INTELLIGENCE COMMUNITY DIRECTIVE 311

Coordination of Clandestine Human Source and Human-Enabled Foreign Intelligence Collection and Counterintelligence Activities Inside the United States

A. AUTHORITY: The National Security Act of 1947, as amended; Executive Order (EO) 12333, as amended; and other applicable provisions of law.

B. PURPOSE

1. This Intelligence Community Directive (ICD) establishes the policies and procedures called for in EO 12333, section 1.3(b)(20), consistent with 1.5(f), (g) & (h), to ensure the deconfliction, coordination, and integration of intelligence activities conducted by an Intelligence Community (IC) element or funded by the National Intelligence Program pertaining to the clandestine collection of foreign intelligence collected through human sources or through human-enabled means and counterintelligence activities inside the United States.

2. The Director of National Intelligence (DNI) is committed to ensuring that clandestine collection of foreign intelligence through human sources or through human-enabled means and counterintelligence activities inside the United States are appropriately coordinated, deconflicted, and integrated. The overall goal is to significantly enhance the security of the nation by effectively and efficiently allocating resources, while adequately protecting intelligence sources, methods, and activities from compromise or unauthorized disclosure.

C. APPLICABILITY

1. This Directive applies to the IC, as defined by the National Security Act of 1947, as amended; and to such other elements of any other department or agency as may be designated an element of the IC by the President, or jointly by the DNI and the head of the department or agency concerned.

2. For purposes of this Directive, the activities described in EO 12333 section 1.3(b)(20)(A) and covered by this Directive are addressed in existing agreements concluded between the Director of the FBI (D/FBI) and the heads of affected IC elements (FBI-IC Coordination Agreements) and may be elaborated as necessary in amendments to existing agreements or in new agreements.

3. Nothing in this Directive limits an FBI-IC Coordination Agreement from addressing the coordination of activities beyond those covered by this Directive. For the purposes of this Directive, the term "coordination" is understood to encompass "deconfliction" and "integration."

D. POLICY

1. Activities covered by this Directive shall be coordinated by the D/FBI, as provided for in FBI-IC Coordination Agreements concluded between the D/FBI and the heads of affected IC elements. Unless otherwise provided for in those FBI-IC Coordination Agreements, the provisions of this Directive shall be read with a presumption in favor of coordination. Existing interagency coordination and deconfliction agreements remain valid and in effect. Copies of all FBI-IC Coordination Agreements shall be provided to the DNI.

2. Coordination should seek to enable and enhance the effectiveness and security of activities covered by this Directive, and should not be limited to the deconfliction of proposed operations. For the purposes of this Directive, the term "coordination" shall be defined in each FBI-IC Coordination Agreement for purposes of that agreement.

3. Coordination should not be *pro forma*. It should include the timely exchange by IC elements of pertinent and necessary information to facilitate operational success and proper coordination of the proposed activity consistent with Section D.1 and other applicable interagency agreements.

4. The following general principles shall inform the coordination of activities covered by this Directive and may be further elaborated in FBI-IC Coordination Agreements described above in Section D.1.:

a. Coordination shall occur at the lowest practical and authorized level.

b. Coordination should occur in advance of a proposed operational activity. If coordination in advance is not possible due to fleeting opportunity, perishable intelligence, or risk of physical harm or loss of life, the IC element conducting that activity shall ensure that notification and coordination is initiated as expeditiously as possible.

c. Coordination should include thorough and continual dialogue among the affected IC elements on proposed and ongoing activities. Even after initial coordination of a proposed activity, all parties must continue to confer as long as that activity is ongoing.

d. All parties shall maintain accurate and complete documentation of the coordination of activities covered by this Directive. Such documentation shall contain sufficient detail to confirm the scope of the coordination.

5. Issue Identification and Resolution.

a. If in the course of coordination any party identifies an issue, including whether the requirements of this Directive apply to a particular activity, and the issue cannot be resolved between the two parties, the issue will be raised to the DNI;

b. Parties shall identify and first seek to resolve issues in accordance with FBI-IC Coordination Agreements;

c. If an FBI-IC Coordination Agreement does not address issue identification and resolution, or affects the equities of an IC element not party to the agreement, then an attempt shall be made to resolve the dispute at the lowest practical level in accordance with the requesting IC element's timeline. If no agreement can be reached, the issue shall be referred promptly to higher-level officials designated by the heads of the affected IC elements, followed by the heads of those IC elements; and

d. If IC elements remain at an impasse despite having exhausted all procedures for issue resolution provided for within FBI-IC Coordination Agreements, or under Section D.5.c, the D/FBI shall notify simultaneously the DNI and the head of the affected IC element. The head of an affected IC element may, at his or her discretion, also notify the DNI of any such impasse. The DNI will facilitate resolution of issues that have been referred to him as provided for in Sections E.1 and E.2.b.

6. When an activity is conducted both inside and outside the U.S., it shall also be coordinated in accordance with IC policies governing such activities outside the U.S. as stipulated in appropriate IC Directives.

7. If the D/FBI believes that a proposed activity may be in violation of federal criminal laws, the D/FBI will first notify in writing the head of the IC element that has proposed the activity of FBI's concern and attempt to resolve the issue. If the head of the IC element and the D/FBI cannot resolve the issue to the satisfaction of both parties, the D/FBI, in consultation with the head of the IC element and the DNI, may refer the matter to the Attorney General for review.

8. The head of an IC element, in accordance with EO 12333, Section 1.6(b), has a responsibility to report to the Attorney General possible violations of federal criminal laws. Heads of IC elements, in accordance with EO 12333, Section 1.6(c), also have a responsibility to report to the Intelligence Oversight Board any intelligence activities of their elements that they have reason to believe may be unlawful or contrary to executive order or presidential directive.

9. Consistent with EO 12333, Section 1.5(h), heads of all executive branch departments and agencies shall promptly inform the Attorney General, either directly or through the FBI, and the DNI of clandestine collection of foreign intelligence and counterintelligence activities inside the United States not coordinated with the FBI.

10. Questions concerning the interpretation of this Directive shall be referred to the Office of the Assistant Director of National Intelligence for Policy and Strategy and the DNI's Office of General Counsel. The Office of General Counsel will consult with the Assistant Attorney General for National Security regarding any novel or significant interpretations of this Directive.

E. ROLES AND RESPONSIBILITIES

1. The DNI will ensure the coordination, deconfliction, and integration of the clandestine collection of foreign intelligence collected through human sources or through human-enabled means, and facilitate the resolution of issues that cannot be resolved by heads of affected IC elements.

2. The Director, National Counterintelligence and Security Center, on behalf of the DNI, shall:

a. Remain apprised of the development of agreements under Section E.3.c implementing this Directive with respect to counterintelligence activities;

b. Facilitate the resolution of issues regarding counterintelligence activities identified under Section D.5 that cannot be resolved by heads of affected IC elements; and

c. Review the annual report called for in Section E.3.d for issues regarding counterintelligence activities.

3. The D/FBI shall:

a. Coordinate IC activities in the United States covered by this Directive;

b. Support and assist IC elements proposing or conducting activities subject to this Directive, as appropriate;

c. Develop, in coordination with the heads of affected IC elements, any additional FBI-IC Coordination Agreements and related procedures necessary to implement this Directive.

(1) The D/FBI shall keep the DNI apprised of the need to develop those FBI-IC Coordination Agreements and related procedures and the status as they progress.

(2) FBI-IC Coordination Agreements will be approved by the D/FBI, or senior designee, and the designated representative of the affected IC elements.

d. Report, in coordination with the heads of affected IC elements, to the DNI annually by 1 October on the status and scope of the coordination of activities subject to this Directive. The D/FBI shall append to the report any views provided by other heads of IC elements.

4. Heads of IC elements shall:

a. Ensure that all activities covered by this Directive are coordinated in accordance with this Directive and applicable FBI-IC Coordination Agreements;

b. Provide necessary and pertinent information concerning activities subject to this Directive in a timely fashion to facilitate coordination;

c. Support the FBI in the development of any additional FBI-IC Coordination Agreements necessary to implement this Directive, as reflected in Section E.3.c.; and

d. Promptly inform the Attorney General, either directly or through the FBI, and the DNI, of clandestine collection of foreign intelligence and counterintelligence activities inside the United States not coordinated with the FBI, consistent with the general obligation established in EO 12333, Section 1.5(h).

F. ATTORNEY GENERAL APPROVAL

1. The policies and procedures presented in this Directive were approved by the Attorney General as required by EO 12333, Section 1.3(b)(20)(C).

2. Any amendment to this Directive shall be subject to Attorney General approval as required by EO 12333, Section 1.3(b)(20)(C).

G. EFFECTIVE DATE: This Directive becomes effective on the date of signature.

Director of National Intelligence

27 JUNE 2016

Date