

Review and Comments on Personnel-Related Provisions of the Senate Select Committee's Proposed Legislation, "National Intelligence Reorganization and Reform Act of 1977".

I. TITLE I -- NATIONAL INTELLIGENCE

1. Section 107(e), Page 14, Authority and Duties of the Director of National Intelligence.
 - a. Section 106 of Title I establishes the positions of Director and Deputy Director of National Intelligence at Levels I and II respectively of the Executive Schedule.
 - b. Section 405 of Title IV, Central Intelligence Agency Act of 1977, established that there shall be a Director of Central Intelligence Agency at Level II (when the Director of National Intelligence is not also serving as Director of CIA) and a Deputy Director of CIA at the Level III of the Executive Schedule.
 - c. Section 107(e) of Title I cites that the Director of National Intelligence "shall also (2) act as the Director of Central Intelligence Agency".

Comment:

- a. It is apparent that the intent of Title I is that the Director of National Intelligence may also serve simultaneously as the Director of Central Intelligence Agency if so appointed by the President, by and with the advice and consent of the Senate.
 - b. Section 107(e)(2), page 15, of Title I, however, is worded that the Director of National Intelligence "shall also" act as the Director of the Central Intelligence Agency". This wording needs to be modified to "may also" to permit the appointment by the President of different persons as Director of National Intelligence and Director of the Central Intelligence Agency.
2. Section 107(e)(29), Page 20, Termination Authority.
 - a. The Director of National Intelligence is authorized to terminate the employment of any officer or employee of CIA or the Office of the Director whenever the Director considers such termination necessary or advisable in the interest of the

United States, notwithstanding any other provision of law. However, the Director shall notify the appropriate committees of Congress, in a timely manner, of any exercise of the Director's authority under this clause.

Comment:

- a. This authority would require notification by the Director to the "appropriate committees of Congress" of each and every termination decision. "In a timely manner" needs to be clarified as to whether this is intended to be prior to fulfillment of the Director's exercise of his authority or in some time frame after such action has been taken. This could be troublesome; e.g., What if Congress asserts itself and disagrees with DNI in a case which DNI determines to be a threat to security?
 - b. Under Section 107(e) (29), page 20, the Director of National Intelligence has the authority to terminate employees of CIA whether or not such Director was also the Director of Central Intelligence Agency or when a different person was appointed by the President as Director of the CIA. Title IV--Central Intelligence Act of 1977 of the Senate Bill--provides appointment authority to the Director of Central Intelligence Agency but does not address termination authority. Should different persons be appointed as Directors of National Intelligence and the Central Intelligence Agency, the Director of Central Intelligence Agency would have appointing authority but no termination authority. This would complicate responsibility the D/CIA should have as the head of CIA.
3. Section 109(a), Page 23, Assistant Directors; Staffs; Committees and Boards.
- a. Under the provisions of this section, the President may appoint, by and with the advice and consent of the Senate, not more than five Assistant Directors of National Intelligence. No grade levels are referred to for these positions.
 - b. The Director of National Intelligence is authorized to employ such personnel as may be necessary to assist in carrying out his responsibilities. Such staff may include, but shall not be limited to, persons employed by any entity of the Intelligence Community.

Comment:

- a. Under the statute, only the President may appoint the Assistant Directors of National Intelligence. The Director, however, has the authority to employ "such personnel as may be necessary" to carry out his responsibilities as Director.

Not stated is the exemption in Section 408(a)(6), page 15, of Title IV dealing with CIA. The Assistant Directors will become statutory positions which have their grade levels defined within the statute.

4. Section 110(a), Page 24, Authority of the President to Transfer Certain Duties and Authorities of the Director of National Intelligence.
 - a. This section authorizes the President to transfer any or all the duties and authorities of the Director of National Intelligence which pertain to such Director's duties as head of the CIA to any person serving as the Deputy Director or serving as Assistant Deputy Director of National Intelligence (provided the President notifies Congress of his intent, etc.).

Comment:

- a. This section would appear to apply only when the President appointed the Director of National Intelligence as also the Director of Central Intelligence Agency. Should the President appoint a different person as Director of CIA, this section could result in a person (i.e., either the Deputy Director of National Intelligence or an Assistant Director of National Intelligence) having authority over the appointed Director of Central Intelligence Agency in running the CIA.
5. Section 115(a), Page 39, Prohibitions against Paying Certain Individuals (full-time religious vocations, Government grantees and journalists) for Certain Intelligence Activities.
 - a. Prohibits payment to persons with full-time religious vocations, Government grantees or journalists for intelligence services.
 - b. Open and voluntary contacts between such persons and entities of the Intelligence Community are permitted.

Comment:

- a. Prohibits employment with compensation of any persons with full-time religious vocations who meet the criteria cited above. It can be construed therefore, that individuals not following a full-time religious vocation may so be employed. We are not certain whether this is intended. What does "full-time" mean as it relates to certain religious groups; e.g., Mormons, where an employee holds an office (Bishop) in the Church?

6. Section 123(m), Page 63, Oversight and Accountability.
 - a. The Director shall provide copies of a record of all legal authorities, published regulations, and published instructions pertaining to National Intelligence activities of the United States to the Office of the Federal Register, National Archives and Records Service, General Services Administration.

Comment:

- a. This would appear to encompass all Agency regulations, notices and other internal published instructions. Is this section intended to apply down to all levels of published instructions?

SUMMARY COMMENT ON TITLE I:

We find some of the language imprecise, vague or ambiguous in key matters dealing with organizational authorities. For example, not stated is whether DNI group are hired, promoted, etc., within the competitive service or--as is now the case with CIA (proposed Title IV)--outside the competitive service. We have trouble with the termination authority and the availability of such authority only to the DNI (not to the head of CIA). Grades of Assistant Directors of National Intelligence are not stated. No provision is made for establishing grade levels of supergrades--unlike the limitation found in Title IV. While we prefer this, it is a conflict with Title IV.

II. TITLE IV -- CENTRAL INTELLIGENCE AGENCY

1. Section 404, Page 4, Functions.

Comment:

- a. Interesting provision that CIA is still established under the National Security Council but subject to the supervision of the Director of National Intelligence.

2. Section 405(a), Page 5, Director and Deputy Director.

- a. Establishes the positions of Director and Deputy Director of Central Intelligence Agency. Both shall be appointed by the President, by and with the advice and consent of the Senate.

Comment:

- a. While this Title of the Act establishes the position of Director of the CIA as "Head of the Agency" and authorizes the President to appoint such a Director; Section 107(e) of Title I of the Act specifically states that the Director of National Intelligence shall also act as the Director of the Central Intelligence Agency. These conflicting provisions need to be resolved. Section 107(e) of Title I should be reworded from "shall also" act as Director of the Central Intelligence Agency to "may also act etc." if so appointed by the President, by and with the advice and consent of the Senate.

3. Section 405(d), Page 6.

- a. This section provides that all compensation to the DCI or the DDCI come from funds appropriate to the Agency. In circumstances where the DCI or the DDCI is an active duty military officer, presume salary becomes a reimbursed item.

Comment:

This is different from current law.

4. Section 407(a), Page 12 and 407(c), Page 13.
 - a. Establishes the position of General Counsel who shall be appointed by the President, by and with the advice and consent of the Senate, and the position of Inspector General who will be appointed by the Director.
 - b. Establishes the General Counsel and Inspector General at statutory (Section 5316, U.S.C., Title V) Level V of the Executive Schedule.

Comment:

- a. The General Counsel and Inspector General positions are currently paid at the equivalent Level IV of the Executive Schedule and are appointed by the DCI. The law downgrades them to Level V. This may have been inadvertent downgrading.
5. Section 407(c)(1) and (2), Page 13.
 - a. Executive Schedule positions within the Agency in addition to those of Director, Deputy Director, General Counsel, and Inspector General and any positions at supergrade level other than those transferred to the Agency under the Act shall be as authorized by law. Section 420, Page 46 of this Title authorizes the transfer of personnel employed by CIA before the effective date of the Title.

*see addition
at rear.*

Comment:

- a. This provision will require the Agency to get approval for any new Executive Schedule or supergrade positions from Congress, which is a dramatic departure from current law.
6. Section 408(a)(6), Page 15, Agency Powers.

- a. Authorizes the Director of the CIA to appoint and pay personnel without regard to Title V provisions for competitive service and pay rates, but limits this authority to GS-18 and below.

Comment:

- a. This would limit the DCI's authority to promote or appoint to GS-18 or below. Clarification is needed as to whether authority will continue to pay officers in positions at levels higher than GS-18 who are included in those positions authorized for "transfer" to the Agency under Section 407 of the Act.
- b. There are no provisions in this Act authorizing the DCI to terminate employees. Title I of the Act provides termination authority to the Director of National Intelligence.

- c. If the DCI is a different person appointed by the President than the Director of National Intelligence, he is a "Head of Agency" without the normal authorities of Heads of Agencies under Title V, U.S. Code, since Title I of this new Act includes the provision in Section 107 that the DNI "shall also act as the Director of the Central Intelligence Agency."
7. Section 408(a)(3), Page 14, and (c), Page 16.
 - a. Authorizes the DCI to reimburse other agencies for the services of personnel assigned or loaned to the Agency and authorizes other agencies to assign or loan personnel to CIA.

Comment:

 - a. Presume "assign or loan" can be interpreted as the "detail" term currently used by CIA. There are no provisions in the Act which authorize CIA to detail, loan or assign CIA employees to other agencies or departments. This omission should be written into the Act.
 8. Section 410(a)(2), Page 19.
 - a. Authorizes the Agency to expend funds for ". . . personal services, including personal services without regard to limitations on types of persons to be employed, etc."

Comment:

 - a. This is essentially the same wording as in the original Act, but if it is intended to be limited to personal service contracts it needs to be so stated. As worded, it provides a broader employing authority than previously cited in Section 408 of the Act.
 9. Section 410(c), Page 20.
 - a. Note the role of the GAO to audit and review all activities of the Agency and information relating thereto.
 10. Section 417, Pages 33-43, Travel.
 - a. (a)(1), Page 33. The term "employee" must be expanded to include contract employees. The analysis notes attached to an earlier draft indicate the drafter does not understand the relationship and status of Agency contract employees, and his reference to "foreigners" in his notes clearly implies he sees contract personnel in terms of local hires.

- b. (a)(3), Page 33. Recommend the definitions used be those normally used in Government. The term "United States" are the 50 states, and the District of Columbia and does not include all the territories and possessions which usually fall into "non-foreign area" terms. N.B. The draft definition is in FAM 699.5-2 (Emergency and Family Visitation Travel). Use of normal government definitions makes use of Federal Travel Regulations and Standardized Travel Regulations vastly less complicated, as well as the future use of the legislation being proposed by the Interagency Committee on Overseas Allowances and Benefits.
- c. (b). Given the DCI's Head of Agency authorities throughout this Title, including appointment of employees, why do the travel regulations have to be "prescribed" by the DNI? It would seem appropriate that the DCI develop the CIA travel regulations.
- d. (b)(1) - (3). Note that the type of travel is not identified except for home leave, but the shipment of effects in connection with the travel is itemized for "successive posts of duty," "terminations," and "retirement." This is same as present law but appears inconsistent.
- e. (b)(3). The draftees analysis notes the intent of this section is to match us with the Foreign Service. If so, is it necessary to spell out in the law the time limits? The Foreign Service law does not. We presently control the time by regulation, and this should be satisfactory. This provision would not allow for any exceptions beyond 18 months. N.B. The present law and this proposed version both provide for return transportation to the "place of residence." Place of appointment can become confusing, too--appointment for travel purposes is understood to be effective with the agreement to hire. Hence, an employee could be viewed as being appointed in Chicago because he/she was residing there when the telephone call came to come to work. Successive assignments to Headquarters between overseas tours create the Headquarters area as a "permanent place of residence" however. It apparently hasn't given rise to confusion before, but it may be worth reviewing.
- f. (b)(4), Page 34. This was also in previous legislation, but we do not understand its need. Does the absence of the employee make any difference in entitlement to packing and shipping or storing of HHE?
- g. (b)(7), Page 34. Is this necessary? We always understood this was standard procedure in government accounting.

- h. (b)(8), Page 35. Because of the wording at the beginning of this section; e.g., "the Director shall," this section appears to make 18-month tours mandatory. We do not believe this was the intent of the request for a home leave authority at 18 months such as State has in its legislation. It is a permissive matter. Recommend this be reviewed to ensure it does not mandate home leave at 18 months. Later provisions for R&R at 24 and 36 months would indicate this is not the intention.

We presume this statement, "resident of the United States," does not negate the carryover benefit normally granted when picking up a U.S. citizen overseas from another government agency. Presume "resident" is used in the sense of a "legal resident" and not "domicile." We have given home leave to U.S. citizens whom we employed abroad, not transferring from other government agencies, at the completion of what would be a normal tour for the post in question, usually 24 months.

- i. (b)(11), Page 36. Again, not a problem, but one does wonder about the authority to establish a medical or dental facility in the middle of travel and related expenses section. However, if it is to be here, suggest "medical and/or dental" facility. As it stands, it could be interpreted to mean only one or the other; but, again, we defer to legal writing style.
- j. (b)(12), Page 36. Recommend taking out the "full-time" restriction on employees. While a remote possibility, a part-time employee could be at a post at our request and should be eligible for this type of benefit. Federal Travel Regulations permit the payment of travel expenses for part-time employees--this would seem a related benefit.

This section provides for the per diem payments for outpatients not involved with hospitalization. It does not specify per diem for outpatients who had been involved with hospitalization for a period of time. Inasmuch as we could not construe per diem eligibility for the outpatient authorized travel expenses but not hospitalized, the reverse would be true here. Recommend per diem eligibility be specifically provided for employees in outpatient status, whether hospitalized or not.

- k. (b)(13). Is "in line of duty" needed? It has always been our understanding that employees assigned abroad are in a duty status 24 hours a day, and this section refers only to employees in foreign areas. Line of duty and performance of duty are not necessarily the same thing--"line" includes "performance."

1. (b)(14), Page 37. Recommend deletion of the deductible. It costs the Government more to process the deductible than the \$35.00 received. This same amount has been in the Foreign Service law since the overseas medical was implemented--if a deductible is necessary, perhaps it should reflect the current economy more accurately. As it now stands, it is not cost effective.
- m. (b)(17), Page 38. Do not believe "no other" is necessary in lines 6-7. "No other" in relation to "sufficient United States Governmental medical facilities" doesn't add anything.
- n. (b)(18), Page 38. For clarity, suggest deleting "any" in clause "while assigned at any duty station" (line 4), as it is misleading if intended to apply only to foreign areas. "A" duty station has the same meaning and is less ambiguous. This is rather remote from the lead-in paragraph to make an obscure connection.

Also recommend "permanent place of residence" be substituted for "former home." "Former home" can also be misleading--which one of any number over the years?

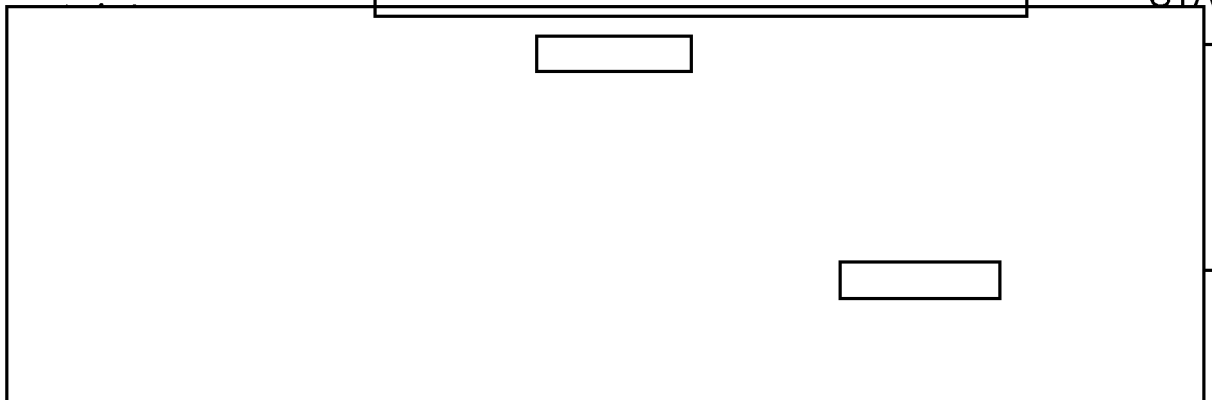
- o. (b)(19), Page 38. The intent here is not clear and needs further study. As this section now reads, it can be interpreted to mean we can pay EOD travel for each and any Agency employee. The current law has a related provision but limits it to residence in a foreign area at time of appointment. OGC has said that the Agency must conform to the CSC determinations on hard-to-get categories for payment of EOD travel in the U.S. As written, this does not make the payment contingent upon a direct assignment to an overseas post--only an agreement to remain with the Agency for 24 months at a foreign duty station.

The parenthetical sentence at the end of the section is a truism and really doesn't affect the "either/or" of this paragraph.

- p. (b)(20), Page 39. What is the purpose of limiting the expenditure of the employee's own money (the add-on to the R&R grant) to not farther than the United States? What difference does it make to anyone if an employee is willing to add his/her own money to the R&R funds and take a trip to the Arctic? Seems unduly restrictive and an invasion of privacy to tell someone how they can spend their own money. If the intent is to be restrictive, suggest limit use of any R&R money for travel to the designated R&R post.

- q. (b)(22). This is same as current provisions, but we understand the Interagency Committee is recommending an initial payment from the employee. Presume any legislation developing from the Interagency Committee study will overtake our specific legislation--in view of last parts of this Title.
- r. (b)(23). We do not understand the thrust of this provision. Is it intended to allow for advance travel or payment of per diem to families accompanying an employee to a TDY stop? If it is advance travel, or following travel (and we presume this is the intent), the provision for the employee to be enroute and then go TDY is limiting. Employees frequently travel to a post and the family follow a month later; an employee can remain at one post and the family precede him/her to the new one because of school schedules (this often happens transferring between stations abroad). The "following" situation is the most frequent, however, and the requirement for the employee to be delayed, accelerated, or whatever in temporary duty status is unduly limiting.
- s. (c)(1) and (2), Page 40. Believe both sections are meant to refer to "home leave" rather than "leave." In the first section, it seems a bit much to put into law a requirement that an employee on self-paid leave in the United States can be ordered to duty at the Director's order. Granted most would pose no objection, but it does seem an unnecessary provision in law.
- t. (e)(1), Page 41. We are told that P.L. 89-516 (copy unavailable in OP) refers to assignment to remote domestic locations. This must be an NSA law. We have no idea how it would or could relate to us--particularly without knowing the sections which can be waived. N.B. [redacted]

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ADDITIONAL COMMENT ON TITLE IV - CENTRAL INTELLIGENCE AGENCY

Section 407(c)(2), page 13.

This section requires that Executive Schedule and any supergrade level positions other than those transferred to the Agency under this Act shall be authorized by law.

Comment:

A second review of this section has raised a question in interpretation which we believe should be clarified. The original interpretation of the section was that it applied to numbers (which in itself could cause confusion inasmuch as the Agency has an OMB approved supergrade ceiling of 430, but has 458 SG positions on the Staffing Complement). However, another usage of the word "position" refers to the substance of the position . . . the duties and responsibilities.

We do not believe it is the intent of this Act to require CIA go to Congress each time a component of the Agency is restructured or reorganized, nor to follow the CSC procedures in requesting approval from the Commission of each new supergrade position established within the approved allowance (inasmuch as CSC has no authority in CIA personnel matters).

If we cannot be exempted from this requirement of going to the Congress for additional positions as we noted in our original comment on this section, it is recommended this portion be clarified by the following insertion "The number of Executive Schedule positions . . . and the number of positions in the grades GS-16, GS-17 and GS-18 . . .

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6 DEC 1977

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MEMORANDUM FOR: Executive Officer, DDA

FROM :
Chief, Management Staff, ODP

SUBJECT : Senate Select Committee on Intelligence
Legislation

REFERENCE : Routing and Record Sheet w/att. Draft
Intelligence Charter Legislation, dtd
30 November 1977

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The working drafts dated 18 November 1977 of the Senate Select Committee Legislation entitled: Title I - National Intelligence Reorganization and Reform Act of 1977, Title III - National Security Agency Act of 1977, and Title IV - Central Intelligence Agency Act of 1977 have been reviewed by ODP personnel and we have no comments on them from an ODP viewpoint.



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cc: DD/A/ODP
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Executive Registry
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WASHINGTON

June 25, 1979

DD/A Registry
79-2184

MEMORANDUM FOR

THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE DIRECTOR, OFFICE OF MANAGEMENT AND
BUDGET
COUNSEL TO THE PRESIDENT
CHAIRMAN, JOINT CHIEFS OF STAFF
DIRECTOR OF CENTRAL INTELLIGENCE
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
DIRECTOR, NATIONAL SECURITY AGENCY

SUBJECT: Intelligence Charter Legislation

The President has approved the recommendations of the SCC on the following issues: counterintelligence; collection of information on potential sources or for security purposes; and remedies. Statutory provisions that will be given to the Senate Select Committee on Intelligence shortly are attached.

We will await Congressional response to our proposals before making a decision on how the final Administration position will be formally presented to Congress. However, in anticipation of that decision, the President has approved the following principles to guide the Administration's efforts in Congress:

1. The intelligence charter and relations with Congress remain under the direct control of the President, through the SCC and its Intelligence Charters Working Group. My office will coordinate, as required, with other White House offices.

2. The Director of Central Intelligence is the principal spokesman for the Administration on charter legislation. Heads of agencies will provide support to the DCI in dealing with Congress on charter provisions of common interest.

3. Agency heads are responsible for presentation of charter provisions that relate specifically to the organization and responsibilities of their agencies.

The Charters Working Group should meet shortly to begin preparation for hearings to be held after the Administration position is formally presented to Congress. In addition, because of the frequent reference in the current proposals to Attorney General guidelines, those guidelines should be completed as quickly as possible.



Zbigniew Brzezinski

Attachment

Subpart 3: Authority to Collect Counterintelligence
and Counterterrorism Intelligence

GENERAL AUTHORITY TO COLLECT COUNTERINTELLIGENCE
AND COUNTERTERRORISM INTELLIGENCE

Sec. 218. (a) The entities of the intelligence community are authorized to collect counterintelligence and counterterrorism intelligence that concerns United States persons. Such intelligence may be collected without the consent of the United States person concerned provided that --

(1) facts and circumstances indicate that the person is or may be engaged in clandestine intelligence activities on behalf of a foreign power or international terrorist activity;

(2) collection is conducted to fulfill a lawful function of the intelligence entity; and

(3) collection involving use of extraordinary techniques and other specified techniques is conducted only in accordance with this subpart.

COLLECTION OF COUNTERINTELLIGENCE OR COUNTERTERRORISM
INTELLIGENCE THROUGH USE OF EXTRAORDINARY TECHNIQUES
OUTSIDE THE UNITED STATES

Sec. 219. (a) No entity of the intelligence community may use extraordinary techniques directed against a United States person outside the United States to collect counterintelligence or counterterrorism intelligence except pursuant to court order.

(b) Applications for an order from the court established pursuant to Section 103(a) of the Foreign Intelligence Search and Surveillance Act, _____ Stat. _____, are authorized and, notwithstanding any other law, a judge to whom an application is made pursuant to this section may grant an order approving use of an extraordinary technique directed against a United States person to collect counterintelligence or counterterrorism intelligence.

(c) An order approving use of extraordinary techniques pursuant to this section shall be granted if the court finds that --

(1) there is probable cause to believe that the person is or may be engaged in clandestine intelligence

activity on behalf of a foreign power or international
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terrorist activity;

(2) significant counterintelligence or counter-
terrorism intelligence is likely to be obtained from use of
the extraordinary technique;

(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 203(b)(11) of
this title.

(d) The requirements of Section 214(d), (e), (f), (g)
and (h) are applicable to the use of extraordinary
techniques to collect counterintelligence or counter-
terrorism intelligence.

COLLECTION OF COUNTERINTELLIGENCE OR COUNTER-
TERRORISM INTELLIGENCE THROUGH PLACING
EMPLOYEES IN UNITED STATES ORGANIZATIONS

Sec. 220. (a) No entity of the intelligence community
may place employees in an organization in the United States
or substantially composed of United States persons, without
disclosure of the employee's intelligence affiliation, for
the purpose of collecting counterintelligence or counter-
terrorism intelligence except as authorized by this section.

(b) Such participation in organizations may be con-
ducted only pursuant to written procedures promulgated

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by the head of the entity.

Such procedures shall --

- (1) limit such participation to that necessary to achieve the lawful objectives of the entity;
- (2) ensure that such participation serves significant intelligence objectives;
- (3) limit the scope, intensity and duration of such participation to that appropriate to the objective;
- (4) provide for written approval of participation and periodic review by a senior official of the entity;
- (5) create independent means for audit and inspection of such participation;
- (6) prevent interference with the exercise of rights protected by the Constitution or laws of the United States;
- (7) prevent interference in political activities engaged in or views expressed by a United States person; and
- (8) ensure that minimization procedures are followed where appropriate.

(c) Procedures prepared pursuant to subsection (b) shall be reviewed by the Attorney General and may not be put into effect without the approval of the Attorney General

COLLECTION OF COUNTERINTELLIGENCE OR COUNTERTERRORISM
INTELLIGENCE THROUGH OTHER TECHNIQUES

Sec. 221. Entities of the intelligence community may collect counterintelligence or counterterrorism intelligence

through the use against a United States person of mail covers, physical surveillance, or directed collection under procedures promulgated by the head of the entity and approved by the Attorney General. Such procedures shall provide for review of counterintelligence or counterterrorism intelligence investigations utilizing any such technique not less than once a year by a senior official of the intelligence entity under the standard set out in Section 218. The heads of intelligence entities shall make such procedures available promptly after promulgation to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence.

Subpart 4: Authority to Collect Other Information for Intelligence Purposes.

AUTHORITY TO COLLECT INFORMATION CONCERNING
POTENTIAL SOURCES OF INTELLIGENCE OR
OPERATIONAL ASSISTANCE

Sec. 222. The entities of the intelligence community are authorized to collect information concerning United States persons who are potential sources of intelligence or operational assistance under procedures promulgated by the head of the entity and approved by the Attorney General. Such procedures shall limit the scope, intensity and duration of such collection to that required to determine the suitability or credibility of the potential source. Extraordinary techniques may not be used for collection under this section.

Sec. 223. The entities of the intelligence community are authorized to collect information concerning United States persons for the purpose of providing for the personnel security or the physical security of intelligence activities under procedures promulgated by the head of the entity and approved by the Attorney General. Such procedures shall limit the scope, intensity and duration of such collection to that required to determine the suitability or trustworthiness of employees, contractors, or applicants for employment or for access to classified information; to protect against breaches of security regulations or contractual obligations by employees or former employees; and to protect against direct or imminent threats to the physical safety of personnel, installations, property, documents or other materials related to intelligence activities. Such procedures shall govern the categories of persons who may be the subjects of such investigations by particular agencies. Extraordinary techniques may not be used for collection under this section.

PART F: REMEDIES AND SANCTIONS

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Sec. 261. (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, there was no statute or established judicial procedure governing 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. 262. (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 261 shall have a cause of action against any person who committed such violation and shall be entitled to recover-

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

(ii) punitive damages; and
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(iii) reasonable attorney's fees and other in-

vestigation 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) The remedy provided under this section shall be the exclusive civil remedy for violation of the provisions of this Act authorizing foreign electronic surveillance or foreign physical search.

CIVIL REMEDIES; NON-LITIGABILITY OF PROCEDURES

Sec. 263. (a) Nothing in this Title creates a civil cause of action against the United States not available under other provisions of this Title, 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 at law.

(b) Nothing in this Title, or in any guidelines or procedures established pursuant to this Title 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
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of this Title or of guidelines or procedures established
pursuant to this Title.

PROTECTION OF PRIVILEGED COMMUNICATIONS

Sec. 264. No otherwise privileged communications or information shall lose its privileged character as a consequence of this Act.

ADMINISTRATIVE RULEMAKING

Sec. 265. 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.

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