Deputy Director for a period of more than six years unless such person is reappointed to that same office by the President, by and with the advice and consent of the Senate. No person who has served as Director or Deputy Director for a period of less than six years and is subsequently appointed or reappointed to that same office may serve in that office under such appointment or reappointment for a term of more than six years. In no event may any person serve in either or both offices for more than a total of 12 years.

(c) At no time shall the two offices of Director and Deputy Director be occupied simultaneously by commissioned officers of the armed forces whether in an active or retired status.

(d) (1) If a commissioned officer of the armed forces is appointed as Director or Deputy Director, then—

(A) in the performance of the duties of Director or Deputy Director, as the case may be, the officer shall be subject to no supervision, control, restriction, or prohibition of

the military departments or the armed forces of the United States or the Department thereof; and

(B) that officer shall not possess or exercise any supervision, control, powers, or functions (other than such as that officer possesses, or is authorized or directed to exercise, as Director, or Deputy Director) with respect to the Department of Defense, the military departments, or the armed forces of the United States or any component thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

(2) Except as provided in this section, the appointment to the office of Director or Deputy Director of a commissioned officer of the armed forces, and acceptance of and service in such an office by that officer, shall in no way affect any status, office, rank, or grade that officer may occupy or hold in the armed forces, or any emolument, prerequisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A commissioned officer shall, while serving in the office of Director or Deputy Director, continue to hold rank and grade not lower than that in which that officer was serving at the time of that officer's appointment as Director or Deputy Director.

(3) The rank or grade of any such commissioned officer shall, during any period such officer occupies the office of Director or Deputy Director, be in addition to the numbers and percentages authorized for the military department of which such officer is a member.

(e) The Director and Deputy Director, whether civilian or military, shall be compensated while serving as Director or Deputy Director only from funds appropriated to the Department of Defense.

(f) If a commissioned officer of the armed forces is serving as Director or Deputy Director, that officer shall be entitled, while so serving, to the difference, if any, between the regular military compensation (as defined in section 101(25) of title 37, United States Code) to which that officer is entitled and the compensation provided for that office under subchapter II of chapter 53 of title 5, United States Code.

(g) The Deputy Director shall act in the place of the Director during the absence or disability of the Director or during any temporary vacancy in the office of the Director. The Director shall provide by regulation which officials of the Agency shall, whenever there is no Deputy Director, act in the place of the Director during the absence or disability of the Director or during any temporary vacancy in the office of the Director.

(h) In computing the twelve-year limitation prescribed in subsection (b) of this section, any service by a person as Director or Deputy Director of the National Security Agency as such agency existed on the day before the effective date of this title shall not be included.

#### DUTIES OF THE DIRECTOR

SEC. 613. (a) It shall be the duty of the Director to—

(1) serve as the principal signals intelligence officer of the Government and the executive head of the National Security Agency;

(2) ensure that the signals intelligence activities of the United States Government are conducted in accordance with the provisions of this Act and with the Constitution and laws of the United States;

(3) direct and manage all cryptologic activities, resources, personnel, and programs of the Agency;

(4) organize, maintain, direct and manage the United States signals intelligence system;

(5) in accordance with intelligence policies, needs, and priorities established by the National Security Council and with intelligence requirements and objectives pro-

mulgated by the Director of National Intelligence, supervise, and formulate and promulgate operational plans, policies, and procedures for the conduct and control of, all signals intelligence collection, processing, reporting, and dissemination activities of the United States Government;

(6) ensure that signals intelligence is disseminated promptly and under appropriate security safeguards only to departments and agencies that require such intelligence for their lawful functions and have been authorized by the President to receive such intelligence;

(7) serve, under the Secretary of Defense, as the principal communications security officer of the United States Government and ensure that the communications security activities of the United States Government are conducted in accordance with the provisions of this Act and with the Constitution and laws of the United States;

(8) fulfill the communications security requirements of all departments and agencies based upon policy guidance from the National Security Council operating pursuant to section 142 of this Act;

(9) consolidate, as necessary, the signals intelligence and the communications security functions of the United States Government for the purpose of achieving overall efficiency, economy, and effectiveness;

(10) conduct such research and development in support of signals intelligence and communications security activities as may be necessary to meet the needs of departments and agencies authorized to receive signals intelligence or which require communications security assistance, or delegate responsibility for such research and development to other departments or agencies, and review research and development conducted by any department or agency in support of signals intelligence and communications security, except for such research and development in support of the clandestine activities of the Central Intelligence Agency;

(11) determine the manpower resources and administrative support needed by the Agency to conduct effectively its signals intelligence activities and, in accordance with such terms and conditions as shall be mutually agreed upon by the Director of National Intelligence and the Secretary of Defense, enter into agreements with other departments and agencies for the provisions of such manpower resources and administrative support;

(12) determine the manpower resources and administrative support needed by the Agency to conduct effectively its communications security activities, and, based upon guidance from the Secretary of Defense, enter into agreements with other departments and agencies for the provision of such manpower resources and administrative support;

(13) review all proposed budgets, programs, and resource allocations for the signals intelligence activities of the United States, prepare a proposed consolidated United States signals intelligence program and budget for each fiscal year based upon program and budget guidance from the Secretary of Defense, and with respect to national intelligence activities on program and budget guidance from the Director of National Intelligence, and submit each such proposed budget to the Director of National Intelligence and the Secretary of Defense;

(14) review all proposed programs, budgets, and resource allocations for the communications security activities of the United States Government, prepare a proposed consolidated Department of Defense communications security program and budget for each fiscal year, and submit each such proposed program and budget to the Secretary of Defense.

(15) establish appropriate controls for funds made available to the Agency to carry out its authorized activities;

(16) ensure that cryptologic information is classified in accordance with applicable law and Executive orders;

(17) conduct liaison on cryptologic matters with foreign governments and, when such matters involve the responsibilities of the Director of National Intelligence under sec. 115(b), conduct such liaison in coordination with the Director of National Intelligence;

(18) provide for such communications support and facilities as may be necessary to (A) conduct signals intelligence activities in a timely and secure manner, and (B) ensure the expeditious handling of critical information for the United States Government;

(19) prescribe all cryptographic systems and techniques, other than secret writing systems and covert agent communications systems of the Central Intelligence Agency, to be used in any manner by or on behalf of the United States Government and provide for the centralized production and control of such cryptographic systems and materials to be used by the United States Government;

(20) evaluate, based, as appropriate, upon guidance from the Attorney General, the vulnerability of United States communications to interception and exploitation by unintended recipients and, under the supervision of the Secretary of Defense and in accordance with policy guidance from the National Security Council operating pursuant to section 142 of this Act, institute appropriate measures to ensure the confidentiality of such communications;

(21) ensure that the Agency will receive, in a timely fashion, all signals intelligence collected by any entity of the United States Government;

(22) develop plans to ensure the responsiveness of the United States signals intelligence system to the needs of the Department of Defense, including the delegation of such tasking authority as may be appropriate;

(23) provide the Director of National Intelligence with such information on the activities of the Agency as the Director of National Intelligence requires to fulfill his statutory responsibilities;

(24) provide technical assistance to any other entity of the intelligence community engaged in lawful intelligence activities;

(25) issue such rules, regulations, directives, and procedures as may be necessary to implement this title; and

(26) perform with respect to the Agency the duties assigned elsewhere in this Act to the head of each entity of the Intelligence Community.

(b) It shall also be the duty of the Director to provide signals intelligence support for the conduct of military operations in accordance with tasking, priorities and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of systems for national intelligence collection, these systems will be tasked within existing guidance from the Director of National Intelligence.

(c) It shall also be the duty of the Director to prescribe and enforce for the United States signals intelligence system and for the communications security activities of the United States Government security rules, regulations, procedures, standards, and requirements with respect to personnel security clearances, authorizations for access to facilities and information, physical security of facilities, equipment, and information, and the transmission, processing, and reporting of information, in order to protect signals intelligence and communications security information from unauthorized disclosure. All such rules, regulations, procedures, standards and requirements shall be

in accord with applicable law and with policy guidance from the Director of National Intelligence with respect to signals intelligence activities and the Secretary of Defense with respect to communications security activities. Enforcement of all such rules, regulations, procedures, standards, and requirements shall be coordinated with the head of each concerned department or agency.

(d) To assist the Director in the fulfillment of his responsibilities under this section, the heads of all departments and agencies shall furnish the Director, upon request and in accordance with applicable law, such data as the Director may require and the Director shall take appropriate steps to maintain the confidentiality of any information which is so provided.

#### GENERAL COUNSEL, INSPECTOR GENERAL

SEC. 614. (a) There shall be a General Counsel of the National Security Agency appointed by the President, by and with the advice and consent of the Senate, who shall discharge the responsibilities of general counsel under this Act for the Agency.

(b) There shall be an Inspector General of the National Security Agency, appointed by the Director, who shall discharge the responsibilities of inspector general under this Act for the Agency.

#### PART C—GENERAL AND SPECIAL AUTHORITIES OF THE AGENCY; AUTHORIZATION FOR APPROPRIATIONS

##### GENERAL AUTHORITIES OF THE AGENCY

SEC. 621. (a) In carrying out its functions under this Act, the Agency is authorized to—

(1) transfer to and receive from other departments and agencies funds for the sole purpose of carrying out functions authorized by this title, subject to the approval of the Director of the Office of Management and Budget;

(2) exchange funds without regard to the provisions of section 3651 of the Revised Statutes (31 U.S.C. 543);

(3) reimburse other departments and agencies of the Government for personnel assigned or loaned to the Agency and services furnished to the Agency;

(4) rent any premises within or outside the United States necessary to carry out any function of the Agency authorized under this title, and make such alterations, improvements, and repairs to the premises of, or rented by, the Agency as may be necessary without regard to any limitation prescribed by law if the Director makes a written finding that waiver of such limitation otherwise applicable to the renting, alteration, improvement, or repair, as the case may be, is necessary to the successful performance of the Agency's functions or the security of its activities;

(5) lease buildings to the Government without regard to the limitations prescribed in section 322 of the Act entitled "An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending 30 June 1933, and for other purposes," approved 30 June 1932 (40 U.S.C. 278a) or the provisions of section 2875 of title 10, United States Code;

(6) acquire, construct, or alter buildings and facilities (including family and bachelor housing in foreign countries only) without regard to the Public Buildings Act of 1959 (40 U.S.C. 601-615) or section 2882 of title 10, United States Code;

(7) repair, operate, and maintain buildings, utilities, facilities, and appurtenances;

(8) conduct health-service programs as authorized by section 7901 of title 5, United States Code;

(9) in accordance with regulations approved by the Director, transport officers and

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employees of the Agency in Government-owned automotive equipment between their domiciles and places of employment where such personnel are engaged in work that makes such transportation necessary, and transport in such equipment, to and from school children of Agency personnel who have quarters for themselves and their families at isolated stations outside the continental United States where adequate public or private transportation is not available;

(10) settle and pay claims of civilian and military personnel, as prescribed in Agency regulations consistent with the terms and conditions by which claims are settled and paid under the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 240-243);

(11) pay, in accordance with regulations approved by the Director, expenses of travel in connection with, and expenses incident to attendance at meetings of professional, technical, scientific, and other similar organizations when such attendance would be a benefit to the conduct of the work of the Agency;

(12) establish, furnish, and maintain, in coordination with the Director of National Intelligence, secure cover for Agency officers, employees, agents and activities;

(13) direct the transfer or disposal, on a non-reimbursable basis and after coordination with the head of the department or agency involved, and in cases involving the responsibilities of the Director of National Intelligence under Sec. 304(h), the Director of National Intelligence, of such cryptologic and cryptologic-related equipment and supplies among entities of the Intelligence Community and between entities of the Intelligence Community and departments and agencies as may be necessary for performance of the functions authorized by this title, and the loan, transfer, or disposal of such equipment and supplies to foreign countries for cryptologic support, and pay expenses of arrangements with foreign countries for cryptologic support;

(14) perform inspection, audit, public affairs, legal, and legislative services;

(15) protect, in accordance with standards established by the Director of National Intelligence under section 304 of this Act and with any other applicable statute or executive order, materials and information related to intelligence sources and methods;

(16) perform such additional functions as are otherwise authorized by this Act to be performed by each entity of the Intelligence Community;

(17) exercise such other authorities available to the Secretary of Defense as may be delegated by the Secretary of Defense to the Agency; and

(18) maintain and operate a permanent full-scale printing plant for the production of cryptologic and cryptologic-related materials, and lease or purchase and maintain and operate computer and communications equipment to carry out authorized functions.

(b) The authority contained in clause (12) of subsection (a) shall, except as otherwise provided in this Act, be available to the Agency notwithstanding any other provision of law and shall not be modified, limited, suspended, or superseded by any provision of law enacted after the effective date of this title unless such provision expressly cites clause (12) of subsection (a) and specifically indicates how such authority is to be so modified, limited, suspended, or superseded.

(c) Notwithstanding the provisions of section 3678 of the Revised Statutes (31 U.S.C. 628) any department or agency may transfer to or receive from the Agency any sum of money approved by the Director of National Intelligence and the Director of the Office of Management and Budget for use in support of foreign cryptologic liaison and

support functions authorized by this title.

(d) The Agency may use as its seal of office the insignia used by the Agency prior to the effective date of this title and judicial notice shall be taken of such seal.

(e) The Director may employ, contract, or arrange with another government agency for the assignment of security officers to police the installations and grounds under the control of or used by the Agency, and to perform courier escort duties and such security officers shall have the same powers as sheriffs and constables for the protection of persons and property, to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rule or regulation the Director may promulgate for the protection of such installations and grounds. The jurisdiction and police powers of such security officers shall not, however, extend to the civil process.

(f) The Director may authorize Agency personnel to carry firearms within the United States for courier protection purposes, for the protection of the Director and Deputy Director, and in exigent circumstances, such officials of the Agency as the Director may designate, and for the protection of any foreign person visiting the United States under Agency auspices.

(g) (1) The Agency may appoint, promote, and separate such personnel or contract for such personnel services as it deems advisable, without regard to the provisions of title 5, United States Code, governing appointments to, promotions in, and separations from the civil service, and without regard to the limitations on types of persons to be employed, and fix the compensation of such personnel without regard to the provisions of chapter 1 and subchapter III and IV of chapter 53 of that title, relating to classification and General Schedule pay rates but at rates not in excess of the maximum pay authorized senior executive service by subchapter VIII of Chapter 53 of title 5, United States Code.

(2) Executive schedule positions within the Agency other than the Director, Deputy Director, General Counsel, and Inspector General, and positions in the grades of GS-16, GS-17, and GS-18, other than those transferred to the Agency under this Act shall be as authorized by law.

(3) Any Agency officer or employee who has been separated under paragraph (1) may seek of accept employment in the Government if declared eligible for such employment by the Office of Personnel Management; and that office may place such officer or employee in a position in the competitive civil service in the same manner as an employee who is transferred between two positions in the competitive service, but only if such Agency officer or employee has served with the Agency for at least one year continuously immediately preceding such separation.

## PROCUREMENT AUTHORITY

Sec. 622. (a) The Agency is authorized to procure such property, supplies, services, equipment, and facilities as may be necessary to carry out its functions under this title.

(b) The provisions of chapter 137, relating to the procurement of property and services, and chapter 139, relating to the procurement of research and development services, of title 10, United States Code, shall apply to the procurement of property, services, and research and development services by the Agency in the same manner and to the same extent such chapters apply to the procurement of property, services, and research and development services by the agencies named in section 2303(a) of such title, except that the Director is authorized, with the approval of the Secretary of Defense and, in the case of any national intelligence activity, the Director of National Intelligence, to waive the application of any or all of the pro-

visions of chapters 137 and 139 of such title when the Director deems such action necessary to the successful performance of any function of the Agency or to protect the security of activities of the Agency.

(c) The Agency is authorized, notwithstanding any other provision of law, to procure property, goods, or services in the name of the Department of Defense when public knowledge of the Agency's sponsorship of such procurement would inhibit or interfere with the secure conduct of an authorized Agency function. Any participation of the Department of Defense in Agency procurement may also be concealed, in accordance with section 139 of this Act but notwithstanding any other provision of law, when the Director finds such concealment necessary to protect the secure conduct of an authorized Agency function.

## EDUCATION AND TRAINING

Sec. 623. The Director is authorized to establish and insure compliance with standards for training necessary to accomplish the cryptologic missions of the Government and to arrange for, fund, or provide training as may be necessary to accomplish the lawful functions of the Agency. The provisions of chapter 41 of title 5, United States Code, shall be applicable in the conduct of such training, except that the Director is authorized to waive the application of any or all such provisions if the Director deems such action necessary because of the unique mission and function of the Agency.

## AUTHORIZATIONS FOR APPROPRIATIONS AND EXPENDITURES

Sec. 624. (a) Notwithstanding any other provision of law, funds made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out the lawful functions of the Agency. No funds may be appropriated for any fiscal year beginning after September 30, 1980 for the purpose of carrying out any activity of the Agency unless funds for such activity have been authorized by legislation enacted during the same or one of the two immediately preceding fiscal years, except that this limitation shall not apply to funds appropriated by any continuing resolution or required by pay raises.

(b) (1) The Secretary of Defense may make funds available to the Agency for the purpose of meeting confidential, emergency, or extraordinary expenses of the Agency, but any funds made available to the Agency by the Secretary of Defense for such a purpose may be made available only from funds appropriated to the Secretary of Defense for the specific purpose of meeting confidential, emergency, or extraordinary expenses.

(2) Any funds made available to the Agency by the Secretary of Defense for meeting confidential, emergency, and extraordinary expenses may be used only to meet the expenses specified by the Secretary of Defense. The expenditure of such funds shall be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount certified therein, but such expenditures may be made only for activities authorized by this title or other law.

## PART D—TRAVEL AND OTHER EXPENSES; SPECIAL FACILITIES; RETIREMENT SYSTEM; TRAVEL, RELATED EXPENSES, DEATH GRATUITIES FOR CERTAIN AGENCY PERSONNEL

Sec. 631. (a) As used in this section "employee" does not include, unless otherwise specifically indicated, any person working for the Agency under a contract or any person who when initially employed is a resident in or a citizen of a foreign country in which the station at which such person is to be assigned to duty is located.

(b) Under such regulations as the Director, in consultation with the Director of National

Intelligence, may approve the Agency may, with respect to employees assigned to duty stations outside the United States, provide allowances and other benefits in the same manner and under the same circumstances such allowances and other benefits are provided employees of the Foreign Service under title IX of the Foreign Service Act of 1948 (22 U.S.C. 1131-1160), and death gratuities in the same manner and under the same circumstances such gratuities are provided employees of the Foreign Service under section 14 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1926 (22 U.S.C. 2679a).

(c) Whenever any provision of law relating to travel and related expenses or death gratuities of employees of the Foreign Service is enacted after the date of enactment of this Act, is not enacted as an amendment to one of the provisions referred to in subsection (b) of this section, and the Director determines that it would be appropriate for the purpose of maintaining conformity between provisions of law relating to travel and related expenses and death gratuities of the Foreign Service and provisions of law and the Central Intelligence Agency and provisions of law relating to travel and related expenses and death gratuities of employees of the Agency, the President may, by executive order, extend in whole or in part to employees of the Agency the allowances and benefits applicable to employees of the Foreign Service by such provision of law, where such allowances and benefits have been extended to employees of the Central Intelligence Agency by the Director of that Agency pursuant to section 431(c) of this Act.

(d) Notwithstanding the provisions of subsections (b) and (c), and under such regulations as the Director, in consultation with the Director of National Intelligence, shall approve, the Agency may pay expenses, benefits, and allowances equivalent to those specifically authorized in subsections (b) and (c) in any case in which the Director determines that, for reasons of operational necessity or security, the means or method of paying expenses, benefits, and allowances authorized in such subsections should not be utilized.

#### COMMISSARY AND MESS SERVICES AND RECREATION FACILITIES

SEC. 633. (a) The Director is authorized to establish and maintain emergency commissary mess services in such places outside the United States and in Alaska where, in the Director's judgment, such services are necessary to ensure the effective and efficient performance of the duties and responsibilities of the Agency, but only if such services are not otherwise available from other departments and agencies of the Government. An amount equal to the amount expended for any such services shall be returned to the Treasury as miscellaneous receipts.

(b) The Director is authorized to assist in the establishment, maintenance, and operation, by officers and employees of the Agency, of non-Government operated commissary and mess services and recreation facilities at certain posts abroad, including the furnishing of space, utilities, and properties owned or leased by the United States for use by the Agency. Commissary and mess services and recreation facilities established pursuant to this subsection shall be made available, insofar as practicable, to officers and employees of other Government agencies, employees of Government contractors, and their families who are stationed outside the United States or in Alaska. Such services and facilities shall not be established in localities where another department or agency operates similar services or facilities unless the Director determines that such additional services or facilities are necessary.

(c) Notwithstanding any other provision of law, charges at any post outside the United States or in Alaska by a commissary or mess service or recreation facility authorized or assisted under this section shall be at the same rate for all civilian and military personnel of the Government serviced thereby, and all charges for supplies furnished to such a facility by any department or agency shall be at the same rate as that charged by the furnishing department or agency to its civilian or military commissary or mess services or recreation facilities.

#### RETIREMENT SYSTEM

SEC. 633. Employees of the Agency shall participate in the regular Federal Civil Service Retirement System provided for under subchapter III of chapter 83 of title 5, United States Code, except that title 5 of the United States Code is amended as follows to provide for the participation of certain Agency employees in such system under special conditions:

(a) Section 8334 of title 5, United States Code, is amended by adding at the end thereof the following:

"(I) The National Security Agency will annually reimburse the fund for additional expenditures incurred as a result of retirement of employees under section 8336(1) of this title."

(b) Section 8336 of title 5, United States Code, is amended by adding the following new subsection (h) and renumbering present subsection (h) as subsection (i):

"(h) An employee of the National Security Agency who has completed 15 years of service outside the United States, or in training therefore, in duties determined by the Director, National Security Agency to be either hazardous to life or health or so specialized because of security requirements as to be clearly distinguishable from normal government employment is entitled to an annuity after becoming 50 years of age and completing 20 years of service."

(c) Section 8339 of title 5, U.S.C., is amended to add the following new subsection (g):

"(g) the annuity of an employee retiring under section 8336(h) of this title is to be computed in accordance with section 221 of the Central Intelligence Agency Retirement Act of 1964, as amended."

(d) Section 8347(d) of title 5, United States Code, is amended to read as follows:

"(d) An administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter may be appealed to the Commission under procedures prescribed by the Commission, except that any action affecting an employee who retires under section 8336(1) of this title may be appealed only to the Secretary of Defense, whose decision is final and conclusive and is not subject to review."

#### PART E—SPECIAL DELEGATION OF AUTHORITY; PRESERVATION OF CERTAIN AUTHORITY AND RESPONSIBILITY

##### SPECIAL DELEGATION AUTHORITY; MISCELLANEOUS PRESERVATION OF AUTHORITY AND RESPONSIBILITY

SEC. 641. (a) In exercising control over all signals intelligence activities of the United States, the Director shall make special provision for the delegation of operational control of specified signals intelligence activities required to provide signals intelligence direct support to military commanders or the heads of other departments and agencies of the Government. Such special provision shall be made for such period and for such activities as the Director determines to be appropriate.

(b) Nothing in this title shall contravene the responsibilities of any department or agency for the final evaluation of signals in-

telligence, the synthesis of such intelligence with intelligence from other sources, or the dissemination of finished intelligence to users in accordance with prescribed security procedures.

(c) Nothing in this title shall contravene the authorized functions of any department or agency to organize and conduct individual communications security activities other than the development of cryptographic systems, devices, equipment, and procedures. Each department and agency concerned shall be responsible for implementing all measures required to assure communications security in accordance with security rules, regulations, procedures, standards, and requirements prescribed by the Director under the authority of section 613(b) of this Act.

(d) (1) Nothing in this title shall contravene the authority of the Central Intelligence Agency to conduct, as approved by the Director of National Intelligence after review by the Director, clandestine signals intelligence operations in support of clandestine activities; to conduct, in coordination with the Director, clandestine operations designed to achieve signals intelligence objectives; and to prescribe unique communications security methods and procedures, after review by the Director, in support of clandestine activities.

(2) Nothing in this title shall be construed to require the disclosure of information that reveals the operational details of any clandestine activities conducted by the Central Intelligence Agency, including any intelligence sources and methods involved in such activities.

(e) All elements of the United States signals intelligence system shall conduct signals intelligence activities in response to operational tasks assigned by the Director in accordance with directives issued by the Director. Except as authorized in subsection (a), no organization outside the United States signals intelligence system may engage in signals intelligence activities unless specifically authorized to do so by the National Security Council.

(f) Nothing in this title shall be construed as amending or superseding the provisions of the Act entitled "An Act to provide certain administrative authorities for the National Security Agency, and for other purposes", approved May 29, 1950 (73 Stat. 50 U.S.C. 402 note; section 24(a) of the Act of October 31, 1951, (65 Stat. 719; 18 U.S.C. 798); and of the Act entitled "Personnel Security Procedures in the National Security Agency," approved September 23, 1950 (73 Stat. 168, 50 U.S.C. 831-835).

(g) The provisions of sections 2 and 3 of the Act entitled "An Act to fix the responsibilities of disbursing and certifying officers, and for other purposes", approved December 29, 1941 (55 Stat. 875; 31 U.S.C. 82), shall apply to certification for payments and to payments made by or on behalf of the National Security Agency by certifying officers and employees and by disbursing officers and employees under the jurisdiction of any military department, notwithstanding the provisions of section 4 of such Act (31 U.S.C. 82e).

#### PART F—TRANSFER OF PERSONNEL, PROPERTY, AND FUNCTIONS

##### TRANSFER OF PERSONNEL, PROPERTY, AND FUNCTIONS

SEC. 651. (a) All positions established in and personnel employed by the National Security Agency, as in effect on the day before the effective date of this title, and all obligations, contracts, properties, and records employed, held, or used primarily in connection with any function to be performed by the Agency under this title, are transferred to the Director.



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(b) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges which have become effective in the exercise of functions transferred under this title and which are in effect on the day before the effective date of this title, shall continue in effect until modified, terminated, superseded, set aside, or repealed by the Director, or other appropriate Agency official, by any court of competent jurisdiction, or by operation of law.

(c) The provisions of this title shall not affect any proceedings pending before the National Security Agency as in effect prior to the effective date of this title.

(d) No suit, action, or other proceeding begun by or against any officer in that official capacity in the National Security Agency, as in effect prior to the effective date of this title, shall abate by reason of enactment of this title.

(e) With respect to any function transferred by this title and exercised after the effective date of this title, reference in any other Federal law to any department, agency, office, or part thereof shall be deemed to refer to the department, agency, or office in which such function is vested pursuant to this title.

#### TITLE VII—PROTECTION OF IDENTITIES OF CERTAIN UNDERCOVER INTELLIGENCE OFFICERS, AGENTS, INFORMANTS, AND SOURCES

##### CRIMINAL PENALTY

Sec. 701. (a) Whoever, having or having had authorized access to classified information that—

(1) identifies as an officer or employee of an intelligence agency, or as a member of the Armed Forces assigned to duty with an intelligence agency, any individual (A) who in fact is such an officer, employee, or member, (B) whose identity as such an officer, employee, or member is classified information, and (C) who is serving outside the United States or has within the last five years served outside the United States; or

(2) identifies as being or having been an agent of, or informant or source of operational assistance to, an intelligence agency any individual (A) who in fact is or has been such an agent, informant, or source, and (B) whose identity as such an agent, informant, or source is classified information.

intentionally discloses to any individual not authorized to receive classified information any information that identifies an individual described in paragraph (1) or (2) as such an officer, employee, or member or as such an agent, informant, or source, knowing or having reason to know that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's intelligence relationship to the United States, shall be fined not more than \$50,000 or imprisoned not more than ten years, or both.

(b) It is a defense to a prosecution under subsection (a) of this section that before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

(c) No person other than a person committing an offense under subsection (a) of this section shall be subject to prosecution under such subsection by virtue of section 2 or 4 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such subsection.

(d) It shall not be an offense under subsection (a) of this section to transmit information described in such subsection directly to the House Permanent Select Committee on Intelligence or to the Senate Select Committee on Intelligence.

(e) There is jurisdiction over an offense under subsection (a) of this section committed outside the United States if the individual committing the offense is a citizen of the United States.

(f) Nothing in this section shall be construed as authority to withhold information from Congress or from a committee of either House of Congress.

(g) As used in this section—

(1) "Classified information" means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

(2) "Authorized," when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of a United States district court, or provisions of any Rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

(3) "Disclose" means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

(4) "Intelligence agency" means the Central Intelligence Agency or any intelligence component of the Department of Defense.

(5) "Informant" means any individual who furnishes or has furnished information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure.

(6) "Agent," informant," and "source of operational assistance" do not include individuals who are citizens of the United States residing within the United States.

(7) "Officer" and "employee" have the meanings given such terms by sections 2104 and 2305, respectively, of title 5, United States Code.

(8) "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(9) "United States" when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

##### PRESIDENTIAL RESPONSIBILITY

Sec. 702. The President shall ensure that each person who has authorized access to the types of classified information described in section 701 (a)(1) and (a)(2) be informed of the provisions of section 701.

#### TITLE VIII—PHYSICAL SEARCHES WITHIN THE UNITED STATES

##### AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT

Sec. 801. The Foreign Intelligence Surveillance Act of 1978, 92 Stat. 1783, is amended as follows:

(1) The statement of purpose is amended by inserting "physical searches and" after "authorize".

(2) The title is amended by inserting "SEARCH AND" before "SURVEILLANCE".

(3) The Table of Contents is amended to read as follows:

"TITLE I—PHYSICAL SEARCH AND ELECTRONIC SURVEILLANCE WITHIN THE UNITED STATES FOR FOREIGN INTELLIGENCE PURPOSES

"Sec. 101. Definitions.

"Sec. 102. Authorization for physical search and electronic surveillance for foreign intelligence purposes.

"Sec. 103. Designation of judges.

"Sec. 104. Application for an order.

"Sec. 105. Issuance of an order.

"Sec. 106. Use of information.

"Sec. 107. Report of physical search and electronic surveillance.

"Sec. 108. Congressional oversight.

"Sec. 109. Penalties.

"Sec. 110. Civil liability.

"Sec. 111. Authorization during time of war.

"TITLE II—CONFORMING AMENDMENTS

"Sec. 201. Amendments to chapter 119 of title 18, United States Code.

##### "TITLE III—EFFECTIVE DATE

"Sec. 301. Effective date."

(4) The title of Title I is amended by inserting "PHYSICAL SEARCH AND" before "ELECTRONIC".

(5) Section 101(h) is amended by striking "with respect to electronic surveillance".

(6) Section 101(h)(1) is amended by inserting "search or" after "particular".

(7) Section 101(h)(4) is amended to read as follows:

"(4) Notwithstanding paragraphs (1), (2), and (3), with respect to any physical search or electronic surveillance approved pursuant to section 102(a), procedures that require that, for a physical search, no information that concerns a United States person and for a surveillance, no contents of any communication to which a United States person is a party, shall be disclosed, disseminated, or used for any purpose or retained for longer than twenty-four hours unless a court order under section 105 is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person."

(8) Section 101(k) is amended to read as follows:

"(k) 'Aggrieved person' means a person who is the target of physical search or electronic surveillance or any other person whose communications, activities, property, or mail were subject to physical search or electronic surveillance."

(9) Section 101 is amended by adding at the end thereof the following new provision:

"(p) 'Physical search' means any search of property that is located in the United States and any opening of mail in the United States or in United States postal channels, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes."

(10) The title of section 102 is amended to read as follows: "AUTHORIZATION FOR PHYSICAL SEARCH AND ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES".

(11) Section 102(a)(1) is amended to read as follows:

"(a)(1) Notwithstanding any other law, the President, through the Attorney General, may authorize physical search or electronic surveillance without a court order under this title to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

"(A) the physical search is directed solely at property or premises under the open and exclusive control of a foreign power, as defined in section 101(a)(1), (2), or (3), and no property or mail of a known United States person may be seized;

"(B) the electronic surveillance is solely directed at—

"(i) the acquisition of the contents of communications transmitted by means of communications used exclusively between or among foreign powers, as defined in section 101(a)(1), (2), or (3); or

"(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of

a foreign power, as defined in section 101(a)(1), (2), or (3);

"(C) there is no substantial likelihood that the search will involve the property or mail of a United States person or the surveillance will acquire the contents of any communication to which a United States person is a party; and

"(D) the proposed minimization procedures with respect to such search or surveillance meet the definition of minimization procedures under section 101(h); and

if the Attorney General reports such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately."

(12) Section 102(a)(2) is amended by striking "An electronic surveillance" and inserting in lieu thereof "A physical search or electronic surveillance".

(13) Section 102(a)(3)(B) is amended by inserting "search or" before "surveillance".

(14) Section 102(a)(4) is amended by inserting "physical search or" after "With respect to".

(15) Section 102(a)(4)(A) is amended by inserting "physical search or" before "electronic surveillance".

(16) Section 102(a)(4)(B) is amended by inserting "search or" before "surveillance".

(17) Section 102(a) is amended by adding a new subsection as follows:

"(5) The Attorney General may authorize physical entry of property or premises under the open and exclusive control of a foreign power, as defined in section 101(a)(1), (2), or (3), for the purpose of installing, repairing, or removing any electronic, mechanical, or other surveillance device used in conjunction with an electronic surveillance authorized by this subsection."

(18) Section 102(b) is amended to read as follows:

"(b) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under section 103, and a judge to whom an application is made may, notwithstanding any other law, grant an order in conformity with section 105, approving physical search or electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving physical search or electronic surveillance directed solely as described in subsection (a) unless such physical search or surveillance may involve the property or acquisition of communications of any United States person."

(19) Section 103(a) is amended by inserting "physical search or" before all appearances of "electronic surveillance".

(20) Section 104(a) is amended by inserting "physical search or" after "approving" in the first sentence.

(21) Section 104(a)(3) is amended by inserting "or the property or mail subject to the physical search" after "surveillance".

(22) Section 104(a)(4)(A) is amended by inserting "physical search or" before "electronic surveillance".

(23) Section 104(a)(4)(B) is amended to read as follows:

"(B) each of the facilities, places, or items of property or mail at which the physical search or electronic surveillance is directed is the property or mail of, or is being used by, or is about to be used by, a foreign power or an agent of a foreign power;"

(24) Section 104(a)(6) is amended by inserting "or the items of property or mail to be subjected to the search" after "surveillance".

(25) Section 104(a)(7)(B) is amended by inserting "search or" before "surveillance".

(26) Section 104(a)(8) is amended by inserting "search or" before both appearances of "surveillance".

(27) Section 104(a)(9) is amended by inserting "property," after "persons,".

(28) Section 104(a)(10) is amended to read as follows:

"(10) a statement of the period of time which the physical search will encompass or for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of physical search or electronic surveillance under this title should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and".

(29) Section 104(b) is amended to read as follows:

"(b) Whenever the target of the physical search or electronic surveillance is a foreign power, as defined in section 101(a)(1), (2), or (3), and each of the facilities, places or items of property at which the search or surveillance is directed is owned, leased, exclusively used, or openly and exclusively controlled by that foreign power, the application need not contain the information required by paragraphs (6), (7)(E), (8), and (11) of subsection (a), but shall state whether physical entry is required to effect the search or surveillance and shall contain such information about the search or surveillance techniques and communications or other information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures."

(30) Section 105(a) is amended by striking "approving the electronic surveillance" and inserting in lieu thereof "approving the physical search or electronic surveillance".

(31) Section 105(a)(1) is amended by inserting "physical search or" before "electronic surveillance".

(32) Section 105(a)(3)(A) is amended by inserting "physical search or" before "electronic surveillance".

(33) Section 105(a)(3)(B) is amended to read as follows:

"(B) each of the facilities, places, or items of property or mail at which the physical search or electronic surveillance is directed is the property or mail of, is being used by, or is about to be used by, a foreign power or an agent of a foreign power;"

(34) Section 105(b) is amended by inserting "physical search or" after "approving".

(35) Section 105(b)(1)(A) is amended by inserting "physical search or" before "electronic surveillance".

(36) Section 105(b)(1)(B) is amended by striking "at which the" and inserting in lieu thereof "or items of property or mail at which the physical search or".

(37) Section 105(b)(1)(C) is amended to read as follows:

"(C) the type of information sought to be acquired and the type of communications, activities or property to be subjected to the search or surveillance;"

(38) Section 105(b)(1)(D) is amended to read as follows:

"(D) the means by which the physical search or electronic surveillance will be effected and whether physical entry will be used to effect the search or surveillance: *Provided*, That no order shall authorize more than one unconsented physical entry into real property except for entries to install, repair or remove surveillance devices;"

(39) Section 105(b)(1)(E) is amended by

inserting "physical search or" before "electronic surveillance".

(40) Section 105(b)(1) is amended by adding at the end thereof the following provision:

"(G) whenever more than one search of property or the opening of more than one item of mail is to be conducted under the order, the authorized scope of the searches or opening of mail; and".

(41) Section 105(b)(2) is amended by inserting "physical search or" before both appearances of "electronic surveillance" and by inserting "search or" before "surveillance or the aid".

(42) Section 105(c) is amended to read as follows:

"(c) Whenever the target of the physical search or electronic surveillance is a foreign power, as defined in section 101(a)(1), (2), or (3) and each of the facilities, places or items of property at which the search or surveillance is directed is owned, leased, exclusively used or openly and exclusively controlled by that foreign power, the order need not contain the information required by subparagraphs (C), (D), and (F) of subsection (b)(1), but shall generally describe the information sought and the communications, activities or property to be subjected to the search or surveillance and for surveillances the type of electronic surveillance involved, including whether physical entry is required for the search or surveillance."

(43) Section 105(b)(1) is amended by inserting "physical search or" before the first appearance of "electronic".

(44) Section 105(d)(3) is amended by inserting "physical search or" before "electronic surveillance".

(45) Section 105(e)(1) is amended to read as follows:

"(1) an emergency situation exists with respect to the use of physical search or electronic surveillance to obtain foreign intelligence information before an order authorizing such search or surveillance can with due diligence be obtained; and".

(46) Section 105(e)(2) is amended by inserting "search or" before all appearances of "surveillance" and by inserting "physical search or" before all appearances of "electronic surveillance".

(47) Section 106(a) is amended by inserting "physical search or" before both appearances of "electronic".

(48) Section 106(c) is amended by inserting "or physical search or the property or mail of," after "electronic surveillance or".

(49) Section 106(d) is amended by inserting "or physical search of the property or mail of," after "electronic surveillance or".

(50) Section 106(e) through (g) are amended by inserting "physical search or" before all appearances of "electronic surveillance" and by inserting "search or" before all appearances of "surveillance".

(51) Section 106(h) is amended by inserting "a physical search or an" before "electronic surveillance" and by inserting "search or" before "surveillance".

(52) Section 106(j) is amended by inserting "physical search or" before both appearances of "electronic surveillance" and by inserting "search or" before "surveillance".

(53) Section 107 is amended by inserting "physical search or" before "electronic surveillance".

(54) Section 108(a) is amended by inserting "physical searches and" before "electronic surveillance".

(55) Section 109 is amended by inserting "physical search or" before all appearances of "electronic surveillance".

(56) Section 110 is amended by striking "or about whom information obtained by electronic surveillance of such person" and inserting in lieu thereof "or whose property or mail has been the subject of a physical

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search of persons whom information obtained by electronic surveillance of such person or property of such person or mail". Section 111 is amended by inserting "physical search or" before "electronic surveillance".

AMENDMENTS TO CHAPTER 119 OF TITLE 18,  
UNITED STATES CODE

Sec. 802. Chapter 119 of title 18, United States Code, is amended as follows:

(1) Section 2511(2)(a)(ii) is amended by inserting "or to engage in physical search" after "electronic surveillance", by inserting "Search and" after "Intelligence", and by inserting "or physical search" before "or the device used".

(2) Section 2511(2)(e) and (f) are amended by inserting "Search and" after all appearances of "Intelligence".

TITLE IX—MISCELLANEOUS AMENDMENTS AND EFFECTIVE DATE

AMENDMENTS TO TITLE 5, UNITED STATES CODE

Sec. 501. (a) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following:

"(25) Director of National Intelligence."

(b) Section 5313 of such title is amended by striking out

"(15) Director of Central Intelligence," and inserting in lieu thereof

"(15) Director of the Central Intelligence Agency."

(c) (1) Section 5314 of such title is amended by striking out

"(35) Deputy Director of Central Intelligence," and inserting in lieu thereof

"(35) Deputy Director of National Intelligence."

(2) Section 5314 of such title is further amended by adding at the end thereof the following:

"(70) Deputy Director of the Central Intelligence Agency."

"(71) Director of the National Security Agency."

(d) Section 5315 of such title is amended by adding at the end thereof the following:

"(123) Assistant Directors of National Intelligence (5)."

"(129) Deputy Director of the National Security Agency."

"(130) General Counsel of the Central Intelligence Agency."

"(131) Inspector General of the Central Intelligence Agency."

(e) Section 5316 of such title is amended by adding at the end thereof the following:

"(152) General Counsel of the National Security Agency."

"(153) Inspector General of the National Security Agency."

REPEAL OF SECTION 2422, TITLE 22, UNITED STATES CODE

Sec. 502. Section 2422 of Title 22, United States Code, is repealed.

AMENDMENT TO THE FEDERAL ADVISORY COMMITTEE ACT TO ELIMINATE EXEMPTION FOR THE CENTRAL INTELLIGENCE AGENCY

Sec. 503. Section 4(b) of the Federal Advisory Committee Act (86 Stat. 770) is amended to read as follows:

"(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by the Federal Reserve System."

EFFECTIVE DATE

Sec. 504. This Act shall become effective on the first day of the third calendar month following the month in which it is enacted.

THE NATIONAL INTELLIGENCE ACT OF 1980—SECTION-BY-SECTION DESCRIPTION

TITLE I—AUTHORIZATION FOR INTELLIGENCE ACTIVITIES

Part A—Findings; purposes; definitions

Sec. 101. Findings. The findings stress the necessity for intelligence activities, the need

to avoid waste and unnecessary duplication of effort, and the importance of supervision to ensure support for U.S. foreign relations and to protect constitutional and legal rights.

Sec. 102. Purposes. The principal purposes are to authorize necessary intelligence activities and replace the intelligence provisions of the National Security Act of 1947. The purposes also stress consistency with U.S. defense and foreign policy interests, proper and effective management, the need for high quality intelligence, accountability and conformity with the Constitution and laws of the United States.

Sec. 103. Definitions. The definitions fall into three categories: first, terms describing the intelligence community's authority; second, terms used for national intelligence coordination purposes; and third, terms that clarify particular provisions of the Act.

The terms describing the intelligence community's authority include foreign intelligence, foreign intelligence activity, counterintelligence, counterintelligence activity, counterterrorism intelligence, counterterrorism intelligence activity, international terrorist activity, special activity, intelligence, intelligence activity, and intelligence community. These definitions substantially parallel current definitions in Executive Order 12036. The "special activity" definition clarifies legal ambiguities created by the Hughes-Ryan Amendment of 1974, which treated as covert action CIA operations to counter the clandestine intelligence activity of foreign governments or to counter international terrorist activity. "Special activity" in this Act excludes counterintelligence or counterterrorism intelligence operations.

The terms used for national intelligence coordination purposes include national intelligence, national intelligence activity, national intelligence budget, and tactical intelligence. "National intelligence" means foreign intelligence which is collected, retained, processed, or disseminated by intelligence entities for use in the formulation and direction of national policy. "National intelligence activity" means any foreign intelligence activity the primary purpose of which is to collect or produce national intelligence, any other foreign intelligence activity designated by the President, and any special activity. The "national intelligence budget" means funds for the CIA and the Office of the DNI; for the Consolidated Cryptologic Program, the programs of the offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs, and the General Defense Intelligence Program (except such elements of these programs as the DNI and the Secretary of Defense agree should be excluded); and any other program or programs of any department or agency designated by the President or jointly by the DNI and the head of such department or agency. The definition of "tactical intelligence" serves to exclude from national intelligence the collection of information required by the armed forces of the United States to maintain their readiness for combat operations and to support the planning and conduct of combat operations by the United States. However, tactical intelligence programs may be included in the national intelligence budget.

The terms used to clarify particular provisions of the Act include communications security, cover, departments and agencies, proprietary, United States, and United States person. "Communications security" is defined for National Security Council policy-making and National Security Agency charter purposes. "Cover" and "proprietary" are defined to clarify particular CIA, FBI, and NSA authorities. "Departments and agencies" and "United States" are defined for jurisdictional purposes generally. The definition of "United States person" differs in

three respects from the definition adopted in Executive Order 12036 and the Foreign Intelligence Surveillance Act of 1978. First, an alien lawfully admitted for permanent residence may be presumed to have resided in the United States person status under this Act after one year of continuous residence abroad. Second, information is obtained which indicates that it was organized in the United States or is substantially composed of citizens or resident aliens. Third, a corporation which is incorporated in the United States is not a United States person if it is a corporation or corporate subsidiary incorporated abroad or controlled by a foreign power abroad.

Part B—General intelligence authorities

Sec. 111. Authorization for intelligence activities. The entities of the intelligence community are authorized to conduct intelligence activities, under the direction and review of the National Security Council, but only in accordance with the provisions of this Act. Title I does not prohibit any department or agency from collecting, retaining, processing, or disseminating information if such department or agency is otherwise authorized to do so. Nor does Title I prohibit or affect any activities of any department or agency that are not intelligence activities. Except as expressly provided, nothing in this Act affects or alters existing responsibilities under law, including responsibilities to the Ambassador in a particular country under 22 U.S.C. 2680a. Nothing in this Act authorizes any entity of the intelligence community to conduct any activity for the purpose of depriving any person of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

Sec. 112. National Security Council. The NSC is to provide the highest level review of, guidance for, and direction to the conduct of intelligence activities. The responsibilities of the NSC (or such committees of the NSC as may be established by the President) are to establish national intelligence requirements and priorities, to review the responsiveness of program and budget proposals to intelligence requirements and priorities, and to review the quality of national intelligence products and develop appropriate policy guidance. The NSC or its committees is also to develop policy, standards, and doctrine for the conduct of counterintelligence and counterterrorism intelligence activities, and to formulate policy for communications security. Additional NSC responsibilities are assigned under Part O of Title I and sec. 213 of Title II.

The President is authorized to establish such NSC committees as may be needed to discharge these responsibilities, and the President may determine the membership of such committees, designate a chairman, set requirements for attendance of members, and prescribe other standards, procedures, and specific duties for the NSC and its committees to discharge their duties under this Act.

(NSC membership and attendance requirements are prescribed by Part C of Title I and sec. 213 of Title II for specific purposes. This Act does not repeal existing law on basic NSC membership and other NSC responsibilities, under sec. 101 of the National Security Act of 1947.)

Part C—Authorization and procedures for special activities and other sensitive intelligence activities

Sec. 121. Purpose. The purpose of this Part is to ensure that special activities are undertaken only in support of important national security interests when overt or less sensitive alternatives would not be likely to achieve the intended objective; when such activities

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are consistent with the aims, values, and policies of the United States; and when the anticipated benefits of such activities justify the foreseeable risks and likely consequences.

Sec. 122. Conduct of Special Activities. Special activities may be conducted only by the CIA, by the Defense Department in a period of war or to the extent necessary for hostilities under the War Power Resolution, or by any agency when the President determines that the intended objective is more likely to be achieved. Any agency may provide support for special activities involving substantial resources, risks, or consequences if the President determines that such support is necessary. Any agency may provide support for other special activities if the NSC or a committee thereof determines that such support is necessary.

Sec. 123. Authorization for Special Activities. Special activities shall be authorized by the President. Authorization for any special activity that involves substantial resources, risks, or consequences shall require a Presidential finding that each such activity is important to the national security and consistent with the purposes of this Part. Authorization for any other special activities may be by category and shall require a Presidential finding that such category of activities is important to the national security and consistent with this Part. The NSC or a committee thereof shall be responsible for the supervision of each activity in the category and shall ensure that it is consistent with the Presidential finding.

Presidential authorization shall be preceded by a review by the NSC or a committee thereof, including an assessment and recommendation as to whether the activity or category of activities is consistent with the purposes of this Part. Such recommendation shall include any dissenting views. No decision or recommendation to the President may be made unless the following officers, or if unavailable their representatives, were present: the Secretaries of State and Defense, the Attorney General, and the DNI. Any special activity which lasts more than a year or substantially changes in form or purpose must be reauthorized by the President and reviewed by the NSC or a committee thereof.

The President may delegate presidential responsibilities under this section to the Secretary of Defense with respect to special activities conducted by the military in time of war or to the extent necessary for hostilities under the War Powers Resolution.

Sec. 124. Other Sensitive Intelligence Activities. The President shall establish procedures for the approval of sensitive foreign intelligence, counterintelligence, or counterterrorism intelligence activities which may require review or findings by the President, the NSC, a committee thereof, the DNI, the head of an intelligence entity, or any other designated official.

Sec. 125. Congressional Notification. Each special activity involving substantial resources, risks, or consequences, and each category of other special activities, shall be considered "significant anticipated activities" for the purpose of fully and currently informing the House and Senate Intelligence Committees under sec. 152. When essential to meet extraordinary circumstances affecting vital United States interests, the President may limit prior notice for forty eight hours to the chairman and ranking minority members of the intelligence committees, the Speaker and minority leader of the House, and the majority and minority leaders of the Senate.

*Part D—Limitation on intelligence authorities*

Sec. 131. Assassination. No person employed by or acting on behalf of the United States Government shall engage or conspire to engage in assassination.

Sec. 132. Integrity of Private Institutions of the U.S. The President is to establish public guidelines for intelligence activities designed to protect the integrity and independence of U.S. private institutions. Intelligence entities may not use the following for cover to engage in foreign intelligence activities or special activities: U.S. religious organizations; U.S. media organizations; U.S. educational institutions; the Peace Corps; or U.S. Government cultural exchange programs.

These restrictions do not bar voluntary contacts or voluntary exchange of information between these persons and intelligence entities. The President may waive these restrictions in wartime or to the extent necessary for hostilities under the War Powers Resolution, if the House and Senate Intelligence Committees are notified.

Sec. 133. Covert Domestic Publication. Intelligence entities may not pay for or otherwise knowingly cause or support distribution of any book, magazine, article, periodical, film, or video or audio tape, for the purpose of influencing public opinion within the United States, unless the involvement of the U.S. Government is acknowledged.

Sec. 134. Contracting. Intelligence entity sponsorship of contracts or arrangements for goods or services with U.S. organizations may be concealed for routine service contracts, procurement contracts, or transactions under the Economy Act. Unless the organization is an educational institution, entity sponsorship may also be concealed pursuant to procedures approved by the Attorney General, if concealment is necessary for authorized intelligence activities.

Sec. 135. Indirect Activities. Intelligence entities and their employees may not request or encourage anyone, directly or indirectly, to engage in any activity on behalf of the U.S. Government in which that entity is prohibited by this Act from engaging. This restriction does not bar an intelligence entity from requesting another U.S. Government agency to engage in an activity that is within the authorized functions of that agency.

*Part E—Oversight and accountability*

Sec. 141. IOB, Reports on Violations, Disciplinary Procedures. An Intelligence Oversight Board is to be appointed by the President. As prescribed by the President, the IOB is to report to the President on questions of legality and propriety, have access to information in the custody of any intelligence entity, and conduct inquiries into the activities of intelligence entities. Each entity is to have a general counsel to review the legality of its activities, rules and regulations; and an inspector general to investigate its activities to determine whether they may be performed more effectively and to determine the facts and circumstances of any alleged wrongdoing. The general counsel and inspector general are to report to the IOB any intelligence matters as specified by the President.

The Attorney General is to report to the IOB any intelligence activity that involves a question as to whether there has been a significant law violation, and report to the President any intelligence activities that involve serious questions of law. The President, the IOB, and the appropriate entity head are to be informed by the Attorney General of decisions or actions taken in response to reports on intelligence activities. The Attorney General is also to keep the IOB and the entity general counsels informed of Justice Department legal opinions affecting intelligence community operations.

Entity heads must ensure that the general counsel and inspector general have access to necessary information; provide information required to fulfill the Attorney General's duties under this Act; report to the Attor-

ney General evidence of possible federal criminal violations by entity employees or agents; and report to the Attorney General evidence of possible violations by other persons of federal criminal laws specified in guidelines adopted by the Attorney General. All entity employees are to cooperate fully with the IOB, the general counsel and inspector general, and the Attorney General; and are to report possible law violations to the entity head and inspector general or general counsel or to the IOB. Entity heads are to ensure such full cooperation. No employee who so reports in good faith or so cooperates may be subject to adverse personnel action solely on that account.

Entity heads are empowered to take disciplinary action against employees who violate this Act or the procedures or regulations established under this Act, including any regulation, procedure, or obligation to provide for personnel, document, communications, or physical security to protect intelligence sources and methods from unauthorized disclosure. Sanctions include suspension without pay for up to 180 days, reduction in salary or grade, and dismissal. Employees have a right to present evidence on their behalf. Existing legal authority of entity heads to terminate employment or take other disciplinary action is not affected.

Sec. 142. Congressional Oversight. Consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches, the head of each intelligence entity shall keep the House and Senate Intelligence Committees fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, that entity, including any significant anticipated intelligence activity; but Committee approval is not a condition precedent to the initiation of any such anticipated activity. Similarly, each entity head shall furnish any information or material concerning intelligence activities in the possession, custody, or control of the entity or its employees whenever requested by the House or Senate Intelligence Committee, and report in a timely fashion to the Intelligence Committees information relating to intelligence activities that are illegal or improper and corrective actions that are taken or planned.

Entity heads shall maintain a complete record of all legal authorities, published regulations, and published instructions pertaining to the intelligence activities of that entity, and shall establish procedures to ensure that a record is maintained of each authorization or approval required by law, regulation or procedures approved by the Attorney General under sec. 204 with respect to any intelligence activity. The Intelligence Committees shall be furnished all record schedules which intelligence entities are required by law to furnish to the Archivist of the United States, including any modifications.

The President may establish such procedures as the President determines may be necessary to carry out the provisions of this section.

Sec. 143. Disclosure Provisions. The House and Senate Intelligence Committees are to report annually to their respective Houses on U.S. intelligence activities and call to the attention of each House, or the appropriate committee, any intelligence matter which should have its attention. Such reports are to be made in a manner consistent with national security interests and are to be made public to the extent possible under H.Res. 658 or S.Res. 400 disclosure provisions. No information provided to the Intelligence Committees that has been classified or that the Executive Branch has requested be kept confidential may be made public, except un-



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der H.Res. 658 or S.Res. 400 disclosure provisions. These provisions may be changed by either House in the same manner as any other bill or resolution of the House. Intelligence Committee employees must agree in writing and under oath to be bound by H.Res. 658 or S.Res. 400 disclosure restrictions and must receive security clearances as determined by each committee in consultation with the DNI.

Sec. 144. Appropriations Requirements. No funds may be appropriated for national intelligence, counterintelligence, or counterterrorism intelligence activities of intelligence entities unless authorized by prior legislation, except for appropriations by continuing resolution or required for pay raises.

Sec. 145. Comptroller General Audits. The Comptroller General may audit and review intelligence activities upon the request of the House Permanent Select Committee on Intelligence or the Senate Select Committee on Intelligence. Each intelligence Committee must approve requests for such audits by other committees of each House; and the results may be made available to the requesting committee only in accordance with H.Res. 658 of the 95th Congress or S.Res. 400 of the 94th Congress. Audits are to be conducted under security standards prescribed by the DNI, and the DNI may exempt particular activities from audits if the DNI finds such exemption is essential for the nation's security and notifies the Intelligence Committees.

#### TITLE II—STANDARDS FOR INTELLIGENCE ACTIVITIES

##### Part A—Purposes and definitions

Sec. 201. Purposes. This title provides statutory authorization for activities of intelligence entities that concern United States persons, establishes standards for such activities and means to ensure that they conform to those standards, and delineates responsibilities of government officials to ensure that such activities are conducted in accordance with the Constitution and laws of the United States. (The Foreign Intelligence Surveillance Act of 1978 already authorizes and regulates electronic surveillance in the United States for intelligence purposes. Title VIII extends that Act to physical searches in the United States.)

Sec. 202. Definitions. The most intrusive techniques are defined by the terms foreign electronic surveillance, foreign physical search, extraordinary technique, and covert technique. "Foreign electronic surveillance" is defined to mean targeting U.S. persons abroad by wiretaps, microphones, and other techniques and monitoring devices that would require a court order in the United States under the Foreign Intelligence Surveillance Act. "Foreign physical search" means searches abroad of U.S. persons and their property, and opening mail abroad of U.S. persons. "Extraordinary technique" includes foreign electronic surveillance, foreign physical search, and any other technique directed against a U.S. person abroad that would require a warrant for law enforcement in the United States. "Covert technique" means any extraordinary technique and any other category or type of collection activity designated by the President for the purpose of protecting privacy and constitutional rights from significant intrusion.

Additional intrusive techniques defined for this title are directed collection, mail cover, and physical surveillance. "Directed collection" means obtaining information concerning a U.S. person by requesting or directing any person to acquire the information by exploiting or developing a relationship with a U.S. person without disclosing that the information will go to an intelligence entity. (Placing employees in domestic groups is excluded to permit separate procedures in sec. 214(b) for that technique.) "Mail cover" means systematic and

deliberate inspection and recording of information from the exterior of envelopes in the mails. "Physical surveillance" means unconsented systematic and deliberate observation of a person on a continuing basis, or unconsented acquisition of nonpublic communications by means other than electronic surveillance.

Other defined terms are collecting agency, employee, foreign power, and minimization procedures. "Collecting agency" and "employee" are defined to clarify the application of procedural requirements. "Foreign power" is defined substantially as in the Foreign Intelligence Surveillance Act to include foreign governments, foreign factions not substantially composed of U.S. persons, entities known to be directed and controlled by foreign governments, international terrorist groups, and foreign-based political groups not substantially composed of U.S. persons. "Minimization procedures" for extraordinary techniques abroad is also defined as in the Foreign Intelligence Surveillance Act. The procedures must minimize acquisition and retention and prohibit dissemination of nonpublicly available information about unconsenting U.S. persons, consistent with the need for intelligence. Foreign intelligence identifying a U.S. person may be disseminated only if such identity is necessary to understand that intelligence or assess its importance. Evidence of a crime may be disseminated for law enforcement purposes.

##### Part B—Authority for activities that concern U.S. persons

Sec. 211. General Authorities. Intelligence entities may engage in the following activities only in accordance with this Part and only to fulfill their lawful functions: (1) collection, retention, or dissemination of intelligence concerning U.S. persons; (2) any other intelligence activities directed against U.S. persons; (3) collection, retention, or dissemination of information concerning U.S. persons who are targets of clandestine intelligence gathering activity of a foreign government; (4) collection, retention, or dissemination of information concerning U.S. persons to determine the suitability or credibility of potential sources of intelligence or operational assistance; and (5) collection, retention, or dissemination of information concerning U.S. persons to provide personnel, document, communications, or physical security for intelligence activities.

Intelligence entities may conduct activities that affect U.S. persons with their consent, and may collect, retain, and disseminate publicly available information concerning U.S. persons for lawful purposes. Information concerning a U.S. person may be retained and disseminated if the person is not identified. Information concerning U.S. persons collected in violation of this Act must be destroyed, unless the collecting agency head or a designee determines that it (1) should be retained for oversight, accountability, or redress; (2) evidences physical danger to any person and is used only as necessary to protect against that danger with notice to the Attorney General or a designee; or (3) is required by law to be used for legal proceedings of which the agency has prior notice.

This title does not affect the use of security guards, access controls, identification credential requirements, or inspection of materials entering or leaving intelligence entity installations for security purposes. Nor does this title prohibit voluntary provision of information to an intelligence entity by anyone not employed by or assigned to its Nothing in this Part prohibits, limits, or otherwise affects activities of any agency other than those described in this section.

Sec. 212. Procedures. Procedures established by intelligence entity heads and approved by the Attorney General are required for in-

telligence activities that concern unconsenting U.S. persons, except where information is publicly available or where a U.S. person's identity is not retained or disseminated. The procedures must protect constitutional rights and privacy. Officials must be designated to initiate or approve particular activities and to review them at timely intervals. Records must be maintained of all approvals. Minimization procedures geared to particular techniques must limit acquisition and retention and prohibit dissemination consistent with the need for information to serve lawful governmental purposes. Foreign intelligence may not be disseminated in a manner that identifies a U.S. person unless the identity is necessary to understand that intelligence or assess its importance, or is evidence of a crime disseminated for law enforcement purposes.

The procedures must also prescribe reasonable requirements for the scope, integrity, and duration of particular types of activities taking into account the nature and quality of information on which the activity is based and the importance of the U.S. objective. Collection is to be conducted with minimal intrusion consistent with the need for information of the nature, reliability, and timeliness required. Certain categories or types of collection activity may be designated "covert techniques" by the President, triggering specific restrictions in sections 213 through 217, and the procedures will implement the President's determinations. Procedures are specifically required to govern the conduct of employees under cover engaged in activities within the United States or directed against U.S. persons abroad. The procedures and any changes are to be submitted in advance to the Intelligence Committees, unless the Attorney General determines immediate action is required and notifies the Committees immediately.

Sec. 213. Collection of Foreign Intelligence. A presumption is established against collection of foreign intelligence by targeting U.S. persons with covert techniques (foreign electronic surveillance, foreign physical search, other techniques that require a warrant for law enforcement, and additional categories or types of collection activity designated by the President to protect privacy and constitutional rights from significant intrusion), unless the person's activities meet counterintelligence or counterterrorism intelligence standards under sec. 214. However, exceptions are made for extraordinary cases.

The first exception is where the President finds that extraordinary circumstances require such collection to obtain foreign intelligence that is essential to the national security and that cannot reasonably be acquired by other means. The NSC or a committee thereof must review such collection before it is approved; and recommendations to the President may not be made unless the Secretaries of State and Defense, the Attorney General, and the DNI, or if unavailable their representatives, are present. Any such collection lasting more than a year or substantially changed in purpose must be reaffirmed by the President and reviewed by the NSC or a committee thereof.

The second exception is where a Presidential designee finds that the target is a senior official of a foreign power, an unincorporated association substantially composed of United States citizens or permanent resident aliens directed and controlled by a foreign government, or any other entity directed and controlled by a foreign power and that unusual circumstances require such collection to obtain foreign intelligence that is important to the national security and cannot reasonably be acquired by other means. The Attorney General must be notified, and an NSC committee must review such collection periodically.

This section also regulates the collection of

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foreign intelligence within the United States by any clandestine means directed against unconsenting U.S. persons who are in the United States. Such collection may be conducted only (1) by the FBI, with notice to the Attorney General or a designee; (2) by the military services when directed against military personnel; (3) by NSA when directed at foreign electromagnetic communications, as defined in Title VI; and (4) with Attorney General approval by CIA through established sources and pretext interviews when the U.S. person is a senior foreign official or an entity directed and controlled by a foreign power or a foreign government under the second exception. All the procedural requirements of sec. 212 apply to such collection.

Sec. 214. Counterintelligence and Counterterrorism Intelligence Activities. These activities may be directed against unconsenting U.S. persons only on the basis of facts and circumstances which reasonably indicate that the person is or may be engaged in clandestine intelligence activities on behalf of a foreign power or international terrorist activity. Placing employees (including informants under the "employee" definition) in domestic organizations requires a finding by a senior official that such participation is necessary to achieve significant intelligence objectives and meets the requirements of the procedures under sec. 212. Those procedures must establish independent means for audit and inspection of such participation. Use against a U.S. person of mail covers, physical surveillance for purposes other than identification, recruitment of persons to engage in directed collection (such as informants and undercover agents), or access to financial records requires a finding that such techniques are necessary to achieve authorized intelligence objectives and meet the procedural requirements. The Attorney General or a designee is to be notified of these findings with respect to activities which the entity, based on guidelines established by the Attorney General, concludes may involve significant collection of information concerning political or religious activity.

Sec. 215. Targets of Clandestine Intelligence Gathering Activity. Information about unconsenting U.S. persons may be collected if a designated official makes a finding, with notice to the Attorney General or a designee, that the person is the target of clandestine intelligence gathering activity of a foreign government and such collection is necessary for counterintelligence purposes and meets the procedural requirements. Covert techniques and mail covers are prohibited.

Sec. 216. Potential Sources. Information about persons under consideration as potential sources of intelligence or operational assistance may be collected, without the consent of a U.S. person against whom such collection is directed, only in accordance with procedures which limit the scope, intensity, and duration to that necessary to determine in a timely manner the suitability or credibility of the potential source. Such collection is limited to interviews (including pretext interviews), physical surveillance for identification purposes, checks of government records, and other techniques approved by the collecting agency head with notice to the Attorney General or a designee. Covert techniques and mail covers are prohibited.

Sec. 217. Collection for Security Purposes. Information may be collected to provide personnel, document, communications, or physical security for intelligence activities, without the consent of a U.S. person against whom such collection is directed, only in accordance with procedures which govern the categories of persons who may be subjects of collection by particular agencies, and which limit the scope, intensity and duration to that required (1) to determine the suitability or trustworthiness of employees,

contractors or applicants for contractor status, employees of contractors or proprietaries, applicants for employment or for access to information or facilities, consultants, or persons detailed or assigned to an entity, when requesting the person's consent would jeopardize the security of an intelligence activity; (2) to protect against breaches of security regulations or contractual obligations applicable to such persons, except that collection to protect against breaches of contractual obligations is limited to that necessary to refer the matter to the Justice Department; (3) to protect against a direct or imminent threat that may be posed by the person's activities to the physical safety of personnel, installations, property, documents or other materials related to intelligence activity, except that such collection in the United States is limited to that necessary to refer the matter to a law enforcement agency; and (4) to determine whether proposed intelligence activity sites meet appropriate physical security requirements.

Covert techniques and mail covers are prohibited. Collection by clandestine means requires a finding by a designated official that such means are necessary for authorized purposes and meet the procedural requirements.

Sec. 218. Review of Activities. Activities directed against particular U.S. persons that are authorized pursuant to sections 213 through 217 for longer than a year must be reviewed at least annually by the entity head or a designee. Except for collection under sec. 217 concerning entity employees, a report of such review must be submitted to the Attorney General or a designee or, for activities of the military services directed at military personnel, to the Service Secretary or a designee.

*Part C—Standards for extraordinary techniques*

Sec. 221. Extraordinary Techniques Outside the United States. Extraordinary techniques (search or surveillance that would require a court order in the United States) may not be directed against a U.S. person abroad to collect intelligence, except pursuant to a court order similar to that required by the Foreign Intelligence Surveillance Act of 1978. Orders are issued by the seven federal district judges designated under that Act. There are four significant differences between the Foreign Intelligence Surveillance Act and the requirements for search or surveillance of U.S. persons abroad. Two are contained in this section, and the others are in sec. 222 on cooperative arrangements and sec. 223 on emergency procedures. (Title VIII deals separately with physical searches within the United States.)

The first difference is that the standards do not require evidence of criminal law violation. In exceptional cases when the use of covert techniques has been approved under sec. 213 to collect foreign intelligence, an order may be issued if the court finds that the information sought is foreign intelligence and there is probable cause to believe that the U.S. person possesses the information sought. A court order may also be issued if the court finds that significant counterintelligence or counterterrorism intelligence is likely to be obtained and there is probable cause to believe that the U.S. person engages or is about to engage in clandestine intelligence activities on behalf of a foreign power, international terrorist activity, or activities in furtherance thereof. In all cases the court must find that less intrusive means cannot reasonably be expected to acquire intelligence of the nature, reliability, and timeliness that is required, and the court must approve the minimization procedures.

The second difference is that military judges designated by the Secretary of Defense may issue orders under these standards for extraordinary techniques directed against military personnel abroad. The Attorney Gen-

eral must be informed of all such applications and orders.

The requirements to identify the target, to state whether physical entry may be involved, to specify duration (up to 90 days), and to grant extensions are substantially the same as under the Foreign Intelligence Surveillance Act, although the court receives less information about the technique to be used. No order may authorize more than one unconsented entry into real property except for entries to install, repair, or remove surveillance devices. The court is to observe the procedural, administrative, and security provisions established under the Foreign Intelligence Surveillance Act; and that Act's provisions on use of information, wartime authority, and congressional oversight apply to extraordinary techniques under this section. The court of review established by that Act has jurisdiction to hear appeals; and its decisions are subject to review by the Supreme Court.

Sec. 222. Cooperative Arrangements. The third difference from the Foreign Intelligence Surveillance Act is the provision that disclosure to the court of information concerning cooperative or liaison relationships between U.S. Government agencies and foreign governments is not required, if the DNI determines such disclosure would jeopardize that relationship. If a determination of facts relating to a probable cause finding would require disclosure of such information, the Attorney General may substitute a certification of facts based on a determination that such information reliably supports the certification of facts. The court is to base its probable cause finding on the Attorney General's certification and any other available information, and the court may not refuse to make a finding of probable cause solely because protected liaison information is withheld.

Sec. 223. Emergency Procedures. The fourth difference from the Foreign Intelligence Surveillance Act is the three-day emergency provision. Extraordinary techniques that would meet the standard for a court order may be approved in emergency situations by the senior agency official in the country where the technique is to be used. This same procedure applies to the use of other "covert techniques" that would otherwise require Presidential approval under sec. 213. (By contrast, the Foreign Intelligence Surveillance Act limits emergency surveillance in the United States to 24 hours and requires the Attorney General's approval.)

*Part D—Remedies and sanctions; other provisions*

Sec. 231. Criminal Sanctions. The criminal penalties in the Foreign Intelligence Surveillance Act are applied to employees of the United States who intentionally engage in foreign electronic surveillance or foreign physical search directed against U.S. persons, except as authorized by statute. It is a defense that the surveillance or search was authorized by a court order or search warrant. It is also a defense that the defendant was a law enforcement officer engaged in official duties and there was no statute or established judicial procedure concerning authorizations for the type of surveillance or search involved.

Sec. 232. Civil Liability and Jurisdiction. The civil liability provisions of the Foreign Intelligence Surveillance Act are applied when sec. 231 is violated. Except for this provision, nothing in this title or in any guidelines or procedures established pursuant to this title creates a civil cause of actions for equitable relief against the United States or a civil cause of action against any officer, agent, or employee or former officer, agent or employee of the U.S. Government, not otherwise available under the Constitution or laws of the United States. Except as provided regarding extraordinary techniques, nothing in

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in any guidelines or procedures established pursuant to this Act, creates any substantial or procedural rights and no court has jurisdiction over a claim in any proceeding, including a motion to quash a subpoena, suppress evidence, or dismiss an indictment based solely on an alleged failure to follow a provision of this Act or of guidelines or procedures established pursuant to this Act.

Sec. 233. Privileged Communications. No otherwise privileged communication shall lose its privileged character as a consequence of this Act.

Sec. 234. Administrative Rulemaking. The DNI and the head of each intelligence entity shall, in appropriate consultation with the Attorney General, promulgate regulations necessary to carry out the provisions of this Act. Any promulgation of a standard, rule, regulation, or procedure to implement this title shall be exempt from the provisions of 5 U.S.C. 553, the Administrative Procedures Act.

## TITLE III—THE INTELLIGENCE COMMUNITY

Sec. 301. Purposes. The purposes are to provide for appointment of a Director of National Intelligence (DNI), and to ensure proper direction of the community. In addition, the DNI is held accountable to the President, Congress and the people.

Sec. 302. Presidential Designation of National Intelligence Activities. The President is to determine from time to time which foreign intelligence activities, if any, in addition to those specifically defined as national intelligence activities, shall constitute national intelligence activities.

Sec. 303. Director and Deputy Director of National Intelligence. The Office of the Director of National Intelligence is established, to be headed by a Director and a Deputy appointed by the President, by and with the advice and consent of the Senate. The maximum terms for the DNI and Deputy DNI, respectively, are ten years. The provisions for appointment of military officers parallel existing law. Provision is made for an acting Director or Deputy Director during their absence or disability or during any temporary vacancy in their offices.

Sec. 304. Duties and Authorities of the DNI. The duties and authorities of the DNI generally reflect the responsibilities presently assigned to the Director of Central Intelligence under Executive Order 12036, other Presidential directives, and the National Security Act of 1947. The CIA charter (Title IV) allows the President the option either to keep the DNI as CIA Director or to split the "two hats" by appointing the Deputy DNI or an Assistant DNI as CIA Director. The FBI Charter (Title V) gives the FBI Director primary responsibility for counterintelligence and counterterrorism intelligence activities conducted within the United States. The NSA charter (Title VI) assigns the principal responsibility for signals intelligence to the NSA Director.

The DNI is to serve, under NSC direction, as the principal foreign intelligence officer of the United States. The DNI is responsible for coordinating national intelligence activities and counterintelligence and counterterrorism intelligence activities abroad, for evaluating the quality of national intelligence activities, and for reviewing national intelligence activities to ensure that they are properly and effectively carried out. To coordinate national intelligence collection, the DNI is to develop objectives and targets to meet NSC requirements, establish procedures to increase the national intelligence contributions of agencies outside the intelligence community, and coordinate all clandestine collection abroad.

The DNI is also responsible for the production of national intelligence, including estimates and other community-wide analyses. This duty includes ensuring that any diverse

points of view are presented fully, considered carefully, and expressed clearly for policymakers. The DNI may levy analytic tasks on departmental intelligence production organizations (such as the Defense Intelligence Agency or the State Department's Bureau of Intelligence and Research), in consultation with those organizations. The DNI's responsibility for the dissemination, under appropriate security procedures, of national intelligence includes duties to ensure that all agencies and military commanders receive national intelligence relevant to their duties, to establish procedures to increase the usefulness to all agencies of information collected, processed, and analyzed through national intelligence activities, and to ensure access of each intelligence entity to national intelligence relevant to that entity's authorized activities.

Other DNI functions include ensuring appropriate implementation of special activities and other sensitive intelligence activities abroad, coordinating intelligence relationships with foreign governments under policies formulated in consultation with the Secretary of State, and promoting the performance of services of common concern by particular agencies for the intelligence community.

The existing responsibility of the Director of Central Intelligence for the protection of intelligence sources and methods from unauthorized disclosure is transferred to the DNI, with additional authority to establish for all agencies minimum security standards for the management and handling of information and material relating to intelligence sources and methods. Administrative and personnel authorities of the Director of Central Intelligence under current law are carried over, with some technical revisions, to the Office of the DNI.

To carry out the DNI's specific duties, the DNI is authorized to audit the national intelligence activities of intelligence entities, to obtain additional information from any agency in accordance with applicable law, to review all research and development that supports intelligence activities, and to review all intelligence activities.

Sec. 305. Assistant DNIs, General Counsel, Committees and Boards. The President may appoint up to five Assistant DNIs, no more than two of whom may be military officers. The President may also appoint a General Counsel for the Office of the DNI and the CIA, by and with the advice and consent of the Senate. The DNI, the Attorney General, and the heads of intelligence entities may establish committees and boards to assist in carrying out their duties under this Act, and may establish advisory committees and waive the Federal Advisory Committee Act.

Sec. 306. Departmental Responsibilities. All agency heads are responsible for ensuring that national intelligence obtained by their agencies is promptly furnished to the DNI or to an intelligence entity designated by the DNI.

Sec. 307. Annual Report of DNI. The DNI is to make an annual public report on the national intelligence, counterintelligence, and counterterrorism intelligence activities of the intelligence community. Such report need not disclose classified information or the names of individuals engaged in such activities.

Sec. 308. National Intelligence Budget. The DNI, consistent with applicable law, has full and exclusive authority to approve the national intelligence budget submitted to the President. The DNI provides program and budget guidance to the agencies, and agency heads must ensure timely submission of their budgets and other necessary information to the DNI. With the advice of the agencies concerned, the DNI develops the budget, presents it to the President in consultation with OMB, and justifies it to Congress. The DNI has comparable reprogramming authority.

Implementation of overall budgets by departments that include intelligence entities must have no significant, predictable adverse effect on implementation of the national intelligence budget.

Sec. 309. Appropriations Requirements. The DNI may account for lawful expenditures of the Office of the DNI by certificate.

## TITLE IV—CENTRAL INTELLIGENCE AGENCY

## Part A—Purposes

Sec. 401. Purposes. The purposes are to clarify the statutory authorities, functions, and responsibilities of the CIA; to authorize the CIA to perform necessary intelligence activities; to ensure that those activities are properly and effectively managed; and to ensure that the CIA is accountable and that its activities are consistent with the Constitution and laws of the United States.

## Part B—Establishment of Agency; Director; Deputy Director; General Counsel; Inspector General; Functions

Sec. 411. Establishment of CIA. The CIA is established as an independent establishment in the executive branch, which acts under the direction of the NSC and subject to intelligence plans, objectives, and requirements set by the DNI.

Sec. 412. Director and Deputy Director. The CIA Director is appointed by the President and confirmed by the Senate. The DNI is to serve as CIA Director unless a Deputy or Assistant DNI is appointed and confirmed by the Senate. The Deputy CIA Director is also appointed by the President and confirmed by the Senate. The provisions of the National Security Act of 1947 regarding appointment of military officers are retained. Both offices may not be held simultaneously by active or retired military officers. A military officer appointed to these positions is not subject to military control and may not exercise military functions.

The duties of the CIA Director are to ensure that CIA activities are conducted in accordance with this Act and with the Constitution and laws of the U.S.; to ensure that CIA activities are properly and efficiently directed, regulated, coordinated, and administered; to perform duties assigned by this Act to the head of each intelligence agency; to protect intelligence sources and methods from unauthorized disclosure; and to specify which CIA officials may act in the absence of the Deputy Director.

Sec. 413. General Counsel and Inspector General. The CIA General Counsel is appointed by the President, confirmed by the Senate and discharges general counsel responsibilities for the office of the DNI. A Deputy General Counsel may act in the General Counsel's absence. An Inspector General is appointed by the CIA Director.

Sec. 414. Functions. All CIA activities, duties, and responsibilities must be performed in accordance with this Act. The CIA has three basic types of functions.

Its intelligence functions are to: (1) conduct foreign intelligence activities including collection by clandestine means, (2) conduct counterintelligence and counterterrorism intelligence activities including activities by clandestine means, (3) conduct special activities, (4) process and analyze foreign intelligence collected by any intelligence agency, (5) produce, publish, and disseminate intelligence to meet the needs of the President, the NSC, the DNI, and other agencies, including national intelligence estimates and similar analyses coordinated with other intelligence agencies, and (6) to develop, conduct, and support technical and other programs, including signals intelligence and reconnaissance, to collect intelligence abroad.

The CIA also performs functions for the intelligence community at large: (1) to act as the DNI's agent in the coordination of counterintelligence, counterterrorism, and clandestine foreign intelligence activities abroad by other intelligence agencies, (2) under the direction of the DNI to

conduct liaison with and provide assistance to foreign governmental agencies and act as the DNI's agent in the coordination of such relationships by other intelligence agencies, and (3) to conduct service of common concern on behalf of the intelligence community as directed by the DNI.

Ancillary CIA functions are: (1) to conduct or contract for research, development, and procurement of systems and devices related to its other functions, (2) to perform inspection, audit, public affairs, legal, legislative, and other administrative functions to support its activities, and provide such support to the DNI's Office as directed by the DNI, and (3) to perform functions otherwise authorized by this Act to be performed by each intelligence agency.

Within the U.S., CIA may collect foreign intelligence by clandestine means only in coordination with the FBI, under standards agreed upon by the Attorney General and the DNI, and may direct such collection against unconsenting U.S. persons only as permitted by sec. 213(d). Within the U.S., CIA may conduct counterintelligence and counterterrorism intelligence activities by clandestine means only with the approval of the FBI Director or a designee, and must keep the FBI fully and currently informed, in accordance with sec. 504(d).

*Part C—Authorities of CIA: Authorization for appropriations*

Sec. 421. General Authorities. To carry out its functions, the CIA has three types of general authorities: security functions, personnel functions and ancillary functions.

Under the heading of security functions, the CIA is authorized to: conduct background investigations; to maintain its own printing plant; to operate secure communications systems; to protect Agency personnel, installations, and equipment; to maintain cover; to conceal and protect the relationship between the Agency and any of its officers, employees, sources, or activities; to hire security officers; to allow employees to carry firearms when necessary to protect information, persons or property of the CIA; provide transportation when normal means of transportation are unsafe; to carry firearms in the discharge of their official duties in limited circumstances. In addition, no provision of law is to require the Director of the Agency to disclose the name, official title, salary or affiliation of any person employed by or associated with the Agency. The Agency is also largely exempted from any law (e.g., FOIA) which requires disclosure of its operations or technical systems, except insofar as they deal with finished foreign intelligence analysis or with information requested by Americans on themselves.

In dealing with personnel matters, the Agency is authorized to be reimbursed by other agencies in connection with the detailed personnel tour from the Agency; settle pay claims for civilian and military personnel; pay for expenses in connection with membership in national societies; provide or pay expenses of training; have assigned or detailed to the Agency employees of other departments; have a person who has been separated receive a position in Civil Service.

Various housekeeping authorizations are also granted to the CIA including authorization to exchange funds; rent premises; construct buildings; perform inspections, audit, public affairs, legal, legislative, and other administrative functions; receive sums of money, and use a seal. In addition the Agency is permitted to carry out any other duties granted to all entities of the community under title I.

Sec. 422. Procurement. The Agency is authorized to procure property and services, enter into contracts, and dispose of property when necessary to perform its authorized functions, without regard to the provisions of other laws.

Sec. 423. Proprietaries. The Agency is authorized to establish and operate proprietaries in furtherance of its responsibilities. Excess profits and funds generated by the liquidation of a proprietary shall be returned to the miscellaneous receipts of the U.S. Treasury. Major transactions involving Agency proprietaries shall be reported to the Intelligence Committees.

Sec. 424. Relationships with Other Government Agencies. The Agency is authorized to receive assistance from state and federal law enforcement agencies in conducting background investigation on prospective employees. It is authorized to cooperate with and receive technical assistance from the State Department Passport Office, the Immigration and Naturalization Service and other federal, state, or local agencies.

Sec. 425. Admission of Essential Aliens. The Agency is authorized to instruct the Immigration and Naturalization Service to grant up to one hundred essential aliens permanent resident alien status in the United States in any one fiscal year. The Agency is to provide necessary processing and relocation assistance to these persons as required.

Sec. 426. Authorizations for Appropriations and Expenditures.

In fulfilling its lawful responsibilities, the Agency may expend the funds authorized and appropriated to it. It may only expend such funds as are authorized by legislation enacted in the same or the two preceding fiscal years. A Contingency Fund is established for any lawful intelligence needs not anticipated at the time the Agency's budget was submitted. The withdrawal of funds from the Contingency Fund is to be approved by the Office of Management and Budget and reported to the Congressional Intelligence Committee, either 72 hours before the transaction or in extraordinary circumstances within 48 hours of the withdrawal.

*Part D—Travel and other allowances; retirement system; death gratuities*

Sec. 431. Travel, Related Expenses and Death Gratuities for Certain Agency Personnel. In accordance with procedures established by the Director of the Agency in cooperation with the Director of National Intelligence, employees of the Agency stationed overseas are to receive the same benefits, travel allowances and death gratuities as Foreign Service officers receive under existing statutes.

Sec. 432. Retirement System. In general, employees of the Agency fall under the Federal civil service retirement system. However, certain employees of the Agency who either have highly specialized skills or hazardous duties in support of Agency activities overseas shall be eligible for special benefits under the provisions of the 1964 Central Intelligence Agency Retirement Act for Certain Employees.

*Part E—Transfer of personnel, property and functions; statutes repealed; effect of subsequent law*

Sec. 441. Transfer of Personnel, Property and Functions.

All personnel, contractual obligations, rules, regulations licenses, pending lawsuits, and functions of the Agency effective the day before enactment of this act shall be transferred to the Agency as described under this legislation.

Sec. 442. Statutes Repealed; Effect of Subsequent Law.

Certain sections of this bill are not to be superseded or amended unless specifically mentioned. In addition, superseded sections of the National Security Act of 1947 and the Central Intelligence Agency of 1949 are hereby repealed.

*Part F—Criminal penalty*

Sec. 443. Criminal Penalty. Under Title IV, anyone using the initials CIA, the name Central Intelligence Agency, or the seal of the

Agency to convey the false impression that a document or production is endorsed or authorized by the Agency shall be fined not more than \$10,000 or imprisoned not more than one year or both.

*TITLE V—FEDERAL BUREAU OF INVESTIGATION*

Sec. 501. Purposes. The purposes are to authorize the FBI, subject to Attorney General supervision and control, to perform certain intelligence activities; to delineate responsibilities and authorities of the FBI Director; and to ensure that FBI intelligence activities are properly and effectively managed, accountable, and consistent with the Constitution and laws of the United States.

Sec. 502. Supervision and Control. All FBI intelligence authorities are to be exercised in accordance with this Act and under the Attorney General's supervision and control. The Attorney General is to be guided by NSC policies and priorities and responsive to foreign intelligence requirements set by the DNI. The Attorney General and the Director are to review FBI intelligence activities annually and publicly designate officials to discharge general counsel and inspector general functions under this Act.

Sec. 503. Duties of the Director. The FBI Director is the principal officer of the Government for the conduct and coordination of counterintelligence and counterterrorism intelligence activities within the United States. He is to ensure conformity with the law and efficient management, to keep the Attorney General informed, and advise the Attorney General and the NSC on counterintelligence and counterterrorism intelligence matters. The Attorney General is to provide by regulation for an Acting Director.

Sec. 504. Counterintelligence and Counterterrorism Intelligence Functions. The FBI is to collect and disseminate counterintelligence and counterterrorism intelligence. Any other counterintelligence or counterterrorism intelligence activities must be necessary for lawful purposes. FBI liaison with foreign governments is to be in coordination with the DNI. FBI activities abroad are to be in coordination with the CIA and, if unrelated to activities within the United States, require Attorney General or a designee's approval.

The FBI coordinates counterintelligence and counterterrorism activities in the United States by other intelligence entities. Except for activities by the military services against military personnel on military installations, another entity may conduct clandestine activities in the United States only with written FBI approval and notice to the Attorney General or a designee.

Sec. 505. Foreign Intelligence functions. The FBI may collect foreign intelligence within the United States in the course of authorized collection of counterintelligence and counterterrorism intelligence. The FBI may also conduct activities in the United States in support of foreign intelligence collection programs of other intelligence entities, and may produce foreign intelligence in coordination with the DNI.

FBI foreign intelligence activities for other entities must be based on a written request by an official designated by the President, with notice to the Attorney General or a designee. The Director must approve each support activity. Clandestine activities directed against U.S. persons require notice to the Attorney General or a designee, as under section 213(d).

Sec. 506. Cooperation with Foreign Governments. The FBI may collect counterintelligence or counterterrorism intelligence on the written request of a foreign government, and assist foreign government officials collecting intelligence in the United States, under two conditions. First, if the FBI would be authorized under this Act to do so in the absence of such a request.



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Second, if the Attorney General or a designee determines that, as a matter of comity, it is in the best interests of the United States. This section shall apply to all the requirements of title 18. The FBI must keep the Attorney General or a designee informed of all intelligence collection by the United States by foreign government officials that is assisted by the FBI.

Sec. 507. General and Special Authorities. In general the bureau may procure necessary property and facilities, establish and maintain necessary cover, establish and operate proprietaries, deposit public moneys in banks; conduct or contract for research and procurement of technical devices; and protect intelligence sources from unauthorized disclosure in accordance with DNI standards.

Proprietary profits are to be deposited in the Treasury, and the disposition of proprietaries valued more than \$50,000 is to be reported to the Attorney General and the Intelligence Committees. FBI procurement of property or services may be conducted in a manner concealed from the public when necessary for security purposes.

TITLE VI—NATIONAL SECURITY AGENCY

Part A—Purposes

Sec. 601. Statement of Purposes. Title VI establishes the National Security Agency (the "Agency") and provides authorization for signals intelligence ("SIGINT")—information gathered through the interception of electromagnetic signals) and communications security ("COMSEC")—protective telecommunications measures denying access to national security information to an unauthorized person). The Agency is to be accountable to the President, the Congress and the people of the United States.

Sec. 602. Definitions. This section defines the terms related to NSA's mission including "communications intelligence", "cryptographic system", "cryptology", "electronic intelligence", "foreign communication", "foreign instrumentation signals intelligence", "signals intelligence", "unauthorized person", and "United States signals intelligence system".

Part B—Establishment of agency's director; deputy director; general counsel, inspector general; duties

Sec. 611. Establishment of NSA; Function. The Agency, an entity within the Department of Defense (DOD), is authorized to conduct SIGINT and COMSEC activities for the U.S. Government and to serve as the principal agency of the U.S. SIGINT system. The Secretary of Defense supervises the functions of the Agency and responds to COMSEC policies and intelligence objectives and requirements established by the Director of National Intelligence (DNI).

Sec. 612. Director and Deputy Director. The Director and Deputy Director of the Agency are appointed by the President with the advice and consent of the Senate. Either the Director or the Deputy Director must have cryptologic (i.e., coding and ciphering) experience, and only one of the two may be a commissioned officer. Such an officer will neither possess DOD authority, nor be under military department supervision; rank and grade held prior to acceptance of appointment will be maintained. Neither the Director nor the Deputy Director may serve for more than six years, unless reappointed by the President with the advice and consent of the Senate. The maximum term for either office is 12 years.

Sec. 613. Duties of the Director. As the principal SIGINT officer of the Government and as the executive head of the Agency, the duties of the Director will include the management, supervision and dissemination of SIGINT requirements and activities. The Director is to prepare the U.S. SIGINT program budget for each fiscal year. To this end, the

Director will receive budget guidance from the Secretary of Defense, the interdepartmental intelligence programs, and the DNI will provide budget guidance in the preparation of national intelligence programs.

Sec. 614. General Counsel, Inspector General. The General Counsel is principal legal advisor to the Director, will review activities, rules and regulations of the Agency; the Inspector General will conduct investigations to promote effectiveness in the legal functions of the Agency.

Part C—General and special activities of the agency; authorization for appropriations

Sec. 621. General Authorities of the Agency. The Agency may rent, lease, and alter buildings to carry out the functions of the Act. A waiver of limitations on the Agency's authority regarding the foregoing is to be in writing. The Agency is further authorized to establish cover for Agency employees and direct the transfer of cryptologic equipment among various entities of the intelligence community.

Sec. 622. Procurement Authority. The Agency may procure property, goods and services with wide discretion in the name of the DOD. However, if procurement is not under the auspices of DOD, it must be pursuant to Sec. 134 ("Restrictions on Contracting").

Sec. 623. Education and Training. In order to accomplish the cryptologic missions of the Government, the Act provides authorization to arrange for, fund, and provide the necessary training needed to accomplish the various functions of the Agency.

Sec. 624. Authorizations for Appropriations and Expenditures. Funds appropriated for the Agency must be authorized by legislation "during the same or one of the two immediate preceding fiscal years." Funds expended under sections 701-708 of title 31 U.S.C. (consolidation of unexpended appropriated funds into a common funds) are not subject to the above limitation. In addition, funds initially appropriated to the Secretary of Defense may be provided to the Agency by the Secretary for the sole purpose of meeting emergency expenses.

Part D—Travel and other expenses; special facilities; retirement system-related expenses; and death gratuities for certain agency personnel

Sec. 631. Travel. In consultation with the DNI, transportation and subsistence expenses may be paid to employees assigned to stations within the United States. Employees assigned to stations in foreign countries will receive the same expenses that are provided to employees of the Foreign Service (per title IX of Foreign Service Act of 1946).

Sec. 632. Commissary and Mess Services and Recreation Facilities. In the absence of commissary and recreation facilities outside the United States, the Director is authorized to establish such services. They will be accessible to employees of government contractors, as well as to employees of other government agencies. However, the Director may not authorize further establishment of facilities where other departments operate such services, unless they are deemed necessary.

Sec. 633. Retirement System. With the exception of Agency employees involved in hazardous duty, Agency employees will participate in the regular Federal civil service retirement system. Those involved in hazardous duty may receive a special annuity.

Part E—Special delegation authority; preservation of certain authority and responsibility

Sec. 641. Special Delegation Authority. The Director will have operational control over activities required for SIGINT direct support to military commanders. The authorities of other agencies for final evaluation

and dissemination of SIGINT is possessed as a principal activity of the Agency, and departmental communications security authorities. An organization operating a SIGINT system or providing a service NSC and/or authorized for such activities.

Part F—Transfer of personnel, property and functions

Sec. 651. Personnel, obligations, and contracts—employed or in effect the day before the effective date of this title—will be transferred to the Director. The foregoing will apply also to rates, regulations, and any other effect prior to the above date.

TITLE VII—PROTECTION OF IDENTITIES OF OFFICERS, EMPLOYEES, INFORMANTS, AND SOURCES

Sec. 101. Criminal Penalties. Criminal penalty. Criminal penalties of a \$50,000 fine or not more than ten years imprisonment or both are imposed on persons who have or have had authorized access to classified information that identifies an undercover intelligence agent and violate their obligation to protect its secrecy. This statute goes beyond current law by: (1) punishing disclosure of this category of classified information by present or former government employees to any unauthorized person, not just to foreign agents; (2) eliminating the Espionage Act requirement of proof of intent by the employee or former employee to harm the national security; and (3) establishing the extraterritorial application of the statute to citizens committing the offense abroad.

It is a defense that the United States has publicly acknowledged or revealed the undercover relationship of the person who is identified. Persons who have not had authorized access to the information cannot be prosecuted as conspirators. It is not an offense to transmit information directly to the Intelligence Committees, and nothing is to be construed as authority to withhold information from the Congress.

Sec. 702. Presidential Responsibility. The President is to ensure that persons having authorized access to such classified information be informed of this criminal penalty.

TITLE VIII—PHYSICAL SEARCHES UNDER THE UNITED STATES

Sec. 801. Amendments to the Foreign Intelligence Surveillance Act. The Foreign Intelligence Surveillance Act of 1978 is entitled the Foreign Intelligence Search and Surveillance Act. The court order procedures of the Act are extended to "physical search" defined as any search of property located in the United States and any opening of mail in the United States or in US post channels, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes. The procedures of the Act for surveillance without a court order approved by the Attorney General are extended to physical search directed solely at property or premises under the open and exclusive control of an "official" foreign power but no property or mail of a known US person may be seized and there must be no substantial likelihood that the search will involve the property or mail of a US person.

The Foreign Intelligence Surveillance Act of 1979 is also amended to permit the Attorney General to authorize physical entry of property or premises under the open and exclusive control of an "official" foreign power for electronic surveillance purposes.

The standards for court orders are basically the same as under the Foreign Intelligence Surveillance Act of 1978. There must be probable cause of criminal activity by any US person whose property or mail is to be searched. No order may authorize more than one unconsented physical entry except for entries to install repair or remove surveillance devices. Whenever more than one

search of property or the opening of more than one item of mail is to be conducted under an order, the court must specify the authorized scope of the searches or opening of mail. All other provisions of the Act concerning electronic surveillance, including criminal penalties and civil liability, are extended to physical search. Numerous technical amendments are necessary for this purpose.

Sec. 802. Amendments to Chapter 119 of Title, 18 United States Code. These are technical conforming amendments to changes made by the Foreign Intelligence Surveillance Act.

TITLE IX—MISCELLANEOUS AMENDMENTS AND EFFECTIVE DATE

Sec. 901. Amendments to Title 5, United States Code. Title 5 is amended to modify the appropriate official designations.

Sec. 902. Repeal of Section 2422, Title 22, United States Code. The Hughes-Ryan Amendment is repealed.

Sec. 903. Amendment to the Federal Advisory Committee Act. The CIA exemption to the Federal Advisory Committee Act is eliminated in view of the authority provided in section 305 of this Act.

Sec. 904. Effective Date. The Act becomes effective on the first day of the third calendar month following the month in which it is enacted.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that the statements by Senator BAYH and Senator MATHIAS be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The statements are as follows:

STATEMENT BY SENATOR BAYH

NATIONAL INTELLIGENCE ACT OF 1980

I join today with Senator Huddleston of Kentucky, who is Chairman of the Senate Select Committee on Intelligence Subcommittee on Charters and Guidelines, and with Senator Charles McC. Mathias of Maryland, who serves as Vice Chairman of the Subcommittee, and my Vice Chairman, Senator Goldwater, in introducing the National Intelligence Act of 1980. This bill represents 3 years of joint effort with the Executive Branch and particularly the intelligence community to arrive at a comprehensive statute to govern the intelligence activities of the United States. Senator Huddleston and Senator Mathias deserve the gratitude of the Senate for the great efforts that they and other Members of the Subcommittee, Senators Biden, Moynihan, Leahy, Garn, and Lugar, have made over the present and past Congress to work out a legislative charter which would provide the authorities necessary to strengthen the best intelligence system in the world, but to do so in a way that protects and enhances the cherished liberties of all of our citizens. This has not been an easy task. Balancing the practical needs of an intelligence service against the guarantees provided by our Constitution and laws in a world of constant danger of shifting intensities has resulted in agreements which required considerable give and take and mature understanding of constitutional requirements and the necessities created by world events.

It would be helpful to set forth some basic premises that underlie this effort to enact a comprehensive legislative charter for intelligence activities.

The first premise is that today's international situation and the military, political, and economic threats that we now face and can foresee, require the permanent existence of a strong and extensive intelligence system.

The second premise is that the difficult task of countering the efforts of potentially hostile nations can, if not carefully directed,

adversely affect the liberties of law-abiding citizens. In order to conduct necessary intelligence activities and to protect the rights of citizens, clear authorities must be given to our intelligence agencies and their activities have to be supported by both the Executive and Legislative Branches. Strong oversight is the necessary companion to the authority for a powerful, effective, far-reaching intelligence system.

The third premise is that a reasonable balance can be struck between providing necessary flexibility for our intelligence agencies to conduct intelligence activities in the interests of the country, and do so in a way that protects the rights of American citizens.

The task is all the more difficult because the basic legal framework of the Constitution did not contemplate the permanent existence of a large, primarily secret, national security system. In an important sense we have been grappling with fundamental issues that require the most careful consideration. The National Intelligence Act of 1980 is a large and complex proposal. There are provisions which I do not agree with and I am sure that all of my colleagues in the Senate will find aspects that they would prefer be resolved in some other way. But in my view, this bill represents a reasonable compromise and on balance would provide an effective means for governing the intelligence activities of the United States in a way that gives the United States the capabilities it needs and protects the rights of our citizens. The proposed bill is a good starting point for Committee consideration and a focal point for the hearings. The hearings will, of course, consider at the same time other proposals already introduced that are concerned with intelligence authorities.

For those who favor my concern about strengthening our nation's intelligence capability—an objective to which I have devoted my energies as chairman of the Intelligence Committee—I hope that the present length and detail of this bill are not misleading. The grants of authority to the intelligence community and the agencies require detail, and the agencies themselves have insisted upon their need for specific statutory authority. The overall result of this proposed legislation is to lift restrictions within a basic framework of accountability and oversight. I believe that the legislation will provide an effective statutory basis for intelligence activities which has been lacking for many years.

The Committee expects to begin hearings after returning from its brief recess by calling upon the chief policy officials of the Executive Branch and the principal heads of the intelligence agencies, as well as outside witnesses—experts on various aspects of the governance of intelligence activities.

The Committee has met with the President on five occasions over the past three years and we have been able to exchange our views directly with him in reasoned and fruitful sessions. Vice President Mondale was assigned the task by the President of working with the Committee, and under his direction Secretary Vance, Secretary Brown and Admiral Turner, the NSC, and of course, the intelligence community, in working with the Committee to develop the bill which we have introduced today. Senator Huddleston and Senator Mathias have described the details of the main provisions of the bill. I would only add that the hearing process will obviously assist in strengthening some points. There will certainly be additions and deletions as is usual in the process of Committee consideration and as the Senate works its will.

I would like to comment on one major point of disagreement between the Committee and the Executive Branch. I fully support a modification of the Hughes-Ryan Amendment reducing the access to notification

of covert action to the oversight committees in the Senate and in the House. But in so doing, the necessity for the remaining oversight committee to be fully informed, including prior notice of any anticipated significant action, is all the more important. Without full, complete and timely information an oversight committee cannot do its work.

The experience of the Committee over the past four years has convinced us that there are many categories of intelligence activities that the Committee requires information about prior to their implementation in order to decide whether funds should be provided or whether they are consistent with declared policies or in the judgment of the Committee would serve the interests of the nation. The Committee, on occasion, has asked for and received the most detailed kinds of information from the most sensitive kinds of sources. The Committee generally does not ask for detail unless it is necessary, but I want to emphasize that on the basis of my experience as chairman, the Committee must have the right in statute to be able to ask for any information concerned with any intelligence activity of the United States. Of course, the Committee has to exercise discretion and balance about what it asks for to meet its needs, and I think we have done so over the past four years. But we also have to recognize that abuse situations may very well occur in the future as they have in the past and that there will be a requirement to pursue inquiries into some areas of intelligence activities in depth in order to perform our Constitutional duties.

There is some concern that widening the circle of awareness of certain activities poses risks. I recognize that, but our Constitutional government also requires shared responsibility and we cannot assume responsibility without knowledge. Surely the leaders of both houses and the Chairman and Vice Chairman of the oversight committee can be entrusted with any sensitive information. They are no less trustworthy than the President's chief advisors and have, in addition, Constitutional responsibilities. It is for this reason that I urge the Senate to support the Committee's language which would give it the authorities it needs to carry out its oversight duties. The language of the bill is as follows:

CONGRESSIONAL NOTIFICATION

SEC. 125. Each special activity authorized under section 123(a)(1) and each category of special activities authorized under section 123(a)(2) shall be considered significant anticipated intelligence activities for the purposes of the requirement of section 142 of this Act, except that such prior notice may be limited for a period of forty-eight hours to the chairman and ranking minority member of the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, The Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate if the President determines it is essential to meet extraordinary circumstances affecting vital interests of the United States. Such committees shall be fully informed under Section 142 of this Act upon expiration of the forty-eight hour period.

CONGRESSIONAL OVERSIGHT

SEC. 142. (a) Consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches, the head of each entity of the intelligence community shall—

(1) keep the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for on be-

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half of that entity of the intelligence community, including any significant anticipated information activity, but the foregoing provision does not require approval of such committees as a condition precedent to the initiation of any such anticipated intelligence activity;

(2) furnish any information or material concerning intelligence activities in the possession, custody, or control of the head of the relevant entity of the intelligence community or in the possession, custody, or control of any person paid by such entity whenever requested by the House Select Committee on Intelligence; and

(3) report in a timely fashion to the House Permanent Select Committee on Intelligence information relating to intelligence activities that are illegal or improper and corrective actions that are taken or planned.

The charter provisions affecting the rights of Americans have also been matters of deep concern to me. Our nation needs a strong intelligence community to protect against threats from abroad, but safeguards are essential to ensure that these powers are not used to violate the constitutional rights of our own citizens. The charter language has been the subject of long and careful deliberations with each intelligence agency and the Department of Justice.

In 1978 the Foreign Intelligence Surveillance Act became law, and electronic surveillance within the United States for intelligence purposes became subject to a court order requirement. During consideration of that bill, I urged the Administration to give the most serious study to whether the court order procedure could be used to protect the rights of Americans overseas as well as at home.

I am greatly pleased that the decision has been made to adopt this approach. Substantial credit is due to former Attorney General Griffin Bell, who played a key role in that decision last year. Attorney General Bell and his successor, Attorney General Civiletti, have worked for nearly a year under the court order procedures of the Foreign Intelligence Surveillance Act. The Justice Department, the FBI, and the National Security Agency have advised the Intelligence Committee that those procedures have posed no threat to the security of sensitive surveillance activities.

Through the Intelligence Committee's oversight of surveillance under the 1978 Act, we have also found that its provisions have resulted in careful scrutiny of surveillance applications. The existence of the court order procedure has enhanced the Committee's ability to conduct oversight, because of the care taken by the Justice Department and the agencies in preparing their applications to the court. This close attention to detail and full justification for the court makes it easier for the Committee to assess surveillance activities through its subsequent semi-annual oversight reviews.

Therefore, the extension of the court order procedure to, electronic surveillance and physical search directed at Americans abroad allows the judiciary to play its vital role in protecting Fourth Amendment rights, without jeopardizing security or detracting from congressional oversight.

It has not been possible to reach agreement, however, to apply to Americans abroad the criminal standard of the Foreign Intelligence Surveillance Act. Instead, different standards have been developed to accommodate the need for somewhat wider leeway in counterintelligence cases and in extraordinary circumstances where the President determines personally that Fourth Amendment techniques must be used against an American abroad to obtain essential foreign intelligence.

This departure from a criminal standard, and even from the noncriminal "foreign

agent" limitation under the current Executive Order, lifts a restriction that now exists on the collection of foreign intelligence. Its potential impact on the privacy of Americans who travel abroad must be weighed carefully as this bill is considered in the legislative process.

I fully understand and share the concern that many Americans will have about these issues. But perhaps the best way to bring overseas surveillance and search powers under the rule of law and within the constitutional system of checks and balances is through this Act. We must carefully consider these issues in the weeks to come.

The same is true for the provisions that bring physical search in the United States within the framework of the Foreign Intelligence Surveillance Act of 1978. Current restrictions on physical search under the Executive order procedures are very stringent. Thus, the charter could result in the lifting of certain limitations. However, without the requirement in law to obtain a court order under a criminal standard for searches of Americans in this country, a future administration could abandon the Executive order procedures and assert "inherent power" to search the homes and offices of citizens without effective checks.

Apart from Fourth Amendment search and surveillance techniques, the charter establishes basic standards for investigations of Americans by the FBI and CIA. The detailed investigative procedures are not put into the law. Instead the Attorney General is required to approve such procedures in the light of certain basic principles of accountability, minimization, and review.

These standards and procedures meet the needs of the FBI and CIA for foreign intelligence and counterintelligence information. At the same time they emphasize respect for individual privacy and the need to minimize intrusions and unnecessary collection, storage, or dissemination of information about Americans in intelligence files.

In some respects the standards permit wider investigations of Americans than are allowed under the Executive order. This would be especially true if the President did not designate certain investigative measures as "covert techniques," subject to special limitations. Nevertheless, the choice may be between having a legal framework of accountability and oversight and having no law at all.

In conclusion, Mr. President, it has been a great honor and privilege for me to be the Chairman of the Committee to continue the work begun by Senator Inouye, Senator Huddleston and Senator Mathias, and to work with the Vice Chairman, Senator Goldwater, to reach this stage of the Senate's effort to bring necessary intelligence activities under Constitutional governance.

## STATEMENT BY SENATOR MATHIAS

## THE NATIONAL INTELLIGENCE ACT OF 1980

I am happy to join my colleague from Kentucky, Senator Huddleston, and the Chairman of the Select Committee on Intelligence, Senator Birch Bayh, and the Vice Chairman of the Committee, Senator Barry Goldwater, in introducing the National Intelligence Act of 1980. The introduction of this bill marks the beginning of the last stage of the legislative effort that began over five years ago.

The experience of the United States since the end of World War II, the requirement to meet the threats from hostile powers, the need for timely and accurate information as well as the strains on our constitutional system caused by these necessities have made it imperative to construct a comprehensive statutory charter for the governance of the intelligence activities of the United States.

The requirement for secret government activities poses unusually difficult challenges

to the efficacy of the American constitutional system which in all other respects is dedicated to open democratic processes.

We have all accepted the necessity for maintaining a large, powerful, and permanent intelligence system. The present state of the world and what we can expect in the foreseeable future requires that we do no less. But the experience we have had since the end of World War II, and particularly in the last decade, indicates clearly that the power of this necessary secret intelligence system must be governed and directed through a carefully constructed constitutional process. This constitutional process requires a balancing between the needs of the intelligence agencies to perform their necessary missions effectively, and the requirement to protect and enhance our cherished and constitutionally granted freedoms and liberties.

Much of this legislative charter details the authorities, duties and missions of the intelligence agencies. The crucial sections of the proposed charter concern the procedures by which the power granted to the intelligence agencies can be monitored and governed. The basic premise is that the governance of secret intelligence activities is a responsibility that the Executive must share with the Legislative branch. The two branches must be responsible on behalf of the people of the United States for the quality and effectiveness of the agencies, the success or failure of their activities, and for assuring that their activities are directed in such a way that our liberties are protected and enhanced and not unnecessarily abridged. We must be cautious that the institutions we fashion to protect our national security do not diminish the liberties that we all cherish.

The process by which we have come to the bill that we have before the Senate today has been a joint effort. Two Presidents and their chief advisors have worked with the Select Committee on Intelligence and the intelligence community to fashion this comprehensive authority for intelligence activities. We have worked jointly to frame the Executive Orders that now govern the activities of the intelligence agencies. This proposed bill, with the exception of a few provisions, represents the shared view of this Committee and the Executive of how our intelligence agencies should be governed.

I am sure that the hearing process and the consideration of the bill by the Committee in mark-up sessions will result in modifications of this proposed charter. But I am confident that what we have presented here today is a fair agenda of the issues that must be considered, and at a minimum, provides a conceptual framework for the issues of governance that face the government today and will face the United States in the future. In this difficult time, the requirement for an effective intelligence system that functions within our constitutional system is all the more necessary. The imperative to complete our work this year is clear to us all.

Mr. MOYNIHAN. Mr. President, I rise on the occasion of the introduction by my friends and colleagues, Senators HUDDLESTON and MATHIAS, of the charter for the intelligence community which the Subcommittee on Charters and Guidelines of the select committee, of which I am a member, has prepared over the past 3 years; and which we now hope to bring to some legislative conclusion in the course of this second session of the 96th Congress.

If there are those who wonder how it has come about that this document has emerged with such wide support in our committee, they need only hear in pub-



lic the counterpart of what we hear in private, which is the persuasive, balanced, moderate, utterly patriotic and selfless analysis and argumentation of the Senator from Kentucky. He is masterful in this, and I wish to acknowledge such masterfulness.

Mr. HUDDLESTON. I thank the Senator from New York for his generous words.

Mr. MOYNIHAN. Mr. President, may I compliment Senators HUDDLESTON and MATHIAS on the great achievement which this bill represents. They have devoted immense amounts of time and effort to the task, and the bill is testimony to their efforts.

Two weeks ago, six colleagues and I joined together to introduce the Intelligence Reform Act of 1980. As I said at that time:

Our bill speaks to three specific problems which have appeared in the operations of our intelligence community. These are: First, the process whereby Congress is kept informed on the activities of the intelligence agencies; second, the requirement that our intelligence agencies respond to requests from the general public and make available information about the activities of those agencies; and third, the protection of those individuals who undertake intelligence duties on our behalf.

At the same time, however, I noted that—

What will be discussed here today should be seen as but the first blocks in the reconstruction of our intelligence community, not the final edifice.

What I would like to make clear at this time is that the Intelligence Reform Act of 1980 in no way contradicts or obstructs the bill which has just been introduced. In fact, in most cases, the provisions of the Intelligence Reform Act are the same as the corresponding provisions in the charter, while in others, the differences are easily reconcilable.

Section 2 of the Intelligence Reform Act repeals the current Hughes-Ryan amendment and replaces it with a requirement that the President report all special activities of the intelligence community to the Intelligence Committees of the House of Representatives and the Senate. The same provision is contained in the charter.

Section 3 partially exempts the CIA from the operation of the Freedom of Information Act. The same exemption is included in the charter.

Finally, section 4 provides for criminal penalties for the disclosure of the identities of intelligence agents who are under cover. While all are agreed on the necessity of providing this protection for undercover intelligence agents, any attempt to write effective legislation on the subject poses first amendment difficulties. Consequently, it is not surprising that the Intelligence Reform Act and the charter have different language with respect to this provision; indeed, the various executive branch agencies have taken opposing positions on this matter. The Intelligence Reform Act provision is taken from a bill introduced in the House of Representatives last October by the entire membership of the House

Intelligence Committee. This committee has just completed a set of hearings on this question. The results of their deliberations, along with the administration view on this matter, when a common administration position has been achieved, will help guide us in reconciling the differences which currently exist between the corresponding provisions of the charter and the Intelligence Reform Act.

Mr. President, may I make some additional observations about this subject.

One provision in our bill has given rise to considerable misgiving, as I understand, in the Department of Justice, and that is the provision having to do with the proposed penalties for the publication of the names of security agents with the intent of harming our intelligence capabilities—intent being absolutely the clear prerequisite. Even so, it has been suggested this might have a chilling effect upon the publication of information that the journalists, publishers, and editors think important and there ought not to be such an effect.

I have called upon the counsel of my friend, Mr. Floyd Abrams, an attorney of New York of the greatest experience and reputation in these matters. I find that he, too, is concerned; and he expresses a concern perhaps greater than some of the expressions of official concern that appeared in the House of Representatives hearings, where the House select committee held hearings on this matter not long ago.

Mr. Abrams has offered to provide me his counsel in this matter. As an interim statement I would like to record that it is his judgment that the provisions in the full charter are more to be desired, and certainly less not to be desired, than those in the Intelligence Reform Act, as we have termed our more limited measure.

I would like here to record that those sensibilities ought to be ours in this matter, and I certainly want to be guided by them. If in the end it does not prove possible to obtain a full charter in this Congress, and we move to a more limited measure, such as the one that I and my colleagues have introduced, then I think we will want to make some modifications in this last and, in terms of the intelligence community as a whole, least consequential provision.

To a great many Americans, it is clear that the need and propriety of a national intelligence system is not self-evident. It is not that many years since a Secretary of State of the United States declined to establish any cryptographic capability in his department on grounds that gentlemen do not read other gentlemen's mail. There is a clear concern about the infractions associated with Government activities that take place in secret. So the need for this charter has arisen. I think that if it is seen properly by the intelligence community, it will be seen at least as much a defense of their interests as it is a control upon their activities. They need to know what it is that is expected of them, what they may do, and what they may not do.

At the same time, I would hope all my

colleagues will recognize that it is possible to develop a charter of this kind ostensibly for the purpose of establishing the role of a government activity, but with a hidden agenda of preventing it, of obstructing it, of so inhibiting it as to, in effect, abolish it.

It is a very fine line the committee has tried to draw.

One would not be wrong, I think, to believe that the demand for this kind of document arose in an atmosphere where, at least for some of those involved, the political agenda was hostile to the executive and to its foreign policies, and, generally, to the notion of a United States that was active and—I was going to say interventionist, but that would have the connotation of active in the minds of the persons whose viewpoint I describe—fully engaged in international affairs, that had not withdrawn its essential commitment to maintaining the free nations in the face of the power of the totalitarian ones. There is no question that as part of the agenda of the initial Senate inquiries there was the assumption that if you could limit our capacities to be an active agent in foreign affairs, you would, to that degree, limit such activity and achieve a clear political purpose.

I would wish to state that it is my clearest understanding from 3 years on the Intelligence Committee that this is not the purpose of this charter at all, although it may be its effect, and that must be looked into.

Mr. President, you will find the charter to be a mournful exercise in bureaucratic draftsmanship, page after page of thou shalt nots—and the only positive and repeated exhortation is that thou shalt coordinate.

I would hope that in the end we will have achieved something more precise, less verbose, more compact. It is a discouraging phenomenon, but the longer this Republic persists, the longer its pronouncements become, the more complex its guidance becomes. If you contrast the Constitution of the United States with the charter of the intelligence agencies, I fear it does not rebound to the advantage either of our draftsmanship or our political science.

Even so, under our distinguished chairman, we have produced a document, which I very much commend to the Senate, to its prayerful consideration, because issues of the largest consequence are at stake.

We do not consider that we have finished our work, but only that we have reached the point where it ought to be presented for more general consideration even as the committee proceeds to a specific chapter-by-chapter examination.

Mr. HUDDLESTON. Mr. President, I thank the distinguished Senator from New York and express to him my appreciation for his participation in this process during the period of time he has served on the Intelligence Committee of the Senate. I have listened to his remarks here this morning, and I appreciate the position he has taken.

He has commented on a provision in the bill he introduced earlier and com-



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pared it with the provision in the legislation that we have introduced. I will simply say at this time that I am somewhat concerned that his exploration of the matter relating to employees and former employees of the CIA who disclose secret and classified information conforms to that which the committee and subcommittee itself had reached. That is, there are some limitations put upon us by the Constitution that makes it very difficult for us to reach as far as we would like to reach in that area. Consequently, we have to proceed with some caution.

Mr. MOYNIHAN. Mr. President, will the Senator yield?

Mr. HUDDLESTON. I yield.

Mr. MOYNIHAN. The Senator has chosen to read the President's letter, and it perhaps would help to define the concern of some members of the committee, although I can speak only for myself, about a certain aspect of that letter and a confusion of intellectual purpose and position.

The letter is written in the code words of the anti-CIA movement of the last 5 years. They are the code words that brought this administration to power. It says, "We are going to safeguard against abuses," that kind of talk. At the same time, under the heading of a few issues remaining to be resolved, the President has declined to give us the one central power required to safeguard against abuses, which is prior notice of these activities.

One of the reasons that I find myself more interested than ever in the kind of congressional oversight that the Senator is talking about is very frankly—I wish to put this on the record—not so much to insure against abuses in a positive sense, to use that code word, but abuses in a negative sense.

I consider it an abuse of responsibilities of the President and the powers of the President that the President says nothing to the Soviet Union about the KGB agents that riddle the Secretariat of the United Nations, which is, as we know, a clear violation of article 100 of the U.N. Charter. They are there. Nothing is done. I consider it a serious lapse.

Could anyone in this Chamber tell me what has become of Mr. Boyce? We act as if the counterintelligence were something that is directed against a fantasy and yet not 5 years ago Soviet agents procured from two employees of TRW, in California, the specifications of one of our most sensitive and important space satellites compromising a surveillance system important for the verification of a SALT treaty.

The man who was convicted and sent to Lumpoc Prison has escaped. How he escaped from a maximum security prison no one knows and no one seems very interested in finding him. That is an abuse.

And under this code word of preventing abuses there is dereliction of duty as well as excess of it.

I find myself in the experience of the last 3 years thinking that the latter can be just as important, and I note that when I find this administration not wanting us to know what it is up to I sometimes think that it is, in part, an

effort not to let us know what it is not up to.

Mr. HUDDLESTON. A point well taken.

Mr. MOYNIHAN. I just want to leave the Senator with those thoughts.

Mr. President, the Senator, my chairman, first said that the foundation of the charter is congressional oversight. Then he said that the President had sent us a letter outlining the few differences that he had.

But am I not correct in saying among these few differences is the question of prior notification?

Mr. HUDDLESTON. That is correct.

Mr. MOYNIHAN. So, in a sense, we are still at odds about the foundation of the charter.

Mr. HUDDLESTON. To some degree.

Mr. MOYNIHAN. Yes.

Mr. HUDDLESTON. As the Senator knows, we have dealt with several alternatives in our efforts to try to reconcile our views. It is my own judgment that we are not totally and hopelessly at odds. But at this point, we have not reached agreement.

Mr. MOYNIHAN. I would like to make the observation that perhaps the administration could learn something from its behavior in this matter.

It staffed itself, in the first instance, in all the areas of foreign policy, with persons of sometimes unbridled revisionist views with respect to the inequity of the United States, the opprobrious nature of its institutions, and the tendency to bring about all manner of misfortune and misdoing.

The person on the White House staff with whom we have been negotiating was a member of the Church committee staff, and few equaled him, if I am not mistaken, in his zeal for putting a chain on the rogue elephant; but let him get into the White House and suddenly he no longer feels it appropriate for the President to inform us.

But wishing to avoid that essential, he asked, "Are we infringing the civil liberties of somebody else?"

In exactly this same way, this administration came to office saying that we have overcome our inordinate fear of communism, we no longer associate ourselves with any dictator who simply claims that he, too, shares our distaste for totalitarianism, and 3 years later what do we find but the colonel of the Brzezinski rifles in the Khyber Pass pointing a submachine gun at Kabul, urging on the militant Pushtuns.

This is not behavior that tends to be consistent.

I hope the President knows—and I wonder whether the chairman will agree with me—that the reason we have been 3 years into this enterprise is that the President—let us leave his aides out of it—will not agree to prior notice to Congress and to two committees of Congress which have been impeccable in preserving these secrets. This involves, parenthetically, some considerable restraint on the Members of Congress. We learn things and therefore are precluded from commenting.

Mr. HUDDLESTON. The experience of the Intelligence Committee in dealing

with the executive branch on covert activities has been very good. The problem is that they do not want to put into law what they are in fact doing in practice.

Mr. MOYNIHAN. That is a very important point.

I believe that in our 3 years, with one exception, we have had prior notice, and it has worked fine. To our knowledge, they have not complained.

Mr. HUDDLESTON. Our problem, as the Senator knows, is that while you may have a very excellent working relationship with a particular administration, administrations do change and attitudes within an administration change. While we may feel confident with the process as it is, it seems to me that you have to have it written into law. If you want to establish permanent oversight then, whoever happens to occupy our seats on the Intelligence Committee will have the mechanism to assure that we have proper oversight.

Mr. MOYNIHAN. How does the Senator from Kentucky interpret the present position of the White House? Does the Senator feel that they resist a statutory provision for prior notification because they realize that some day an administration might come along so perfect in its morality that it can be expected to do the right thing without congressional oversight? Is that it? Are they looking forward to the time when someone less imperfect than they may come along?

Mr. HUDDLESTON. I think the main concern is the separation of powers and the rights of the executive not to have to report to congressional committees on all executive matters. They also are concerned about the kinds of circumstances that might occur in which, if you had everything cemented in law, it might be virtually impossible to perform a very highly desirable and necessary act.

They would like to have the flexibility to deal with these kinds of problems. I think the Senator from New York and I agree that we can give that kind of flexibility, but we have not yet reached agreement on the actual language.

Mr. MOYNIHAN. Will the Senator from Kentucky agree that we are seeing here another example of the adage that "Where you stand depends on where you sit"?

Mr. HUDDLESTON. There is no question about it. Which side of the desk you are on makes a difference, and we have seen evidence of that.

Mr. MOYNIHAN. The capacity of the Senator from Kentucky for quiet negotiation has been remarkable; but it is a fact that we would have had this charter to Congress a year ago if there had been just a little more cooperation from the White House. Now the Senator from Kentucky is forced to bring it forward without the support of the President. The Senator is not able to say that this is an agreed-upon document—and that is not his doing. It is their doing, and I would like to have that recorded.

Mr. HUDDLESTON. We certainly are willing to agree upon our document. So any disagreement on this comes from some other source.

Mr. MOYNIHAN. The Senator from

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Kentucky displays a mastery at indirection which I had not heretofore noted. [Laughter.]

I congratulate the Senator and thank him.

The public never says "Thanks" very well, especially to a staff such as ours, which necessarily operates in the greatest privacy. I think our staff director deserves to be acknowledged in this matter, as well as his many associates to whom we are indebted and without whom, I think the Senator will agree, we could not have achieved what we have.

Mr. HUDDLESTON. That is a well-taken comment.

I think we should recognize the work of our staff director, Bill Miller, as well as Keith Raffel, John Elliff, Michael Epstein, Elliot Maxwell, Stan Taylor, Martha Talley, and Patrick Norton.

This has been a tremendous undertaking over a long period of time. It has been an area that has not been explored legislatively to much depth before.

We started, of course, with certain desirable objectives in mind. We started, in some instances, dealing with a lot of theory about what we, as a democratic society and a democratic country, should provide for our people. During this long process, we have had to take those desirable objectives and adapt them to the reality of operating intelligence in a world as it is today and not as we would like it to exist—considering all the desirable objectives we had in mind, considering all the risks, considering the absolute necessity for our policymakers to have the best information possible on a very broad range of difficult problems emanating from anywhere in the world.

So, taking all these things into account, we have had a great deal of difficulty in bringing these desired objectives down to operational reality.

In the legislation we are presenting today, we think we have reached about as good a balance as can be reached, and we commend it to our colleagues in the Senate for their careful consideration. It is a rather long bill, with a number of titles. However, I do not think it is quite as complicated as it may seem at first blush. So I urge that we do not throw up our hands and say, "This is too much; this is too big," without giving it a thorough looking over. I believe we will find that the controversial parts will be fairly few in number.

I believe we can expect that there are those who think that our intelligence operations should be totally unrestrained and unshackled, who will think that this legislation puts too much control over them, because of the machinery and the procedures it sets up for them to follow before entering into certain types of intelligence activities.

There will be others who will take the purists' view—that there never should be any kind of infringement upon the privacy of individuals—who will say that we have gone too far and have allowed these agencies to infringe upon some rights to a greater extent than they should. We have taken into account both views.

From both sides, disappointments will be found in the proposed legislation. But

we simply ask them to consider the position of the other side and to determine how best to provide an effective intelligence operation, while still providing the greatest possible protection of the civil liberties of the individual citizens of this country.

We have attempted to do that. I think that, in large measure, we have been successful; and it is my hope that a majority of the Members of this body will agree.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. HUDDLESTON. I yield.

Mr. HELMS. Mr. President, I commend the Senator from New York for his comments. He is exactly right.

About 2 or 3 weeks ago I learned from inside the Federal Bureau of Investigation that the FBI has the names and generally speaking the location of more than 1,500 KGB or other subversive Soviet agents in this country. They know where they are. They know who they are. And yet the FBI says that it has no authority to do anything about it, that it is a political decision, as the FBI puts it, as to whether these agents will be dealt with.

I do not know how other Senators may feel about it, Mr. President, but this Senator feels that every KGB agent in this country should be sent back home forthwith.

I have been particularly interested in the comments by the distinguished Senator from New York.

Mr. HUDDLESTON. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. HUDDLESTON. This bill would provide all of the counter-espionage authority that the FBI could need to deal with this kind of situation.

It is my judgment they can deal with it now.

Mr. HELMS. Mine, also.

Mr. HUDDLESTON. We have a situation that I think the Senator from New York was alluding to in that maybe the FBI is not dealing with it for some other reason, maybe a diplomatic reason, or maybe having KGB agents identified, located, and observed might serve our interests better. But they may be precluded from action by a policy that has been set by someone.

Mr. HELMS. That is correct.

Mr. HUDDLESTON. But they are not precluded from action by law.

Mr. MOYNIHAN. Not by this charter.

Mr. HELMS. The Senator is absolutely correct. It is inconceivable to this Senator that we will countenance a situation where there are 1,500 subversive agents trotting around this country seeing what they want to see where they want to see it.

That is in addition, I say, to the personnel at the United Nations to which the Senator from New York alluded. But I hope that the attention focused on this by the distinguished Senator from Kentucky and the Senator from New York, equally distinguished, will bring about some resolution of it because it is a serious proposition, in my judgment.

I thank the Senator for yielding.

Mr. HUDDLESTON. I thank the Senator very much.

Mr. MOYNIHAN. Well done.

Mr. GLENN. Mr. President, I have listened, while presiding, with great interest to the statements by the distinguished Senator from Kentucky and the distinguished Senator from New York regarding the plan that is usually referred to as the CIA charter, and I would like to ask a couple of questions of the distinguished Senator from Kentucky as to whether this plan also includes the Defense Intelligence Agency, DIA; does it include the National Security Agency activities, NSA; does it get over into FBI activities that might be domestic in support of CIA; in other words, how broad is this? I do not believe this was adequately covered in the discussion the two Senators had regarding the charter.

Mr. HUDDLESTON. I appreciate very much the Senator from Ohio bringing up this point because the answer is in the affirmative. This deals with the entire intelligence community. It provides specific authority for DIA, the Defense Intelligence Agency, the National Security Agency, the portion of the FBI dealing with intelligence, the CIA, and other departments of Government, too. So it is a comprehensive charter dealing with the whole scope of intelligence operations of the United States.

Mr. GLENN. I think that is good. In other words, we will not require a separate charter for each separate intelligence-gathering organization or dealing with intelligence information within the administration. This charter is designed to cover all of our intelligence activities?

Mr. HUDDLESTON. That is correct.

Mr. GLENN. I think that adequately clarifies it, and I appreciate the remarks of the distinguished Senator from Kentucky.

I would like to add that I want to rise also in congratulating him on the long and, I know, difficult work he has put in with regard to this matter.

Some 2 years ago I started dealing more closely with the intelligence situation and with the Intelligence Committee in looking into some of the means by which we were monitoring and were about to embark on verifying the SALT II treaty had it been approved, and I worked very closely with the staff director of the Intelligence Committee, Mr. Bill Miller, who has done, I think, such an outstanding job in running those activities there for the committee.

I might say that my working with the Intelligence Committee staff on this, and all the background information that was necessary to determine whether we could or could not monitor provisions of SALT II, led me to a far, far greater appreciation of some of the things that we could do and could not do with our intelligence-gathering apparatus in this country.

I think we saw that some of the prior investigations run with regard to CIA were—and no one disputes excesses that, perhaps, occurred in earlier days under some of our intelligence-gathering ac-

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tivities but, perhaps, we have gone too far and, perhaps, the CIA and some of the other intelligence-gathering agencies had been operating too much under a cloud of suspicion that did hamper them.

We are now seeing under the new-world situation that we are in today, and I do think we have crossed a threshold, we have passed a watershed position in foreign policy, probably both in the Soviet Union and here that sets us on a new course that we will follow perhaps for quite some time—and in this new-world situation we now see how much greater our intelligence need is even more than it was in prior days, and what our need is for new equipment, what our need is for new personnel at the same time that we embark on some of this expanded intelligence-gathering capability that we must have. How do we do that? What safeguards do we put on that to protect the rights of individuals and groups within our own country?

There are legitimate concerns about the misuse of equipment and of people, both. So I think it is particularly apropos at this time when our world-crisis situation has occurred that it was very lucky, I guess, that this charter is coming out at the same time so that as we expand these activities, which I hope we do, that we will have rules about their legitimate use, about what personnel of the CIA, NSA, DIA, and any other information-gathering organization, what rules they are going to operate under.

We need information. We must have the finest, the very best, intelligence-gathering apparatus we possibly can have. I do not like to compare it with others in the world, and say that we have to be better than somebody else. I think we are better than any other nation in the world now. But having an expanded intelligence capability of the very best we can have against, measuring it against, ourselves, is what we need because this kind of information very well may turn out to be worth several divisions, it may turn out to be worth several carriers, it may turn out to be worth more in preventing war than almost anything else we can do.

We are talking about expanding our military capability. That comes in use after the fact. That comes in use after we might have been able to prevent a war if we had had good enough intelligence information to make the right moves along the way.

So I want to congratulate the chairman, the distinguished Senator from Kentucky, in what he has done on this. I look forward to working with him on this and I think it comes at a most propitious time. We need to expand our intelligence-gathering apparatus and I look forward to working with him to provide not just something that is better than some other nation in the world but the very best we can have on our own development. I thank the Chair.

Mr. HUDDLESTON. I thank the distinguished Senator from Ohio.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

## EXTENSION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period for routine morning business be extended again for not to exceed another hour under the same conditions.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator from Virginia.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PRYOR). Without objection, it is so ordered.

## COOPERATION, COMMITMENT, AND A STRONG DEFENSE

Mr. BAUCUS. Mr. President, a recent editorial in the Christian Science Monitor articulates a very important argument—an argument which I believe deserves the serious attention of each of my colleagues.

The essence of the piece is simple. As Congress debates the wisdom of increasing America's defense budget and expanding our defense commitments, we must ask our allies in Western Europe and Japan to shoulder a larger part of the burden of meeting the Soviet challenge. The United States cannot be expected to pour more and more of its resources into strengthening its defense posture without a comparable commitment from its allies. The respect and cooperation the United States already receives from its allies has always been an important part of America's strength. But, as global tensions increase, this cooperation must be matched with concrete commitments adequate to the task of defending the free world.

Mr. President, I ask unanimous consent that the article from the Christian Science Monitor be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

## DEFENSE: AMERICA'S ALLIES SHOULD DO THEIR SHARE

America seems in a belligerent mood these days as cries are heard for a stronger U.S. military posture. The Carter administration has submitted a record \$158 billion defense budget for fiscal 1981, and some voices in Congress think even this is too little. The American public, for its part, also appears willing to support a bigger military effort in the face of growing Soviet adventurism.

The mood may be understandable but it raises a fundamental and serious question: how can the United States continue year after year to expand its defense capabilities as the President wants, without incurring bigger and bigger deficits and fueling inflation? Put another way, what good will a bolstered military posture do if the U.S. economy, the foundation of America's strength, is increasingly weakened? By 1985, the administration estimates, defense outlays are supposed to reach a staggering \$25 billion. Is the American public willing to pay for this (as it did not pay in taxes for the cost of the Vietnam war)?

Whether massive increases in military spending are actually needed is a subject open to debate. But, in any case, we must take the view of those who believe that the US cannot be expected to go it alone in meeting the Soviet challenge. In short, it is time for the Western and Japanese allies to play a bigger defense role. Western Europe and Japan, after all, are even more dependent on Middle East oil. They have as much if not more interest in resisting Soviet penetration of the Gulf region. Their own economies, moreover, are by and large strong—a strength that should be added, which the US was instrumental in building up. Is it not reasonable to expect, in these days of a heightened common threat, that the industrial democracies work more closely together? And that America's allies carry a greater share of the burden for defense? Secretary of Defense Harold Brown thinks so and we agree.

The fact is, the US continues to spend a greater proportion of its gross national product on defense than do its NATO allies. The figure is roughly five percent. The average for NATO, according to London's International Institute for Strategic Studies, is 3.5 percent. Canada, for instance, spends 1.8 percent of its GNP on defense; Denmark 2.4 percent; France 3.3 percent; West Germany 3.4 percent; Norway 3.2 percent. Britain makes the best showing at 4.7 percent. The Europeans, moreover, maintain comparatively smaller ground forces than the US.

Japan, for its part, spends even less on defense—under one percent of GNP—given though the Soviet Union is expanding its presence in the North Pacific. Constitutional strictures and public opinion have much to do with the restrained Japanese defense posture, of course. But even if it were not possible to increase military outlays dramatically, Japan could make a worthwhile contribution in other ways—by providing economic aid to Pakistan, say. A nation which has benefitted generously from American largess and which is so strong economically ought to be ready for enhanced responsibilities.

This is not to say that a huge measure of defense cooperation among the Western and Asian allies does not already exist. It does. But much more needs to be done. Thought should be given, for example, to proposals emanating from the Center for Strategic and International Studies for formation of an inter-allied "common market" for basic defense industries. Says the CSIS study: "If America's Atlantic and Pacific allies were equitably and collectively sharing the financial burdens of defending Europe, defending the Pacific, and defending the energy lifelines in between, total allied military expenditures would be 47 percent less than the Warsaw Pact" instead of slightly larger, with the US carrying the main burden. Within the Pentagon, too, are some voices calling for a total pooling of allied defense resources and elimination of often costly competition in weapons manufacture. Needless to say, the US would have to be more open than it has been so far to the purchase of European-made equipment.

In any case, the goal of the US should be to encourage its allies to become more responsible for their defense. It will always be

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ready to come to their help in the event of aggression. But surely collective defense means a collective sharing of the cost. It is time the West Europeans and others, who can afford to do so, begin to pull their own weight.

#### CONTROLLING THE FEDERAL BUDGET

Mr. BAUCUS. Mr. President, the administration's proposed 1981 budget illustrates the imperative need for the spending and tax limitation. The administration proposes to spend \$616 billion and to raise \$600 billion in taxes. If this budget is approved, over 22 percent of the gross national product (GNP) will be devoted to Federal spending.

Montanans and most Americans are deeply dissatisfied with the Federal Government's cost, size, and lack of responsiveness. I have joined Senator BAYH as a cosponsor of the Spending and Tax Limitation Act (S. 2132), which offers a responsible and effective means of addressing these concerns. This legislation would provide a workable framework for placing Federal taxes and spending under closer, public scrutiny and more effective legislative control.

This legislation is necessary because—in spite of all the talk of recent years—Federal spending stubbornly resists control, the tax burden increases, and inflation continues to grind away at living standards.

#### THE GOAL OF BUDGET RESTRAINT

Before discussing specific proposals to restrain the budget, we should precisely identify our goals.

If we simply want to attain a balanced budget, the most effective means may be a constitutional amendment requiring that Federal outlays do not exceed tax revenues.

If the goal is to reduce inflation, a balanced budget will be only partially effective. Reducing inflation also requires that the absolute level of both spending and taxes be reduced, and that Federal policies be designed to alleviate the effects of extraneous shocks such as OPEC oil price increases.

If our goal is to divert resources from the public to the private sector, the most appropriate method would be through reexamination of specific spending programs. By that method, we could identify activities which might appropriately be resumed by the private sector.

I think that a primary goal of budget restraint should be to limit the size and cost of Government to a level that the American people are willing to support through taxes. And I believe that the Spending and Tax Limitation Act offers the best prospects of achieving this and other economic goals.

#### THE SPENDING AND TAX LIMITATION ACT

The Spending and Tax Limitation Act would establish a formula to limit both Federal taxes and spending. The legislation would require the President each year to submit a proposed budget in which neither spending nor taxation could exceed 20 percent of the GNP.

Similarly, the Congressional Budget Committees would be required to sub-

mit budget resolutions consistent with the 20-percent limitation imposed on the President.

These requirements would sharply limit the percentage of the GNP which could be devoted to public spending. If the act were in effect today, Federal spending in fiscal year 1981 would be limited to \$552 billion, rather than the \$616 billion proposed by the President.

The Spending and Tax Limitation Act recognizes that under some economic circumstances it may be impossible to meet the act's strict requirements without severe economic disruptions. Therefore, the legislation would give the President and Budget Committees the option to propose alternative budgets if they believe that economic conditions require exceptions to the act's limitations. However, a budget consistent with the 20-percent limitation on taxes and spending would have to be defeated by recorded votes in the House and Senate Chambers before any alternative budget could be considered.

#### BALANCED BUDGET CONSTITUTIONAL AMENDMENT

A number of my colleagues have asserted that a constitutional amendment requiring a balanced budget is the ultimate and only effective means of controlling Federal spending.

As a member of the Senate Judiciary Committee which considers proposed constitutional amendments, I have examined this issue closely. I conclude that a constitutional amendment is only a partial solution to our budget problems. A simple requirement for a balanced budget does not restrict either Federal taxes or spending. Both could continue to increase, as long as they increased at the same level.

As I mentioned a few moments ago, I fear that balancing the budget will not in itself substantially reduce inflation. The inflation rate is affected as much or more by extraneous variables such as OPEC oil price increases and world grain prices than by domestic fiscal policy.

Testimony by noted economists including Milton Friedman suggest that the absolute level of Government spending, rather than the relationship between taxes and outlays, is the primary influence of fiscal policy on inflation. In other words, the best way to reduce inflation through fiscal policy is to cut both taxes and spending.

While a balanced budget requirement may be helpful, at best it would provide only a partial solution to our national economy problems.

#### SUMMARY

Present administrative and congressional budget processes are not adequate to prevent deficit spending and reasonable curbs on the size of Government. There is simply too much opportunity and incentive for Federal spending and taxation to mushroom.

Consequently, it is imperative that Congress strengthen the budget process. There are questions about the effectiveness of a constitutional amendment to require a balanced budget. The Spending and Tax Limitation Act which I have cosponsored offers a more responsible

and effective framework for curbing both Federal spending and taxes. I would urge my colleagues to carefully study and actively support this constructive legislation.

#### STATE COAL SEVERANCE TAX AND THE WINDFALL PROFIT CONFERENCE: A NOTE OF WARNING

Mr. BAUCUS. Mr. President, this week the Senate-House conferees to the crude oil windfall profit tax bill (H.R. 3919) tentatively agreed to limit the extent of favorable tax treatment that States would receive in administering their own oil and gas severance tax.

I wanted to express today my concern about the possible precedential effect that such limitations may portend for State administered coal severance taxes such as we have in Montana.

During the Senate floor debate on windfall profit tax, I strongly opposed the Danforth amendment that would have permitted the Federal Government to tax the royalties States receive from oil and gas produced on State lands.

Proponents of that amendment argued last December that if they could not convince this body that the Federal Government had a right to tax State royalty holdings, it at least had the right to limit State severance taxes on oil. These proposals are two sides of the same coin. They constitute an unconstitutional intrusion by the Federal Government into legitimate State enterprise, and the Danforth amendment was defeated 65 to 28.

It concerns me that this vote was not a strong enough signal to prevent a second consideration, but I realize a lot has happened since that vote was taken, Mr. President.

Since last December, our sense of threatened disruption of foreign oil imports has begun to dominate our energy policy considerations. Every Senator here is aware of the conspicuous frailty of our present conventional liquid fuels dependency; everyone here senses the panic that would ensue if we suddenly lost a major increment of the crude oil we needed to hold this Nation together.

We all hope there will be time enough to shift our oil dependence to an extent from OPEC suppliers to domestic producers, or that we will be able to diversify our energy base away from inflexible oil dependence.

This transition should be as rational a process as we can make it. We should not tolerate regional fracturing pitting user States against producing States in a panicked scramble to stabilize regional energy supplies if we suddenly lose a major increment of foreign oil imports.

I fear that an unwitting rush to scale up domestic energy production in the interest of meeting unpredictable national energy emergencies may have the effect of suspending certain unalienable States' rights. In this event, 11 Western States stand to suffer the scars of an improperly managed energy transition which may require drastically scaled up energy production.

Mr. President, I think we have the