

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL

REPORT ON THE
INTELLIGENCE OVERSIGHT INSPECTION OF
THE SPECIAL TECHNOLOGIES LABORATORY

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THE SPECIAL TECHNOLOGIES LABORATORY

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REPORT ON THE
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I. INTRODUCTION AND PURPOSE

Executive Order (EO) 12863, "President's Foreign Intelligence Advisory Board," dated September 13, 1993, requires Inspectors General of the Intelligence Community to submit reports to the Intelligence Oversight Board, on at least a quarterly basis, on intelligence activities that the Inspectors General have reason to believe may have been unlawful or contrary to Executive order or Presidential directive. Within the Department of Energy (DOE) Office of Inspector General, responsibility for oversight of DOE's intelligence activities, pursuant to EO 12863, has been assigned to the Deputy Inspector General for Inspections.

To carry out this responsibility, the Office of Inspections performs reviews to determine if intelligence activities within DOE are in compliance with restrictions set forth in selected intelligence-related laws, Executive orders, and DOE orders, guidelines or implementing procedures. Accordingly, the purpose of this inspection was to determine if intelligence activities conducted by the Special Technologies Laboratory (STL) were in compliance with such restrictions. Our primary objectives were to: 1) evaluate STL intelligence personnel's knowledge of these restrictions, and 2) review procedures implemented by STL to identify, investigate, and report questionable intelligence activities and/or abuses to higher officials.

II. SCOPE AND METHODOLOGY

We used the "Intelligence Oversight Inspection Guide" developed by the Office of Inspections to conduct this inspection. The guide focuses on an organization's conduct of foreign intelligence, counterintelligence, and threat assessment activities, and its intelligence oversight training program. The questions in the guide are based on Executive Order 12333, "United States Intelligence Activities," dated December 4, 1981; the "Department of Energy Procedures for Intelligence Activities" (DOE Intelligence Procedures), which were approved by the former Attorney General on October 7, 1992; and DOE orders and other directives.

Our inspection, which was conducted between February 1994 and February 1995, included interviews with STL and DOE officials as well as a review of STL files. We used the "Intelligence Oversight Inspection Guide" to ask STL management and other employees questions regarding their knowledge of EO 12333 and the DOE Intelligence Procedures. We also interviewed officials from the Office of Intelligence, which was redesignated as the Office of Energy Intelligence during the inspection; the Office of Safeguards and Security; and the Nevada Operations Office.

This inspection was conducted in accordance with "Quality Standards for Inspections" issued by the President's Council on Integrity and Efficiency.

III. SUMMARY RESULTS OF INSPECTION

We found deficiencies in the distribution to DOE Field Intelligence Elements of the "Department of Energy Procedures for Intelligence Activities," upon their approval by the former Attorney General on October 7, 1992. The Special Technologies Laboratory, therefore, conducted intelligence and intelligence-related activities for 13 months without possessing the approved procedures that governed such activities. Some of these activities, as discussed below, were conducted contrary to the DOE Intelligence Procedures. As a result of this finding, the Office of Energy Intelligence distributed additional copies of the DOE Intelligence Procedures to the Field Intelligence Elements. At the time of our review at STL, therefore, STL employees had possessed the DOE Intelligence Procedures for four months and had also received familiarization training on the Procedures. In this regard, we found that the majority of STL employees we surveyed were familiar with most provisions of the DOE Intelligence Procedures. We found, however, that they were not familiar with the provisions regarding collection, retention, and dissemination of information on "U.S. persons."

We found that STL employees were not conducting periodic reviews of information collected under the DOE Intelligence Procedures to assure that the information was being retained in accordance with the Procedures.

We found that the Office of Intelligence had not required Intelligence Community agencies requesting approval of intelligence-related Work for Others projects to provide, in accordance with Part IX of the DOE Intelligence Procedures, written assurances regarding 1) health and safety of DOE and DOE contractor employees conducting the projects, and 2) the authority of requesting agencies to conduct "the activity for which support or assistance is requested." We also found, therefore, that the Office of Intelligence reviewed and approved approximately 400 requests for intelligence-related Work for Others projects without having written assurance from requesting Intelligence Community agencies that the projects were in conformance with Executive Order 12333, "United States Intelligence Activities," dated December 4, 1981. As a result of this finding, the Office of Energy Intelligence issued documentation requiring Intelligence Community agencies to submit the written assurances with their requests for approval of such projects.

We found that the DOE Intelligence Procedures need to specify that the intelligence procedures of the requesting Intelligence Community agency govern those DOE activities, which are "beyond the scope of DOE's authority," in providing technical, analytical, or research assistance to the intelligence activities of the agency that requested the assistance.

We also found that STL had inappropriately conducted foreign travel and contacts debriefings because 1) the limited counterintelligence responsibilities of the STL Security Work Package Manager did not authorize him to conduct the debriefings as a counterintelligence official; and 2) DOE had not deleted the requirement in DOE Order 5631.1B, "Security Education Briefing and Awareness Program," dated December 31, 1991, for security officials to conduct the debriefings. As a result of this finding, the Office of Safeguards and Security revised DOE Order 5631.1B by issuing a new

order that deleted the requirement for security officials to conduct the debriefings.

IV. BACKGROUND

Executive Order 12333, "United States Intelligence Activities," dated December 4, 1981, governs the conduct of intelligence activities by all agencies within the U.S. Intelligence Community. EO 12333 designates the intelligence element of DOE as a member of the Intelligence Community and assigns DOE general and specific duties and responsibilities in support of the U.S. intelligence effort. Responsibility for "management, implementation and oversight of [DOE's] intelligence activities pursuant to Executive Order 12333, except for those authorities and responsibilities of the Inspector General and the General Counsel," was delegated to the Director, Office of Intelligence, by DOE Delegation Order No. 0204-146, effective January 21, 1993.

DOE Intelligence Procedures Adopted Pursuant to EO 12333

EO 12333 authorized Intelligence Community agencies to collect, retain or disseminate information concerning U.S. persons only in accordance with procedures established by the agency head and approved by the Attorney General. On October 7, 1992, the former Attorney General approved the "Department of Energy Procedures for Intelligence Activities," which were adopted pursuant to EO 12333. The former Secretary of Energy established and approved the DOE Intelligence Procedures on October 9, 1992, and stated that the Procedures took effect ten days later on October 19, 1992.

Two supplements to the DOE Intelligence Procedures have been issued. Supplement 1, dated April 18, 1994, is EO 12863, "President's Foreign Intelligence Advisory Board." Supplement 2, "NN Reorganization: Status of OCI and OTA Programs," dated August 19, 1994, discusses the status of the Office of Counterintelligence (OCI) and the Office of Threat Assessment (OTA) as DOE intelligence elements after the reorganization of the Office of Nonproliferation and National Security (NN).

The DOE Intelligence Procedures have two stated intentions. They are intended to 1) enable DOE Intelligence Components to carry out effectively their authorized functions and to provide appropriate assistance to other Intelligence Community agencies, and 2) ensure that DOE intelligence activities and programs do not violate constitutional protections and other individual rights of "U.S. persons" as defined in EO 12333, applicable laws, other Executive orders, Presidential directives, or applicable DOE policy.

Applicability of the DOE Intelligence Procedures

The DOE Intelligence Procedures apply to designated organizations and individuals engaging in intelligence or intelligence-related activities authorized by EO 12333. These organizations and individuals include 1) DOE Intelligence Components, which are defined in the Procedures; 2) DOE employees, detailees, contractor, and subcontractor employees acting on behalf of DOE Intelligence Components when they are engaged in intelligence activities authorized by EO 12333; and 3) all DOE Management and Operating contractors, their subcontractors and employees engaged in intelligence-

related Work for Others. Intelligence-related Work for Others includes in part: 1) work sponsored by an organization specifically identified in EO 12333 as an intelligence component; 2) work for which the cognizant technical DOE Headquarters official is the Director of Intelligence; and 3) the Special Technologies Program that assists, processes, and coordinates all requests from other Federal agencies seeking DOE technical assistance in support of "counterterrorism, counternarcotics, and related activities."

The DOE Intelligence Components include eight DOE Field Intelligence Elements (FIEs) as designated by the former Director of the Office of Intelligence in a September 3, 1992, memorandum. The memorandum stated that the FIEs were components of Government-owned, contractor-operated laboratories performing classified services pursuant to EO 12333 in support of the Intelligence Community. The Special Technologies Laboratory was designated as one of the eight DOE FIEs.

STL Established at Request of Intelligence Community

STL, located at Santa Barbara, California, and operated by EG&G Energy Measurements, was established by DOE in 1986 at the Intelligence Community's request. STL's missions include in part: 1) conducting research and development paid for by other government agencies and approved by DOE Headquarters and the Nevada Operations Office, for emergency response, law enforcement, intelligence, counterterrorism, environmental management, and nuclear weapons; and 2) ensuring technologies developed for sensitive intelligence applications are available for and applied to DOE missions such as emergency response, treaty verification, reactor security, and waste management. The senior STL official is designated the Special Technologies Program Manager.

Two DOE offices provide management and oversight of STL activities. The Program Manager for Special Technologies, Office of Energy Intelligence, approves and monitors technological areas in which STL conducts Special Technologies Program Research and Development. The Nevada Operations Office provides day-to-day program management and oversight.

V. RESULTS OF INSPECTION

A. Distribution of the DOE Intelligence Procedures

We found deficiencies in the distribution to DOE Field Intelligence Elements of the "Department of Energy Procedures for Intelligence Activities," upon their approval by the former Attorney General. The Special Technologies Laboratory, therefore, conducted intelligence and intelligence-related activities for 13 months without possessing the approved procedures that governed such activities. As a result of this finding, the Office of Energy Intelligence distributed additional copies to the FIEs.

Responsibility for management, implementation, and oversight of DOE's intelligence activities pursuant to Executive Order 12333, "United States Intelligence Activities," dated December 4, 1981, was delegated to the Director, Office of Intelligence, by DOE Delegation Order No. 0204-146, effective January 21, 1993.

DOE Intelligence Procedures Not Received by DOE FIEs

Three DOE FIEs said that they did not receive the DOE Intelligence Procedures upon their approval by the former Attorney General on October 7, 1992. The STL Special Technologies Program Manager told us that neither he nor any of the STL employees that we interviewed had the DOE Intelligence Procedures until an official representing the Office of Intelligence provided them copies on November 3, 1993. This date was approximately 13 months after approval of the Procedures by the former Attorney General. We learned during other inspections that the FIEs at the Idaho National Engineering Laboratory (INEL) and at the Los Alamos National Laboratory (LANL) received the DOE Intelligence Procedures approximately 6 months and 13 months, respectively, after approval of the Procedures by the former Attorney General. The head of the LANL FIE said, however, that he had a draft of the DOE Intelligence Procedures more than a year prior to receiving the approved Procedures.

The STL Special Technologies Program Manager also told us that STL conducted intelligence and intelligence-related activities during the 13 months they did not have the approved DOE Intelligence Procedures that governed such activities. As will be discussed in the next two sections of this report, some of these activities were conducted contrary to the DOE Intelligence Procedures.

Comments from Management

In commenting on an earlier draft of this report, the Director, Office of Energy Intelligence, stated, "As with all DOE Field Intelligence Elements, the DOE Procedures were mailed to STL in Interim Draft format on May 29, 1992 [sic] and in final on October 26, 1992."

In commenting on an earlier draft of this report, the STL Special Technologies Program Manager said that he had received the Interim Draft, but that the draft had not been approved by the Attorney General. He said that he therefore read the draft, then put the draft aside and waited for the Attorney General-approved final procedures, which would authorize STL to conduct intelligence and intelligence-related activities.

Additional Copies Distributed to FIEs

An official and a representative from the Office of Energy Intelligence told us that the Office of Energy Intelligence had distributed additional copies of the DOE Intelligence Procedures to the DOE FIEs. The representative said that as a result of our inspection and the inspection at INEL, the Office of Energy Intelligence had mailed additional copies to each FIE. He also said that he knew some FIEs had received the additional copies, but he did not know if the Office of Energy Intelligence had verified that every FIE had received them. The official told us that he also knew some FIEs had received additional copies, either by mail or in training sessions. He said that he did not know, however, if every FIE had received them.

The official from the Office of Energy Intelligence also told us that some DOE FIEs had received Supplement 1 and Supplement 2 to the DOE Intelligence Procedures from the Office of Energy Intelligence because these FIEs had asked him questions regarding the supplements after receiving them in the mail or in training sessions. The official said that he did not know, however, if every FIE had received the two supplements.

Conclusions

We found deficiencies in the distribution to DOE Field Intelligence Elements of the DOE Intelligence Procedures upon their approval by the former Attorney General on October 7, 1992. The Director, Office of Energy Intelligence, stated that the final DOE Intelligence Procedures were mailed to all DOE Field Intelligence Elements on October 26, 1992. Three FIEs, including STL, said, however, that they did not receive the DOE Intelligence Procedures until approximately 6 to 13 months after the Procedures were approved by the former Attorney General. STL, therefore, conducted intelligence and intelligence-related activities for 13 months without possessing the approved procedures that governed such activities. Some of these activities, as will be discussed later in the report, were conducted contrary to the DOE Intelligence Procedures. As a result of this finding, the Office of Energy Intelligence distributed additional copies of the DOE Intelligence Procedures to the FIEs.

Recommendations

We recommend that the Director, Office of Energy Intelligence:

1. Confirm that each DOE Field Intelligence Element has a copy of the "Department of Energy Procedures for Intelligence Activities," with both supplements.

2. Establish procedures for future use to confirm that each DOE Field Intelligence Element has received future supplements to the "Department of Energy Procedures for Intelligence Activities."

In commenting on the official draft of this report, the Director, Office of Energy Intelligence, concurred with both recommendations. Regarding the first recommendation, he stated that the Office of Energy Intelligence will confirm by September 15, 1995, that the DOE Intelligence Procedures and both supplements have been received by all DOE FIEs. We subsequently learned from an official in the Office of Energy Intelligence that he had confirmed by September 15, 1995, that the DOE Intelligence Procedures and both supplements have been received by all DOE FIEs. Regarding the second recommendation, the Director stated that procedures have been established "to ensure that each FIE receives copies of all future supplements, memoranda and correspondence pertaining to the DOE Intelligence Procedures."

B. Familiarity with the DOE Intelligence Procedures

We found that the majority of employees we surveyed at the Special Technologies Laboratory were familiar with most provisions of the "Department of Energy Procedures for Intelligence Activities." We found, however, that they were not familiar with the provisions regarding collection, retention, and dissemination of information on "U.S. persons."

The DOE Intelligence Procedures state, "Each DOE Intelligence Component shall familiarize its personnel with the provisions of Executive Order 12333, ["United States Intelligence Activities," dated December 4, 1981,] these Procedures, and any instructions implementing" the Procedures that apply to such component's activities.

Survey to Determine Familiarity with DOE Intelligence Procedures

Of the 41 STL employees, we surveyed 13, including 8 managers, to determine if they were familiar with the provisions of EO 12333 and the DOE Intelligence Procedures, and to test the effectiveness of the STL oversight training program. We asked all 13 employees the same questions regarding their knowledge of EO 12333 and the DOE Intelligence Procedures.

From our survey we noted that all 13 employees: 1) had copies of EO 12333 and the DOE Intelligence Procedures; 2) had received training on EO 12333 and the Procedures; 3) knew what the subject matter of EO 12333 was; 4) knew the definition of "U.S. person" as defined in EO 12333; and 5) knew what channels and procedures were available to report questionable intelligence activities to STL management, the General Counsel, and the Inspector General. In our opinion, the oversight training conducted by the Office of Intelligence and the STL Special Technologies Program Manager, as discussed later in this section, also provided STL employees with an awareness of what activities constitute "questionable intelligence activities."

Our survey also revealed that most of the 13 STL employees were not familiar with the provisions of the DOE Intelligence Procedures regarding collection, retention, and dissemination of information on "U.S. persons." Of the 13 employees:

- o Twelve said that they could not collect information on "U.S. persons."

- o Eight said that they could not retain information on "U.S. persons."

- o Ten said that they could not disseminate information on "U.S. persons."

Training Conducted to Achieve Familiarity

The DOE Intelligence Procedures state that the Director, Office of Intelligence, "shall ensure that training is conducted to achieve the requisite familiarity" of each DOE Intelligence Component with the provisions of EO 12333 and the DOE Intelligence Procedures. To ensure that such training was conducted at STL, an official representing the Office of Intelligence presented training on EO 12333 and on the DOE Intelligence Procedures to STL employees on November 3, 1993, and on February 17, 1994. The STL Special Technologies Program Manager said that he thought both sessions were "beneficial" because the trainer presented the information more clearly than did EO 12333 and the DOE Intelligence Procedures. A slide used to conduct the training showed the categories of information on "U.S. persons" that may be collected, retained, and disseminated by personnel of a DOE Intelligence Component in accordance with the DOE Intelligence Procedures.

The STL Special Technologies Program Manager told us that on two occasions he also conducted training on the DOE Intelligence Procedures and on EO 12333 with the majority of STL employees. He said that he wanted to ensure that they were familiar with provisions in both documents and with the applicability of both documents to STL's intelligence and intelligence-related activities. He also said that the training focused on the definition of "U.S. persons" and on the collection of information on "U.S. persons." In this regard, the STL Special Technologies Program Manager said that he

emphasized that STL did not actively gather information on "U.S. persons" for specific collection purposes, which he referred to as "classic targeting."

In commenting on an earlier draft of this report, the STL Special Technologies Program Manager said he believed that STL employees probably concluded, as a result of him emphasizing that they did not conduct "classic targeting" of "U.S. persons," that they could not collect information on "U.S. persons." He told us he had not intended, however, that STL employees take from the training that they could not collect such information. He said that the DOE Intelligence Procedures contain categories of information on "U.S. persons," which they can and, as discussed in the next section of this report, do collect.

Comments from DOE Management

In commenting on an earlier draft of this report, the Director, Office of Energy Intelligence, nonconcurrent. He stated that:

"No one at STL engages in, or needs to engage in traditional 'collection,' defined by the DOE Intelligence Procedures as 'active gathering,' of any intelligence information whatsoever. Indeed, this is what the STL Manager has told the STL employees and is most likely what the employees had in mind when answering the question."

Whether or not STL employees actually engage in "traditional collection," as members of a DOE Intelligence Component they are supposed to be familiar, in accordance with the DOE Intelligence Procedures, with provisions of the Procedures. In this regard, six pages of the 28-page DOE Intelligence Procedures contain provisions that authorize DOE Intelligence Components to collect, retain, and disseminate information on "U.S. persons." Furthermore, a slide used by an official representing the Office of Intelligence to conduct training at STL on the DOE Intelligence Procedures and on EO 12333 showed the categories of information on "U.S. persons" that may be collected, retained, and disseminated by a DOE Intelligence Component in accordance with the Procedures.

In commenting on an earlier draft of this report, the Director, Nevada Intelligence Center, told us that our review had raised issues regarding the Nevada Operations Office's day-to-day program management and oversight of STL. He said that as a result, he had staffed a plan through the Nevada Operations Office and the Office of Energy Intelligence that would have him more involved in day-to-day program management and oversight of STL's intelligence and intelligence-related activities. The Director also said that such involvement included ensuring that STL employees were familiar with all provisions of the DOE Intelligence Procedures.

Conclusions

We found that the majority of STL employees we surveyed were familiar with most provisions of the DOE Intelligence Procedures. We found, however, that they were not familiar with the provisions regarding collection, retention, and dissemination of information on "U.S. persons." As indicated by the STL Special Technologies Program Manager, this lack of familiarity may have resulted from him emphasizing during training on the DOE Intelligence Procedures and on EO 12333 that STL employees did not conduct "classic targeting" of "U.S. persons."

Recommendation

We recommend that the Manager, Nevada Operations Office:

3. Ensure that STL employees are familiar with provisions of the "Department of Energy Procedures for Intelligence Activities" regarding collection, retention, and dissemination of information on "U.S. persons."

In commenting on the official draft of this report, the Director, Office of Energy Intelligence, concurred with this recommendation. He stated that during "post-inspection reviews all current STL personnel were instructed in clarifications of the provisions concerning 'U.S. persons.' Procedures are in place that will familiarize new personnel with the procedures when they join the organization."

In commenting on the official draft of this report, the Acting Manager, Nevada Operations Office, concurred with this recommendation. The Director, Nevada Intelligence Center, provided additional comments. He stated that the STL Special Technologies Program Manager "continues to provide a vibrant training program on [EO 12333 and the DOE Intelligence Procedures] . . . in addition to the numerous training sessions provided by the Office of Energy Intelligence" He also stated that, "Cognizance of [EO] 12333 requirements has become an integral part of STL's operations as a result of the continual training."

C. Periodic Review of Collected Information

We found that Special Technologies Laboratory employees were not conducting periodic reviews of information collected under the "Department of Energy Procedures for Intelligence Activities" to assure that the information was being retained in accordance with the Procedures.

The DOE Intelligence Procedures state that collected information shall be reviewed as follows:

- o "Each DOE Intelligence Component retaining any information collected under these Procedures shall conduct periodic reviews to assure that all such information is being retained in accordance with these Procedures and that the information is relevant, timely, and necessary for the performance of its functions.

- o "Such periodic reviews must be conducted at least once each calendar year."

The DOE Intelligence Procedures define "collection" as the "active gathering by an employee, a detailee, a contractor or an employee of a contractor of a DOE Intelligence Component, of intelligence information for use in the course of his official duties."

STL Did Not Review Files Containing Collected Information

At the time of our review at STL, employees whom we interviewed had not reviewed in more than a year files containing information that they had collected under the DOE Intelligence Procedures. Two employees said that they had not reviewed such information in more than a year; three employees told us that such information had probably not been reviewed in "years."

The files that had not been reviewed contained information that STL employees had collected on "U.S. persons" for purposes to which the DOE Intelligence Procedures applied. The DOE Intelligence Procedures define "U.S. persons," in part as 1) a U.S. citizen; and 2) a corporation incorporated in the U.S., except for a corporation directed or controlled by a foreign government or governments. These files contained advertising brochures on U.S. corporations that STL employees had requested or obtained at "trade shows" and used for general information about the corporations. Files also contained "professional knowledge" information on U.S. corporations from magazine and newspaper articles regarding such topics as nonproliferation and nuclear waste disposal. In addition, files contained information on U.S. citizens, such as business cards on individuals and records indicating who at STL had received annual counterintelligence briefings and Sensitive Compartmented Information recertification.

Periodic Review Should Have Been Conducted

According to the DOE Intelligence Procedures, which were approved on October 7, 1992, all DOE Intelligence Components, to include STL, should have conducted at least one periodic review of information collected under the Procedures during calendar year 1993. As stated previously, STL employees, however, did not receive the DOE Intelligence Procedures until November 3, 1993. STL employees thus were not aware of the requirement to conduct periodic reviews until approximately one month before the calendar year ended. Nevertheless, we believe that by the time of our review at STL in March 1994, which was four months after STL had received the DOE Intelligence Procedures, STL employees should have begun reviewing collected information to assure that the information was being retained in accordance with the Procedures.

We further believe that the Manager, Nevada Operations Office, had the responsibility to ensure that STL employees were conducting periodic reviews because the Operations Office provides day-to-day program management and oversight of STL. In this regard, the Director, Nevada Intelligence Center, said that he would be more involved in day-to-day program management and oversight of STL's intelligence and intelligence-related activities. He told us that such involvement included ensuring that STL employees conducted periodic reviews of information that they had collected.

Comments from DOE Management

In commenting on an earlier draft of this report, the Director, Office of Energy Intelligence, stated that "retention of the information here involved was proper and that the violation, if any, was technical in nature." The Director further stated that "information obtained with consent from vendors and related sources is not what this portion of the Procedures was directed at, but, literally, such reviews should be conducted."

Conclusions

We found that STL employees were not conducting periodic reviews of information collected under the DOE Intelligence Procedures to assure that the information was being retained in accordance with the Procedures. The DOE Intelligence Procedures state that DOE Intelligence Components shall conduct periodic reviews at least once each calendar year of retained

information that was collected under the Procedures. At the time of our review at STL, however, some STL employees had not reviewed in more than a year information in their files on "U.S. persons" that they had collected under the DOE Intelligence Procedures.

Recommendation

We recommend that the Manager, Nevada Operations Office:

4. Ensure that STL employees conduct periodic reviews of information that they had collected under the "Department of Energy Procedures for Intelligence Activities" to assure that the information is being retained in accordance with the Procedures.

In commenting on the official draft of this report, the Acting Manager, Nevada Operations Office, concurred with this recommendation. The Director, Nevada Intelligence Center, provided additional comments. He stated that STL is awaiting a response from the Office of Energy Intelligence for approval or disapproval of a proposed reorganization of STL to "better define STL as a" DOE FIE. He further stated that STL will establish a program to conduct the periodic reviews after receiving the response from the Office of Energy Intelligence, which is anticipated "shortly after the beginning of [F]iscal [Y]ear 1996."

In commenting on the official draft of this report, the Director, Office of Energy Intelligence, concurred with this recommendation.

D. Requirement for Written Assurances

We found that the Office of Intelligence had not required Intelligence Community agencies requesting approval of intelligence-related Work for Others (WFO) projects to provide written assurances in accordance with Part IX of the "Department of Energy Procedures for Intelligence Activities." The Office of Intelligence, therefore, reviewed and approved approximately 400 requests for intelligence-related WFO projects without having written assurance from requesting agencies that the projects were in conformance with Executive Order 12333, "United States Intelligence Activities," dated December 4, 1981. As a result of this finding, the Office of Energy Intelligence issued documentation requiring Intelligence Community agencies to submit the written assurances with their requests for approval of intelligence-related WFO projects.

Part IX of the DOE Intelligence Procedures states that "In order for DOE to [approve and] provide technical, analytical, or research assistance to the intelligence activities of a requesting [Intelligence Community] member agency," written assurances must be provided by the requesting agency that:

- o "the activity for which support or assistance is requested is within the authority of the requesting agency and will be conducted in accordance with [EO] 12333, all applicable U.S. laws, other Executive orders, Presidential directives, DCIDS and the approved intelligence procedures of the requesting agency.

- o "any DOE employee or DOE contractor employee will not be

exposed to any unreasonable or undisclosed risks to his or her health or safety as a result of providing the assistance requested."

Office of Intelligence Had Not Required Written Assurances

A WFO Coordinator in the Office of Intelligence told us that prior to our review at STL, the Office of Intelligence had not required an Intelligence Community agency requesting approval of an intelligence-related WFO proposal to provide the written assurances required by Part IX of the DOE Intelligence Procedures. A representative from the Office of Energy Intelligence told us that Part IX is applicable to the intelligence-related WFO program and that the written assurances should have been required and used by the Office of Intelligence to review proposed WFO projects.

Office of Intelligence Required to Review WFO Projects

DOE Orders regarding the WFO program required the Director of Intelligence to review and approve all proposals for intelligence-related WFO projects for conformance with EO 12333. DOE Order 4300.2B, "Non-Department of Energy Funded Work (Work For Others)," Change 3, dated January 7, 1993, which was in effect during most of this review, required the Director of Intelligence to review, validate, and, as applicable, certify/accept proposed intelligence-related WFO projects. The order also stated that all intelligence-related WFO projects were to be reviewed and approved by the Director, Office of Intelligence, for conformance with EO 12333. DOE Order 4300.2B was superseded by DOE Order 4300.2C, "Work for Others (Non-Department of Energy Funded Work)," on December 28, 1994. The new order requires that all "Intelligence-related activities will be conducted in accordance with [EO] 12333." DOE Order 4300.2C also states that the Director, Office of Energy Intelligence, has the responsibility to review and approve proposed intelligence-related WFO projects.

WFO Projects Reviewed and Approved without Written Assurances

The WFO Coordinator also told us that the Office of Intelligence had reviewed and approved approximately 400 requests for intelligence-related WFO projects. As stated previously, however, the Office of Intelligence, prior to our review at the Special Technologies Laboratory, had not required Intelligence Community agencies requesting approval of intelligence-related WFO projects to provide written assurances in accordance with Part IX of the DOE Intelligence Procedures. The Office of Intelligence, therefore, reviewed and approved WFO proposals without written assurance from requesting agencies that the projects were in conformance with EO 12333.

Comments from DOE Management

In commenting on an earlier draft of this report, the Director, Office of Energy Intelligence, stated that the "requirement" for sponsoring Intelligence Community agencies to provide the written assurances required by Part IX of the DOE Intelligence Procedures "is now being observed." In this regard, the WFO Coordinator in the Office of Intelligence told us that as a result of our review at STL, the former Director, Office of Intelligence, issued a memorandum, dated March 14, 1994, to agencies of the Intelligence Community. The memorandum required addressees to add the following to their initial WFO project statements of work:

"This request is within this organizations [sic] authority in

accordance with [EO] 12333, applicable U.S. laws, other Executive orders, Presidential directives, DCIDS and our approved intelligence procedures. DOE employees or DOE contract employees will not be exposed to any unreasonable or undisclosed risks to his or her health or safety as a result of providing this assistance."

In addition, on April 26, 1995, the Director, Office of Energy Intelligence, issued a memorandum, subject "Work Performed for Others at Department of Energy Facilities (Intelligence and Intelligence-related." Agencies of the Intelligence Community were among the addressees. The purpose of the memorandum was to update addressees on DOE's policy for intelligence and intelligence-related WFO. The memorandum stated that WFO requests must include the paragraph stated above.

Conclusions

We found that the Office of Intelligence had not required Intelligence Community agencies requesting approval of intelligence-related WFO projects to provide written assurances in accordance with Part IX of the DOE Intelligence Procedures. The Office of Intelligence, therefore, reviewed and approved approximately 400 requests for intelligence-related WFO projects without having written assurance from requesting Intelligence Community agencies that the projects were in conformance with EO 12333. Departmental policy, however, required that the Director, Office of Intelligence, review and approve all intelligence-related WFO projects for conformance with EO 12333. As a result of this finding, the Office of Energy Intelligence issued documentation requiring Intelligence Community agencies to submit the written assurances with their requests for approval of intelligence-related WFO projects.

Recommendation

We recommend that the Director, Office of Energy Intelligence:

5. Ensure that procedures for reviewing and approving proposed intelligence-related Work for Others projects from Intelligence Community agencies use the written assurances required by Part IX of the "Department of Energy Procedures for Intelligence Activities."

In commenting on the official draft of this report, the Director, Office of Energy Intelligence, concurred with this recommendation. He stated that the requirement for the Office of Energy Intelligence to ensure that "each WFO project and the activities thereunder are within the authority of the sponsoring agency . . . has now been incorporated into the [WFO] review and approval process" He also stated that WFO project sponsors are including in "newer [project] packages" statements that requested work is within "the authority of their organization."

E. Clarification of the DOE Intelligence Procedures

We found that the "Department of Energy Procedures for Intelligence Activities" need to specify that the intelligence procedures of the requesting Intelligence Community agency govern those DOE activities, which are "beyond the scope of DOE's authority," in providing technical, analytical, or research assistance to the intelligence activities of the agency that requested the assistance.

DOE Intelligence Procedures Apply Unless Specified Otherwise

According to the DOE Intelligence Procedures, intelligence activities conducted by DOE may be governed by the DOE Procedures or by the intelligence procedures of another Intelligence Community agency. Part II, "Applicability and Scope," states that, "Unless specified otherwise," these Procedures apply to any activities authorized by Executive Order 12333, "United States Intelligence Activities," dated December 4, 1981. (emphasis added) As an example, Part II specifies that the intelligence procedures of another Intelligence Community member agency govern the activity when that agency has tasked or requested that DOE "engage in the collection of foreign intelligence information or the conduct of counterintelligence operations"

STL Employees Would Follow DOE Intelligence Procedures

Eleven of the 13 Special Technologies Laboratory employees we surveyed said that they would follow the DOE Intelligence Procedures when providing technical, analytical, or research assistance to the intelligence activities of the Intelligence Community agency that had requested the assistance. As stated previously, procedures that must be followed in order for DOE to provide such assistance are contained in Part IX, "Provision of Technical, Analytical and Research Assistance to Other IC Member Agencies," of the DOE Intelligence Procedures.

In commenting on the official draft of this report, however, the Director, Office of Energy Intelligence, stated that Part IX of the DOE Intelligence Procedures "requires that sponsoring agencies provide written assurance that the [Work for Others] project activity is 'within the authority of the requesting agency and will be conducted in accordance with . . . the approved intelligence procedures of the requesting agency.' The intent of the phrase relating to conducting the activity in accord with the intelligence procedures of the sponsoring agency . . . is to confirm that, in those instances where a project activity is beyond the scope of DOE's authority, it is within the authority of, and will be governed to that extent by, the approved procedures of the sponsoring agency [E]xamples of WFO project activities where the authority and procedures of the sponsor might be applicable include offsite testing and training."

Part IX of the DOE Intelligence Procedures Is Not Specific

We do not believe that Part IX specifies, as does the previously stated example from Part II, that those DOE activities, which are "beyond the scope of DOE's authority," in providing the requested support or assistance are governed by the requesting agency's intelligence procedures. Part IX does state, however, that the requesting agency must provide written assurance "that the activity for which [DOE] support or assistance is requested is within the authority of the requesting agency and will be conducted in accordance with . . . the approved intelligence procedures of the requesting agency." (emphasis added) In our opinion, this statement means only that the requesting agency will follow its intelligence procedures when conducting the "activity for which [DOE] support or assistance is requested."

We believe, therefore, that Part IX needs to state specifically that the requesting agency's intelligence procedures govern those DOE activities, which are "beyond the scope of DOE's authority," in providing technical,

analytical, or research assistance to the intelligence activities of the Intelligence Community. Employees of DOE Intelligence Components, e.g., DOE Field Intelligence Elements like STL, may be required to conduct intelligence and intelligence-related activities that are restricted by the DOE Intelligence Procedures when testing or training with technologies developed through WFO projects. The activities, however, may not be restricted by the intelligence procedures of the requesting agency. The DOE Intelligence Procedures state that the Procedures "are intended to enable DOE Intelligence Components to carry out effectively their authorized functions and to provide appropriate assistance to other member agencies of the [Intelligence Community]." DOE Intelligence Components, therefore, need to know clearly that a requesting agency's intelligence procedures may allow them to conduct activities, otherwise restricted by the DOE Intelligence Procedures, when they provide technical, analytical, or research assistance to that agency.

Conclusions

We found that the DOE Intelligence Procedures need to specify that the intelligence procedures of the requesting Intelligence Community agency govern those DOE activities, which are "beyond the scope of DOE's authority," in providing technical, analytical, or research assistance to the intelligence activities of the agency that requested the assistance. Eleven of the 13 STL employees we surveyed said that they would follow the DOE Intelligence Procedures when providing such assistance. The Director, Office of Energy Intelligence, stated, however, that WFO activities "beyond the scope of DOE's authority" are conducted pursuant to the authority and approved procedures of the sponsoring agency. DOE Intelligence Components, therefore, need to know clearly that a requesting agency's intelligence procedures may allow them to conduct activities restricted by the DOE Intelligence Procedures, when they provide technical, analytical, or research assistance to that agency.

Recommendation

We recommend that the Director, Office of Energy Intelligence:

6. Clarify Part IX of the "Department of Energy Procedures for Intelligence Activities" by stating specifically that the intelligence procedures of a requesting agency govern those DOE activities, which are "beyond the scope of DOE's authority," in providing the requested support or assistance.

In commenting on the official draft of this report, the Director, Office of Energy Intelligence, concurred with this recommendation. He stated that he will issue by October 15, 1995, a memorandum clarifying the "relevant part" of the DOE Intelligence Procedures.

F. Foreign Travel and Contacts Debriefings

We found that the Special Technologies Laboratory had inappropriately conducted foreign travel and contacts debriefings because 1) the limited counterintelligence responsibilities of the STL Security Work Package Manager did not authorize him to conduct the debriefings as a counterintelligence official; and 2) DOE had not deleted the requirement in DOE Order 5631.1B, "Security Education Briefing and Awareness Program," dated December 31, 1991, for security officials to conduct the debriefings. As a result of this

finding, the Office of Safeguards and Security revised DOE Order 5631.1B by issuing a new order that deleted the requirement for security officials to conduct the debriefings.

DOE Order 5670.3, "Counterintelligence Program," dated September 4, 1992, states that Field Office Counterintelligence Program Managers (CIPMs) shall "Establish and conduct a program for foreign travel and contacts debriefings."

STL Security Official Conducted Debriefings

At the time of our review at STL in March 1994, the STL Security Work Package Manager had conducted about five foreign travel and contacts debriefings within the previous twelve-month period. His counterintelligence responsibilities, however, which were "limited to integrating initial and annual briefing requirements into the Security Education/OPSEC Awareness Program," did not authorize him to conduct the debriefings as a counterintelligence official. The CIPM for the Nevada Operations Office (NV), who was responsible for ensuring the "development and implementation" of the NV Counterintelligence Program, confirmed that the STL Security Work Package Manager was not assigned any additional counterintelligence responsibilities.

The NV CIPM said that the STL Security Work Package Manager had conducted the debriefings because "Safeguards and Security Orders" required security officials to conduct the debriefings. DOE Order 5631.1B, which was in effect at the time of our review at STL, stated that local security offices were to debrief those travelers who submitted a hostile contact report regarding "any security or other concerns arising as a result of" foreign travel. The NV CIPM also told us that the requirements in "Safeguards and Security Orders" for security officials to conduct foreign travel and contacts debriefings should have been deleted when DOE Order 5670.3 was issued. He said that the NV Contractor Counterintelligence Officer (CCIO) or he should be conducting the debriefings at STL, based on requirements of DOE Order 5670.3. The NV CIPM also said that security officials conducting the debriefings "inhibited potential [counterintelligence] information from getting into [counterintelligence] channels."

Debriefing Requirement Should Have Been Deleted

Based on discussions with DOE Headquarters officials, we determined that the requirement for DOE security officials to conduct foreign travel and contacts debriefings should have been deleted from DOE Order 5631.1B. The Director, Office of Counterintelligence, told us that historically DOE security officials had conducted travel briefings, which included foreign travel and contacts debriefings. He said that after the Office of Intelligence was established, however, counterintelligence officials assumed the responsibility in DOE for conducting the debriefings, which was formalized by DOE Order 5670.3. The Director, Policy, Standards, and Analysis Division, Office of Safeguards and Security, also said that counterintelligence officials currently had the responsibility in DOE to conduct the debriefings. He additionally told us that he was amending DOE Order 5631.1B to delete the requirement for local security offices to debrief those travelers who had submitted a hostile contact report. In response to our question, he said that local security offices in the field had probably not been informed that they no longer had the responsibility to conduct the debriefings.

Office of Safeguards and Security Revised DOE Order 5631.B

Prompted by our inquiry, "and in the interest of ending confusion regarding responsibility for the foreign travel briefing program," the Office of Safeguards and Security revised DOE Order 5631.1B by issuing DOE Order 5631.1C, "Safeguards and Security Awareness Program," dated May 5, 1994. The revision deleted the paragraphs in DOE Order 5631.1B containing the responsibility for the foreign travel briefing program. A note issued with DOE Order 5631.1C stated that "the responsibility for foreign travel briefings is currently recognized as a function of the Director of Counterintelligence."

Comments from DOE Management

In commenting on an earlier draft of this report, the Director, Office of Energy Intelligence, stated that, "When the revised DOE Order 5631.1B (now 5631.1C) was issued in May 1994, the STL Security [Work Package Manager] discontinued the foreign travel . . . debriefings resulting in placing that responsibility solely upon the DOE/NV . . . CIPM and the . . . CCIO." The Director further stated that the "DOE/NV CIPM has established an on-going foreign travel [debriefing] program . . . [that] continues to be conducted in accordance with DOE Order 5670.3."

An official from the Office of Counterintelligence said that the Office of Counterintelligence had data indicating that CIPMs and CCIOs at other Operations Offices had established and were conducting programs for foreign travel and contacts debriefings in accordance with DOE Order 5670.3. The official also said that he did not know, however, if CIPMs and CCIOs at every Operations Office had established and were conducting the programs.

Conclusions

We found that STL had inappropriately conducted foreign travel and contacts debriefings because 1) the limited counterintelligence responsibilities of the STL Security Work Package Manager did not authorize him to conduct the debriefings as a counterintelligence official; and 2) DOE had not deleted the requirement in DOE Order 5631.1B for security officials to conduct the debriefings. DOE Order 5670.3, which was issued in September 1992, stated that Field Office CIPMs had the responsibility to establish and conduct foreign travel and contacts debriefing programs. Beginning in September 1992, therefore, the NV CIPM or the NV CCIO should have been conducting the debriefings at STL instead of the STL Security Work Package Manager. As a result of this finding, the Office of Safeguards and Security revised DOE Order 5631.1B by issuing a new order that deleted the requirement for security officials to conduct the debriefings.

Recommendation

We recommend that the Director, Office of Energy Intelligence, in accordance with the Managers, DOE Operations Offices:

7. Ensure that Counterintelligence Program Managers at the Operations Offices have established and are conducting foreign travel and debriefings programs in accordance with DOE Order 5670.3.

In commenting on the official draft of this report, the Director, Office of Energy Intelligence, concurred with this recommendation. He stated that the "Office of Energy Intelligence, through the Director of the Counterintelligence Division, will ensure that foreign travel briefings and debriefings are conducted in accordance with DOE Order 5670.3."

IG Report

No. _____

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