

DoD 5240.1-R



DEPARTMENT OF DEFENSE

PROCEDURES GOVERNING THE  
ACTIVITIES OF  
DOD INTELLIGENCE COMPONENTS  
THAT AFFECT UNITED STATES PERSONS

DECEMBER 1982

ANNEX E TO NSA/CSS  
DIR. NO. 10-30  
Dated: 20 September 19

UNDER SECRETARY OF DEFENSE FOR POLICY

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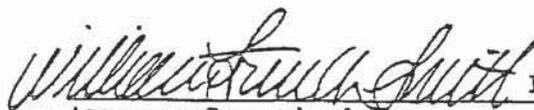
FOREWORD

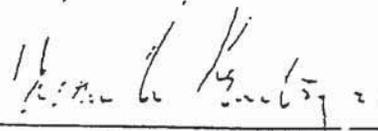
This DoD regulation sets forth procedures governing the activities of DoD intelligence components that affect United States persons. It implements DoD Directive 5240.1, and replaces the November 30, 1979 version of DoD Regulation 5240.1-R. It is applicable to all DoD intelligence components.

Executive Order 12333, "United States Intelligence Activities," stipulates that certain activities of intelligence components that affect U.S. persons be governed by procedures issued by the agency head and approved by the Attorney General. Specifically, procedures 1 through 10, as well as Appendix A, herein, require approval by the Attorney General. Procedures 11 through 15, while not requiring approval by the Attorney General, contain further guidance to DoD Components in implementing Executive Order 12333 as well as Executive Order 12334, "President's Intelligence Oversight Board".

Accordingly, by this memorandum, these procedures are approved for use within the Department of Defense. Heads of DoD components shall issue such implementing instructions as may be necessary for the conduct of authorized functions in a manner consistent with the procedures set forth herein.

This regulation is effective immediately.

  
10/4/82  
Attorney General of the  
United States

  
12/7/82  
Secretary of Defense

## PROCEDURE 5. ELECTRONIC SURVEILLANCE, continued

PART 2: ELECTRONIC SURVEILLANCE OUTSIDE THE UNITED STATES FOR INTELLIGENCE PURPOSESA. APPLICABILITY

This part of Procedure 5 applies to electronic surveillance, as defined in Appendix A, for foreign intelligence and counterintelligence purposes directed against United States persons who are outside the United States, and who, under the circumstances, have a reasonable expectation of privacy. It is intended to be applied in conjunction with the regulation of electronic surveillance "within the United States" under Part 1 and the regulation of "signals intelligence activities" under Part 3, so that the intentional interception for foreign intelligence and counterintelligence purposes of all wire or radio communications of persons within the United States and against United States persons abroad where such persons enjoy a reasonable expectation of privacy is covered by one of the three parts. In addition, this part governs the use of electronic, mechanical, or other surveillance devices for foreign intelligence and counterintelligence purposes against a United States person abroad in circumstances where such person has a reasonable expectation of privacy. This part does not apply to the electronic surveillance of communications of other than United States persons abroad or the interception of the communications of United States persons abroad that do not constitute electronic surveillance.

B. EXPLANATION OF UNDEFINED TERMS

1. Electronic surveillance is "directed against a United States person" when the surveillance is intentionally targeted against or designed to intercept the communications of that person. Electronic surveillance directed against persons who are not United States persons that results in the incidental acquisition of the communications of a United States person does not thereby become electronic surveillance directed against a United States person.

2. Electronic surveillance is "outside the United States" if the person against whom the electronic surveillance is directed is physically outside the United States, regardless of the location at which surveillance is conducted. For example, the interception of communications that originate and terminate outside the United States can be conducted from within the United States and still fall under this part rather than Part 1.

C. PROCEDURES

Except as provided in section D., below, DoD intelligence components may conduct electronic surveillance against a United States person who is outside the United States for foreign intelligence and counterintelligence purposes only if the surveillance is approved by the Attorney General. Requests for approval will be forwarded to the Attorney General by an official designated in section E.1., below. Each request shall include:

1. An identification or description of the target.

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2. A statement of the facts supporting a finding that:
  - a. There is probable cause to believe the target of the electronic surveillance is one of the following:

- (1) A person who, for or on behalf of a foreign power is engaged in clandestine intelligence activities (including covert activities intended to affect the political or governmental process), sabotage, or international terrorist activities, or activities in preparation for international terrorist activities; or who conspires with, or knowingly aids and abets a person engaging in such activities;

- (2) A person who is an officer or employee of a foreign power;

- (3) A person unlawfully acting for, or pursuant to the direction of, a foreign power. The mere fact that a person's activities may benefit or further the aims of a foreign power is not enough to bring that person under this subsection, absent evidence that the person is taking direction from, or acting in knowing concert with, the foreign power;

- (4) A corporation or other entity that is owned or controlled directly or indirectly by a foreign power; or

- (5) A person in contact with, or acting in collaboration with, an intelligence or security service of a foreign power for the purpose of providing access to information or material classified by the United States to which such person has access.

- b. The electronic surveillance is necessary to obtain significant foreign intelligence or counterintelligence.

- c. The significant foreign intelligence or counterintelligence expected to be obtained from the electronic surveillance could not reasonably be obtained by other less intrusive collection techniques.

3. A description of the significant foreign intelligence or counterintelligence expected to be obtained from the electronic surveillance.

4. A description of the means by which the electronic surveillance will be effected.

5. If physical trespass is required to effect the surveillance, a statement of facts supporting a finding that the means involve the least amount of intrusion that will accomplish the objective.

6. A statement of period of time, not to exceed 90 days, for which the electronic surveillance is required.

7. A description of the expected dissemination of the product of the surveillance, including a description of the procedures that will govern the retention and dissemination of communications of or concerning United States persons other than those targeted, acquired incidental to such surveillance.